

NOTICE TO DEFENDANT OR YOUTH COMMITTED FOR TRIAL IN SUPREME COURT OR DISTRICT COURT
Criminal Procedure Act 1921 S 115(4)

[MAGISTRATES/YOUTH/ENVIRONMENT RESOURCES AND DEVELOPMENT] COURT OF SOUTH AUSTRALIA
CRIMINAL JURISDICTION

[FULL NAME]
Informant

v

[FULL NAME]
Defendant/Youth

To the [Defendant/Youth]: WARNING

This Notice sets out your statutory obligations to be fulfilled in anticipation of trial in accordance with section 115(4) of the *Criminal Procedure Act 1921*. Non-compliance with those obligations may have serious consequences.

- This Notice also contains a reproduction of section 69(3) of the *Judiciary Act 1903* (Cth) which applies in respect of trials for an offence against the laws of the Commonwealth select if Defendant/Youth committed on federal offence(s)

General notices

- You have been committed to the [Supreme/District] to be inserted by Court Court for trial. You are required to appear before a Judge of that Court for arraignment on [date] at [time].
- If you are on bail, you are required to appear on that date at that time as a condition of your bail. **If you do not attend, a warrant may be issued for your arrest.**
- If you are in custody, arrangements will be made for you to appear before the Court on that date at that time.
- If you plead not guilty before the Judge, you will be remanded for trial and the Judge will adjourn your case to a particular date and time for a directions hearing.
- Directions hearings are held so that arrangements can be made for the trial.
- There may be more than one directions hearing and you will be required to attend on each occasion, unless excused by the Judge.
- If you plead guilty before the Judge, you will be remanded for sentence. There may be more than one sentencing hearing and you will be required to attend on each occasion, unless excused by the Judge.

Next box displayed unless only Commonwealth offences charged

Information on Guilty Pleas

If you plead guilty to a State offence, you may be eligible for a reduction in the sentence you receive for the offence. The maximum reductions available are set out in section 40 of the *Sentencing Act 2017*.

The maximum reduction you may be eligible for depends on when you plead guilty.

You will have an opportunity to plead guilty at any hearing. However, if you wish to plead guilty before your next hearing date, you will need to apply to have the matter called on to enter your plea. You can do this by filling out a

Form 52 'Request to have Matter Called on for Guilty Plea' available on the CourtSA portal (website). If you fill out this form you must sign it and upload it to the CourtSA website as soon as possible.

Next box displayed if a Commonwealth offence is charged

Information on Guilty Pleas

If you plead guilty to a Commonwealth offence, you may be eligible for a reduction in the sentence you receive for the offence.

You will have an opportunity to plead guilty at any hearing. However, if you wish to plead guilty before your next hearing date, you will need to apply to have the matter called on to enter your plea. You can do this by filling out a Form 52 'Request to have Matter Called on for Guilty Plea' available on the CourtSA portal (website). If you fill out this form you must sign it and upload it to the CourtSA website as soon as possible.

Defence Case Statement

General information

The prosecution is required to give you (or your lawyer) a Prosecution Case Statement setting out a summary of the facts alleged against you and other information relating to your trial. This must be provided to you 6 weeks before your arraignment in the Supreme Court or District Court.

You are required to file in Court and give to the prosecution a Defence Case Statement not more than 4 weeks after being given the Prosecution Case Statement. You can do this by filling out a Form 73 'Defence Case Statement' available on the CourtSA portal (website).

A Defence Case Statement must include:

1. any facts and any elements of the offence set out in the prosecution case statement that you admit; and
2. any witnesses that you want the prosecution to call (if the witnesses have provided a statement but are not amongst the list of witnesses the prosecution intends to call at trial); and
3. an indication of whether you –
 - a. consent to any of the prosecution applications included in the prosecution case statement;
 - b. intend to introduce expert evidence or evidence of alibi (in which case you will also be required to comply with the requirement to give notice of your intention to introduce expert or alibi evidence – see section 124 of the *Criminal Procedure Act 1921*);
 - c. agree with the prosecution estimate of the length of the prosecution case;
 - d. will apply for trial by Judge alone;
 - e. require an interpreter (and if so, the language and/or dialect that the interpreter will be required to interpret);
 - f. intend to raise any of the following prior to trial
 - i. issues relating to joinder or severance;
 - ii. issues relating to cross-admissibility of evidence;
 - iii. challenges to the legality of any searches;
 - iv. applications for stay of proceedings;
 - v. issues relating to chain of evidence or continuity of custody of exhibits;
 - vi. points of law.

Changes to Defence Case Statement

If any information or material included in your case statement subsequently changes or information or material is obtained or occurs after your case statement has been filed, you must disclose the information, material or occurrence to the prosecution as soon as possible. You may do this in the form of a revised Defence Case Statement.

Notice of Defence Case Statement to other [*Defendant/Youth*] where jointly charged

If you are jointly charged with 1 or more other [*Defendant/Youth*]s, your case statement must be given to each other [*Defendant/Youth*] unless the Court orders otherwise.

Alibi evidence

Alibi evidence is evidence that you were at some place other than the scene of the alleged offence(s) at the relevant time.

If you wish to call alibi evidence at your trial and the evidence was not given at your committal hearing, you must complete a Form 78A Notice of Intention to Adduce Alibi Evidence and file it in the Court and give it to the prosecution at the same time as the Defence Case Statement.

The Notice **must**:

- (a) contain a summary of the facts that you wish to establish by calling the alibi evidence; and
- (b) include the **name** and **address** of the witness you intend to call to give the alibi evidence; and
- (c) contain any other particulars and be in the form required by the Rules of Court.

And **must be delivered or posted** to the [*Commonwealth*] Director of Public Prosecutions.

If you **do not** give notice, you may not be able to call **alibi evidence**, and the prosecutor and the Court may be able to comment to the jury on your failure to give notice of that evidence before the trial.

If you **do** give notice the prosecutor may not, after the close of the prosecution case, give evidence in rebuttal of your **alibi evidence** unless given leave by the Court.

Expert Evidence

If expert evidence is to be called for the defence at the trial, written notice of your intention to call the evidence must be given to the prosecution at the same time that the defence case statement is filed in Court and given to the prosecution. You can do this by completing a Form 77A Notice of Intention to Adduce Expert Evidence, filing it at Court and giving it to the prosecution.

If the evidence does not become available to the defence until later, or if any expert information already provided to the prosecution in a written notice changes, it must be given to the prosecution as soon as practicable after such evidence becomes available or the defence becomes aware of such changes.

The notice must set out the name and qualifications of the expert and describe the general nature of the evidence and what it tends to establish.

If you wish to introduce expert psychiatric evidence or other expert medical evidence relevant to your mental state or medical condition at the time of the alleged offence(s), the Court may require you to submit to an examination by an independent expert approved by the Court.

If you fail to submit to a psychiatric or other medical examination as required by the Court, the Court may not allow you to call expert psychiatric or medical evidence which you wish to tender to the Court.

If you fail to comply with any other requirement in relation to expert evidence, you may not be allowed to call the evidence without the Court's permission and the prosecutor or the Court may comment on your non-compliance to the jury.

Service of documents on the Prosecution

Your Defence Case Statement and any Notice in relation to Alibi Evidence or Expert Evidence **must be delivered or posted** to the [*Commonwealth*] Director of Public Prosecutions at

first item displayed if State DPP, second item if Commonwealth DPP

Level 12
GPO Exchange
10 Franklin Street

GPO Box 464
ADELAIDE SA 5001

ADELAIDE SA 5000

12th Floor
211 Victoria Square
ADELAIDE SA 5000GPO Box 2562
ADELAIDE SA 5001**Information that you may be required to give to the prosecution**

The Court may authorise the prosecution to serve you with a notice or notices requiring you to provide information in relation to the following matters.

Notification of prosecution witnesses who are not required

This is another way in which the trial might be shortened where some of the evidence is not in dispute.

The Court may order that you notify the prosecution in writing whether you consent to the prosecution not calling witnesses to prove the admissibility of the following kinds of evidence:

- (a) documentary, audio, visual, or audiovisual evidence of surveillance or interview;
- (b) other documentary, audio, visual or audiovisual evidence;
- (c) exhibits.

This can be done by completing a Form 82 Notice Whether Defendant Consents to Dispensing with Calling Prosecution Witnesses and giving it to the prosecution.

If you fail to file such a notice, the Court will assume you have no objection.

Notice of defences

The Court may require you to give written notice to the prosecution if you intend to call evidence at the trial which tends to establish that –

- you are mentally unfit to stand trial; or
- you were mentally incompetent to commit the alleged offences; or
- the circumstances of the alleged offence(s) occurred by accident; or
- you were entitled to any property which is the subject of the offence(s); or
- you were acting for a defensive purpose.

The Court may also require you to give written notice to the prosecution if you intend to call evidence at the trial:

- relating to the defences of provocation, automatism, necessity or duress; or
- that you were intoxicated at the time of the alleged offence(s).

You can do this by completing a Form 81A Notice of Intention to Adduce Evidence and giving it to the prosecution.

If you fail to give the prosecution notice of any of these matters, you may call evidence about them but the prosecutor or the Court or both may comment to the jury on your failure to give notice.

Next box only displayed if tickbox at start of form selected

Section 69(3) of the *Judiciary Act 1903* (Cth)

Section 69(3) of the *Judiciary Act 1903* (Cth) provides:

Any person committed for trial for an offence against the laws of the Commonwealth may at any time within fourteen days after committal and before the jury is sworn apply to a Justice in Chambers or to a Judge of the Supreme Court of a State for the appointment of counsel for his or her defence. If it be found to the satisfaction of the Justice or Judge that such person is without adequate means to provide defence for himself or herself, and that it is desirable in the interests of justice that such an appointment should be made, the Justice or Judge shall certify this to the Attorney General, who may if he or she thinks fit thereupon cause arrangements to be made for the defence of the accused person or refer the matter to such legal aid authorities as the Attorney-General considers appropriate. Upon committal, the person committed shall be supplied with a copy of this subsection.