

Domestic Violence Act
PRACTICE DIRECTION

CONSENT ORDERS

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

Background

A Clerk of the CSJ (ie. 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 parties seeking revocation of a restraining order by consent are often not sufficiently aware of the gravity of the initial order and the "victims" are often under pressure to consent to revocation.

Procedure

1. Making or varying a restraining 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 should 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:-

- a) 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
- b) if the applicant applies in person, the Clerk has explained to her/him
 - (i) the purpose and effect of the proposed order or variation;
 - (ii) the consequences that may follow if the defendant fails to comply with the proposed order or variation; and
 - (iii) the means by which the proposed order may be varied or revoked, and
- c) the defendant consents in writing (on Form 3), either personally or by his/her legal practitioner, and

- d) the defendant attends in person before the Clerk who explains to the defendant-
 - (i) the purpose and effect of the proposed order or variation;
 - (ii) the consequences that may follow if the defendant fails to comply with the proposed order or variation; and
 - (iii) 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