



Local Court Practice Note No. 2 of 2012

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Domestic and Personal Violence Proceedings

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Part 1 Commencement and Application of Practice Note

1.1 This Practice Note commences on 1 May 2012.

1.2 This Practice Note applies to application proceedings pursuant to the Crimes (Domestic and Personal Violence) Act 2007 ('the Act') in the Local Court and is intended to reflect the legislative objective set out in sections 9 and 10 of the Act.

Part 2 Definitions

2.1 In this Practice Note:

'AVO' means an apprehended violence order within the meaning of the Act.

'ADVO' means an apprehended domestic violence order within the meaning of the Act.

'APVO' means an apprehended personal violence order within the meaning of the Act.

'business day' means a day that is not on a weekend or gazetted as a public holiday in the State of New South Wales.

'written statement' means a written statement prepared in accordance with the form and requirements, and with the evidentiary effect, set out in Division 3 of Part 2 of Chapter 3 of the 1986 Act.

'1986 Act' means the Criminal Procedure Act 1986.

Part 3 Purpose

3.1 This Practice Note is issued for the purpose of providing for a range of procedural measures in application proceedings under the Act.

3.2 The object of this Practice Note is to promote consistency and efficiency in the determination of application proceedings and procedural fairness to all parties, having

regard to the objects of the Act, and to facilitate the “just, quick and cheap” resolution of proceedings in accordance with the overriding purpose set out in s 56 of the Civil Procedure Act 2005.

3.3 This Practice Note is to be read in conjunction with Chapter 10 of Practice Note Crim 1.

Part 4 Orders sought in the absence of a defendant

4.1 This Part applies in respect of application proceedings conducted in the absence of the defendant.

4.2 Subject to section 75 of the Act:

- (a) Where, in the course of proceedings, the applicant seeks any additional or alternative orders to those specified in an original application and/or any provisional or interim order, and
- (b) The additional or alternative orders being sought would, if made, have the effect of increasing or varying (except for lessening) the restrictions imposed upon the defendant,

the applicant must file and serve upon the defendant an amended application specifying the orders sought unless the Court is satisfied it is in the interests of justice not to do so.

4.3 A person serving an amended application must complete a statement of service in accordance with rule 5.12 of the Local Court Rules 2009.

4.4 Before making an order that will have the effect described in paragraph 4.2, the Court must be satisfied that service of the amended application has been effected upon the defendant.

Part 5 Procedure at interim hearing

- 5.1 The object of this Part is to establish a consistent approach to the manner in which evidence is received at interim hearings. Subject to section 22 of the Act, an interim order may be made by the Court where:
- (a) The person for whose protection an order is sought is present and gives evidence orally or by written statement or by a combination of both; or
 - (b) The person for whose protection an order is sought is absent but a written statement of the person is tendered on his or her behalf by a person authorised to tender such a statement.
- 5.2 Subject to this Part, the procedure to be followed at a hearing where an interim apprehended violence order is sought ('interim hearing') will be determined by the Court.
- 5.3 Nothing in this Part removes the requirement that the Court be satisfied of the matters set out in section 17 (in the case of an interim ADVO) or section 20 (in the case of an interim APVO) of the Act prior to making an interim order.
- 5.4 The Court may make an order determining the amount of time that may be taken by each party in the examination, cross-examination or re-examination of a witness who is giving evidence orally at an interim hearing.
- 5.5 An interim order may not be made unless the person for whose protection an order is sought is present at an interim hearing, unless the Court is satisfied that the person is unable for good reason to be present and the matter requires urgent consideration by the Court.

A Where application brought by police officer and protected person and defendant both absent

5.6 When determining an application for an interim order made by a police officer in the absence of the defendant and the person for whose protection an order is sought, the Court may consider (in addition to the material set out in section 22(4) of the Act):

- (a) The grounds set out in an application for an order, including a provisional order granted by an authorised justice; and/or
- (b) A written statement taken by a police officer from the person for whose protection an order is sought.

B Where defendant and protected person both present and application contested

5.7 At an interim hearing at which the defendant and the person for whose protection an order is sought are present and the application is contested, unless the Court orders otherwise, an application for an interim apprehended violence order is to be heard and determined on the basis of any one or more of the following:

- (a) The written grounds supporting the application;
- (b) A written statement from any witness intended to be called at the interim hearing;
- (c) Evidence given orally (including in cross-examination) at the interim hearing;
- (d) Any submissions made by the parties or their legal representatives.

5.8 Unless the Court orders otherwise, the evidence in chief and cross-examination of a witness at an interim hearing is:

- (a) Limited to establishing whether or not it is necessary or appropriate for the Court to make an interim order, and
- (b) Not to be directed to establishing whether the making of a final order is warranted.

Part 6 Use of written statements at hearings

- 6.1 In this Part, ‘**hearing**’ means a contested hearing at which an application under the Act is heard and determined, but does not include:
- (a) an interim hearing; or
 - (b) the hearing of an application under the Act where concurrent criminal proceedings are in progress against the defendant for an alleged offence arising out of the same facts or circumstances that give rise to the application.
- 6.2 Unless the Court orders otherwise, a witness’ evidence in chief at a hearing must be given by written statement in accordance with paragraph 6.3.
- 6.3 Subject to paragraphs 6.2 and 6.4, the Court shall direct a party to serve on each other party a written statement of the oral evidence that the party intends to adduce in chief on any question of fact to be decided at a hearing. Unless the Court orders otherwise, directions for the listing of the matter for hearing shall be made in the form set out at Attachment A.
- 6.4 Where a police officer is to be called as a witness, the written statement of the officer is not required to be served until the day of the hearing.
- 6.5 Each written statement must be signed by the intended witness unless the signature of the witness cannot be procured or the Court orders otherwise.
- 6.6 If the party serving the written statement calls as a witness at the hearing any person whose written statement has been served in accordance with paragraph 6.3 or 6.4:
- (a) That person’s written statement is to stand as the whole of his or her evidence in chief, so long as the person testifies to the truth of the written statement, and

(b) Except by leave of the court, the party may not adduce from that person any further evidence in chief.

6.7 Nothing in this Part operates to make admissible any evidence that is otherwise inadmissible or privileged.

6.8 Where it is anticipated a certificate under section 87 of the Civil Procedure Act 2005 will be sought, such application should be made to the Court no later than the mention date when the proceedings are to be fixed for hearing, unless the Court otherwise directs.

6.9 The Court may, if satisfied it is in the interests of justice to do so, dispense with compliance with any or all of this Part.

Part 7 Procedure at final hearing – where no consent to the order and s39 does not apply

7.1 Subject to this Part, the procedure to be followed at a contested hearing where a final AVO is sought and section 39 of the Act does not apply ('final hearing') will otherwise be determined by the Court.

A Where defendant present

7.2 Unless the Court orders otherwise pursuant to paragraph 7.3 or 7.4, an application for a final AVO is to be heard and determined on the basis of:

(a) The written grounds supporting the application;

(b) Evidence in chief given by way of written statements that have been served in accordance with any case management orders:

(i) By, or if a person is someone to whom section 16(2) or section 19(2) of the Act applies, on behalf of, the person for whose protection an order is sought,

- (ii) If the application is brought by a police officer, that or another officer;
 - (iii) Of the defendant, and
 - (iv) Of any other witnesses,
- (c) Subject to leave being granted by the Court, any additional evidence of a matter or thing occurring or becoming known to the witness after the making of a written statement;
- (d) Any cross-examination evidence or re-examination evidence given orally by a witness at the final hearing; and
- (e) Any submissions made by the parties or their legal representatives at the final hearing.

7.3 The Court may order that any or all of a witness' evidence be given orally.

7.4 Where the witness is a vulnerable person within the meaning of section 306M of the 1986 Act, evidence in chief of a previous representation may be given by way of a recording, in accordance with Division 3 of Part 6 of Chapter 6 of the 1986 Act.

7.5 The Court may, at any time before or during a final hearing, make an order determining the amount of time that may be taken by each party in the examination, cross-examination or re-examination of a witness who is giving evidence orally.

7.6 Written statements of or on behalf of the person for whose protection an order is sought must, to the fullest extent practicable, address all matters required to be considered by the Court in deciding whether or not to make:

- (a) A final ADVO, pursuant to sections 16 and 17 of the Act, or
- (b) A final APVO, pursuant to section 20 of the Act.

B Where defendant absent

7.7 Proceedings for a final order may be heard and determined by the Court even if the defendant is absent.

7.8 The Court must be satisfied of the matters set out in:

- (a) Sections 16 and 17 of the Act, in the case of a final ADVO, or
- (b) Section 20 of the Act, in the case of a final APVO.

Part 8 Procedures for protection of children

8.1 In proceedings under the Act where:

- (a) A child is required to give evidence pursuant to section 41 of the Act, and
- (b) The defendant is not represented by an Australian legal practitioner,

then in addition to any measures for the protection of children specified in the Act, the following procedure shall apply at a hearing of an application:

- (c) A child is not to be examined in chief, cross-examined or re-examined by the defendant, but may be so examined instead by a person appointed by the Court who is an Australian legal practitioner or other suitable person.
- (d) The person appointed by the Court is to ask the child only the questions that the defendant requests that person to put to the child.
- (e) An appointed person must not independently give the defendant legal or other advice.

8.2 Paragraph 8.1 applies whether or not closed-circuit television facilities or other similar technology (or alternative arrangements) are used by the child to give evidence.

8.3 In accordance with section 42, in application proceedings under the Act where any child may be directly or indirectly affected by the making or variation of an AVO:

- (a) A person who applies for an order is under a duty to inform the Court of any relevant parenting order (within the meaning of section 42 of the Act) or pending application for a relevant parenting order, and
- (b) Prior to making or varying an AVO, the Court shall remind of the person of the duty set out in paragraph 8.3(a) and have regard to the matters set out in section 42(2) and (3) of the Act.

Part 9 Applications for variation or revocation of orders where contested

9.1 Subject to section 73(3) of the Act, unless the Court orders otherwise pursuant to paragraph 9.2 an application for variation or revocation of orders which is contested is to be heard and determined on the basis of:

(a) Evidence in chief given by way of written statements:

- (i) Of the protected person,
- (ii) Of the defendant, and
- (iii) Of any other witnesses,

that have been served in accordance with any case management orders;

- (b) Subject to leave being granted by the Court, evidence in chief given orally by a witness at the final hearing that relates to a matter or thing occurring or becoming known to the witness after the making of a written statement,
- (c) Any cross-examination evidence or re-examination evidence given orally by a witness at the hearing, and

- (d) Any submissions made by the parties or their legal representatives at the hearing.

9.2 The Court may order that any or all of a witness' evidence be given orally.

Part 10 Applications for revocation of expired AVO

Where an application is made to revoke an expired AVO, in addition to the requirements of section 72(8) of the Act, the Court requires a copy of the application setting out the grounds relied to be served on the protected person and the Commissioner of Police.

Part 11 Applications for annulment of orders

For the purposes of section 6(1) of the Crimes (Appeal and Review) Act 2001, the Court requires the following "interested parties" to be informed of an application for annulment of an AVO:

(a) Where the application is made by a defendant:

- (i) The protected person, and

- (ii) If the application for an AVO was brought by a police officer, the officer in charge of the police station from which the application was made.

(b) Where the application is made by a protected person:

- (i) The defendant; and

- (ii) If the application for an AVO was brought by a police officer, the officer in charge of the police station from which the application was made.

Judge Graeme Henson

Chief Magistrate

Timetable for Statements
(Practice Note 2 of 2012)

Applicant's evidence

1. The Applicant is to serve on the Defendant a copy of:
 - The Applicant's own written statement, and
 - Any written statement/s of witness/es from whom the Applicant intends to call evidence at hearing on or before: (approximately 2 weeks).
2. In proceedings where the Defendant is unrepresented, the statements may be placed with the registry for collection by the Defendant.

Defendant's evidence

3. Subject to any claim under s 87 of the Civil Procedure Act 2005, the Defendant is to serve on the Applicant a copy of:
 - The Defendant's own written statement, and
 - Any written statement/s of witness/es from whom the Defendant intends to call evidence at hearing on or before: (approximately 4 weeks).
4. In proceedings where the Applicant is unrepresented, the statements may be placed with the registry for collection by the Applicant.

Mention

5. The matter is next listed on: (approximately 5 weeks) ('the mention date') to review compliance with this timetable and, if ready, to list the matter for hearing.
6. Unless the Court otherwise orders, and subject to the interests of justice, on the mention date:
 - If the Applicant has failed to comply with these directions and does not appear at Court, the application may be struck out.
 - If the Defendant has failed to comply with these directions and does not appear at Court, an Apprehended Violence Order may be made.

It is important to comply with the above timetable. If statements are not exchanged prior to the hearing date, it will be necessary to seek leave of the Court to give oral evidence.