

Local Court Act
PRACTICE DIRECTION

PROCEEDS OF CRIME ACT

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and will apply from 4 January 2006.

BACKGROUND

The *Proceeds of Crimes Act* 2002 (Cth) has not previously been enforced in the Northern Territory. The Act deals with the restraint and forfeiture of property which is the proceeds of an offence or an instrument of an offence. The Commonwealth Attorney General has now put some resources towards utilising this Act. The Local Court has jurisdiction to hear an application for restraining order and forfeiture in relation to matters where there has been a conviction in respect of a Commonwealth offence. The procedure under this act will be as follows:

PROCEDURE

Section 17 Applications

1. An application for a restraining order pursuant to section 17 of the Act shall be in the form of an originating application (Form 7E) with a supporting affidavit from an "authorised officer" as defined in section 338.
2. any person who the Director of Public Prosecutions believes may have an interest in the property shall be notified by the Director of Public Prosecutions of the application. The notice shall be by way of serving a copy of the application and supporting affidavit upon that person prior to the return date of that application.
2. The application once filed will be listed together with the prosecution of the criminal matter in the Court of Summary Jurisdiction so that if a conviction is obtained the prosecution can then apply for the restraining order at the time of the conviction.

Section 48 Applications

1. Six months after a conviction is obtained then an application for forfeiture can be made.
2. An application can take two forms:
 - a) If there has been a previous application for restraining order then the application for forfeiture should be an interlocutory application (form 25A) within that original proceeding.
 - b) If there is no restraining order then the application should be by way of Originating Application (form 7E) with supporting affidavit.

Service of Applications for restraining orders or forfeiture orders

Sections 26 and 61 require the Director of Public Prosecutions to give notice to the owner of the property and any other interested parties of the application. Written notice of the application accompanied by a copy of the application and any affidavits in support must be given prior to the hearing of the application.

Objection to restraining order or forfeiture order

A person with an interest in the property can appear at the hearing of the application for restraining order or forfeiture.

A person who wishes to appear should file a Notice of Appearance (Form 7D) with a supporting affidavit as to the ownership of the property and any evidence to establish that the property is not the proceeds of crime or an instrument of crime.

Where an appearance is filed in relation to an application for restraining order then the objection to the order can be dealt with immediately upon conviction or be referred by the Magistrate to the Judicial Registrar for case management if required.

If an application for forfeiture is made by way of Originating Application then an interested party can file an Appearance with the Court and the matter will be set down for a prehearing conference before a Registrar for case management prior to the matter being set down for hearing.

**HUGH BRADLEY
CHIEF MAGISTRATE**

4 January 2006