

*Local Court Act*  
PRACTICE DIRECTION

**CRIMINAL PROPERTY FORFEITURE ACT**

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and will apply from 18 October 2005.

**BACKGROUND**

The practice direction of the 11<sup>th</sup> November 2004 was issued to put in place the procedure to be followed for applications under the *Criminal Property Forfeiture Act*. A new form of Originating application has been created in the Local Court Rules which will make the inter parte procedures for applications for restraining orders simpler.

**PROCEDURE**

**Section 40 Interim Orders**

1. Form 4 of the Criminal Property Forfeiture Regulations is the form to be used when making an application pursuant to section 40. That application should be accompanied by a sworn declaration or affidavit by the officer concerned setting out the facts upon which they wish to rely.
2. The Civil registry will keep a copy of the application, supporting documentation and the interim order in a register kept at the court.
3. Upon the applicant then making an application under section 41 & 43 of the Act the application and supporting documentation along with the interim order will be transferred to the court file.
4. If the application is made by phone to a Magistrate the following procedure applies:
  - a) The applicant should fax to the Magistrate a copy of the application, any supporting documentation and draft order to the court.
  - b) The applicant will then swear on oath over the phone as to the facts relied upon. If the order is made the applicant shall complete his copy of the application in the same manner as the Magistrate.
  - c) If the applicant is unable to fax a copy of the application the Magistrate the information shall provided to the court over the phone and the applicant and the court shall complete the Form 2 with the same words each endorsing their own copies. The applicant shall then provide the court with the original sworn declaration as soon as possible.

### **Section 43 applications**

1. An application pursuant to section 43 should be by way of Form 7E of the Local Court rules if the application is to be ex parte and 7F if the application is to be inter parte
2. The Application should be made as soon as possible as the interim restraining order will lapse within 72 hours or before the application can be heard by the court.
3. The application should be accompanied by an affidavit stating all matters relied upon including the facts which establish that there are reasonable grounds to believe that the property is crime derived or crime used and the connection between the property and any respondent to the application.
4. If the application is inter parte the application should be served with a copy of the original application for interim order and any supporting affidavits. After service Part 7 Division 2 of the Local Court Rules shall apply.
5. Should the application for restraining order be ex parte then the first mention will be before a magistrate. At that first mention a restraining order can be made.
6. Once the restraining order is issued then it is up to the Applicant to serve any interested parties with a copy of the order

### **Section 59 Notice of objection**

Any person can file a notice of objection to an order made under section 43 of the Act. Once served with a restraining order a person has 28 days to lodge an objection.

1. The form of Objection should be in the form of an interlocutory application with an affidavit in support setting out the facts to establish grounds as set out in sections 63, 64, 65 or 66 of the Act. Rule 25 shall apply to these applications.
2. That interlocutory application must be served on the Territory and any other interested party and will be listed in the usual manner unless expressly urgent.
3. At the first return date of the interlocutory application, The court can either hear the application or refer the matter to a Judicial Registrar for further case management.

### **Application for Forfeiture (section 95).**

1. The application for forfeiture shall be by way of interlocutory application in the same file as the application for restraining order. It cannot be included in the originating application because of the restrictions placed on the court by the legislation.
2. The Application for forfeiture can only be filed once the 28 days for objection has run. The Application will be listed on the next available date and will be heard on the papers.

3. If an objection has been filed then an application for forfeiture can be filed but will not be dealt with until after the objection hearing has been dealt with. In these circumstances the Applicant should file the application for forfeiture to be heard at the same time as the objection hearing.

**HUGH BRADLEY  
CHIEF MAGISTRATE**

18 October 2005