

AUSTRALIAN CAPITAL TERRITORY  
MAGISTRATES COURT

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**PRACTICE DIRECTION No 2 of 2008**

**DOMESTIC RELATIONSHIPS ACT 1994**

1. **Background**

The *Domestic Relationships Act 1994* (the Act) gives the Magistrates Court (the Court) power to make orders adjusting the interests in the property of parties to a domestic relationship within the meaning of the Act. This practice direction sets out the procedure for applying for an order under the Act.

Proceeding may be commenced under the Act seeking an order where no termination agreement is in place or if a termination agreement is in place to enforce, set aside or vary the agreement.

This practice direction puts in place special procedures where, at the time of filing the application, the parties agree as to the orders they want the Court to make (consent applications).

2. **Revocation of Practice direction**

This Practice Direction revokes the Practice Direction in relation to the Act dated 12 March 1996.

3. **Commencement of proceedings**

*Originating application*

Proceedings under the Act must be commenced by the filing of an Originating Application and affidavit in support.

The Originating Application must be in the form of Approved Form 2.7 under the *Court Procedures Act 2004*. Rule 60 of the *Court Procedures Rules 2006* (the Rules) sets out what information must be included in the originating application.

The Rules require that:

- Both parties to the domestic relationship be named as a party to the proceedings, one as plaintiff and one as defendant.
- The originating application:

- state the orders sought, and
- list the affidavits relied upon;
- either the originating application or supporting affidavit must show that the Magistrates Court has jurisdiction to hear the matter.

#### *Supporting Affidavit*

The supporting affidavit must be in the form of Approved Form 6.11 under the *Court Procedures Act 2004*. Division 6.10.2 of the Rules sets out the general requirements in relation to affidavits.

#### General

In all cases the affidavit by the plaintiff must contain evidence to establish:

- The date of separation;
- The nature and length of the relationship
- Whether there are any children of the relationship
- The financial and non-financial contributions made by each party
- Where the parties reside, both now and throughout the period of the relationship
- The property involved and its value and where the value of the property exceeds \$50,000 an indication that the parties consent to having the matter dealt with in the Magistrates Court;
- If the application is made more than two years after the parties separated grounds as to why the Court should grant leave to file the application. The Court may grant leave if it is satisfied that greater hardship would be caused to the plaintiff if leave were refused than if leave were granted (see section 13 of the Act).
- Where the parties have entered into a Termination Agreement a true copy of the agreement must be annexed to the plaintiff's affidavit and if a Solicitor's Certificate under paragraph 33(1)(d) of the Act has been obtained in relation to the Termination Agreement a copy of the certificate must also be annexed.

The affidavit must include sufficient details of the financial circumstances of the parties to enable the Court to determine whether the orders sought are just and equitable.

#### Consent applications

Where the defendant supports the application being made and agrees to the orders sought the defendant should provide an affidavit in support of the application at the time the application is filed. The filing of an affidavit by both parties at the time of lodging the application will allow the court to progress the matter more quickly and possibly without the need of the parties to attend court. Both affidavits should indicate that the deponent agrees to the orders being sought.

The affidavit must include sufficient details of the financial circumstances of the parties to enable the Court to determine whether the orders sought are just and equitable.

### *Minute of Consent Order*

Where the parties are seeking consent orders they should file a Minute of Consent Orders using Approved Form 2.44 under the *Court Procedures Act 2004*. The Minute should set out the exact orders the parties have agreed and wish the Court to make.

#### **4. Procedure**

##### *Consent applications*

1. Where both parties agree to the orders being sought and have provided affidavits indicating their agreement to the orders sought, provided the affidavits contain sufficient evidence to allow the Court to satisfy itself that the orders are fair and equitable, a Magistrate will consider the application as lodged with the Court.
2. Before returning the copies to the applicant the Court will insert a return date into the application, usually four to six weeks after the filing of the application.
3. Before the return date the Court will consider the application and if appropriate make the requested orders in Chambers. The parties will be sent a copy of the orders and will not be required to attend the Court on the return date.
4. If the affidavits do not contain sufficient evidence, or the orders sought are unclear, the Court may request further information from the parties before dealing with the matter.
5. Once the Court is satisfied that it should make the orders sought the Court will prepare an order in the terms agreed and send a copy to the parties.
6. If consent orders are not made before the return date the parties will be required to attend the Court on that day for the Registrar to make directions in relation to the future progress of the matter.

##### *Contested Matters*

1. The Court will return two sealed copies of the application and supporting affidavit to the plaintiff. The plaintiff then must serve one of the copies on the defendant. For the requirements of service see Division 6.8.3 of the *Court Procedures Rules 2006*.
2. Before returning the copies to the applicant the Court will insert a return date into the application, usually four to six weeks after the filing of the application.
3. On the return date listed in the application the matter will go before the Registrar for directions as to its future progress.

4. If the defendant wishes to defend the proceedings he or she must file a Notice of Intention to respond on or before the return date listed in the originating application. Failure to do so may prevent the defendant defending the proceedings.

Chief Magistrate

Dated: