

Small Claims Act
PRACTICE DIRECTION

LEAVE TO ISSUE INTERSTATE SUMMONS TO WITNESSES

The following practice direction is issued pursuant to section 50 of the *Small Claims Act* and will apply from 2 February 1999.

Background

The introduction of the Service and execution of Process Act (Cth)(1992) ("SEPA") seemed to abolish the need to apply for leave to issue a summons to witness and serve interstate. SEPA however merely says that a process issued out of one jurisdiction may be served in another. The Supreme Court Rules of the Northern Territory require a party to apply for leave to issue and serve a summons to witness outside of the Territory. The Local Court rules are silent on this matter and the Local Court has always adopted the Supreme Court rules in this matter.

Recently some practitioners have questioned the need for leave. The reasons for requirement of leave is so that the court can satisfy itself that it is not issuing process to be served interstate which could be an abuse of process or cause major inconvenience to the person summons without any evidence that they will assist the court to come to a just and proper finding in the matter.

Procedures

1. Leave to issue of a summons to witness and to produce documents for service interstate shall be sought by an interlocutory summons supported by an affidavit. The application shall be accompanied by a draft order and a draft summons to witness.
2. This application can be made on an ex parte basis.
3. The application will be considered by a Judicial Registrar or a Magistrate in chambers and the order may be made by the Court out of chambers. If the Magistrate or Judicial Registrar is of the opinion further information is required that will be requested from the party applying.
4. If the Magistrate or Judicial Registrar is on the opinion the application ought to be heard in court then a date will be endorsed on the summons and that summons returned to the applicant.
5. The affidavit must contain evidence that-
 - a) The person being summonsed has relevant evidence to provide to the court
 - b) The appropriate arrangements have been made for the person to travel and accommodation has or will be arranged for the witness if required to attend in person (cf to produce documents)
 - c) The appropriate amount of conduct money will be provided at the time of service of the summons.

HUGH BRADLEY
CHIEF MAGISTRATE

2 February 1999