

Supreme Court of the Northern Territory

Practice Direction No. 1 of 1998

PRISONERS AT RISK

1. Where there is information available to a prosecutor or counsel for an accused person that a prisoner or person who may become a prisoner may be at risk if remanded into custody or committed to a prison that information should be disclosed to the Court as soon as possible.
2. Where the Court is advised that there is information in relation to such a person or there is material before the Court upon which the Court may conclude that such a person may be at risk if remanded into custody or committed to a prison the Court may order that information or material be immediately brought to the attention of the Sheriff and of the Superintendent of the prison to which the person is to be remanded or committed.
3. An order made in accordance with paragraph 2 shall be notified to the Sheriff immediately who shall forthwith take out the order for signature by the Judge who made the order.
4. The order shall have attached to it a copy of the relevant transcript of the proceedings and copies of any other relevant documents ordered by the Court to be attached to the order.
5. A signed copy of the order is to be sent immediately by facsimile to the Superintendent of the gaol by the Sheriff.
6. The Sheriff shall ensure that:
 - (a) the terms of the order are explained to all Deputy Sheriffs and that the prisoner is not left unsupervised whilst in the custody of the Court;
 - (b) the terms of the order are explained to any prison officer into whose custody the prisoner is delivered;
 - (c) the original order together with all attachments is delivered to him or by a Deputy Sheriff to any such prison officer.
7. This practice Direction 'at risk' includes a risk of suicide or any other significant risk to physical or mental health.

Signed
DN Angel,
ACTING CHIEF JUSTICE
9 April 1998

Magistrates' Court

Domestic Violence Act – Practice Direction CONSENT ORDERS

This practice direction is issued pursuant to section 20AB of the *Domestic Violence Act* and will apply from 1 May 1998. It rescinds the practice direction on consent orders dated 25 October 1996.

Background

A Clerk of the CSJ (i.e. a Registrar of the Local Court) has the power under the *Domestic Violence Act* to make, vary or revoke a restraining order by consent. In the case of making or varying an order, the Clerk may make an order by consent provided that the Clerk has explained to the defendant certain matters specified in the Act.

It has become apparent that the parties seeking revocation of a restraining order by consent are often not sufficiently aware of the gravity of the initial order and that "victims" are often under pressure to consent to the revocation.

Procedures

1. Making or varying a restraint order by consent (sections 5 & 9)

The power to make or vary an order by consent is to be exercised only by a Clerk who is a Judicial Registrar, or Registrar, or a Deputy Registrar specifically authorised by a Magistrate, Judicial Registrar.

In dealing with an application for a consent order, a Clerk should speak to

the parties in private, if at all possible. **These matters must not be dealt with over the counter.** It may be appropriate for the Clerk to speak to the parties individually rather than together. A Clerk should keep in mind when dealing with an application for variation that the initial order was made by a magistrate upon hearing evidence.

The Clerk may make a consent order, provided that—

- 1) the person making the application, or on whose behalf the application was made, consents in writing (on Form 3), either personally or by her/his legal practitioner, and
- 2) if the applicant applies in person, the Clerk has explained to her/him
 - a) the purpose and effect of the proposed order or variation;
 - b) the consequences that may follow if the defendant fails to comply with the proposed order or variation; and
 - c) the means by which the proposed order may be varied or revoked, and
- 3) the defendant consents in writing (on Form 3), either personally or by her/his legal practitioner, and
- 4) the defendant attends in person before the Clerk who explains to the

defendant —

- a) the purpose and effect of the proposed order or variation;
- b) the consequences that may follow if the defendant fails to comply with the proposed order or variation; and
- c) the means by which the proposed order may be varied or revoked.

If the Clerk is not satisfied that an order should be made, or varied, the Clerk must refer the application to the Court for decision.

2. Revocation of restraining orders by consent (section 9)

If an application is made for revocation of a restraining order by consent, the Clerk **must list the matter in court before a magistrate**, unless exceptional circumstances exist. (An exceptional circumstance would be, for example, the non-availability of a magistrate for some time; or the available magistrate having a perceived conflict.

If a Clerk considers it necessary to deal with an application for revocation himself/herself, the matter should be dealt with in private, if at all possible.

Hugh Bradley
CHIEF MAGISTRATE
2 April 1998