

South Australia

Supreme Court Criminal Rules 2014

(as varied to the 1 March 2021 – Amendment No. 10)

The Supreme Court Criminal Rules 2014, dated 25th August 2014, came into operation on 1st October 2014 (Government Gazette 11 September 2014, p. 4892) have been varied by Supreme Court rules dated:

	<i>Date</i>	<i>Gazette</i>	<i>Date of operation</i>
# 1	25 August 2014	19 March 2015, p. 1188	1 April 2015
#2	29 February 2016	14 April 2016, p. 1195	1 May 2016
#3	17 May 2016	23 June 2016, p. 2606	27 June 2016
#4	26 September 2016	10 November 2016, p. 4380	1 December 2016
#5	30 October 2017	28 November 2017, p. 4778	1 December 2017
#6	14 May 2018	24 May 2018, p. 2044	1 June 2018
#7	20 March 2019	18 April 2019, p. 1081	1 May 2019
#8	5 May 2020	14 May 2020, p. 1168	18 May 2020
#9	17 December 2020	24 December 2020, p. 6140	1 January 2021
#10	16 February 2021	25 February 2021, p. 653	1 March 2021

By virtue and in pursuance of Section 72 of the *Supreme Court Act 1935* and all other enabling powers, we, Judges of the Supreme Court of South Australia, make the following Supreme Court Criminal Rules 2014.

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History of Amendment

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

These Rules may be cited as the *Supreme Court Criminal Rules 2014*.

2—Commencement

These Rules commence on 1 October 2014.

Part 2—Objects

3—Objects

- (1) The objects of these Rules are to—
 - (a) establish orderly procedures for the conduct of the business of the Court in its criminal jurisdiction;
 - (b) promote the just and efficient determination of such business; and
 - (c) facilitate the timely disposal of such business at a cost affordable to the parties and the community generally.
- (2) These Rules are not intended to defeat a proper prosecution by or frustrate a proper defence of a party who is genuinely endeavouring to comply with the procedures of the Court.
- (3) Proceedings in the Court will be managed and supervised with a view to best attaining the objects in subrule (1).
- (4) These Rules are to be construed and applied, and the processes and procedures of the Court conducted, so as best to attain the objects in subrule (1).

Part 3—Interpretation

4—Interpretation

In these Rules, unless the contrary intention appears—

the Act means the *Criminal Procedure Act 1921*;

address for service – see rule 32;

approved form means a form approved under rule 28 and contained in the Schedule to the Supplementary Rules;

audiovisual link means a communication between the Court and a party or a party's representative or a witness by video, telephone or other electronic means for the purpose of a court hearing;

bail application means an application relating to bail and includes—

- (a) an application for release on bail under sections 4 and 8 of the *Bail Act 1985*;
- (b) an application to revoke a bail agreement or issue a warrant under section 6(4), 18(1) or 19A of the *Bail Act 1985*;
- (c) an application to vary a condition of a bail agreement under section 6(4) of the *Bail Act 1985*;
- (d) an application to vary or revoke a guarantee in respect of a bail agreement under section 7(4) of the *Bail Act 1985*;
- (e) an application for estreatment under section 19 of the *Bail Act 1985*; or
- (f) any other application under the *Bail Act 1985* except an application for review of a bail decision governed by Part 12 of these Rules.

bail authority means a court or person constituted as a bail authority by or under section 5 of the *Bail Act 1985* or a Magistrate acting under section 83 of the *Service and Execution of Process Act 1992* (Cth) as the case requires;

bail review authority means a Magistrate making a decision on review under section 14 of the *Bail Act 1985*;

business day means a day on which the Registry is ordinarily open for business;

the Civil Rules means the *Supreme Court Civil Rules 2006*;

child pornography – see rule 31;

Consolidation Act means the *Criminal Law Consolidation Act 1935*;

commencement date means the date on which these Rules came into operation;

community impact statement means a neighbourhood impact statement or a social impact statement as defined in section 15 of the *Sentencing Act 2017*;

Confiscation Acts – see rule 98;

Court means the Supreme Court of South Australia;

Director means the Director of Public Prosecutions for the State or Commonwealth as the context requires;

election - see rule 38;

first directions hearing means the first directions hearing after the defendant is first arraigned in the Court;

High Risk Offenders Act means the *Criminal Law (High Risk Offenders) Act 2015*;

lawyer means a legal practitioner within the meaning of the *Legal Practitioners Act 1981*;

legal representative certificate – see rule 46;

practitioner's certificate - see rule 41;

preliminary question - see rule 49(1)(h);

pre-trial directions hearing - see rule 58;

prescribed proceeding *****

pre-trial special hearing order means a pre-trial special hearing order under section 12AB of the *Evidence Act 1929*

priority proceeding means a proceeding in which a person—

- (a) is charged with a serious and organised crime offence within the meaning of section 5(1) of the *Criminal Law Consolidation Act 1935* and the proceeding is a “prescribed proceeding” within the meaning of section 127(2) of the Act;
- (b) is a serious and organised crime suspect; or
- (c) is charged with a sexual offence within the meaning of section 50B(2) of the *District Court Act 1991* where the alleged victim of the offence is a child;

Registrar means the Registrar and includes the Deputy Registrar (Criminal) and any other officer or employee of the Court performing functions delegated by the Registrar or under the Registrar’s supervision;

the Rules means these Rules;

the Sentencing Act means the *Sentencing Act 2017*;

serious and organised crime suspect means a person who is the subject of a serious and organised crime suspect determination under section 3A of the *Bail Act 1985*;

Special directions hearing – see rule 57;

Supplementary Rules - see rule 15;

trial Judge means the Judge to whom a trial has been assigned;

Written assurance – see rule 46.

5—Calculation of periods of time

- (1) When a rule or order of the Court fixes prospectively the time within which something is required or permitted to be done, the period runs from the end of the day from which the calculation is to be made.

Example—

On 1 March, the Court orders a party to file a document within 14 calendar days. The party must file the document by no later than 15 March.

- (2) When a rule or order fixes the time within which something is required or permitted to be done as being not less than a specified number of days before a day or event in the future, the calculation of the period commences on the day before the day or event in question.

Example—

The Court orders a party to file a document at least 14 days or 14 clear days before a hearing scheduled on 31 March. The party must file the document by no later than 16 March.

- (3) If the time within which something is required or permitted to be done under these Rules or an order is fixed at 7 days or less, the period is to be understood as a reference to business days only.

Example 1—

On Thursday, 1 March, the Court orders a party to file a document within 4 days. The party must file the document by no later than Wednesday, 7 March.

Example 2—

The Court orders a party to file a document at least 4 days or 4 clear days before a hearing scheduled on Monday, 31 March. The party must file the document by no later than Monday, 24 March.

- (4) When the time within which something is required or permitted to be done under these Rules or an order ends on a day on which the Registry is closed, the period is extended so that it ends on the next day on which the Registry is open for business.
- (5) During the period fixed by the Supplementary Rules as the Christmas vacation—
- (a) documents may be filed on any day on which the Registry is open for business; but
 - (b) subject to any contrary direction by the Court, the time for filing a document or taking any other step in a proceeding does not run during the Christmas vacation.

Part 4—Application of Rules

6—Application of Rules

- (1) These Rules apply to the exercise by the Court of its original and appellate criminal jurisdiction, except appeals that lie to a single Judge that are governed by the Civil Rules.
- (2) These Rules do not derogate from the Court's inherent jurisdiction.

Part 5—Repeal and transitional provisions

7—Repeal

The *Supreme Court Criminal Rules 2013*, the *Supreme Court Bail Review Rules 1985* and the *Supreme Court Criminal Appeal Rules 1996* are repealed.

8—Transitional provision

- (1) Unless the Court otherwise directs, these Rules apply to—
- (a) proceedings commenced on or after the commencement date; and
 - (b) steps taken or required to be taken or matters occurring on or after the commencement date in proceedings commenced before the commencement date.

- (2) The Court may direct that these Rules, or the Rules in force before these Rules were made, apply to a transitional proceeding or a particular step or matter in a transitional proceeding.

Chapter 2—General procedural rules and allocation of Court business

Part 1—Sittings

9—Sittings

The sittings of the Court in its criminal jurisdiction will be at such times and places as the Chief Justice from time to time directs.

Part 2—Public access to hearings

10—Public access to hearings

- (1) All proceedings before the Court are, as a general rule, to be held in a place open to the public.
- (2) This general rule is, however, subject to the following exceptions—
 - (a) directions hearings and pre-trial conferences are usually heard in private;
 - (b) the Court has a general discretion to direct, if there is good reason to do so, that a proceeding be heard wholly or partly in private or that the public be excluded from the whole or a particular part of a hearing.

11—Recording events in court

- (1) Subject to this rule and to any contrary direction of the Court, the making of a record of persons, things, or events in court is not permitted.
- (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
- (3) Despite subrule (1) and subject to subrules (4) and (5)—
 - (a) a party to a proceeding that is being heard by the Court, a lawyer, law clerk, student or bona fide member of the media may make a handwritten or electronic note of persons, things or events in court; and
 - (b) a bona fide member of the media may make an audio recording of a proceeding for the sole purpose of verifying notes and for no other purpose.
- (4) A record made in court permitted by this rule must—
 - (a) be made in a manner that does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceeding;
 - (b) not interfere with the Court’s sound system or other technology; and
 - (c) not generate sound or require speaking into a device.
- (5) An audio recording made by a member of the media under subrule (3)(b) —
 - (a) must not record any private conversation occurring in court;

- (b) must not be made available to any other person or used for any other purpose; and
 - (c) must be erased entirely within 48 hours of the recording.
- (6) For the purpose of this rule, **record** means a record by any means whatsoever, including by handwriting, other physical means, audio and/or visual recording or electronic record.

12—Electronic communications to and from court

- (1) Subject to this rule and to any contrary direction of the Court, communication by means of an electronic device to and from a courtroom during the conduct of proceedings is not permitted.
- (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
- (3) Despite subrule (1) and subject to subrules (4) and (5), a party to a proceeding that is being heard by the Court, a lawyer or a bona fide member of the media may communicate by means of an electronic device to and from a courtroom during the conduct of the proceeding.
- (4) An electronic communication permitted by this rule must—
 - (a) be made in a manner that does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceeding;
 - (b) not interfere with the Court’s sound system or other technology; and
 - (c) not generate sound or require speaking into a device.
- (5) An electronic communication of evidence adduced or a submission made in a proceeding, whether in full or in part, must not be made until at least 15 minutes have elapsed since the evidence or submission in question, or until the Court has ruled on any application for suppression or objection made in relation to the evidence or submission within that period of 15 minutes, whichever occurs last.
- (6) For the purpose of this rule, **electronic device** means any device capable of transmitting and/or receiving information, audio, video or other matter (including a cellular phone, computer, personal digital assistant, digital or analogue audio and/or visual camera or similar device).

Part 3—Court's control of procedure

13—Power of Court to control procedure

- (1) The Court may, on its own initiative or on application by a party, give directions about the procedure to be followed in a particular proceeding.
- (2) A direction may be given under this rule—
 - (a) when these Rules do not address or address fully a procedural matter that arises in a proceeding;

- (b) to resolve uncertainty about the correct procedure to be adopted;
 - (c) to achieve procedural fairness in the circumstances of a particular case; or
 - (d) to expedite the hearing or determination of a particular case or to avoid unnecessary delay or expense.
- (3) A direction may be given under this rule irrespective of whether it involves some departure from these Rules or the established procedures of the Court.
- (4) A direction may be given under this rule superseding an earlier direction but a step taken in a proceeding in accordance with a direction that has been superseded is to be regarded as validly taken.

14—Dispensation

- (1) The Court may at any time dispense with compliance with all or any part of these Rules including a rule relating to or governing powers that the Court may exercise on its own initiative.
- (2) The Court may extend or abridge the time for taking a step prescribed by or under these Rules whether or not such time has expired.

15—Supplementary Rules

- (1) It is intended that the Court make supplementary rules necessary or convenient for the regulation of proceedings in the Court (the *Supplementary Rules*).
- (2) In particular, it is intended that the Supplementary Rules—
- (a) supplement these Rules;
 - (b) modify these Rules in respect of a particular category of proceedings;
 - (c) give directions as to practices to be followed;
 - (d) prescribe scales of costs;
 - (e) prescribe approved forms.

Part 4—Distribution of Court's business

16—Jurisdiction of Masters

A Master has jurisdiction to make interlocutory orders in criminal proceedings governed by these Rules only in respect of —

- (a) the adjudication of costs; and
- (b) any matter referred to a Master by a Judge.

17—Registrar's functions

- (1) The Registrar is the Court's principal administrative officer.
- (2) The Registrar's functions include the following—
- (a) to establish and maintain appropriate systems—
 - (i) for filing documents in the Court; and

- (ii) for issuing the Court's process as provided by these Rules or as directed by the Court;
 - (b) to ensure that proper records of the Court's proceedings are made and to provide for the safe keeping of the Court's records;
 - (c) to take custody of documents and objects produced to the Court in response to a subpoena, and of all exhibits tendered in proceedings before the Court, and to deal with them as authorised by these Rules or as directed by the Court;
 - (d) to ensure that judgments and orders of the Court are properly entered in the records of the Court.
- (3) The Registrar may delegate functions under these Rules to another officer of the Court.
- (4) No record is to be taken out of the Registrar's custody without the Court's authorisation.

Part 5—Representation

18—Solicitor acting for party

- (1) A solicitor instructed to act for a person committed for trial or sentence is, not less than 14 calendar days before that person's first arraignment, to give notice in writing to the Registrar that the solicitor is so acting.
- (2) A solicitor appearing or counsel instructed by a solicitor to appear to represent a person committed for trial or sentence is to announce to the Court the name of the solicitor who acts for the person.
- (3) A solicitor is to be recorded in the Court's records as the solicitor acting for a party if—
 - (a) the solicitor's name appears on the first document to be filed in the Court on behalf of the party as the name of the party's solicitor;
 - (b) the solicitor's name is announced to the Court as the party's solicitor by a lawyer appearing in court to represent the party; or
 - (c) the solicitor gives notice to the Court, in an approved form, that the solicitor is acting for the party.
- (4) The Court will alter its records so that a particular solicitor no longer appears as the solicitor for a party if—
 - (a) the party files in the Court a notice, in an approved form, to the effect that the party is no longer represented by a solicitor; or
 - (b) a solicitor files a notice, in an approved form, to the effect that the solicitor is to be recorded as the solicitor acting for the party in place of the solicitor previously recorded as the solicitor acting for the party; or

- (c) the Court orders on its own initiative, or on the application of a party or a solicitor, that the Court's records be altered so that the solicitor no longer appears as the solicitor acting for the party.
- (5) If the Court makes an order under subrule (4)(c), it may make ancillary orders—
- (a) requiring that notice be given of the order; and
 - (b) providing that the order is not to take effect until notice has been given of the order.

19—Service of documents on solicitor acting for party

Unless these Rules otherwise provide and subject to any contrary direction by the Court, any document, notice or proceeding to be served on a party may be served on the solicitor recorded in the Court's record as the solicitor for the party.

Chapter 3—Initiation of criminal proceedings

Part 1—Information

20—*****

21—Information

- (1) An information presented under section 103(1) of the Act is to—
 - (a) be in an approved form;
 - (b) contain in a separate numbered paragraph, called a count, a description of each offence charged;
 - (c) have endorsed on the back the names of the witnesses who the Director intends to call at the trial.
- (2) The accused is to be sufficiently identified in the information without necessarily stating his or her full name, address and occupation.
- (3) Each count in an information is to—
 - (a) describe the offence briefly in ordinary language, avoiding technical terms when possible, and without necessarily stating all the essential elements of the offence;
 - (b) state the section of the statute creating the offence when applicable, and
 - (c) contain in ordinary language particulars of the offence, avoiding technical terms whenever possible.
- (4) If an offence comprises—
 - (a) any one of several different acts or omissions;
 - (b) an act or omission in any one of several capacities;
 - (c) an act or omission with any one of several intentions;
 - (d) any other element in the alternative,the acts, omissions, capacities, intentions or other matters in the alternative may be stated in the alternative in the count charging the offence.
- (5) It is not necessary, in a count charging a statutory offence, to negative any exception or exemption from, or qualification of, the operation of the statute creating the offence.
- (6) An information is not open to objection by reason only of any failure to comply with this rule or with rule 22.

21A—Qualifying and prescribed offences

- (1) An information is to state as to each count whether the offence charged is a “qualifying offence” within the meaning and for the purposes of section 44 of the *Children and Young People Safety Act 2017* (a **qualifying offence**) and/or a “prescribed offence” within the meaning and for the purposes of section 38 of the *Child Safety (Prohibited Persons) Act 2016* (a *prescribed offence*).
- (2) If the Director becomes aware after an information has been filed that a proceeding alleges an offence that is a qualifying offence and/or a prescribed offence the Director is to file an amended information in an approved form providing the required information.

22—Particulars

- (1) The description or designation of any other person to whom reference is made is to be sufficient to identify the person, without necessarily stating his or her full and correct name, address and occupation.
- (2) If such a description or designation cannot be given, the best description or designation is to be given, or the person may be described as “a person unknown”.
- (3) The description of property should be sufficient to identify the property. Unless an offence depends on the special ownership or value of property, it is not necessary to state the owner or value of the property.
- (4) If reference is made to property with multiple owners, it is sufficient to describe it as owned by one named person “with others”. If the owners are a body of persons with a collective name, such as “Trustees”, “Commissioners” or “Club”, it is sufficient to use the collective name without naming any individual.
- (5) The description of a document or instrument should be sufficient to identify it. It is sufficient to describe a document or instrument by a name or designation by which it is usually known, or by its effect, without setting out a copy of it.
- (6) The description of a place, time, thing, matter, act or omission should be sufficient to identify it.
- (7) Figures and abbreviations may be used to express anything commonly expressed in that manner.
- (8) If a rule of law or statute limits the particulars required to be given, this rule does not require more detailed particulars than those required by the rule or statute.

23—Priority proceedings

- (1) If a proceeding comprises a priority proceeding, the information is to be accompanied by a notice in an approved form—
 - (a) identifying that the proceeding is a priority proceeding;
 - (b) identifying why the proceeding is a priority proceeding; and
 - (c) stating where applicable that the proceeding may be expedited in accordance with section 127 of the Act or section 50B of the District Court Act 1991 (as the case may be) and these Rules.

- (2) If a proceeding becomes a priority proceeding after an information has been filed, the Director is to file a notice complying with subrule (1).
- (3) The Director is to inform the Court at the first arraignment that a proceeding is a priority proceeding.
- (4) An application by the Director or an accused for an order under section 127 of the Act that exceptional circumstances justify the trial not commencing within 6 months of the determination that an accused is a serious and organised crime suspect is to be filed and served at least 5 business days before the first arraignment.

23A—Statement before arraignment

- (1) If the accused is represented by a lawyer, the lawyer is, at least 14 calendar days before the first arraignment, to file and serve on the Director a statement before arraignment.
- (2) The statement before arraignment is to be in an approved form.

23B—Case Statements

Where proceedings are instituted in the Court by the Director laying an information ex officio in accordance with section 103 of the Act:

- (a) the Director is to file and serve on the accused or if represented his or her lawyer a prosecution case statement in accordance with subsection 123(2) of the Act with the information;
- (b) the accused or if represented his or her lawyer is to file and serve on the Director a defence case statement in accordance with subsection 123(3) of the Act no less than 14 days before the date fixed for arraignment;
- (c) If the regulations made under the Act require the prosecution to serve a response to the defence case statement, the Director is to file and serve on the accused or if represented his or her lawyer a response to the defence statement in the same circumstances and at the same time as if subsection 123(9) and the regulations applied.

Note –

Section 123 of the Act applies of its own force when the accused has been committed for trial.

Part 2—Arraignment

24—Arraignment of persons committed for trial or sentence

- (1) Subject to subrule (2), a person committed for trial or sentence is to appear before the Court on the date prescribed by the Supplementary Rules.
- (2) The Court may direct that a person appear before the Court at an earlier or later date.

25—Arraignment on multiple counts

- (1) If—
 - (a) a person committed for trial or sentence is to be arraigned on an information charging more than one offence; and
 - (b) the Court is satisfied that the person is literate,
the Court may direct the person to be arraigned under this rule.
- (2) Upon arraignment under this rule—
 - (a) a true copy of the information is to be provided to the person before or at the arraignment;
 - (b) the person is, before or at the arraignment, to write against each charge on a true copy of the information his or her plea;
 - (c) a summary of the offences is to be read to the person;
 - (d) the person is to sign his or her name at the foot of the true copy of the information and his or her signature is to be witnessed by the person’s solicitor or counsel or, if not represented, by a person directed by the Judge;
 - (e) the Judge will record the respective pleas in accordance with the signed copy of the information; and
 - (f) if the person pleads not guilty and the arraignment is in the presence of the jury panel or a jury—a copy of the information bearing the pleas may be given to the jury.

25A—Priority proceedings

At arraignment for a priority proceeding, the parties are to address the means by which—

- (a) the proceeding may be expedited; and
- (b) subject to rule 47, the trial of a proceeding involving an accused who is a serious and organised crime suspect is to commence within 6 months after the determination by reason of which the accused became a serious and organised crime suspect.

26—Court of trial

- (1) If a person committed for trial pleads not guilty to an offence or offences not within the exclusive jurisdiction of the Court, the Director and the defence may make submissions under section 118 of the Act as to the appropriate court of trial.
- (2) A decision whether a proceeding is to be referred to the District Court for trial may be made by the Court at any time before trial.
- (3) In determining the court of trial, regard will be had to the matters set out in section 118(5) of the Act including the availability of Judges of each of the Supreme and District Courts to preside over criminal trials.

27—Referral to directions hearing

If upon arraignment or attendance for arraignment—

- (a) a person committed for trial pleads not guilty to an offence;
- (b) an issue of fitness to stand trial is raised and no plea is entered; or
- (c) there is a dispute as to the facts in respect of a person committed for sentence or who pleads guilty having been committed for trial,

the Court will refer the proceeding to a directions hearing.

Chapter 4—Documents, service and hearings generally

Part 1—Documents

28—Approved forms

- (1) It is intended that approved forms will be promulgated in a schedule to the Supplementary Rules.
- (2) On promulgation of an approved form, it is to be published on the Court's website.
- (3) A document to be filed in the Court is to be in an approved form.
- (4) The Court may, in a particular action, give directions—
 - (a) about the form in which documents are to be filed in the Court; and
 - (b) imposing additional requirements about the filing or form of documents.

29—Inspection of court records

- (1) Unless an Act or rule otherwise provides or the Court otherwise directs, a party to a proceeding or a party's solicitor may inspect any court record relating to the proceeding or take a copy on payment of the appropriate copying fee.
- (2) No record is to be taken out of the Court without an order of the Court.
- (3) Subject to subrule (1) and section 131 of the *Supreme Court Act 1935*, no person is entitled inspect or take a copy of a court record without first obtaining the permission of the Court.

30—Production of court records

- (1) This rule applies to a request by a court or tribunal, including an umpire or arbitrator, for production of a court record.
- (2) Subject to subrule (3), unless the Registrar is satisfied that there is good reason why the original of a record should be produced, the Registrar is to answer a request for production of a court record by sending a copy of the record certified by the Registrar to be a true copy. The court or tribunal requesting production of the record is liable to pay the charges prescribed by regulation for the copy. The copy need not be returned to the Court.
- (3) The Court may direct that the original court record be produced subject to such conditions, if any, as the Court thinks fit.
- (4) If the Court directs or the Registrar decides that the original court record be produced, subject to compliance with any condition stipulated by the Court or the Registrar, the Registrar is to send the original record to the requesting court or tribunal, together with a certificate signed by the Registrar certifying that the record was filed in or is in the custody of the Court and specifying the date upon and matter in which it was filed.
- (5) Subject to subrule (6), the original record is to be sent to the requesting court or tribunal by messenger or registered post.

- (6) If the Registrar thinks fit, the Registrar may require that an officer of the Court attend the requesting court or tribunal to produce the original record.
- (7) The court or tribunal to which an original record is sent under this rule is to—
 - (a) keep the record in safe custody; and
 - (b) return it by messenger or registered post to the Registrar immediately it is no longer required.
- (8) The Registrar is to keep a register containing a description of any original record sent, the date upon which it is sent, the court or tribunal to which it is sent and the date of its return. The Registrar is to ensure that each original record is duly returned within a reasonable time.

31—Child pornography material

- (1) This rule applies to child pornography marked for identification, received as an exhibit or otherwise received into the custody of the Court in proceedings in the criminal jurisdiction of the Court.
- (2) The purpose of this rule is to ensure that the handling and storing of child pornography is lawful, safe and efficient.

Note—

Child pornography is sensitive material as defined in section 67H of the *Evidence Act 1929*.

- (3) A reasonable time before tender, a party who proposes to tender child pornography in electronic form is to inform the Registrar of the computer hardware and software required to access it.
- (4) At the time of tender, a party tendering child pornography in electronic form is to—
 - (a) tender it in a sealed envelope marked with the title and file number of the proceeding, a description of the material, the name of the party tendering it and any code needed to access it; and
 - (b) provide computer hardware and software enabling it to be viewed.
- (5) The Registrar is to maintain a computer especially designated for viewing child pornography in electronic form.
- (6) Upon receipt of child pornography into the custody of the Court, the Judge's staff will keep it and any relative code in secure storage and, at the conclusion of the hearing, deliver it to the Registrar to be kept in secure storage.
- (7) Subject to subrule (8), the Registrar is to keep in secure storage all child pornography in hard copy or electronic form and any relative code.
- (8) Subject to section 131 of the *Supreme Court Act 1935*, child pornography and the relative code may only be accessed—
 - (a) by direction of a Judge; and
 - (b) for the purpose of the proceeding in which the material is received into the custody of the Court; and

- (c) if in electronic format—on the computer maintained by the Registrar or provided by the tendering party for that purpose.
- (9) If copies of exhibits containing child pornography are provided during a trial for the assistance of the jury, at the conclusion of the trial, the Sheriff is to ensure that all copies are retrieved from the jury and delivered to the Registrar and—
- (a) if a copy has been marked by a jury member—the Registrar is to immediately destroy the copy; and
 - (b) otherwise—the Registrar is to keep the copies in secure storage in accordance with subrule (7) for return to the party who tendered the exhibit in accordance with subrule (11).
- (10) When access to the child pornography is no longer required for the purpose of the proceeding, the material and any relative code are to be returned to the Registrar and the Registrar is to—
- (a) cause any images to be erased from all drives of the computer;
 - (b) place the child pornography in any physical form and any relative code in a sealed envelope marked “Not to be opened except by order of a Judge”; and
 - (c) keep the envelope in secure storage.
- (11) Unless a Judge otherwise directs, no later than six months after finalisation of the proceeding including any appeal, the Registrar is to return the child pornography and any relative code to the party who tendered it and for this purpose may open the sealed envelope in which they are contained.
- (12) In this rule, ***child pornography*** means—
- (a) in relation to a Commonwealth prosecution—child pornography material or child abuse material as defined by the *Criminal Code* enacted by the *Criminal Code Act 1995* (Cth); and
 - (b) otherwise—child pornography as defined by section 62 of the Consolidation Act,
- marked for identification, received as an exhibit or otherwise received into the custody of the Court.

Part 2—Service

32—Address for service

- (1) The ***address for service*** of a party is an address recorded (or to be recorded) in the Court's records as an address at which documents may be served on the party.
- (2) A party must submit a physical address as an address for service.
- (3) A ***physical address*** for service is an address of premises at which service may be effected on the party—
 - (a) by leaving the document for the party; or

- (b) if there is no separate postal address for service—by sending the document by prepaid post in an envelope addressed to the party at that address.
- (4) The premises to which a physical address for service relates—
 - (a) must be in separate occupation; and
 - (b) must—
 - (i) be premises at which the party’s lawyer practises in South Australia; or
 - (ii) unless service was effected on the party under the *Service and Execution of Process Act 1992* (Cth) or the *Trans-Tasman Proceedings Act 2010* (Cth)—be within 50 kilometers of the GPO at Adelaide.
- (5) A party may submit, in addition to a physical address, one or more of the following as an address for service—
 - (a) a postal address at which service may be effected on the party by sending the document by prepaid post in an envelope addressed to the party at that address (a *postal address*);
 - (b) a box number at an approved document exchange, or a branch of an approved document exchange, at which service may be effected on the party by delivery of the document to the box in an envelope addressed to the party (a *DX address*);
 - (c) a fax number at which the party is prepared to accept service of documents transmitted by fax (a *fax address*);
 - (d) an address at which the party is prepared to accept service of documents by the transmission of documents in electronic form to the relevant address (an *email address*).

33—Obligation to give address for service

- (1) A document filed in the Court by or on behalf of a party must be endorsed with the party's address for service.
- (2) The address for service shown on the first document filed in the Court by a party (including a notification of address for service) is to be recorded as the party's address for service.
- (3) A party may designate or change the party's address for service by giving the Registrar notice, in an approved form, of the address for service.

34—Service of documents at address for service

Unless these Rules otherwise provide, any document, notice or proceeding to be served on a party may be served at the address for service recorded for that party.

Part 3—Hearings generally

35—Appearance of defendant in person

- (1) A person who has appeared before the Court under rule 24 or 25 and been remanded in custody for trial or sentence is to appear before the Court in person on a subsequent occasion—
 - (a) either-
 - (i) for trial; or
 - (ii) for sentence subject to the exceptions contained in subsection 21(2) of the *Sentencing Act 2017*; or
 - (b) if the Court directs.
- (2) A defendant who has been convicted and is in custody will not appear before the Court in person for the hearing of an application for permission to appeal or of an appeal unless—
 - (a) the defendant requests; and
 - (b) the appeal is not on a ground of law alone or the Court directs.

36—Appearance of defendant by audiovisual link

- (1) Subject to section 59IQ of the *Evidence Act 1929* and to any contrary direction by the Court, a person in custody is to appear by audiovisual link for—
 - (a) directions hearings;
 - (b) bail application and bail review hearings;
 - (c) permission to appeal hearings;
 - (d) appeal hearings, unless the defendant requests to be personally present and the appeal is not on a ground of law alone or the Court so directs;
 - (e) such other hearings as the Court directs.
- (2) A party may object to the use of an audiovisual link by—
 - (a) an oral submission whenever the proceeding is before the Court; or
 - (b) filing a notice of objection in an approved form at least 3 clear business days before the relevant hearing.
- (3) A notice of objection may be determined at the discretion of the Court—
 - (a) at a hearing in court;
 - (b) in chambers without hearing from any party; or
 - (c) at a hearing using an audiovisual link (whether a hearing to which subrule (1) refers or otherwise).

- (4) If during the course of a hearing by audiovisual link counsel is required to take instructions on a matter that could not reasonably have been anticipated, counsel will be provided with access to a private telephone linked to the audiovisual link facility at the custodial institution in which the person is held.

Part 4—Hearings for interstate courts

37—Audiovisual evidence for interstate proceedings

- (1) A party to a proceeding seeking to enforce an order of a recognised court under Part 6C Division 3 of the *Evidence Act 1929* is to file with the Registrar a sealed copy of the order.
- (2) The Registrar will maintain a register of orders made by a recognised court filed under subrule (1). The register may be maintained in electronic format.
- (3) After filing the order, the party seeking to enforce the order may do so in accordance with the provisions of section 59IL(2) of the *Evidence Act 1929*.
- (4) In this rule, *recognised court* has the meaning defined in section 59IA of the *Evidence Act 1929*.

Chapter 5—Election for trial by Judge alone

38—Election

- (1) An accused may make an election under section 7(1)(a) of the *Juries Act 1927* (the *election*) in the manner and at the time stipulated in this Chapter and not otherwise.
- (2) Subject to subrule (3), the election applies to the trial of all charges in the information in respect of which a trial is to be held. An election that purports to be limited to certain charges contained in the information is not valid or effectual.
- (3) When an accused is charged in an information in respect of more than one count and proposes to apply for a separate trial in respect of one or more counts, a separate election may be made as to the counts sought to be severed or as to the counts remaining in anticipation of an order for severance. The election is to be made in the manner and at the time stipulated in this Chapter and will be valid and effectual only if the application for severance is granted.

39—Election by joint accused

- (1) Subject to subrule (2), when two or more accused are jointly charged with an offence, they must concur, as required by section 7(3) of the *Juries Act 1927*, in making the election by jointly signifying their concurrence in the election or by each of them separately notifying his or her election in accordance with this Chapter.
- (2) When two or more accused are jointly charged in an information and an accused proposes to apply for a separate trial from the trial of others jointly charged, a separate election may be made by that accused in anticipation of an order for separate trials. The election is to be made in the manner and at the time stipulated in this Chapter and will be valid and effectual only if the application for separate trials is granted or all co-accused make a valid election in accordance with subrule (1).

40—Manner of making election

- (1) An election made by the defendant is to be made by filing a notice of election in an approved form signed by the accused making the election and a practitioner's certificate.
- (2) An election made by counsel on behalf of the defendant under section 269W(2) of the Consolidation Act is to be made by filing a notice of election in an approved form signed by counsel and no practitioner's certificate is required.
- (3) When an accused or counsel files a notice of election, the accused or counsel, as the case may be, is as soon as practicable to serve a copy of the notice on the Director and on any person jointly charged with the accused on a charge contained in an information the subject of the election.

- (4) Unless the election was made under subrule (2), a notice of election complying with this rule is admissible at any stage of the proceeding as evidence that the accused before making the election sought and received advice in relation to the election from a lawyer.

41—Practitioner’s certificate

- (1) A *practitioner’s certificate* is a certificate signed by a lawyer stating that the signatory holds a current practising certificate and has advised the accused on all matters relevant to the election. The certificate is to identify clearly the charge in respect of which the advice has been given.
- (2) A practitioner’s certificate is to be in an approved form.
- (3) A practitioner’s certificate complying with this rule is admissible at any stage of the proceeding as evidence that the accused before making the election sought and received advice in relation to the election from a lawyer.

42—Time for making election

- (1) If an accused is committed for trial to sittings at Adelaide, the election is to be made no later than the day of the accused’s first arraignment on the information in respect of which the trial is intended to be held or within such time and in such manner as the Judge on the first arraignment directs.
- (2) If an accused is committed for trial to a circuit sittings, the election is to be made within 28 calendar days after the accused is committed for trial.
- (3) Subject to subrules (4) and (5) and to rule 44, if the election is not made in accordance with the preceding subrules, the accused is precluded from making the election subsequently notwithstanding that the information is amended or that the trial proceeds upon an information filed in substitution for an earlier information or informations on which the accused has been arraigned.
- (4) If an amended or new information referred to in subrule (3) materially alters the substance of the charge or charges upon which the accused is to be tried, the accused may make an election at or before the first arraignment on the amended or new information.
- (5) The Court may extend the time prescribed by or under this rule if satisfied that there are special reasons for so doing or that it would be unjust not to do so notwithstanding that such period has expired.

43—Election irrevocable

- (1) Subject to rule 44, an accused who has made an election in accordance with the preceding rules is not permitted to revoke the election without the permission of the Court.
- (2) Permission to revoke the election may be granted only if the Court is satisfied that, because of events occurring after the election, there are special reasons for so doing or that it would be unjust to refuse such permission.

44—Election after direction for new trial

- (1) Despite rule 42, when there has been a mistrial or a jury has been unable to reach a verdict or an appeal against conviction has been allowed and the accused has been remanded for a new trial, the accused may make the election in the manner set out in the preceding rules within 28 calendar days after being remanded for a new trial.
- (2) Despite rule 43, when an appeal against conviction by a Judge alone has been allowed and the accused has been remanded for a new trial, the accused may revoke an election for trial by Judge alone by filing a notice of revocation in an approved form signed by the accused and a practitioner's certificate within 28 calendar days after being remanded for a new trial.
- (3) A notice of revocation and practitioner's certificate complying with subrule (2) are admissible at any stage of the proceeding as evidence that the accused before making the revocation sought and received advice in relation to revoking the election from a lawyer.

45—Application by Director

An application by the Director for a determination under section 7(3a) of the *Juries Act 1927* that the trial of an information that includes a charge of a serious and organised crime offence be heard by Judge alone is to be made by written application under rule 49 no later than 28 calendar days after the first arraignment.

Chapter 6—Pre-trial applications and directions

Part 1—Matters before first directions hearing

46—Legal representation certificate or written assurance

- (1) If the accused is represented by a lawyer, the lawyer is, at least 14 calendar days before the first directions hearing, to file a certificate (a **legal representation certificate**) under section 8(2) of the *Criminal Law (Legal Representation) Act 2001* certifying that:
 - (a) the accused is an assisted person; or
 - (b) the lawyer undertakes that the accused will be provided with legal representation for the duration of the trial; or
 - (c) the accused is not an assisted person and the lawyer is not prepared to give an undertaking under paragraph (b).
- (2) The legal representation certificate is to be in an approved form.
- (3) A written assurance under section 8(3)(c) of the *Criminal Law (Legal Representation) Act 2001* that the accused does not want legal representation at trial (a **written assurance**) is to be in an approved form.

47—Trial preparation statement

- (1) If the accused is represented by a lawyer, the lawyer is, at least 14 calendar days before the first directions hearing, to file and serve on the Director a trial preparation statement.
- (2) The trial preparation statement is to be in an approved form.

Part 2—Convening directions hearings

48—Convening directions hearing

- (1) A directions hearing will be convened—
 - (a) when the proceeding is referred upon arraignment to a directions hearing under rule 27;
 - (b) when the proceeding is referred at a directions hearing to a further directions hearing;
 - (c) when convened by the Registrar under rule 49; or
 - (d) when convened by the Court (including by the trial Judge in preparation for the trial) on the Court’s own initiative or on the application of a party.
- (2) Any directions hearing required in relation to a priority proceeding will be held as soon as possible and, in any event, within 4 weeks of the first arraignment.

Part 3—Pre-trial applications

49—Written application

- (1) An application—
 - (a) by the Director under section 3A(1) of the *Bail Act 1985* for a determination that a person is a serious and organised crime suspect or under section 19A of the *Bail Act 1985* for the cancellation of bail;
 - (ab) being a bail application within the meaning of rule 4;
 - (ac) for permission to make a bail application to the Court under rule 51A;
 - (b) by the Director for an order under section 7(3a) of the *Juries Act 1927* for a trial by Judge alone;
 - (c) by the accused for an extension of time under rule 42 to elect for trial by Judge alone or for permission to revoke an election under rule 43;
 - (d) to quash or stay a proceeding on the ground of an abuse of process or otherwise;
 - (e) for separate trials of different charges or different accused charged in the same information;
 - (f) for an order under section 134 of the Act requiring the defence to notify the Director in writing whether the defence consents to dispensing with calling prosecution witnesses or to give written notice of intention to introduce certain kinds of evidence;
 - (g) *****
 - (ga) for or to vary or revoke a pre-trial special hearing order;
 - (gb) for admission of an audio visual record of evidence under section 13BA of the *Evidence Act 1929*;
 - (gc) for communication assistance under sections 13A and 14A of the *Evidence Act 1929*;
 - (gd) by a close relative for exemption from giving evidence under section 21 of the *Evidence Act 1929*;
 - (h) to determine before trial any question relating to the admissibility of evidence or any other question of law affecting the conduct of the trial (a *preliminary question*);
 - (i) to adduce evidence or make submissions by audiovisual link under section 59IE or 59IQ of the *Evidence Act 1929*;
 - (j) required by these Rules to be made by written application;
 - (k) that cannot reasonably be made without notice to the other party or parties;

- (1) that the applicant seeks to be determined in chambers under rule 52, is to be made by filing and serving an application for directions in an approved form.
- (2) The Court may dispense with the need for a written application or may direct that a written application be made when an oral application is made under rule 50.
- (3) A written application is to set out—
 - (a) the orders sought; and
 - (b) sufficient particulars of the grounds relied upon to enable each other party to consider whether evidence will be necessary in respect of the issues raised.
- (4) A written application is to be supported by an affidavit—
 - (a) when it is an application under section 3A(1) or section 19A of the *Bail Act 1985*, or
 - (b) *****
 - (b) if it relies upon evidence that is potentially contentious.
- (5) A written application for taking evidence interstate is to be accompanied by a draft letter of request.
- (6) The Registrar will endorse the written application with the date, time and place of its hearing, which is to be a hearing that has already been fixed under rules 48 or 58 or a hearing before the trial Judge at or immediately before the commencement of the trial unless the Registrar is satisfied that the application must be heard urgently by the Court.

50—Oral application

Unless the Court otherwise directs, an oral application may be made at any directions hearing—

- (a) to amend the information;
- (b) for bail or a variation in the conditions of bail;
- (c) to issue a bench warrant;
- (d) to make a subpoena for documents returnable before commencement of trial;
- (e) to abridge or extend time for service of a subpoena including a subpoena served or to be served interstate under section 30 of the *Service and Execution of Process Act 1992* (Cth);
- (f) to permit inspection of documents produced on subpoena before commencement of trial;
- (g) for special arrangements for protection of a witness under section 13 of the *Evidence Act 1929*;
- (h) to enter a *nolle prosequi*; or
- (i) subject to rule 49, in relation to any other matter concerning the conduct of

the proceeding and of the trial.

51—Time for making certain applications

- (1) An application for separate trials or to quash or stay a proceeding is to be filed no less than 7 calendar days before the first directions hearing.
- (1A) An application for a pre-trial special hearing under section 12AB of the *Evidence Act 1929* is to be made no later than 35 calendar days after the defendant is committed for trial pursuant to section 117 of the Act.
- (2) An application to exclude the admission of evidence of an interview, admission or search is to be filed no less than 7 calendar days before the first directions hearing.
- (3) An application for an order or permission under section 124 or 134 of the Act is to be filed no less than 28 calendar days before the listed trial date.
- (4) An application to adduce evidence or make submissions by audiovisual link or from interstate is to be filed no less than 28 calendar days before the listed trial date.
- (4A) An application for admission of an audio visual record of evidence under section 13BA of the *Evidence Act 1929* is to be made no later than 28 calendar days before the listed trial date.
- (5) An application for special arrangements for the protection of a witness under section 13 or 13A of the *Evidence Act 1929* is to be made no less than 14 calendar days before the listed trial date.
- (6) An application to determine any issue before the commencement of the trial not governed by the preceding subrules is to be filed no less than 14 calendar days before the listed trial date.

Part 3A—Bail applications

51A—Making bail application

- (1) Subject to subrules (3) and (4), a bail application must not be made to the Court without the permission of a Judge of the Court if—
 - (a) the bail application relates to a charge in an information laid in the Magistrates Court or the Youth Court and—
 - (i) the defendant the subject of the charge has not been committed for trial or sentence in the Court; and
 - (ii) the charge is not the subject of an order transferring the proceeding to the Court or a remand of the defendant to be dealt with by the Court for a breach of bond;
 - (b) the bail application relates to a charge in an information laid in the District Court; or
 - (c) the bail application relates to a charge in an information laid in a court and the defendant the subject of the charge has been committed for trial or sentence in the District Court.

- (2) A bail application—
 - (a) that relates to a charge in an information laid in the Court—must be made in an approved form in accordance with rules 49 and 50;
 - (b) otherwise— must be made by originating application in an approved form.
- (3) A person who is required by subrule (1) to obtain permission before making a bail application—
 - (a) may apply for permission by originating application in an approved form; and
 - (b) must include the proposed application relating to bail in the originating application contingently on permission being granted.
- (4) If an application for permission is made under subrule 51A(3), the application relating to bail is contingent on permission being granted and, if permission is refused, the application relating to bail lapses.

51B—Bail application in respect of proceeding in another court

If a bail application is made to the Court in respect of a proceeding in another court, the Court may request the Registrar of the other court to send to the Court such documents as the Court requires for the purpose of hearing and determining the bail application.

Part 4—Determination without oral hearing

52—Determination of application without hearing oral submissions

- (1) The Court may determine an application by making an order in chambers without the attendance of the parties and without hearing oral submissions from the parties if—
 - (a) the application is not contentious; or
 - (b) the Court decides on its own initiative or on the application of a party to determine the application on the basis of written submissions.
- (2) Unless the Court otherwise directs, any submissions to be made on an application to which this rule applies are to be sent to the Court in electronic form.

Part 5—Proceedings at directions hearings

53—Forum for directions hearing

- (1) Unless the Court otherwise directs—
 - (a) a directions hearing will be presided over by a Judge of the Court; and
 - (b) the accused is to attend but attendance may be by audiovisual link under rule 36.
- (2) Unless the Court otherwise directs—

- (a) subject to paragraphs (b) and (c), a directions hearing will be held in private and only the persons involved in the directions hearing, and lawyers whether involved in the hearing or not, are permitted to be present;
- (b) when a contested application is set down for argument, the hearing will be in open court;
- (c) the recording of a *nolle prosequi* will be in open court if the accused so requests.

54—First directions hearing

- (1) At the first directions hearing, the Court will consider any legal representation certificate or written assurance that has been filed and will consider whether to make a direction under section 8 of the *Criminal Law (Legal Representation) Act 2001* that the defendant make an application to the Legal Services Commission for legal assistance.
- (2) *****
- (2) A Judge may convene a directions hearing before arraignment and give such directions as the Judge thinks fit for the taking of steps or determination of matters before or after arraignment

55—Directions hearings generally

- (1) At a directions hearing, the Court may—
 - (a) adjourn the hearing where the circumstances of the case require it;
 - (b) give directions and set time limits for steps in the proceeding;
 - (c) set or alter the date for the commencement of the trial;
 - (d) record the entry of a *nolle prosequi*;
 - (e) make an order for any interpreter, communication assistance or accompaniment that may be required for the trial;
 - (f) hear and determine any application made under rule 49 or rule 50;
 - (g) make an order relating to any other matter concerning the conduct of the proceeding and of the trial.
- (2) No failure to answer a question nor anything said by or on behalf of an accused at a directions hearing may be used or made the subject of comment at any subsequent trial.
- (3) Directions given at a directions hearing may be supplemented or varied at an adjourned or subsequent directions hearing.

56—Tender documents and aids

- (1) The Court may, on its own initiative or on application of a party, direct that, by a specified date, a party proposing to tender documentary exhibits to the Court file and serve on all other parties a list of such documents.

- (2) The Court may direct that a list of documents be numbered or marked to correspond with the marking of the documents to be tendered at the trial and include such other details as the Court thinks fit.
- (3) The Court may direct that a list of documents and copies of the documents referred to therein be filed and served in hard copy form, electronic form or both.
- (4) The Court may give directions for the production and use at trial of summaries, diagrams, charts, illustrations, graphs, photographs, films, documents, models or other audio, video, or visual media as an aid to illustrating or assisting to explain the evidence.

Part 6—Special directions hearings

57—Convening special directions hearing

- (1) At an arraignment or directions hearing, if the Court is of the opinion that there is sufficient prospect that a matter can be resolved at a special directions hearing (a *special directions hearing*) the presiding Judge may:
 - (a) list the matter for a special directions hearing before that Judge; or
 - (b) direct that the matter be listed for a special directions hearing at a time to be fixed by the Registrar.
- (2) The Registrar may refer a proceeding to a special directions hearing upon application by a party.
- (3) A written application for a special directions hearing is to:
 - (a) be in the form prescribed for other applications under subrule 49(1);
 - (b) specify that there is sufficient prospect of resolution of the matter to justify the convening of a special directions hearing; and
 - (c) inform the Court of any particular matters in respect of which the parties seek the assistance of the Court.

Example: The presiding Judge indicating the benefits of an early guilty plea to the defendant.
- (4) The written application is to be served on each other party within 3 business days after being filed.
- (5) Each other party is, within 3 business days of receiving the application, to file and serve a response informing the Court of that party's attitude to the application.
- (6) If the requirements in subrules (3), (4) and (5) are complied with, the Registrar is to list the proceeding for a special directions hearing.

57A—Special directions hearing

- (1) The accused is to attend at a special directions hearing but that attendance may be by audiovisual link under rule 36.
- (2) At a special directions hearing, the principal matters to be considered are possible resolution of the matter or of specific issues.

- (3) Nothing said at a special directions hearing can be used at a subsequent trial, sentencing hearing or other substantive hearing.
- (4) If the matter resolves or partially resolves at the special directions hearing, a *nolle prosequi* can be entered at that hearing in respect of any counts agreed to be withdrawn, and any counts to which it is agreed that the defendant will plead guilty will generally be referred to the next convenient arraignment.
- (5) If the matter does not fully resolve at the special directions hearing, it will remain in the trial list with its allocated trial date.

Part 6A—Vulnerable witnesses

57B—Pre-trial special hearing

- (1) An application under section 12AB(1) of the *Evidence Act 1929* for a pre-trial special hearing is to—
 - (a) be in a prescribed form;
 - (b) identify the age of the witness;
 - (c) if the application is made on the ground that the witness has a disability that adversely affects the witness' capacity to give a coherent account of his or her experiences or to respond rationally to questions—
 - (i) identify that disability and why it has such adverse effect;
 - (ii) be supported by an affidavit deposing to the existence, nature and extent of the disability and its consequential effects on the witness's capacity of the witness;
 - (d) identify why the special hearing is sought;
 - (e) identify any physical disability or cognitive impairment of the witness that might make it desirable that the evidence be taken in a particular way under section 12AB(2)(a)(ii) of the *Evidence Act 1929*;
 - (f) identify any special measures sought to prevent the witness and the defendant from directly seeing or hearing each other before, during or after the hearing;
 - (g) identify whether any communication assistance or accompaniment of the witness by a person for the purpose of providing emotional support is sought;
 - (h) be accompanied by minutes of order addressing the matters referred to in 12AB(2) of the *Evidence Act 1929*;
 - (i) be served on the other party or parties to the proceeding as soon as reasonably practicable after being filed.

Note —

Section 12AB(7)(c) requires an application to be served on the other party to the proceedings within 14 days of being filed in the Court.

- (2) An objection under section 12AB(8) of the *Evidence Act 1929* to an application for a pre-trial special hearing is to be—
 - (a) in a prescribed form;
 - (b) served on the applicant and any other parties as soon as reasonably practicable after being filed.

Note —

Section 12AB(8) requires an objection to be filed by a respondent within 14 days of service of the application on the respondent. Section 12AB(10) prescribes the consequences of no objection being filed within that period.

57C—Admission of audio visual record of evidence

An application under section 13BA(1) of the *Evidence Act 1929* for admission of evidence of a witness in the form of an audio visual record is to—

- (a) be in a prescribed form;
- (b) if the admission is sought of an audio visual recording taken under section 12AB of the *Evidence Act 1929*—identify that fact and provide details of the order made and evidence given under that section;
- (c) if the admission is sought of an audio visual recording taken under section 74EB of the *Summary Offences Act 1953*—
 - (i) identify that fact;
 - (ii) be supported by an affidavit deposing to compliance or non-compliance with the requirements under section 74EB and to the extent of any identified non-compliance the facts by reason of which the interests of justice require the admission of the evidence despite the non-compliance;
- (d) be served on the other party or parties to the proceeding as soon as reasonably practicable after being filed.

Note —

Section 13BA(2)(c) requires an application to be served on the other party to the proceedings within 14 days of being filed in the Court.

Part 7—Pre-trial directions hearings

58—Convening pre-trial directions hearing

- (1) When a criminal trial is pending, a directions hearing before commencement of the trial (a *pre-trial directions hearing*) may be held on the Court’s own initiative or on application by a party.
- (2) A pre-trial directions hearing will ordinarily be convened and conducted by the trial Judge but may be convened or conducted by any Judge if the trial Judge is unavailable.

59—Proceedings at pre-trial directions hearing

- (1) Counsel briefed to appear at the trial (or, if the attendance of a party's counsel is not practicable, that party's solicitor) and, subject to rule 36, the accused are to attend at a directions hearing convened under rule 58.
- (2) At a pre-trial directions hearing, the Court will give directions (including any arising by virtue of section 59J of the *Evidence Act 1929*) with respect to the trial to ensure that the trial commences on the trial date and will be conducted in an expeditious and fair manner.

Part 8—Outcome of directions hearings

60—Outcome of directions hearing

- (1) To give effect to an agreement arrived at between the parties in the course of a directions hearing, the Court may direct that—
 - (a) a specified fact may be proved at trial in a specified manner that is not in accordance with the rules of evidence;
 - (b) a specified fact is to be treated as admitted or established without proof at trial;
 - (c) a specified exhibit is to be admitted in evidence at trial without proof of its authenticity;
 - (d) specified evidence may be read or a specified statement may be tendered at trial without a witness being called; or
 - (e) with respect to any specified matter or topic, the regular course of procedure at the trial is to be modified or varied to facilitate proof of facts.
- (2) An order made under this rule is to be drawn up at the direction of and signed by the Court.
- (3) Subject to these Rules, the trial is to be conducted in conformity with the provisions of any such order.
- (4) Despite any order made under this rule, a party may, with the permission of the trial Judge, withdraw agreement to any provision contained in that order, whereupon that provision ceases to have effect and the trial is thereafter with respect to the subject matter of that provision to be conducted in accordance with the law and practice generally applicable.
- (5) Nothing in these Rules, or any order made under them, precludes the Court—
 - (a) at any time, on its own initiative or on the application of a party, setting aside or varying by administrative direction the listing of a trial;
 - (b) adjourning the trial or giving any other necessary directions as to how it is to proceed;
 - (c) making any order or giving any direction at trial that, in the opinion of the Court, should be made in the interest of justice and to ensure that there is a fair trial according to law.

Chapter 7—Notice of and dispensing with evidence

Part 1—Notice of evidence

61—Evidence of discreditable conduct

- (1) Notice of intention to adduce evidence of discreditable conduct under section 34P(4) of the *Evidence Act 1929* is to be in an approved form and filed and served on all other parties to the proceeding—
 - (a) in the case of a notice by the Director— not less than 7 calendar days before the first directions hearing;
 - (b) in all other cases—at least 21 clear calendar days before the listed trial date.
- (2) A party who intends to object to the admission of proposed evidence of discreditable conduct is to file and serve on all other parties to the proceeding a notice of objection in an approved form—
 - (a) in the case of an objection to evidence proposed to be led by the Director— within 28 calendar days after the filing of the Director’s notice of intention;
 - (b) in all other cases—at least 5 clear business days before the listed trial date.
- (3) The Court may vary the time within which a notice under this rule is to be filed and served.

62—Evidence of self-defence or other designated matters

- (1) An application under section 134 of the Act to require the defence to give to the Director notice of intention to adduce evidence of a certain kind is to be in an approved form.

Note —

Rule 51(3) requires an application to be made no less than 28 calendar days before the listed trial date.

- (2) An order requiring the defence to give notice of intention to adduce evidence of a certain kind is to be in an approved form.
- (3) The defence response to an order is to be in an approved form.

63—Expert or alibi evidence

A notice under section 124 of the Act or section 18 of the Sentencing Act of intention by the defence to call expert or alibi evidence is to be in an approved form.

Part 2—Admissions

64—Dispensing with prosecution witnesses

- (1) An application under section 134 of the Act to require the defence to give to the Director notice whether it consents to dispensing with calling certain prosecution witnesses is to be in an approved form and is to state the time within which it is proposed the defence is to respond.

Note —

Rule 51(3) requires an application to be made no less than 28 calendar days before the listed trial date.

- (2) An order requiring the defence to give notice whether it consents to dispensing with calling certain prosecution witnesses is to be in an approved form.
- (3) The defence response to an order is to be in an approved form.

65—*****

Part 3—Subpoenas

Note —

This Part follows the form of harmonised rules adopted in jurisdictions across Australia.

66—Interpretation

- (1) In this Part, unless the contrary intention appears—

addressee means a person who is the subject of the order expressed in a subpoena;

conduct money means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending;

issuing party means the party at whose request a subpoena is issued;

subpoena means an order in writing requiring a person (an *addressee*)—

- (a) to attend to give evidence; or
 - (b) to produce the subpoena or a copy of it and a document or thing; or
 - (c) to do both those things.
- (2) To the extent that a subpoena requires an addressee to attend to give evidence, it is called a *subpoena to attend to give evidence*.
 - (3) To the extent that a subpoena requires an addressee to produce the subpoena or a copy of it and a document or thing, it is called a *subpoena to produce*.

67—Issuing subpoena

- (1) The Court may, in any proceeding, by subpoena order an addressee—
 - (a) to attend to give evidence as directed by the subpoena; or

- (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or
 - (c) to do both those things.
- (2) The Court may exercise its power to issue a subpoena not only for the purposes of a proceeding in the Court but also for the purposes of proceedings extraneous to the Court for which the issue of a subpoena by the Court is authorised by statute.
 - (3) The Registrar is empowered to issue subpoenas on the Court's behalf in the circumstances identified in section 126 of the Act.
 - (4) The Registrar—
 - (a) may issue a subpoena on his or her own authority in the circumstances specified in section 126 of the Act; and
 - (b) must issue a subpoena if directed by a Judge or Master to do so.
 - (5) A subpoena is not to be issued—
 - (a) if the Court has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena—
 - (i) not be issued; or
 - (ii) not be issued without permission of the Court and that permission has not been given; or
 - (b) requiring the production of a document or thing in the custody of the Court or another court.
 - (6) A subpoena is not to be issued to compel the production of a public document unless a Judge authorises the issue of the subpoena.
 - (7) On issuing a subpoena, the Court will authenticate it by affixing its seal or in some other appropriate manner.

68—Form of subpoena

- (1) A subpoena under rule 68 of the Rules:
 - (a) to attend to give evidence is to be in an approved form;
 - (b) to produce is to be in an approved form;
 - (c) to do both those things is to be in an approved form.
- (2) A subpoena—
 - (a) may be addressed to one or more persons; and
 - (b) must, unless the Court otherwise orders, identify the addressee or addressees by name, or by description of office or position.
- (3) A subpoena may, however, be issued without the identification of the addressee or addressees on the basis that the necessary identifying names or descriptions are to be inserted before service of the subpoena by a solicitor for the party on whose application the subpoena was issued.

- (4) A subpoena to produce must—
 - (a) identify the document or thing to be produced; and
 - (b) specify the date, time and place for production.
- (5) A subpoena to attend to give evidence must specify, for each addressee who is required to attend, the date, time and place for attendance.
- (6) If a subpoena requires an addressee's personal attendance at a particular date, time and place to produce a document or thing, or to give evidence (or both)—
 - (a) the date, time and place for attendance must be the date, time and place at which the trial is scheduled to commence or some other date, time and place permitted by the Court; but
 - (b) if the course of the Court's business makes it necessary or expedient to change the date, time or place for attendance—
 - (i) the issuing party may amend the date, time or place by serving notice of the amendment on the addressee personally and tendering any additional conduct money that may be reasonable in the light of the amendment; and
 - (ii) the subpoena then operates in its amended form.
- (7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.
- (8) The last date for service of a subpoena—
 - (a) is the date falling 5 clear business days before the earliest date on which an addressee is required to comply with the subpoena or an earlier or later date fixed by the Court; and
 - (b) must be specified in the subpoena.
- (9) If an addressee is a company, the company must comply with the subpoena by its appropriate or proper officer.
- (10) If there is a mistake in the terms in which a subpoena is issued, and the mistake is discovered before the subpoena is served, the issuing party may correct the mistake and, after filing a corrected copy of the subpoena in the Court, proceed with service of the subpoena in its corrected form.

69—Alteration of date for attendance or production

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.
- (2) When notice is given under subrule (1), the subpoena has the effect as if the date or time notified appeared in the subpoena instead of the date or time which appeared in the subpoena.

70—Setting aside or other relief

- (1) The Court may on the application of a party or any person having a sufficient

interest, set aside a subpoena in whole or part, or grant other relief in respect of it.

- (2) Any application under subrule (1) must be made on notice to the issuing party.
- (3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

Note—

Sections 33, 43 and 44 of the *Service and Execution of Process Act 1992* (Cth) contain provisions governing applications to set aside subpoenas served interstate.

71—Service

- (1) A subpoena must be served personally on the addressee on or before the last business day for service specified in the subpoena.
- (2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee or addressees.

72—Compliance with subpoena

- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence or a subpoena both to attend to give evidence and to produce unless conduct money has been handed or tendered to the addressee a reasonable time before the date on which attendance is required.
- (2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.

Note—

1. Section 30 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served interstate, service is only effective if it is not less than 14 days before the person is required to comply unless the Court allows a shorter period in defined circumstances.
 2. Section 31 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served interstate, service is only effective if prescribed notices and a copy of any order under section 30 are attached to the subpoena served.
 3. Section 32 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served interstate, service is only effective if, a reasonable time before compliance is required, sufficient allowances and travelling expenses are paid or tendered to the person.
- (3) Despite rule 71(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.
 - (4) Subject to subrules (5) and (6), the addressee must comply with a subpoena to produce—

- (a) by attending at the date, time and place specified for production or, if the addressee has received notice of a later date or time from the issuing party, at that later date or time and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or
- (b) by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified for the purpose in the subpoena, or, if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production or, if the addressee has received notice of a later date or time from the issuing party, before that later date.

Note—

Section 34 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served interstate, a document or thing may be delivered to the Registrar not less than 24 hours before the date for compliance.

- (5) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by subrule (4) does not discharge an addressee from the obligation to attend to give evidence.
- (6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.
- (7) The copy of a document may be—
 - (a) a photocopy; or
 - (b) in an electronic form in any of the following electronic formats –
 - (i) .doc and .docx – Microsoft Word documents;
 - (ii) .pdf – Adobe Acrobat documents;
 - (iii) .xls and .xlsx – Microsoft Excel spreadsheets;
 - (iv) .jpg – image files;
 - (v) .rtf – rich text format
 - (vi) .gif – graphics interchange format;
 - (vii) .tif – tagged image format; or
 - (viii) any other format agreed with the issuing party.

73—Production otherwise than on attendance

- (1) This rule applies if an addressee produces a document or thing in accordance with rule 72(4)(b).
- (2) The Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.
- (3) If the addressee produces more than one document or thing, the addressee must, if requested by the Registrar, provide a list of the documents or things produced.

74—Removal, return, inspection, copying and disposal of documents and things

The Court may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

75—Inspection of, and dealing with, documents and things produced otherwise than on attendance

- (1) On request in writing of a party, the Registrar must inform the party whether production in response to a subpoena has occurred in accordance with rule 72(4)(b) and, if so, include a description, in general terms, of the documents and things produced.
- (2) The following provisions of this rule apply if an addressee produces a document or thing in accordance with rule 72(4)(b).
- (3) Subject to this rule, no person may inspect a document or thing produced unless the Court has granted permission and the inspection is in accordance with that permission.
- (4) Unless the Court otherwise orders, the Registrar may permit the parties to inspect at the Registry any document or thing produced if—
 - (a) the Registrar is satisfied that a copy of the subpoena to produce was served on each other party in accordance with rule 71(2); and
 - (b) there has been no objection to inspection under this rule by a party or any person having a sufficient interest.
- (5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must, at the time of production, notify the Registrar in writing of the objection and of the grounds of the objection.
- (6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify the Registrar in writing of the objection and of the grounds of the objection.
- (7) On receiving notice of an objection under this rule, the Registrar—
 - (a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and
 - (b) must refer the objection to the Court for hearing and determination.
- (8) The Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party must notify the addressee, the objector and each other party accordingly.
- (9) The Registrar must not permit any document or thing produced to be removed from the Registry except on application in writing signed by the solicitor for a party.
- (10) A solicitor who signs an application under subrule (9) and removes a document or thing from the Registry undertakes to the Court by force of this rule that—

- (a) the document or thing will be kept in the personal custody of the lawyer for the party; and
 - (b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the Registrar.
- (11) The Registrar may, in the Registrar's discretion, grant an application under subrule (9) subject to conditions or refuse to grant the application.

76—Disposal of documents and things produced

- (1) Unless the Court otherwise orders, the Registrar may, in the Registrar's discretion, return to an addressee any document or thing produced in response to the subpoena.

Note—

It should be noted, however, that if the document or thing has been tendered as an exhibit, the Registrar is to deal with the exhibit as directed by the Court (see rule 83)).

- (2) Unless the Court otherwise orders, the Registrar must not return any document or thing under subrule (1) unless the Registrar has given to the issuing party at least 14 calendar days notice of the intention to do so and that period has expired.
- (3) The addressee of a subpoena to give evidence or to give evidence and to produce must complete the declaration by the addressee provided for in the approved form.
- (4) The completed declaration must be included in the subpoena or copy of the subpoena which accompanies the documents produced under the subpoena.
- (5) Subject to subrule (6), the Registrar may, on the expiry of four months from the conclusion of the proceeding, cause to be destroyed all the documents produced in the proceeding in compliance with a subpoena which were declared by the addressee to be copies.
- (6) The Registrar may cause to be destroyed those documents declared by the addressee to be copies which have become exhibits in the proceeding when they are no longer required in connection with the proceeding, including on any appeal.

77—Costs and expenses of compliance

- (1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.
- (2) If an order is made under subrule (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.
- (3) An amount referred to in this rule is separate from and in addition to—
 - (a) any conduct money paid to the addressee; or
 - (b) any witness expenses payable to the addressee.

Note—

Sections 35 and 45 of the *Service and Execution of Process Act 1992* (Cth) provide that, when a subpoena is served interstate, the person served is entitled to reasonable expenses incurred in compliance and empowers the Court to make orders for this purpose.

78—Failure to comply with subpoena—contempt of court

- (1) An addressee who fails to comply with a subpoena without lawful excuse is in contempt of court and may be dealt with accordingly.
- (2) Despite rule 71(1), if a subpoena has not been served personally on an addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and its requirements.
- (3) Subrules (1) and (2) are without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

79—Documents and things in court custody

- (1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the Registrar in writing accordingly, identifying the document or thing.
- (2) If the document or thing is in the custody of the Court, the Registrar must produce the document or thing—
 - (a) in court or to any person authorised to take evidence in the proceeding, as required by the party; or
 - (b) as the Court directs.
- (3) If the document or thing is in the custody of another court, the Registrar must, unless the Court has otherwise ordered—
 - (a) request the other court to send the document or thing to the Registrar; and
 - (b) after receiving it, produce the document or thing—
 - (i) in court or to any person authorised to take evidence in the proceeding as required by the party; or
 - (ii) as the Court directs.

Chapter 8—Trial

Part 1—Evidence

80—Audiovisual link evidence or submissions

- (1) When an order has been made for taking evidence or submissions by audiovisual link, an applicant who no longer requires the evidence or submissions to be taken by audiovisual link is to notify the Registrar immediately.
- (2) Unless the Court otherwise orders, if the Court makes an order under section 59IF of the *Evidence Act 1929*, the amount fixed by the Court under section 59IF of that Act is to be paid by the applicant for the order.

81—Evidence to be taken interstate or overseas

- (1) A request under section 59E(1)(c) of the *Evidence Act 1929* to a foreign court to take evidence is to be in an approved form.
- (2) The party obtaining the order is responsible for all expenses incurred by the Court, or by any person at the request of the Court, in respect of the letter of request to the foreign court.

82—Audiovisual record of evidence

- (1) This rule applies to an audiovisual record of the evidence of a vulnerable or other witness given in a proceeding before the Court.
- (2) An application under section 13C(3) of the *Evidence Act 1929* to take custody of an audiovisual record of the evidence of a vulnerable witness given in a proceeding before the Court for the purpose of a related proceeding—
 - (a) may be made orally at a directions hearing in the proceeding;
 - (b) otherwise is to be made by application under rule 49.
- (3) Subject to any contrary direction by the Court, a party who is authorised by the Court under section 13C(3) of the *Evidence Act 1929* to take custody of an audiovisual record of evidence—
 - (a) will be provided with a duplicate copy of the record;
 - (b) is to use the duplicate record for the sole purpose of the related proceeding in respect of which the authorising order is made;
 - (c) is not to copy or disseminate the duplicate record to any third party; and
 - (d) is to ensure the safekeeping of the duplicate record and to return it to the Court at the conclusion of the related proceeding in respect of which the authorising order is made.
- (4) An application under section 13D of the *Evidence Act 1929* to admit an official record of evidence given in an earlier criminal proceeding in a later proceeding is to be made by application under rule 49.

- (5) If editing of an official record of evidence is required under section 13D(3) of the *Evidence Act 1929*, the party tendering the evidence—
 - (a) will be provided with a duplicate copy of the official record and the editing is to be carried out on the duplicate record;
 - (b) is to ensure that the edited version is prepared in a form that, if tendered, may be displayed on the Court’s audio or audiovisual equipment;
 - (c) is to keep all edited versions of the official record in safekeeping; and
 - (d) is to return to the Court all edited versions not already in the custody of the Court immediately upon the conclusion of the proceeding.

Part 2—Exhibits

83—Exhibits

- (1) Subject to section 131 of the *Supreme Court Act 1935*, a Judge may at any time make such direction as he or she thinks fit for the custody, disposal or production at the conclusion of the trial of any exhibit.
- (2) Subject to any direction under subrule (1) and subject to the Registrar not having received any notice of appeal, the Registrar may, at the expiration of 28 calendar days after the conclusion of the trial, return any exhibit to the custody of the person who produced it or to the solicitor for the party who tendered it, as may be appropriate, and the person to whom any exhibit is returned is liable for any costs incurred by the Registrar in returning the exhibit.
- (3) Subject to any direction under subrule (1), if a notice of appeal is received by the Registrar before returning the exhibits, the Registrar is to retain the exhibits in custody until required to transmit them to the Court of Appeal.
- (4) Upon the exhibits being returned, the Registrar may deal with the exhibits in accordance with subrule (2).
- (5) If an exhibit is returned while an appeal is pending, the person to whom it is returned is, so far as is practicable having regard to the nature of the exhibit, to keep it marked and labelled as before so that the person may be able to produce the exhibit so marked and labelled at the hearing of the appeal if required to do so.
- (6) If there is an appeal, the Registrar will include the list of exhibits amongst the documents supplied to the proper officer of the Court of Appeal for the purpose of the appeal.

Chapter 9—Juries

84—Interpretation

In this Chapter—

jury card means the jury card referred to in section 42 of the *Juries Act 1927*;

jury pool room means the place appointed from time to time by the Sheriff for the attendance of the jury pool for a jury district;

Sheriff includes the Deputy Sheriff and any other person for the time being performing the functions of the Sheriff under the *Juries Act 1927*;

sheriff's officer means an officer appointed by the Sheriff.

85—Juror's oath or affirmation

- (1) Before first directing a juror to attend for a criminal trial, the Sheriff is to cause the juror to take an oath or affirmation in the form of Schedule 6 to the *Juries Act 1927*.
- (2) The Sheriff is to cause a record to be made of the taking by each juror of the oath or affirmation. The record is not to be shown or communicated to any person other than a Judge except by leave of a Judge.

86—Jury panel

- (1) When a trial of an accused is to commence, the Sheriff is to ensure that a jury panel of not less than 20 jurors attend for the trial.
- (2) When a trial of more than one accused is to commence, the Sheriff is to ensure that a jury panel of not less than 20 jurors plus not less than 3 extra jurors in respect of each additional accused attend for the trial.
- (3) Subject to subrule (4), a copy of the jury panel list giving the number, name, suburb and occupation of the jurors selected by the Sheriff under subrule (1) or (2) will be made available to counsel for the parties or an unrepresented accused by the Sheriff's Officer in court sufficiently early before the jury is empanelled to enable decisions to be made on challenge.
- (4) The Presiding Judge may direct the Sheriff to have information included or removed from the jury panel list for a particular trial.

87—Selection of jurors by ballot

- (1) The Associate will conduct the juror ballot by drawing a jury card from the ballot box and reading aloud to the Court the jury number only of the juror selected as shown on the jury card.
- (2) This procedure will continue, allowing for challenges, until 12 jurors, or 12 jurors and any additional jurors, are seated in the jury box.
- (3) After the selection of the jury, the Sheriff's Officer will collect the jury panel list from counsel and from any unrepresented accused.

- (4) The jury panel list is not a public document and is supplied to the parties for the purpose of jury selection only. Subject to any direction of the trial Judge, it ceases to be available to counsel or the accused after the jury has been selected.
- (5) The cards of the jurors empanelled for a criminal trial are to be kept apart from the cards of all other jurors until a verdict has been given or until such jurors have been discharged.
- (6) A ballot required to be held in accordance with section 6A(2) of the *Juries Act 1927* is to be conducted by drawing at random the number of cards necessary to reduce the number of jurors to 12 from those cards kept apart in accordance with subrule (5).

88—Jurors in charge of Sheriff or Sheriff’s officer

The Sheriff is to ensure that jurors while in a jury pool room, jury retiring room, courtroom, building in which a courtroom is situated, at a view or proceeding between any of those places are in the charge of the Sheriff or a sheriff’s officer.

89—Non attendance

If a juror does not attend in obedience to a summons or in compliance with a direction by the Sheriff, the Sheriff is to report the fact to a Judge.

Chapter 10—Sentencing

90—Victim impact statements

- (1) A person wishing to furnish to the Court a victim impact statement under section 14 of the Sentencing Act or section 269R(3) of the Consolidation Act is to provide the statement in writing to the Director.
- (2) A copy of the statement is to be provided to the Court and the defence as soon as reasonably practicable after the defendant pleads or is found guilty or the Court declares that the defendant is liable to supervision under Part 8A of the Consolidation Act.
- (3) The Director may request the Court to—
 - (a) allow an audio or audiovisual record of the person reading the statement to be played to the Court;
 - (b) exercise, in relation to the person making the statement, any power that the Court has with regard to a vulnerable witness;
 - (c) direct that the defendant, or if the defendant is a body corporate a director or other representative of the body corporate satisfactory to the Court, be present when the statement is read or played to the Court.
- (4) The Court may appoint the time when the victim impact statement will be read or played to the Court and may refuse to postpone reading or playing it if the resulting delay would be unreasonable in the circumstances.
- (5) If the person providing the statement is not in court when the Court gives a direction under subrule (4), the Director is to advise the person of the time fixed for reading or playing it.
- (6) The person making the statement may amend it at any time before it is read or played to the Court.
- (7) The Court may direct that irrelevant material in the statement not be read or played to or taken into account by the Court.
- (8) A person may at any time withdraw the statement, in which event it will not be read or played to or taken into account by the Court.

91—Community impact statements

- (1) If the Director or the Commissioner for Victims' Rights wishes to furnish to the Court a community impact statement in a proceeding to determine sentence or to fix a limiting term, he or she is to provide a copy of it to the Court and to the defence upon the accused pleading or being found guilty or upon the Court declaring that the defendant is liable to supervision under Part 8A of the Consolidation Act.
- (2) The Court will appoint the time at which the statement will be read to the Court and may refuse to postpone its reading if the resulting delay would be unreasonable in the circumstances.
- (3) The statement will not be read out in court if the Court determines that it is

inappropriate or if it would be unduly time consuming to do so.

- (4) The Court may direct that irrelevant material in the statement not be read or taken into account by the Court.

92—Application to fix non-parole period

- (1) An application under section 47(3) of the Sentencing Act to fix a non-parole period is to be made by originating application in an approved form.
- (2) The application is to be served—
 - (a) if made by the prisoner—on the Parole Board, the Director and any other person directed by the Court; and
 - (b) if made by Parole Board—on the prisoner, the Director and any other person directed by the Court.

93—Mental impairment detention

When the Court makes a supervision order committing the defendant to detention under section 269O of the Consolidation Act, the warrant to be issued by the Court will be in an approved form.

Chapter 11—Statutory applications

94—Mental impairment

- (1) An application to revoke, vary or revise a supervision order under section 269P or 269U of the Consolidation Act (other than a telephone application under section 269U(1)) is to be made by originating application in an approved form.
- (2) The application is to be served on the Director, the defendant, the Parole Board and the Public Advocate (other than the applicant) within 5 business days after being filed.
- (3) The Registrar will list the application before the Court and it is to proceed in accordance with any directions given by the Court.
- (4) When an order is made by the Court committing the defendant to detention under section 269P or 269U of the Consolidation Act, the warrant issued by the Court will be in an approved form.
- (5) When an order is made by the Court committing the defendant to an appropriate form of custody under section 269X(1) or (2) of the Consolidation Act, the warrant issued by the Court will be in an approved form.

95—*****

95A—Extended supervision orders

- (1) An application by the Attorney-General under section 7(1) of the High Risk Offenders Act for an extended supervision order is to be made by originating application in an approved form.
- (2) Such an application is to be supported by an affidavit—
 - (a) deposing to the relevant factual basis for the application; and
 - (b) exhibiting available records and reports relevant to the grounds for making the application.
- (3) The application and supporting affidavit are to be served on the respondent within 5 business days after being filed.
- (4) The Registrar will list the application in an arraignment list and it is to proceed in accordance with any directions given by the Court.
- (5) An interim supervision order under section 9 of the High Risk Offenders Act is to be in an approved form.
- (6) An order under section 7(4) of the High Risk Offenders Act that the respondent be subject to an extended supervision order is to be in an approved form.
- (7) An application by the Attorney-General or the person subject to an order under section 13 of the High Risk Offenders Act to revoke or vary an extended supervision order is to be in an approved form.
- (8) Such an application is to be supported by an affidavit—
 - (a) identifying the extended supervision order;

- (b) addressing compliance or non-compliance by the person subject to an extended supervision order with the conditions of the order;
 - (c) addressing any relevant change in circumstances since the order was made;
 - (d) addressing any other relevant circumstances.
- (9) The application and supporting affidavit are to be served on the respondent within 5 business days after being filed.

95B—Continuing detention orders

- (1) An order under section 18(4) of the High Risk Offenders Act for interim detention is to be in an approved form.
- (2) An order under section 18(2) of the High Risk Offenders Act for Continuing Detention is to be in an approved form.
- (3) A warrant under section 18(6) of the High Risk Offenders Act committing a person to a correctional institution is to be in an approved form.
- (4) An application by the Attorney-General, the Parole Board or the person subject to an order under section 19 of the High Risk Offenders Act to revoke or vary a continuing detention order is to be in an approved form.

96—Detention of person unable or unwilling to control sexual instincts

- (1) An application by the Attorney-General under section 57(3) of the Sentencing Act for an order detaining a person in custody until further order is to be made by originating application in an approved form.
- (2) The application is to be served on the person within 5 business days after being filed.
- (3) The Registrar will list the application in an arraignment list and it is to proceed in accordance with any directions given by the Court.
- (4) Without affecting the right of any party to adduce further evidence, the Court may receive any evidence given in a criminal proceeding concerning the person to whom the application relates and may give such weight to that evidence as it thinks fit.

97—Suspension of reporting obligations

- (1) An application to suspend reporting obligations under section 37 of the *Child Sex Offenders Registration Act 2006* is to be made by originating application in an approved form.
- (2) The application is to be accompanied by an affidavit of the applicant that—
 - (a) if the applicant is subject to a child sex offender registration order—specifies the order including the date upon which it was made, the Court that made it, the offence for which the applicant was sentenced when the order was made and, if the applicant is subject to a restraining order under section 99AA or 99AC of the Act, the terms of that order;

- (b) if the applicant is not subject to a child sex offender registration order— specifies each sentence imposed on the applicant that has the effect that the applicant is a registrable offender;
 - (c) sets out the grounds upon which the application is made;
 - (d) sets out details of the applicant’s antecedent criminal history;
 - (e) exhibits a report of any expert witness upon whose evidence the applicant relies;
 - (f) exhibits any other documentary evidence upon which the applicant relies; and
 - (g) identifies any other evidence upon which the applicant relies.
- (3) The application and supporting affidavit are to be served on the Commissioner of Police within 5 business days after being filed.
 - (4) The Registrar will list the application in an arraignment list and it is to proceed in accordance with any directions given by the Court.
 - (5) The Court may, on the application of the Commissioner of Police, direct that the applicant submit to examination by a medical practitioner registered under the *Health Practitioner Regulation National Law* or another person as the Court directs, and may obtain from any such practitioner or other person such report relating to an issue arising in relation to the application as the Court thinks fit.
 - (6) If the applicant fails to comply with a direction to submit to an examination, the Court may stay the hearing of the application until the applicant complies with that direction.

98—Confiscation orders

- (1) This rule applies to proceedings instituted in the criminal jurisdiction of the Court under the *Proceeds of Crime Act 2002* (Cth) or the *Criminal Assets Confiscation Act 2005* (the *Confiscation Acts*).
- (2) A party may initiate a proceeding under the Confiscation Acts in the Court’s criminal jurisdiction—
 - (a) if there is a criminal proceeding underway against the person to whom the application relates for an offence upon which the confiscation application relies—by a written application under rule 49 in that proceeding; or
 - (b) otherwise—by originating application in an approved form.
- (3) An application—
 - (a) under subrule (2)(a) will proceed in accordance with directions given by the Court on a directions hearing;
 - (b) under subrule (2)(b) will be listed by the Registrar before the Court and is to proceed in accordance with directions given by the Court.

- (4) Without affecting the right of any party to adduce further evidence, the Court may receive any evidence given in a criminal proceeding concerning the person to whom the application relates and may give such weight to that evidence as it thinks fit.
- (5) Subject to the Confiscation Acts, the Court may direct that an application under the Confiscation Acts in the criminal jurisdiction of the Court be transferred to the civil jurisdiction of the Court, and in that event the application will be governed by the Civil Rules.

Chapter 12—Bail reviews

99—Application of Chapter

This Chapter applies to the review in the Supreme Court of bail decisions under Part 4 of the *Bail Act 1985* or under Part 5 of the *Service and Execution of Process Act 1992* (Cth).

100—Application for review

- (1) An application for review of a decision of a bail authority under section 14(2)(a) of the *Bail Act 1985* is to be made by originating application in an approved form.
- (2) An application for review of a decision of a Magistrate on a review of a decision of a bail authority under section 15A(1) and for permission under section 15A(3) of the *Bail Act 1985* is to be made by originating application in an approved form.
- (3) An application for review of a decision of a Magistrate under section 86 of the *Service and Execution of Process Act 1992* (Cth) is to be made by originating application in an approved form.

Note—

Section 86(2) of the *Service and Execution of Process Act 1992* (Cth) requires the application for review to be brought within 7 days after the making of the order.

- (4) The application is to be supported by an affidavit setting out or exhibiting—
 - (a) the decision subject to the review;
 - (b) the reasons given by the bail authority and, when applicable, by the bail review authority;
 - (c) the grounds for the review; and
 - (d) when permission is required under section 15A(3) of the *Bail Act 1985*—the grounds for the grant of permission.
- (4A) The application is to be supported by an affidavit by the applicant’s solicitor or, if the applicant is not represented, by the applicant (which in either case may be contained in the affidavit addressing the matters identified in subrule (4))—
 - (a) stating that the substance of the material on which the applicant relies was put before the bail authority whose decision is sought to be reviewed; and
 - (b) stating that there has been no material change of circumstances that would warrant making a fresh application for bail to the bail authority whose decision is sought to be reviewed.
- (5) Except with the permission of the Court, the applicant for review is not to use an affidavit on the hearing of the review unless it was filed with the application.
- (6) The Registrar will endorse on the application the time and place for the hearing of the review and transmit the duplicate copy to the applicant.

- (7) Subject to section 16 of the *Bail Act 1985*, an application for review does not operate as a stay of the orders made under the decision subject to review unless the Court so orders.
- (8) An application for extension of the period of deferral under section 16(2)(a) of the *Bail Act 1985* is to be made by an application under rule 49.
- (9) An application for a suppression order under section 96 of the *Service and Execution of Process Act 1992* (Cth) is to be made by an application under rule 49.

Note—

An appeal against a decision in relation to a suppression order under the *Service and Execution of Process Act 1992* (Cth) lies as of right under section 101 of that Act except as provided by the *Judiciary Act 1903* (Cth).

101—Service of application

- (1) The application and affidavit in support are to be served as soon as practicable on—
 - (a) the other parties to the proceeding in which the bail decision was made;
 - (b) the registrar of the court or other bail authority who made the original bail decision;
 - (c) the registrar of the court that was the bail review authority when applicable; and
 - (d) any other person whom the Registrar considers to be an interested party.
- (2) Unless the Registrar endorses on the application that the applicant is to effect service, the Registrar will effect service of the documents to be served under subrule (1).
- (3) If the respondent to the application decides to take an attitude to the application for bail different from that taken before the bail authority whose decision is sought to be reviewed, the respondent must inform the Court in writing within 48 hours of receipt of the application for review.

102—Transmission of bail authority file

If an application for review is made and the Registrar makes a written request to the bail authority or bail review authority, that authority is to send to the Registrar immediately the file and all other documents relevant to the review, including any reasons under section 12(1), 14 or 15(1) of the *Bail Act 1985* or section 83 of the *Service and Execution of Process Act 1992* (Cth) (as the case may be), together with a certificate that such file and other documents are those relevant to the review.

102A—Withdrawal of application for review

- (1) A notice of discontinuance by the Crown of an application for review under section 16(2)(b)(i) of the *Bail Act 1985* is to be made in an approved form.
- (2) The Crown must file the notice in the Court and in the Court which made the bail decision subject to the application for review and serve it on the respondent to the

application for review.

103—Hearing of application for review

- (1) Unless the Court otherwise directs—
 - (a) the application is to be heard in open court;
 - (b) a person in custody is to appear by audiovisual link; and
 - (c) all evidence is to be given by affidavit.
- (2) A party who objects to the use of an audiovisual link for the hearing is to give notice of objection in writing in accordance with rule 36(2)(b).
- (3) Rules 36(2)(b) and (3) apply to the hearing and determination of a notice of objection.

104—Determination of application for review

- (1) When upon a review the Court releases a person on bail, the Court may direct that the Registrar or another officer of the Court take the bail agreement in the terms ordered and thereupon release the applicant on bail.
- (2) Upon completion of a review, the Registrar may return the file and any documents received under rule 102 to the person who transmitted them except documents required as court records.

Chapter 12A—Appellate proceedings—single Judge

Part 1—Introduction

104A—Application of Chapter

- (1) Subject to subrules (3) and (4), this Chapter applies to all appeals to a single Judge against a judgment, order or decision of a court, and all reservations to a single Judge of a question of law, by a court in the exercise of its criminal jurisdiction.
- (2) In particular, these Rules and this Chapter apply to—
 - (a) appeals under section 42(2)(b) of the *Magistrates Court Act 1991* against a judgment, order or decision by a Magistrate in the criminal division of the Magistrates Court;
 - (b) appeals under section 22(2)(a)(i) or (b)(iii) of the *Youth Court Act 1993* against a judgment, sentence or decision by a Magistrate of the Youth Court, or an interlocutory judgment by a Judge of the Youth Court, exercising criminal jurisdiction under the *Young Offenders Act 1993*;
 - (c) reservation of a question of law arising in a criminal action under section 43 of the *Magistrates Court Act 1991*;
 - (d) reservation of a question of law arising in a criminal proceeding under section 23 of the *Youth Court Act 1993*; and
 - (e) any other appeal to a single Judge or reservation of law to a single Judge by a court exercising criminal jurisdiction.
- (3) Subject to a statute conferring jurisdiction on a single Judge in absolute terms, a Judge may order that the appellate jurisdiction of the Supreme Court that would otherwise be exercised by a single Judge be exercised by the Court of Appeal.
- (4) This Chapter does not apply to bail reviews governed by Chapter 12.

104B—Definitions

In this Chapter, unless the contrary intention appears—

appeal means an appeal against a judgment, order or decision of a court in a proceeding and, unless the context indicates otherwise, includes—

- (a) a cross appeal;
- (b) an application for leave to appeal (or cross appeal); or
- (c) an application for an extension of time to appeal (or cross appeal);

appellant means—

- (a) in an appeal—the person appealing against a judgment, order or decision and, unless the context indicates otherwise, includes that person in the capacity of a respondent to a cross appeal; or
- (b) in a case stated—the person who files the notice of case stated or otherwise has the carriage of the case stated;

appellate document means—

- (a) a notice of appeal;
- (b) a notice of cross appeal;
- (c) a notice of alternative contention; or
- (d) a notice of case stated.

appellate hearing means a hearing of an appeal or an issue relevant to whether a party is or may be entitled to final relief in an appeal;

appellate proceeding means—

- (a) an appeal (including cross appeal; or
- (b) a case stated;

case stated means a case stated or question reserved for the consideration of a single Judge;

cross appeal means a cross appeal referred to in rule 104J.

104C—Name of party—Police

In an appeal, the South Australian Police, whether as appellant or respondent, is to be referred to as “Police” and not as “South Australian Police” or “SA Police”.

Example—

“Jones v Police” or “Police v Jones”

Part 2—Permission to appeal

Division 1—General

104D—When required

- (1) Permission to appeal is required if a statute so requires.
- (2) If permission to appeal is granted but it later becomes evident that it ought not to have been granted, the Court may revoke the grant of permission.

Division 2—Seeking permission

104E—Notice of appeal seeking permission to appeal

- (1) When permission to appeal is required, the appeal must be instituted in the ordinary way and the notice of appeal must seek the necessary permission.
- (2) If a notice of appeal seeking permission to appeal is filed under this Part—
 - (a) the institution of the appeal is conditional on leave to appeal being granted; and
 - (b) if leave to appeal is refused, the appeal lapses.

Division 3—Determination of question of permission

104F—Determination timing

- (1) A Judge may order that the question of permission to appeal be heard before the hearing of the appeal.
- (2) Unless an order is made under subrule (1), an application for permission to appeal and the appeal will be heard at the same time.

Part 3—Institution of appellate proceeding

Division 1—Time to appeal

104G—Time to appeal

- (1) Subject to any statute or rule to the contrary, an appeal must be instituted within 21 days after the date of the judgment, order or decision the subject of the appeal.
- (2) If an extension of time to appeal is required, the appeal must be instituted in the ordinary way in accordance with rule 104H and the notice of appeal must seek the necessary extension of time.
- (3) A Judge may order that the question of an extension of time to appeal be heard before the hearing of the appeal.
- (4) Unless an order is made under subrule (3), an application for an extension of time to appeal and the appeal will be heard at the same time.

Division 2—Appeals

104H—Institution

- (1) An appeal must be instituted by filing a notice of appeal in an approved form setting out—
 - (a) the forum of the appellate Court;
 - (b) the statutory provision under which the appeal is brought;
 - (c) details of the judgment, order or decision the subject of the appeal;
 - (d) the grounds of appeal;
 - (e) the orders sought on appeal;
 - (f) if permission to appeal is sought—the grounds on which it is sought; and
 - (g) if an extension of time is sought—the grounds on which it is sought.
- (2) The appellant must join as a respondent in the appeal any other party to the first instance proceeding unless that party has no interest in the appeal.
- (3) The Court may order the inclusion or removal of a person as a party to an appeal.
- (4) The appellant must serve the notice of appeal on the other parties to the appeal as soon as practicable.

- (5) The appellant must serve a copy of the notice of appeal on the Registrar or other proper officer of the court of first instance as soon as practicable.
- (6) Unless the Court otherwise orders, an appellant may not rely on grounds that are not stated in the notice of appeal.

104I—Documents and information from court of first instance

- (1) The Registrar may, and when directed by the Court must, request the court of first instance to transmit to the Court by physical or electronic means (as specified) documents relevant to the appeal.
- (2) Unless the Registrar otherwise specifies, documents relevant to the appeal the subject of a request comprise—
 - (a) all documents lodged with the court;
 - (b) any transcript of evidence or hearing;
 - (c) any other evidentiary material; and
 - (d) the judgment, order or decision subject of the appeal and any reasons given for it.
- (3) The Registrar or proper officer of the court of first instance must comply with the request as soon as practicable.

104J—Institution of cross appeal

- (1) Another party to an appeal may institute an appeal against the same judgment, order or decision by filing a notice of cross appeal in an approved form within 14 days after service of the notice of appeal on that party.
- (2) Subrules (3) to (5) of rule 104H apply, with any necessary changes, in respect of a cross appeal.
- (3) If permission to appeal is required, rule 104F applies, with any necessary changes, in respect of a cross appeal.
- (4) If an extension of time to appeal is required, rule 104G applies, with any necessary changes, in respect of a cross appeal.

104K—Notice of alternative contention

- (1) If another party to the appeal wishes to contend that a decision subject to appeal or cross appeal should be upheld for reasons other than those given by the court of first instance, that party must file a notice of alternative contention in an approved form setting out the grounds on which the party asserts that the decision should be upheld within 14 days after service of the notice of appeal, or notice of cross appeal, on that party.
- (2) Subrules (4) and (5) of rule 104H apply, with any necessary changes, in respect of a notice of alternative contention.
- (3) If an extension of time to file the notice of alternative contention is required, rule 104G applies, with any necessary changes, in respect of a notice of alternative contention.

Division 3—Case stated

104L—Case stated by court

- (1) A court which reserves a question of law for the consideration of a Judge must—
 - (a) prepare a document containing a statement of the background and relevant facts on the basis of which the question of law is to be determined and a statement of the question to be determined;
 - (b) designate a party to the proceeding who is to be regarded as the appellant on the case stated before the Supreme Court and have the carriage of it; and
 - (c) designate who are to be the respondents to the appellate proceeding.
- (2) The Court may request that court to forward to the Registrar the whole or part of the file for the proceeding including any transcript of hearings and evidence in the custody of that court.

104M—Institution of case stated

- (1) The party designated as the appellant under rule 104L must file in the Court a notice of case stated in an approved form.
- (2) Subrules (3) and (4) of rule 104H apply, with any necessary changes, in respect of a case stated.

Part 4—Preparation for and listing of appellate proceeding

Division 1—Introduction

104N—Definition

In this Part—

listed hearing date means the earlier of the listed hearing date referred to in rule 104P(1) and any varied hearing date referred to in rule 104P(3).

Division 2—Transcript

104O—Transcript

- (1) This rule applies to appeals where a transcript of evidence was not produced for the proceeding in the court of first instance.
- (2) The appellant must file and serve with the notice of appeal a document identifying whether the appellant requests that a transcript of the evidence of any witness be produced and if so identifying what passages of evidence are requested to be produced.
- (3) Each other party to the appeal must, within 7 days after service of the notice of appeal on the party, file and serve a document identifying whether they request that a transcript of the evidence of any witness be produced and if so identifying what passages of evidence are requested to be produced.

- (4) Unless a Judge otherwise orders, the Court will request the court of first instance to produce transcript in accordance with any requests made under subrules (2) and (3).

Division 3—Listing for hearing

104P—Listing for hearing

- (1) An appellate proceeding will be listed for hearing before a Judge on a fixed date in a given month.
- (2) The Court will give notice of the listed hearing date to the parties.
- (3) If a party seeks a change from the listed hearing date, the party must, within 7 days after the listed hearing date is notified, contact the Judge’s chambers and make a request with details of alternative hearing dates.

Division 4—Appeal book

104Q—Filing and service of appeal book

- (1) The appellant must prepare an appeal book in accordance with rule 104R.
- (2) The appellant must file a physical copy of the appeal book 7 days before the listed hearing date.

104R—Content of appeal book

- (1) An appeal book for an appeal must contain—
 - (a) a copy of the information or other document that originated the proceeding in the court of first instance;
 - (b) a copy of the judgment or order the subject of the appeal;
 - (c) a copy of reasons for judgment or sentencing remarks given in respect of that judgment or order; and
 - (d) a copy of the notice of appeal, any notice of cross appeal and any notice of alternative contention.
- (2) An appeal book is not required for a case stated.
- (3) An appeal book must contain a filing which shows the court, jurisdiction, case number, parties, name of the document and details of the law firm representing the party filing the document, or if self-represented, the party.

Division 5—Written submissions, chronologies and lists of authorities

104S—Filing and service

- (1) Each party who intends to make submissions on the hearing of the appellate proceeding must prepare written submissions in accordance with rule 104T and a list of authorities in accordance with rule 104U, and may prepare a chronology.
- (2) Unless the Court otherwise orders, the appellant must file and serve on the other parties to the appellate proceeding written submissions, a list of authorities and any chronology not less than 7 days before the listed hearing date.

- (3) Unless the Court otherwise orders, each other party must file and serve on the other parties to the appellate proceeding written submissions, a list of authorities and any chronology not less than 3 days before the listed hearing date.
- (4) The appellant may file and serve on the other parties to the appellate proceeding written submissions in reply not less than 1 day before the listed hearing date.

104T—Content of written submissions

- (1) Written submissions must show the anticipated hearing date and name of the Judge listed to hear the matter.
- (2) Written submissions must—
 - (a) in respect of each ground of appeal or issue—set out succinctly each proposition advanced by the party together with supporting references to the reasons for judgment, evidence, legislation or authorities;
 - (b) to the extent that a party challenges a factual finding—identify the finding that was or was not made, why it is erroneous, the finding that should have been made and the evidence relied on in support of the challenge;
 - (c) to the extent that a party challenges a statement of law—identify the statement of law, why it is erroneous, the correct statement of law and any authorities relied on in support of the challenge; and
 - (d) to the extent that a party challenges the reasoning of the judicial officer at first instance—identify the reasoning, why it is erroneous and the correct reasoning.
- (3) Written submissions must provide citations to cases in the manner required by rule 104U for a list of authorities.
- (4) Written submissions should not, other than in exceptional circumstances, set out passages from the reasons for judgment, evidence, legislation or authorities but should merely identify them.
- (5) Written submissions must not, without the leave of the Registrar or the Court, exceed 20 pages for submissions in chief, or 10 pages for submissions in reply.
- (6) The Registrar may, on application filed by a party, vary the page limit for written submissions.

104U—Content of list of authorities

- (1) A list of authorities must be divided into 2 parts, being authorities expected to be read and authorities not expected to be read.
- (2) A list of authorities must show the anticipated hearing date and name of the Judge listed to hear the matter.
- (3) A citation to a case must—
 - (a) if the case is reported in an authorised series of reports—include a citation to the highest ranking available series of authorised reports in which the case is published;

- (b) if the case is reported in a published (but not authorised) series of reports—include a citation to an available series of reports in which the case is published; and
- (c) if the case postdates 1997 and is published online on austlii or its equivalent elsewhere—include a medium neutral citation to the case.

Part 5—Hearing and determination of appellate proceedings

104V—Hearing of appeals

- (1) Subject to any statute to the contrary—
 - (a) an appeal is to be by way of rehearing;
 - (b) the Court may draw inferences from evidence adduced in the proceeding at first instance; and
 - (c) the Court may hear further evidence in its discretion.
- (2) The Court may, if it considers that it is in the interests of justice to do so, determine an appeal on the merits notwithstanding a failure of a party to raise or state properly a ground of appeal or alternative contention in a notice of appeal, notice of cross appeal or a notice of alternative contention.

104W—Determination of appeals

- (1) Subject to any statute to the contrary, the Court may—
 - (a) set aside or amend the judgment or order the subject of the appeal;
 - (b) substitute the Court’s own judgment or order;
 - (c) remit the matter for rehearing or reconsideration;
 - (d) dismiss the appeal;
 - (e) make orders for the costs of the appeal or costs at first instance; or
 - (f) make such other further orders for the disposition of the appeal as it thinks fit.
- (2) When the Court determines an appeal (including refusing leave to appeal), the Registrar must—
 - (a) give to the Registrar or proper officer of the court of first instance written notice of the Court's decision together with any written reasons given by the Court; and
 - (b) return any documents or materials transmitted to the Court by the Registrar or proper officer of the court of first instance (other than documents and materials forwarded in electronic form) in connection with the proceeding.

104X—Costs of appeals

- (1) Costs in an appeal governed by this Chapter are in the discretion of the Court.

- (2) The general rule is that costs follow the event and in the ordinary case costs fixed at \$500 plus the appeal filing fee will be awarded in favour of a successful appellant and costs fixed at \$500 will be awarded in favour of a successful respondent.
- (3) The general rule that costs follow the event is subject to the discretion of the Court.

Examples—

1. When the appellant succeeds on part of, or an issue on, appeal but fails on another.
 2. When a party is guilty of misconduct in relation to the original proceeding or the appeal.
 3. When one party adopts an unreasonable position on appeal.
- (4) If either party intends to apply for costs in an amount other than that reflected in subrule (2), that party must make an application at the outset of the hearing of the appeal; in which event, the Court may fix a different amount for the purpose of paragraph (2) that will generally apply regardless of which party is successful on the appeal or may make any other order that the Court thinks fit.

Examples—

1. An application might be based on the complexity of the appeal requiring especially extensive preparation for the hearing of the appeal.
 2. An application might be based on the appeal being listed for an especially lengthy hearing.
 3. An application might be based on the reasonable retention of senior counsel to argue the appeal.
- (5) The Court may, if it thinks fit, dispense with the requirement in subrule (4) that an application for costs in an amount other than that reflected in subrule (2) must be made at the outset of the hearing of the appeal.

104Y—Discontinuance of appeal

- (1) An appellant may discontinue an appeal by filing a notice of discontinuance in an approved form.
- (2) Upon a notice of discontinuance being filed, the appeal will be deemed to have been dismissed by the Court.
- (3) A notice of discontinuance may be withdrawn by permission of the Court.

Chapter 12B—Appellate proceedings—permission to appeal to Court of Appeal from single Judge on appeal

104Z—Application of Chapter

This Chapter applies to all applications for permission to appeal to the Court of Appeal against a judgment of a Judge of the Court on an appeal governed by Chapter 12A.

104AA—Time for appeal

Subject to any statute or rule to the contrary, an appeal for which permission to appeal is governed by this Chapter is to be commenced within 21 calendar days after the date of the judgment of the Judge of the Court subject to the appeal.

104AB—Commencement of appeal

- (1) An appeal for which permission to appeal is governed by this Chapter is commenced by filing a notice of appeal in accordance with rule 108 in the approved form and the notice of appeal must seek the necessary permission to appeal in accordance with rule 108(2)(e)(i).
- (2) If a notice of appeal seeking permission to appeal is filed under this Chapter—
 - (a) the institution of the appeal is conditional on permission to appeal being granted; and
 - (b) if permission to appeal is refused, the appeal lapses.

104AC—Notification of appeal

Within 5 business days after filing a notice of appeal, the appellant is to serve the notice of appeal and any document filed with the notice of appeal on the respondent to the appeal.

104AD—Address for service

- (1) The appellant's address for service will be the address for service shown in the notice of appeal.
- (2) If the appellant's address for service changes, the appellant is to file and serve on the respondent a new address for service in an approved form, which becomes the appellant's address for service thereafter.
- (3) Unless the respondent is the Director, the respondent is to file and serve on the appellant a notice of acting and address for service in an approved form within 5 business days after the date of the notice of appeal.
- (4) If the respondent's address for service changes, the respondent is to file and serve on the appellant a new address for service in an approved form, which becomes the respondent's address for service thereafter.
- (5) A document to be served on a party under these Rules may be served at the party's address for service.

104AE—Determination by Court of Appeal of permission to appeal

- (1) A party who seeks permission to appeal from the Court of Appeal to appeal must, within 14 days of the filing of the notice of appeal—
 - (a) file written submissions identifying why the grounds of appeal are reasonably arguable and why permission to appeal should be granted;
 - (b) attach to the written submissions—
 - (i) a copy of the judgment or order the subject of the appeal; and
 - (ii) a copy of the reasons for judgment given in respect of that judgment or order; and
 - (c) file 3 physical copies of an application book containing the notice of appeal, written submissions and attachments.
- (2) Unless the Court otherwise orders, the party is not to file an affidavit or any other evidence on the application for permission to appeal.
- (3) A party who files written submissions under subrule (1) must serve the written submissions and attachments on each other party to the appeal as soon as practicable.
- (4) Unless the Court otherwise orders, the other parties are not to file any evidence or submissions on the application for permission to appeal.
- (5) The Court of Appeal will ordinarily determine the application for permission to appeal without hearing further from the parties and will not make an order as to costs of the application for permission to appeal.
- (6) The Court of Appeal may—
 - (a) order that the application for permission to appeal be listed for separate hearing and determination;
 - (b) order that the application for permission to appeal be heard at the same time as the appeal;
 - (c) invite a party to produce specific documents or make submissions on a specific matter; or
 - (d) make any other or further order.

104AF—Hearing and determination of appeal

If permission to appeal is granted, the preparation for hearing, listing, hearing and determination of the appeal is to be governed by Chapter 13.

Chapter 13—Appellate proceedings—Court of Appeal

Part 1—Introduction

105—Application of Chapter

- (1) Subject to subrule (3), this Chapter applies to all appeals to or jurisdiction exercised by the Court of Appeal in the exercise of its criminal jurisdiction.
- (2) In particular, these Rules and this Chapter apply to—
 - (a) appeals against a judgment, sentence or decision by a Judge of the Supreme Court or District Court exercising criminal jurisdiction;
 - (b) appeals under section 22(2)(d) of the *Youth Court Act 1993* against a judgment, sentence or decision by a Judge of the Youth Court exercising criminal jurisdiction under the *Young Offenders Act 1993* other than an interlocutory judgment;
 - (c) appeals under section 42(2)(ab) of the *Magistrates Court Act 1991* or section 22(2)(ba) of the *Youth Court Act 1993* against a sentence for a major indictable offence by a Magistrate exercising criminal jurisdiction under section 9(ab) of the *Magistrates Court Act 1991* or section 14(2a) of the *Youth Court Act 1993*;
 - (d) reservations of questions of law under section 350 of the Consolidation Act;
 - (e) reservations of questions of law in a criminal proceeding to the Court of Appeal under section 31 of the *Environment, Resources and Development Court Act 1993*, section 70 of the *South Australian Employment Tribunal Act 2014* or any other legislative provision;
 - (f) references of the whole case or a point on a petition for mercy under section 369 of the Consolidation Act; and
 - (g) appeals or reservations of questions of law referred by a single Judge to the Court of Appeal under rule 104A(3);
 - (h) appeals against a judgment of Judge of the Supreme Court on appeal governed by Chapter 12A.

106—Interpretation

- (1) In this Chapter—

antecedent decision means a decision on an issue antecedent to trial within the meaning of section 157(1)(c) or (d) of the Act;

appeal

- (a) incorporates the substantive appeal as well as any application for permission to appeal and any application for an extension of time for commencing the appeal;
- (b) includes a second appeal;
- (c) includes any other application dealt with in this Chapter other than under

Part 3;

appellant means a person who is given a right to appeal or apply for permission to appeal or make any other application dealt with in this Chapter;

appellate proceeding means an appeal to or other matter in which jurisdiction is exercised by the Court of Appeal governed by this Chapter;

court of trial means the court from which the appeal lies;

decision includes an antecedent decision and a sentencing decision;

exhibits means all documents, electronic records and other things admitted into evidence or marked for identification at trial;

judgment means—

- (a) a conviction and includes a finding of guilt without recording a conviction;
- (b) an acquittal;
- (c) a decision whether to make a declaration that the defendant is liable to supervision under Part 8A of the Consolidation Act; or
- (d) a key decision within the meaning of section 269Y(4) of the Consolidation Act;

respondent means the person who undertakes the defence of the appeal;

second appeal means a second or subsequent appeal against conviction under section 159 of the Act;

sentence means—

- (a) a sentence within the meaning of, or any other order made under, the Sentencing Act;
- (b) a decision whether to make an order for payment of a pecuniary sum within the meaning of the Sentencing Act or for restitution or compensation under Part 6 of the Sentencing Act;
- (c) a decision whether to make a recidivist young offender declaration under section 55 of the Sentencing Act or a declaration under section 51(2) or 54(2) of the Sentencing Act;
- (d) a decision whether to make a child sex offender registration order under section 9 of the *Child Sex Offenders Registration Act 2006*;
- (e) a decision whether to make an extended supervision order or a continuing detention order under the High Risk Offenders Act; and
- (f) a decision whether to make any other order against a person convicted or found guilty of an offence other than a sentencing decision.

Sentencing Act *****

sentencing decision means—

- (a) *****
- (a) a decision whether to make, extend or discharge an order for detention or an

- order for release on licence under Part 3 Division 5 of the Sentencing Act;
- (b) an order under section 269O of the Consolidation Act; and
- (c) a decision of the Court to defer sentencing under section 157(1)(a)(iii) of the Act;

trial Judge means the Judge who presided in the court of trial and includes the Judge who made a decision on an issue antecedent to trial and the Judge who passed sentence.

106A—Constitution of Court of Appeal

Subject to rule 119, when the jurisdiction to hear and determine an appellate proceeding is vested in or to be exercised by the Court of Appeal, the Court of Appeal—

- (a) will ordinarily be comprised of 3 Judges;
- (b) may, if the Chief Justice or President of the Court of Appeal so determines, be comprised of 5 Judges; or
- (c) may, if the Chief Justice or President of the Court of Appeal so determines, be comprised of 2 Judges.

Part 2—Commencement of appeal

107—Time for appeal

- (1) Subject to any statute or rule to the contrary and to subrule (2), an appeal is to be commenced within 21 calendar days after the date of the judgment, sentence or sentencing decision subject to the appeal.
- (2) An appeal by the Director under section 157(1)(a)(iii) and 157(2) of the Act is to be commenced within 5 business days after the grant to the defendant of permission to appeal under section 157(1)(a)(iii) of the Act.

108—How to commence appeal

- (1) An appeal is commenced by filing a notice of appeal.
- (2) A notice of appeal—
 - (a) is to contain the appellant’s address for service within the State of South Australia;
 - (b) is to identify the judgment, sentence or decision subject to the appeal;
 - (c) is to state in detail the grounds of the appeal;
 - (d) is to state the orders sought by the appellant on the appeal;
 - (e) if the appeal is of a kind for which permission to appeal is necessary—
 - (i) is to include a request for the necessary permission; or
 - (ii) if the appellant has obtained a certificate of the trial Judge under section 157(1)(a)(ii) of the Act—is to attach the certificate; and
 - (f) if an extension of time for commencing the appeal is necessary—is to include an application for the necessary extension of time.

- (3) A notice of appeal is to be in an approved form.

108—A Permission to appeal

Permission to appeal is required by a person who wishes to appeal pursuant to subsection 161(1) or (2) of the Act against an ancillary order as defined in section 151 of the Act.

109—Petition for mercy

When the Attorney-General refers the whole case on a petition of mercy to the Court of Appeal under section 173 of the Act, the case is to be heard and determined as if it were an appeal by the petitioner and permission to appeal had been granted.

110—Notification of appeal

- (1) Subject to subrule (2), within 5 business days after filing a notice of appeal, the appellant is to serve notification of the appeal in an approved form attaching a copy of the notice of appeal and any document filed with the notice of appeal on—
 - (a) the respondent to the appeal; and
 - (b) if the appeal is from another court—the proper officer of the court of trial.
- (2) When the appeal is instituted by the defendant, the Registrar will serve the documents required by subrule (1) to be served.

111—Address for service

- (1) The appellant's address for service will be the address for service shown in the notice of appeal.
- (2) If the appellant's address for service changes, the appellant is to file and serve on the respondent a new address for service in an approved form, which becomes the appellant's address for service thereafter.
- (3) Unless the respondent is the Director, the respondent is to file and serve on the appellant a notice of acting and address for service in an approved form within 5 business days after the date of the notice of appeal.
- (4) If the respondent's address for service changes, the respondent is to file and serve on the appellant a new address for service in an approved form, which becomes the respondent's address for service thereafter.
- (5) A document to be served on a party under these Rules may be served at the party's address for service.

Part 3—Effect of filing notice of appeal

112—Custody of exhibits

- (1) Subject to any direction by the Court, on receipt of a notice of appeal under this rule, the proper officer of the court of trial is to transmit to the Registrar—
 - (a) the information or other document initiating the proceeding;

- (b) the exhibits and any documents marked for identification;
 - (c) the transcript of the hearing;
 - (d) the judgment, sentence or decision subject to the appeal and reasons given for it; and
 - (e) any other document requested by the Registrar.
- (2) The Registrar may direct that a document required to be transmitted by the proper officer of the court of trial to the Registrar be transmitted in electronic form.

113—Certificate of conviction

No certificate of conviction of any person is to be issued by the court of trial—

- (a) for 28 calendar days after the conviction and sentence in case there is to be an appeal; and
- (b) while an appeal against conviction or sentence in respect of that person is pending.

Part 4—Reservation of question for Court of Appeal

114—Application for permission to apply to reserve question

An application under section 153(6)(b)(ii) of the Act for permission of the Supreme Court to make an application to the Court of Appeal for an order that a court refer a relevant question to the Court of Appeal for consideration and determination is to be made by originating application in an approved form.

115—Reservation of question

- (1) An application by—
- (a) the Attorney General or the Director under section 153(5) and (6)(a) of the Act; or
 - (b) any other person under section 153(6)(b) of the Act who has obtained permission under section 153(6)(b)(ii) of the Act,
- for an order by the Court of Appeal requiring a court to refer a relevant question to the Court of Appeal for consideration and determination is to be made by originating application in an approved form.
- (2) Unless the Court otherwise directs, the proper officer of the court of trial by or in respect of which a question is reserved for determination by the Court under sections 153 and 154 of the Act is to forward to the Registrar—
- (a) the information or other document initiating the proceeding;
 - (b) the exhibits and documents marked for identification;
 - (c) the transcript of the hearing;

(d) any other document,

identified by the trial Judge as necessary to be considered by the Court of Appeal in relation to the question reserved.

- (3) The Registrar may direct that a document required to be transmitted by the proper officer of the court of trial to the Registrar be transmitted in electronic form.

116—*****

117—Reference on petition for mercy

Unless the Court otherwise orders, when the Attorney-General refers a point to the Judges of the Supreme Court under section 173(1)(b) of the Act, the reference is to be heard and determined by the Court of Appeal in the same manner as a reservation of a relevant question under section 153 of the Act.

Part 5—Permission to appeal

118—Certificate of trial Judge

- (1) A certificate of the trial Judge under section 157(1)(a)(ii) of the Act will be in an approved form and is to be filed with the notice of appeal.
- (2) A certificate may be given—
- (a) without any application being made by the person convicted; or
 - (b) on the application in writing of the person convicted within 14 calendar days after the date of conviction.

119—Hearing by single Judge

- (1) Unless a Statute otherwise requires, all applications—
- (a) for permission to appeal;
 - (b) for an extension of time in which to appeal;
 - (c) for bail pending the hearing and determination of an appeal;
 - (d) to appear before the Court in person at the hearing of an appeal; or
 - (e) that otherwise may be heard by a single Judge under section 48(3) of the *Supreme Court Act 1935*,
- will in the first instance be heard and determined by a single Judge.
- (2) Unless the Court otherwise directs, if a person in custody is to appear at the hearing of an application under this rule, the person will appear by audiovisual link. Rules 35 and 36 apply to all such hearings.
- (3) If the Judge considers that an application or part of an application should be referred to the Court of Appeal, the Judge may, without otherwise disposing of the application, make an order accordingly, in which case the application or that part of the application will be referred to the Court of Appeal in accordance with rule 120.

- (4) No order refusing an application under this rule will be made without the applicant being afforded an opportunity to present oral argument in open court or by audiovisual link in support of the application.
- (5) If the Judge refuses the application in whole or in part, the Registrar will notify the applicant of the decision of the Judge by notice in an approved form.
- (6) A Judge hearing an application under this rule may receive and hear evidence for the purpose of determining the application.

120—Referral of application to Court of Appeal

- (1) If a Judge refuses an application by an applicant in whole or in part under rule 119, the applicant may request that the application or the part of the application that was refused be referred to the Court of Appeal.
- (2) Any such request by the applicant is to be made within 5 business days after the date of the notice referred to in rule 119(5) by filing an application in an approved form.
- (3) If a Judge orders that the whole or part of an application or part be referred to the Court of Appeal under rule 119(3), it will be dealt with in accordance with this rule.
- (4) Unless the Court otherwise orders, when an application for permission to appeal or for an extension of time to appeal is referred to the Court of Appeal in accordance with this rule, it will be heard at the same time as the merits of the appeal.
- (5) Unless the Court otherwise orders, the Court of Appeal will hear and determine in private any request for bail pending an appeal or for the applicant to appear before the Court in person at the hearing of an appeal and the applicant will be notified of the decision in an approved form.

Part 6—Preparation for hearing of appeal

121—Service of documents and notification of directions

- (1) When the Registrar receives a document filed by a party or to be provided to the parties under this Part, the Registrar will serve a copy of the document on the other parties to the appeal.
- (2) Except when otherwise provided in these Rules, when notice of an order or direction is to be given, it will be given by the Registrar to all parties.

122—Witnesses before Court of Appeal

- (1) An application under section 166(b) of the Act for an order requiring a witness to be examined for the purpose of the appeal is to be in an approved form.
- (2) The application is to identify—
 - (a) the name and address of the witness;
 - (b) the grounds upon which it is sought to have the witness examined; and
 - (c) upon what matters it is proposed to examine the witness.
- (3) Unless the Court otherwise directs, the application is to be filed with the notice of

appeal.

- (4) Upon the hearing of an appeal or application for permission to appeal to which section 166 of the Act applies, the Court may give such directions as it thinks fit as to the sealing and service upon any person of any subpoena or order made under section 166(b) of the Act and as to the procedure to be followed for the examination of a witness pursuant to that section.

123—Report of trial Judge

- (1) When a notice of appeal has been filed, the Registrar will enquire of the trial Judge whether the Judge wishes to provide a report in writing giving his or her opinion upon the case or upon any point arising in the case.
- (2) When the grounds of appeal under a notice of appeal have been settled, the Registrar will enquire of the trial Judge whether the Judge wishes to provide a report in writing giving his or her opinion upon the case or upon any point arising in the case.
- (3) The Registrar will in every such case provide the trial Judge with a copy of the notice of appeal together with all such documents and information as the Judge may require.
- (4) The trial Judge may, and if requested by the Court of Appeal or a Judge considering an application for permission to appeal shall, provide a report to the Court of Appeal.
- (5) Upon receipt of a report from the trial Judge, the Registrar will provide a copy of the report to the appellant and respondent.

124—Preparation of appeal book

- (1) The Registrar will determine the contents of the appeal book for the use of the Court of Appeal subject to any directions by the Court.
- (2) The appeal book will be prepared by the Registrar free of charge.

125—Discontinuance of appeal

- (1) An appellant may discontinue an appeal by filing a notice of discontinuance in an approved form.
- (2) Upon a notice of discontinuance being filed, the appeal will be deemed to have been dismissed by the Court of Appeal.
- (3) A notice of discontinuance may be withdrawn by permission of the Court of Appeal.

125A—Written submission for hearing of the appeal

- (1) Each party to an appellate proceeding must deliver to the Court a written submission in the case of appeals to the Court of Appeal.
- (2) The written submission must be delivered to the Court within the relevant time limit prescribed by the Supplementary Rules.

- (3) Subject to any direction by a Judge or Master, a written submission must conform with the Supplementary Rules.

Part 7—Hearing and determination of appeal

126—Hearing of appeal

- (1) Unless the Court otherwise orders, at the hearing of the appeal, the Court of Appeal will hear any application for permission to appeal or for an extension of time for commencing the appeal referred to the Court of Appeal under rule 119 or 120 at the same time as hearing the merits of the appeal.
- (2) Unless the Court otherwise directs, if a person in custody is to appear at the hearing of an appeal or application for permission to appeal under this rule, the person will appear by audiovisual link, unless the appeal is not on a ground of law alone and the person requests to attend in person.
- (3) Subject to any limitation on its powers arising apart from these Rules, the Court of Appeal may determine an appeal as the justice of the case requires despite the failure of parties to the appeal to raise relevant grounds of appeal, or to state grounds of appeal appropriately, in the notice of appeal.
- (4) When an appellant is not present at the hearing of the appeal by reason of the appellant's escape from custody or breach of a bail agreement, the Court of Appeal may—
 - (a) summarily dismiss the appeal;
 - (b) consider the appeal in the appellant's absence; or
 - (c) make such other order as the Court thinks fit.

127—Notifying result of appeal

On the final determination of an appeal, the Registrar will give notice of the determination in an approved form to the appellant, the respondent, the court of trial and such other persons as the Registrar considers appropriate.

Chapter 14—Contempt of Court

Part 1—Contempt committed in face of Court

128—Contempt committed in face of Court

- (1) If a contempt is committed in the face of the Court and it is necessary to deal urgently with it, the Court may—
 - (a) if the person alleged to have committed the contempt (the *accused*) is within the precincts of the Court—order that the accused be taken into custody; or
 - (b) issue a warrant to have the accused arrested and brought before the Court to be dealt with on a charge of contempt.
- (2) The Court must formulate a written charge containing reasonable details of the alleged contempt and have the charge served on the accused when, or as soon as practicable after, the accused is taken into custody.

Part 2—Court initiated proceedings for contempt—other cases

129—Court initiated proceedings for contempt—other cases

- (1) If the Court decides on its own initiative to deal with a contempt of the Court, the Court will require the Registrar to formulate a written charge containing reasonable details of the alleged contempt.
- (2) The Registrar will then issue a summons requiring the person alleged to have committed the contempt (the *accused*) to appear before the Court at a nominated time and place to answer the charge.
- (3) The Court may issue a warrant to have the accused arrested and brought before the Court to answer the charge if—
 - (a) there is reason to believe that the accused will not comply with a summons; or
 - (b) a summons has been issued and served but the accused has failed to appear in compliance with it.

Part 3—Contempt proceedings by party to proceeding

130—Contempt proceedings by party to proceeding

- (1) A party to a proceeding who claims to have been prejudiced by a contempt of the Court committed by another party, a witness or another person in relation to the proceeding may apply to the Court to have the accused charged with contempt.
- (2) The application is to—
 - (a) be made as an application for directions under rule 49; and
 - (b) include details of the alleged contempt.

- (3) The application may be made without notice to the accused or other parties but the Court may direct the applicant to give notice of the application to the accused or the other parties (or both).
- (4) If the Court is satisfied on an application under this rule that there are reasonable grounds to suspect the accused of the alleged contempt, subject to subrule (7), the Court may require the Registrar to formulate a written charge containing reasonable details of the alleged contempt.
- (5) The Registrar will then issue a summons requiring the accused to appear before the Court at a nominated time and place to answer the charge.
- (6) The Court may issue a warrant to have the accused arrested and brought before the Court to answer the charge if—
 - (a) there is reason to believe that the accused will not comply with a summons; or
 - (b) a summons has been issued and served but the accused has failed to appear in compliance with it.
- (7) Despite subrule (4), the Court may, if satisfied that there are reasonable grounds to suspect the accused of the alleged contempt, grant permission to the applicant to issue a summons requiring the accused to appear before the Court at a nominated time and place to answer the charge and, in that event, the applicant—
 - (a) must, within the time fixed by the Court, issue and serve a summons in an approved form requiring the accused to appear before the Court at the nominated time and place to answer the charge;
 - (b) must be named as the prosecuting party in the summons;
 - (c) will have the carriage of the prosecution of the charge;
 - (d) must prosecute the charge at its own expense and satisfy any costs orders made in favour of the accused;
 - (e) must comply with any direction of the Court in relation to the prosecution of the charge.

Part 4—Hearing of charge of contempt

131—Charge to be dealt with by Judge

A charge of contempt is to be dealt with by the Court constituted of a single Judge.

Exception—

If the contempt is a contempt of the Court of Appeal, the Court of Appeal may itself deal with the charge.

132—Procedure on charge of contempt

- (1) Apart from those cases to which rule 130(7) applies, the Registrar will have carriage of the prosecution of a charge of contempt, and the Registrar may retain solicitors and counsel for that purpose.

- (2) In relation to a proceeding for contempt that was initiated by an application under rule 130(1), the Court may direct the applicant to indemnify the Registrar in respect of the costs incurred by the Registrar or ordered to be paid by the Registrar.

Note—

This right of cost recovery is additional to that contained in Rule 133(3).

- (3) The Court will deal with a charge of contempt as follows—
- (a) the Court will hear relevant evidence for and against the charge from the prosecutor and the accused;
 - (b) the Court may, on its own initiative, call witnesses who may be able to give relevant evidence;
 - (c) at the conclusion of the evidence, the Court will allow the prosecutor and the accused a reasonable opportunity to address the Court on the question whether the charge has been established;
 - (d) if, after hearing the evidence and representations from the prosecutor and the accused, the Court is satisfied beyond reasonable doubt that the charge has been established, the Court will find the accused guilty of the contempt;
 - (e) the Court will, if it finds the accused guilty of the contempt, allow the prosecutor and the accused a reasonable opportunity to make submissions on penalty;
 - (f) the Court will then determine and impose penalty.
- (4) A witness called by the Court may be cross-examined by the prosecutor and the accused.
- (5) In a proceeding founded on a charge of contempt—
- (a) the Court—
 - (i) may exercise with respect to the charge any of the powers that it has with respect to a charge of an indictable offence; and
 - (ii) may exercise with respect to the accused any of the powers that it has in relation to a person charged with an indictable offence; and
 - (b) evidence may be received by way of affidavit if the accused does not require attendance of the witness for cross-examination.

133—Punishment of contempt

- (1) The Court may punish a contempt by a fine or imprisonment (or both).
- (2) If the Court imposes a fine, the Court may fix—
 - (a) the time for payment of the fine; and
 - (b) a term of imprisonment in default of payment of the fine.
- (3) The Court may order a person who has been found guilty of a contempt to pay the costs of the proceeding for contempt.

- (4) The Court may release a person who has been found guilty of a contempt on the person entering into an undertaking to the Court to observe conditions determined by the Court.
- (5) The Court may, on its own initiative or on application by an interested person, cancel or reduce a penalty imposed for a contempt.
- (6) An order for the imposition of a penalty for a contempt, or for the cancellation of a penalty imposed for a contempt may be—
 - (a) made on conditions the Court considers appropriate; and
 - (b) suspended on conditions the Court considers appropriate.
- (7) The Court may, on its own initiative or on application by the Registrar—
 - (a) cancel the release of a person who has been released under subrule (4) for breach of a condition of the undertaking; and
 - (b) issue a warrant to have the person arrested and brought before the Court to be dealt with for the original contempt.
- (8) The Registrar, if so directed by the Court, must make an application under subrule (7).

History of Amendment

New entries appear in **bold**.

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
4 (definition)	ins am 2	1 May 2016
	ins am 3	27 June 2016
Multiple	ins am 4	1 December 2016
Multiple	am am 4	1 December 2016
Single	del am 4	1 December 2016
Multiple	sub/ins/am am 6	1 June 2018
Single	ins am 9	1 January 2021
18(1)	sub am 4	1 December 2016
20	del am 6	1 June 2018
21(1)	am am 6	1 June 2018
21A	ins am 7	1 May 2019
23	sub am 4	1 December 2016
23(1)(c)	am am 6	1 June 2018
23(4)	am am 6	1 June 2018
23A	ins am 4	1 December 2016
23B	ins am 6	1 June 2018
25A	ins am 4	1 December 2016
26(1)	am am 6	1 June 2018
26(3)	am am 6	1 June 2018
31(12)(b)	am am 6	1 June 2018
35(1)	sub am 6	1 June 2018
40(2)	am am 6	1 June 2018
46(1)	sub am 4	1 December 2016
47	sub am 4	1 December 2016
48	sub am 4	1 December 2016
49(1)(ab)	ins 9	1 January 2021
49(1)(ac)	ins 9	1 January 2021
49(1)(f)	am am 6	1 June 2018
49(1)(g)	del am 6	1 June 2018
49(1)(ga)	ins am 3	27 June 2016
49(1)(gb)	ins am 3	27 June 2016
49(1)(gc)	ins am 3	27 June 2016
49(1)(gd)	ins am 3	27 June 2016
49(1)(k)	am am 4	1 December 2016
49(4)(a)	am am 3	27 June 2016
	am am 9	1 January 2021
49(4)(b)	ins am 3	27 June 2016
	del am 9	1 January 2021
49(4)(c) to 49(4)(b)	renum am 9	1 January 2021
49(4)(b) to 49(4)(c)	ren am 3	27 June 2016
49(6)	sub am 4	1 December 2016
50	am am 4	1 December 2016
51(1)	sub am 4	1 December 2016
51(1A)	ins am 3	27 June 2016
	sub am 9	1 January 2021
51(2)	sub am 1	1 April 2015
	sub am 4	1 December 2016

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
51(3)	sub am 1 am am 3 sub am 4 am am 6	1 April 2015 27 June 2016 1 December 2016 1 June 2018
51(4)	sub am 4	1 December 2016
51(4A)	ins am 3	27 June 2016
51(5)	am am 1 am am 3	1 April 2015 27 June 2016
51(6)	ins am 1	1 April 2015
Part 3A-Bail applications	ins am 9	1 January 2021
54(1)	am am 4	1 December 2016
54(2)	del am 4 ins am 6	1 December 2016 1 June 2018
55(1)(a)	am am 4	1 December 2016
55(1)(e)	ins am 4	1 December 2016
55(1)(e) to (f)	ren am 4	1 December 2016
55(1)(f) to (g)	ren am 4	1 December 2016
57	sub am 4	1 December 2016
57A	ins am 4	1 December 2016
Part 6A	ins am 3	27 June 2016
57A	ins am 3	27 June 2016
57A to 57B	ren am 4	1 December 2016
57B	ins am 3	27 June 2016
57B to 57C	ren am 4	1 December 2016
58	sub am 4	1 December 2016
59	sub am 4	1 December 2016
61(1)(a)	sub am 4	1 December 2016
61(1)	am am 6	1 June 2018
62(3)	am am 6	1 June 2018
62(1) Note	sub am 4	1 December 2016
63	am am 6	1 June 2018
64(1)	am am 6	1 June 2018
64(1) Note	sub am 3 sub am 4	27 June 2016 1 December 2016
65	del am 6	1 June 2018
65(1) Note	sub am 3 sub am 4	27 June 2016 1 December 2016
67(3)	am am 6	1 June 2018
67(4)(a)	am am 6	1 June 2018
67(4)(b)	am am 6	1 June 2018
68(1)	sub am 2 sub am 5	1 May 2016 1 December 2017
72(1)	am am 4 am am 5	1 December 2016 1 December 2017
72(7)(b)	sub am 5	1 December 2017
76(3)	sub am 5	1 December 2017
76(4)	sub am 5	1 December 2017
83(3)	am am 9	1 January 2021
83(6)	am am 9	1 January 2021
90(1)	am am 6	1 June 2018
90(2)	am am 6	1 June 2018
91(1)	am am 6	1 June 2018

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
92(1)	am am 6	1 June 2018
93	am am 6	1 June 2018
94(1)	am am 6	1 June 2018
94(4)	am am 6	1 June 2018
94(5)	am am 6	1 June 2018
95	del am 6	1 June 2018
95A	ins am 2	1 May 2016
95B	ins am 2 sub am 5	1 May 2016 1 December 2017
96(1)	am am 6	1 June 2018
97(2)	am am 6	1 June 2018
100(4A)	ins am 5	1 December 2017
101(3)	ins am 5	1 December 2017
102A	ins am 9	1 January 2021
Chapter 12A	ins am 8	18 May 2020
104A(3)	am am 9	1 January 2021
104Y	ins am 9	1 January 2021
Chapter 12B	ins am 9	1 January 2021
Chapter 13 Heading	am am 8 am am 9	18 May 2020 1 January 2021
105	sub am 8	18 May 2020
105(1))	am am 9	1 January 2021
105(2)(e)	am am 6 am am 9	1 June 2018 1 January 2021
105(2)(f)	am am 6	1 June 2018
105(2)(g)	am am 9	1 January 2021
105(2)(h)	ins am 9	1 January 2021
106(1) Interpretation (multiple) (single) (single)	am/del/renum am 6 sub am 8 am am 9	1 June 2018 18 May 2020 1 January 2021
106A	ins am 10	1 March 2021
107(2)	am am 6	1 June 2018
108(2)	am am 6	1 June 2018
108A	ins am 6	1 June 2018
109	am am 6 am am 9	1 June 2018 1 January 2021
Chapter 13 Heading Part 4	am am 9	1 January 2021
114	am am 6 am am 9	1 June 2018 1 January 2021
115(1)	am am 9	January 2021
115(1)(a)	am am 6	1 June 2018
115(1)(b)	am am 6	1 June 2018
115(2)	am am 6 am am 9	1 June 2018 1 January 2021
116	del am 6	1 June 2018
117	am am 6 am am 9	1 June 2018 1 January 2021
118(1)	am am 6	1 June 2018
119(1)	am am 8	18 May 2020
119(3)	am am 9	January 2021

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
120 heading	am am 9	January 2021
120(1)	am am 9	January 2021
120(3)	am am 9	January 2021
120(4)	am am 9	January 2021
120(5)	am am 9	January 2021
122 heading	am am 9	January 2021
122(1)	am am 6	1 June 2018
122(4)	am am 6	1 June 2018
123(4)	am am 9	January 2021
124(1)	am am 9	January 2021
125(2)	am am 9	January 2021
125(3)	am am 9	January 2021
125A	ins am 5	1 December 2017
125A(1)	am am 9	January 2021
126(1)	am am 9	January 2021
126(3)	am am 9	January 2021
126(4)	am am 9	January 2021
131	am am 9	January 2021