

# **SUPREME COURT OF TASMANIA**

## **PRACTICE DIRECTION**

**No. 5 of 2006**

**10 August 2006**

The following Practice Direction is published by direction of the Chief Justice, the Honourable Justice Peter Underwood AO.

This Practice Direction replaces 12/2005.

### **CONSENT ORDERS UNDER THE *RELATIONSHIPS ACT 2003* AND THE *TESTATOR'S FAMILY MAINTENANCE ACT 1912***

Consent orders will generally not be made under either of these Acts unless the parties or their solicitors provide sufficient evidence to satisfy a judge or the Associate Judge that the orders should be made. The requirements set out below, where applicable, should be complied with.

#### **Cases with all litigants legally represented**

If each party is legally represented (including each affected beneficiary in a *Testator's Family Maintenance Act* case), consent orders will ordinarily be made on the papers by a judge or the Associate Judge in Chambers in the absence of the parties and their legal representatives. If a judge or the Associate Judge is not satisfied with the evidentiary material, the parties or their solicitors may be advised by letter as to the deficiency in that material. Alternatively, the application may be listed for hearing so that submissions can be made in relation to it.

#### **Parties without solicitors**

If one or more parties are not legally represented the application for consent orders will be listed for a short hearing before a judge or the Associate Judge. The same will apply in *Testator's Family Maintenance Act* cases if one or more affected beneficiaries are not legally represented. Each unrepresented party (or beneficiary) will have to attend court unless a judge or the Associate Judge directs otherwise. At the hearing each unrepresented party (or beneficiary) will be asked whether he or she agrees to the proposed orders and considers them fair. Unless each unrepresented party (or beneficiary) attends court and confirms that he or she agrees to the proposed orders and considers them fair, the consent orders will not be made.

## **Testator's Family Maintenance Act**

Because of the wording of s3(1), a consent order may be made only if a judge or the Associate Judge thinks the order is proper, having regard to all the circumstances of the case. Information sufficient to show that the proposed orders are proper must be provided in one or more affidavits and/or an agreement as to facts.

## **Registered personal relationships**

If a deed of relationship has been registered under the *Relationships Act* 2003, in respect of the parties' relationship there should be evidence of that fact.

## **Unregistered personal relationship**

If an order adjusting property interests under the *Relationships Act* is sought in respect of an unregistered personal relationship, the evidence must include the dates when the parties' "personal relationship" began and ceased. See ss8, 37(1) and 38.

The evidence must also show that the parties' relationship was a "personal relationship" for the purposes of the Act. Under s6, a personal relationship is either a "significant relationship" or a "caring relationship".

If orders are sought on the basis that the parties had an unregistered "significant relationship" the evidentiary material should deal with enough of the relevant facts listed in s4(3) to show that a "significant relationship" existed between the relevant dates. A paragraph stating that the parties lived together as if they were married between certain dates will ordinarily be sufficient.

If orders are sought on the basis that the parties had an unregistered "caring relationship", the evidentiary material should deal with enough of the factors listed in s5(5), and exclude the matters listed in s5(2), so as to show that a "caring relationship" existed between the relevant dates.

If an order adjusting property interests under the *Relationships Act* is sought, and the parties were in a "personal relationship" for less than two years, the evidentiary material must contain information sufficient to show that s37(2) applies.

## **Property orders – "Just and Equitable"**

A consent order adjusting property interests under the *Relationships Act* will not generally be made unless the evidentiary material is sufficient to show that the proposed order is just and equitable, having regard to the matters listed in ss40(1), 47(1) and (2). Form 11 of the *Family Law Rules* should be used.

### **Maintenance for a partner**

For an order to be made for the payment of maintenance for a partner, the evidentiary material must be sufficient to show a judge that the applicant is unable to support himself or herself adequately, either because his or her earning capacity has been adversely affected by the circumstances of the personal relationship, or because of some other reason arising in whole or in part from the circumstances of the relationship. See s47.

### **Discharge or variation of maintenance order**

A consent order for the discharge or variation of a maintenance order for a partner will not be made unless the evidentiary material is sufficient to show that the order sought is justifiable because, since the original order was made or last varied, the circumstances of one party have changed, or the cost of living has changed. See s52(2). If a change to the cost of living is relied on, details of the relevant changes in the Consumer Price Index (or other relevant statistics issued by the Australian Statistician) will need to be provided in the evidentiary material.

R J Walker  
REGISTRAR

Amended 1 March 2010 (changing references to “Master” to “Associate Judge”)