

Work Health Act
PRACTICE DIRECTION

EARLY RETURN OF SUMMONS TO PRODUCE DOCUMENTS

The following practice direction is issued pursuant to section 95 of the *Work Health Act* to apply from 1 December 2000.

Revocation

The Practice Direction entitled "Early Return of Summons for Production" dated 21 October 1999 is revoked.

Background

In the recent past this Court has taken the view that the frequent use of the early return Summons to Produce was a misuse of court process. If a party required documents from persons not involved in the action, they were required to use the procedure for not party discovery. In many jurisdictions however, including the Supreme Court of the Northern Territory, a practice has developed allowing Summons to Produce to be used for the gathering of documents at any time of the proceeding.

In order to achieve some consistency with the practices of the Supreme Court this court will receive applications for the early return of a Summons to Produce Documents. It must always be remembered however, that a Summons to Produce is an order of the Court and must not be used lightly; a failure to comply is punishable as a contempt of Court.

Procedure

From 1 December 2000 onwards the following procedure should be followed:

1. Parties must apply for leave to issue a Summons to Produce Documents whenever they seek an early return – whether or not a hearing date has been fixed.
2. The application shall be way of interlocutory application supported by an affidavit setting out why the documents are relevant to the issues before the court. The application shall also be accompanied by a draft Summons to Produce which allows a reasonable time for the person to comply with the Summons. The application is required to be on notice to the other parties to the proceedings.
3. If leave is granted:
 - (a) a copy of the Order and the Summons to Produce shall be served on each of the parties to the action; and
 - (b) the party applying for the Summons must also serve upon the person summonsed a Notice in the form attached to this Practice Direction. This Notice shall be attached to the front of the Summons.

- (c) Upon filing, the party applying for the Summons must also pay into court the cost of an express post bag for the return of the documents by the Court to the summonsed party.
- 4. Upon the return date and assuming the documents have been produced to the Court, the appropriate orders may be made – for example:-
 - (1) The plaintiff/defendant have leave to inspect the documents returned bywithin 7 days with a view to ascertaining any claim for privilege.
 - (2) If there is a claim for privilege the plaintiff/defendant shall notify the other party in writing of any claim for privilege.
 - (3) If there is no claim for privilege the parties have leave to inspect and photocopy the documents returned within 21 days.
 - (4) Upon the expiry of 28 days the Registrar shall arrange for the return of the documents to the person who produced the documents.
- 5. If the documents to be produced are medical records then the issue of privilege shall be addressed before any access to the documents is granted.

HUGH BRADLEY
CHIEF MAGISTRATE

13 November 2000