

Local Court Act – Small Claims Act
PRACTICE DIRECTION

APPLICATIONS FOR STAY OF EXECUTION

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and section 50 of the *Small Claims Act*. It rescinds the practice direction dated 23 August 1996 and will apply from the date of this practice direction.

Background

Rule 66.16 of the Supreme Court Rules provides that the Court may stay execution of a judgment.

Section 20 of the Local Court Act provides, inter alia, that an application for to set aside a final order against a party who did not appear in the proceeding and that the proceeding be re-heard, does not operate as a stay of the final order unless-

- the Court so orders (section 20(3)) or
- the final order was for the payment of money in which case the application for re-hearing operates as a stay of so much of the order as relates to the payment of money (section 20(4)).

Neither Order 30 of the Local Court Rules nor Order 23 of the Small Claims Rules cover stay of execution when a party files an application for re-hearing.

Procedure

In the Local Court and Small Claims jurisdictions, where an application for an order to stay execution of a judgment is made, it shall be-

- in accordance with Form 25A in the Local Court or Form 14A in the Small Claims jurisdiction
- accompanied by a supporting affidavit setting out the reasons for staying execution
- served on the judgment creditor
- listed before the Court as soon as possible but allowing enough time to enable service on the judgment creditor.

HUGH BRADLEY
CHIEF MAGISTRATE

2 December 1998