

# SOUTH AUSTRALIA

## SUPREME COURT CRIMINAL RULES 2013

The Supreme Court Criminal Rules 2013, dated 29<sup>th</sup> October 2012, which came into operation on 1<sup>st</sup> January 2013 (*Government Gazette* 6 December 2012, p. 5366), have been varied by Supreme Court rules dated:

		<i>Gazette</i>	<i>Date of operation</i>
# 1	30 May 2013	27 June 2013 p. 2867	1 July 2013
#2	29 July 2013	29 August 2013 p. 3622	1 October 2013
#3	<b>14 November 2013</b>	<b>28 November 2013 p. 4378</b>	<b>1 December 2013</b>

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## SUPREME COURT CRIMINAL RULES 2013

### CHAPTER 1 - PRELIMINARY

#### Citation

- 1.01 These rules may be cited as the “*Supreme Court Criminal Rules 2013*”. These rules apply to the exercise by the Court of its criminal jurisdiction.
- 1.02 In these rules and forms, unless the contrary intention appears:  
*the Act* means the *Criminal Law Consolidation Act 1935*;  
*the Criminal Rules* means these rules;  
*the Civil Rules* means the *Supreme Court Civil Rules 2006*;  
*the Director* means the Director of Public Prosecutions for the State or Commonwealth (as the context requires).
- 1.03 These rules commence on 1 January 2013 (**the commencement date**).
- 1.04 The *Supreme Court Criminal Rules 1992* are repealed. Unless the Court otherwise directs, the *Supreme Court Criminal Rules 2013* 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.

#### Jurisdiction, powers and sittings

- 2.01 Subject to rule 2.02, the sittings of the Court in its criminal jurisdiction will be at such times and places as the Chief Justice shall from time to time direct.
- 2.02 The sittings of the Court in its criminal jurisdiction at Adelaide shall be continuous throughout the year except for the period from Christmas Day until the day preceding the second Monday in the month of January.
- 2.03 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 of its own motion.
- 2.04 The Masters of the Court have the power, authority and jurisdiction to make interlocutory orders in criminal proceedings governed by these rules only in respect of:
- (a) the listing and de-listing of matters for trial;
  - (b) the taxation of costs; and
  - (c) any matter referred to them by a Judge.

#### Time

- 3.01 When anything is by these rules or any order or direction of the Court directed to be done within a fixed period of time, that period of time shall be calculated in accordance with the criteria in rule 5 of the *Civil Rules*.

- 3.02 When any period of time prescribed by these rules or any order or direction of the Court expires on or after 24 December in any year and before the second Monday in January of the following year, that period of time is hereby extended to that second Monday in January.

### **Caseflow management**

- 4.01 These rules are made for the purpose of establishing orderly procedures for the conduct of the business of the Court in its criminal jurisdiction and of promoting the just and efficient determination of such business. They are not intended to defeat a proper prosecution or to frustrate a proper defence of a person who is genuinely endeavouring to comply with the procedures of the Court and they are to be interpreted and applied with the above purpose in view.

- 4.02 With the object of -

- (a) promoting the just determination of the business of the Court;
- (b) disposing efficiently of the business of the Court;
- (c) maximising the efficient use of the available judicial and administrative resources; and
- (d) facilitating the timely disposal of business at a cost affordable by the parties and the community generally;

proceedings in the Court will be managed and supervised in accordance with a system of positive caseflow management. These rules are to be construed and applied and the processes and procedures of the Court conducted so as best to ensure the attainment of the above objects.

## **CHAPTER 2 – INITIATION OF CRIMINAL PROCEEDINGS**

### **Informations**

- 5.01 The rules contained in Schedule 3 to the Act are revoked.

- 5.02 An information presented under s 275(1) of the Act is:

- (a) to be in form 3;
- (b) to contain in a separate numbered paragraph, called a count, a description of each offence charged;
- (c) to have endorsed on the back the names of the witnesses who the Director intends to call at the trial;
- (d) to comply with the remaining provisions of rule 5 and with rule 6;
- (e) not open to objection by reason only of any failure to comply with rule 5.

- 5.03 Each count in an information is:

- (a) to describe the offence briefly in ordinary language, avoiding as far as possible technical terms, and without necessarily stating all the essential elements of the offence;
- (b) if applicable, to state the section of the statute creating the offence or fixing the

- penalty for the offence; and
- (c) to contain in ordinary language particulars of the offence, avoiding as far as possible the use of technical terms. If any rule of law or any enactment limits the particulars required to be given, rule 5 does not require more detailed particulars than those so required by that rule or enactment.
- 5.04 If an enactment states an offence to be the doing or the omission to do any one of any different acts, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any other part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence.
- 5.05 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.
- 5.06 (1) Subject to subrule (2), the description or designation of the accused person, or of any other person to whom reference is made, should be sufficient to identify the person, without necessarily stating his or her correct name, address or occupation.
- (2) If it is impracticable to give a description or designation which identifies a person in accordance with subrule (1), such description or designation as can best be provided should be given, or the person may be described as “a person unknown”.
- 5.07 (1) The description of property should be sufficient to identify the property. It is not necessary (unless an offence depends on any special ownership of property or special value of property) to name the owner or value of the property.
- (2) When reference is to be made to a property with multiple owners, it is sufficient to describe the property as owned by one of those named persons “with others”. If the persons owning the property 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.
- 5.08 The description of a document or instrument should be sufficient to identify the document or instrument. It is sufficient to describe a document or instrument by any name or designation by which it is usually known, or by its effect, without setting out any copy of it.
- 5.09 The description of a place, time, thing, matter, act or omission should be sufficient to identify the place, time, thing, matter, act or omission.
- 5.10 Figures and abbreviations may be used to express anything which is commonly expressed in that manner.

### **Serious and organised crime offences**

- 6.01 If proceedings are, or will be, prescribed proceedings under s 275 of the Act or a bail authority has determined under s 3A of the *Bail Act 1985* that an accused person is a serious and organised crime suspect:
- (a) the Director is to include an endorsement to that effect on any information filed in the Court charging the person with the offence or offences relied upon for the determination or concerning such proceedings; and
- (b) if the determination that a person is a serious and organised crime suspect is made



after an information has been filed, the Director is to apply as soon as practicable to amend the information to add an endorsement to the same effect.

- 6.02 An endorsement under rule 6.01 is also to include a statement informing the accused that the proceedings may be expedited in accordance with s 275(3) of the Act and the rules made by the Court under that provision.
- 6.03 If there has not been any information filed in the Court to which rule 6.01 may apply, the Director is to inform the Court at the first arraignment that the proceedings are prescribed proceedings under s 275 of the Act, or that the accused person is a serious and organised crime suspect, as the case may be.

## **CHAPTER 3 – ARRAIGNMENT, APPEARANCE AND REPRESENTATION**

### **Arraignment of persons committed for trial or sentence**

- 7.01 Persons committed for trial or sentence in Adelaide, whether in custody or on bail, are to appear before the Court on the first working day of the first week after the expiration of 28 days from their committal for trial or sentence.
- 7.02 Persons committed for trial or sentence at a place other than Adelaide, whether in custody or on bail, are to appear before the Court on the first working day of the first week of the sittings next after the expiration of 28 days from their committal for trial or sentence.
- 7.03 Despite rules 7.01 and 7.02, a Judge may direct a person committed for trial or sentence, whether in custody or on bail, to appear before the Court at an earlier or later date than that provided for in such rules.
- 7.04 A person may be presented for trial before the date fixed in accordance with rules 7.01 or 7.02 respectively if a Judge shall so order.

### **Arraignment of persons committed for trial on more than one charge**

- 8.01 If:
- (a) a person committed for trial is to be arraigned on an information which charges that person with more than one offence; and
  - (b) the Judge before whom that person stands to be arraigned is satisfied the person is literate;
- the Judge may allow that person to be arraigned in the manner provided by rule 8.02.
- 8.02 An arraignment under rule 8 will proceed in the following manner:
- (a) a true copy of the information must be provided to the person either prior to or at the time of arraignment;
  - (b) a summary of the offences charged will be read to the person by a person directed by the Judge;
  - (c) the person is, either prior to or at the time of arraignment, to write against each charge on a true copy of the information his or her plea to such charge;
  - (d) at the time of arraignment, the person is to sign his or her name at the foot of that true copy of the information and that signature is to be witnessed by the person's

solicitor or counsel or, if the person is not represented, by a person directed by the Judge;

- (e) the Judge before whom the person has been so arraigned will, in accordance with the signed copy of the information, record the respective pleas; and
- (f) if the arraignment is in the presence of the jury panel or a jury, a copy of the information bearing the plea of the accused may be given to the jury empanelled for the trial of the accused.

### **Court of trial**

- 9.01 If upon arraignment a person committed for trial pleads not guilty to an offence which is not within the exclusive jurisdiction of the Court, the Director and the defence may make submissions under s 110 of the *Summary Procedure Act 1921* as to the appropriate court of trial.
- 9.02 A decision as to whether any matter referred to in rule 9.01 is to be removed for trial in the District Court may be made by a Judge at any time prior to trial.
- 9.03 When consideration is being given to the making of any decision referred to in rule 9.02, regard will be had to the matters set out in s 110(5) of the *Summary Procedure Act 1921*. The availability of Judges of both the Supreme Court and the District Court to preside over criminal trials is a matter which will be taken into account under that section.

### **Other appearances**

- 10.01 Subject to rule 10.02, a person who has appeared before the Court under rule 7.01 or rule 7.02 and been remanded in custody for trial or sentence is to be brought before the Court on a subsequent occasion:
  - (a) for the trial or sentence, as the case may be, and directions hearings relating to the trial or sentence;
  - (b) if a Judge so directs;
  - (c) for the purpose of any application to be made by that person to the Court, if the person so requests.
- 10.02 Subject to s 59IQ of the *Evidence Act 1929* and to any contrary direction by the Court, persons in custody are to appear in the Court for the following hearings by audio visual link:
  - (a) directions hearings;
  - (b) bail applications and bail reviews;
  - (c) pre-trial conferences;
  - (d) applications for permission to appeal;
  - (e) such other applications as the Court may order.
- 10.03 A party may object to the use of an audio visual link for a hearing to which rule 10.02 refers by:
  - (a) an oral submission made at the time of arraignment or on any other occasion on which the person in custody is present in Court; or
  - (b) at least three business days before the hearing, filing a notice of objection using form

4. A notice of objection may be determined at the discretion of the Court by a Judge at a hearing in Court at which the person in custody is present, or in chambers without the Judge hearing from any party, or at a hearing using an audio visual link (whether that be a hearing to which rule 10.02 refers, or otherwise).

10.04 It may be necessary for counsel during the course of a hearing by audio visual link to take instructions on a matter which could not reasonably have been anticipated. In that event, counsel will be provided with access to a private telephone which will link directly to the audio visual link facility at the custodial institution in which the person in custody is held.

### **Representation of defendants**

11.01 A solicitor instructed to act for any person committed for trial or sentence is, not less than seven days prior to that person's first appearance in the Court, to give notice in writing to the Registrar that the solicitor is so acting, whereupon such solicitor becomes the solicitor on the record for such person and service of any document, notice or proceeding authorised by the *Supreme Court Act 1935* or these rules to be served by or upon a solicitor so acting may be served by or upon that solicitor.

11.02 A legal practitioner instructed by a solicitor to appear in court to represent any person committed for trial or sentence is to announce to the Court the name of the solicitor who has instructed the practitioner. If such solicitor has not previously given notice under rule 11.01, the solicitor will thereafter be deemed to have done so.

11.03 A solicitor who has given notice in accordance with rule 11.01, or who is deemed to have given such notice by virtue of rule 11.02, will be deemed to be the solicitor acting for the person on whose behalf the solicitor has given or been deemed to have given notice until notice of change of solicitor is duly given under rule 11.04 or an order has been made under rule 11.05.

11.04 Any person committed for trial or sentence who has instructed a solicitor is at liberty to change solicitor without any order for that purpose, but when any such change is made the person or the new solicitor must file a notice in the Registry of the change and include the name and place of business of the new solicitor.

11.05 If a solicitor who has acted for any person committed for trial or sentence wishes to cease to so act and notice of change has not been given in accordance with the provisions of rule 11.04, the solicitor may make an application in writing for an order that he or she cease to be the solicitor on the record for that person. Unless a Judge otherwise directs, a copy of such application is to be served upon the person committed for trial or sentence. The Court may make such order on the application as it considers appropriate.

11.06 Subject to rule 11.05, unless and until the solicitor on the record for a person committed for trial or sentence has obtained an order that the solicitor has ceased to be the solicitor on the record for that person, he or she will be considered the solicitor of that person until the final conclusion of the proceedings before the Court.

11.07 (1) The certificate required by s 8(2) of the *Criminal Law (Legal Representation) Act 2001* is to be in form 5.

(2) The assurance to be given by an unrepresented defendant pursuant to s 8(3) of the *Criminal Law (Legal Representation) Act 2001* is to be in form 6.

## CHAPTER 4 – PRE-TRIAL APPLICATIONS AND HEARINGS

### Directions hearings

- 12.01 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;
  - (c) a person committed for trial pleads guilty to all offences with which the person is charged but it appears that there is a dispute as to the facts upon which the person is to be sentenced; or
  - (d) it appears that there will be a dispute as to the facts in respect of a person committed for sentence;
- a directions hearing will be held as directed by the Court.
- 12.02 Unless the Court otherwise orders:
- (a) a directions hearing will be presided over by a Judge of the Court;
  - (b) only the persons involved in the directions hearing, and legal practitioners whether involved in the hearing or not, are permitted to be present;
  - (c) the accused must attend but that attendance may be by audio visual link under rule 10.02;
  - (d) the directions hearing will be held in court as in chambers.
- 12.03 On a directions hearing under rule 12, the Court may without the need for any written application under rule 15:
- (a) adjourn the hearing from time to time;
  - (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 except where the accused person requests that it be entered in open court;
  - (e) hear and determine any application for:
    - (i) the making of special arrangements for the protection of a witness under s 13 of the *Evidence Act 1929*;
    - (ii) bail or a variation in the conditions of bail;
    - (iii) making a subpoena for documents returnable before the commencement of the trial;
    - (iv) abridgment or extension of the time for service of a subpoena;
    - (v) permitting inspection of documents produced on subpoena prior to the commencement of the trial;
    - (vi) dispensation from compliance with the rules relating to election for trial by Judge alone;
    - (vii) amending the Information;
    - (viii) abridging the time for service of a subpoena interstate under s 30 of the *Service and Execution of Process Act 1992 (Cth)*;

- (ix) orders under Parts 6 and 6C of the *Evidence Act 1929* relating to obtaining evidence out of the State;
  - (x) issuing a bench warrant;
  - (xi) the making of orders under ss 285BA(1), 285BB(1) and 285BB(4) of the Act.
  - (xii) any other matter concerning the conduct of the case and of the trial.
- 12.04 When any application under rule 12.03(e) is contested, the Court may direct that it be heard in open court.
- 12.05 Nothing contained in rule 12.03:
- (a) restricts the power of a Judge at any time of his or her own motion or at the request of any party to the proceedings to set aside or vary by administrative direction any listing of any trial;
  - (b) restricts the power of a Judge once a person committed for trial has been arraigned for trial to adjourn the trial or to give any other necessary directions as to how it is to proceed thereafter.
- 12.06 (1) In any case in which it is proposed that any party will or may tender substantial numbers of documentary exhibits, a Judge may, by order made at any stage of the proceedings (including during any pre-trial conference) either of the Judge's own motion or on application of a party, direct that, by such date as may be nominated for that purpose, the party proposing or likely to tender such exhibits supply to the Court and serve on all other parties a list of all such documents.
- (2) Any such list may be directed to be numbered or marked to correspond with the marking of the documents to be tendered at the trial, and include such ancillary details as to the documents as may reasonably be required for trial management purposes.
  - (3) Any such list and copies of the documents referred to therein may be ordered to be filed and served either in hard copy form or in such electronic form as the Judge may specify, or both.
- 12.07 A Judge of the Court may convene a directions hearing in a matter which has been committed for trial to a Circuit Court at any time prior to the commencement of the circuit.
- 12.08 Any directions hearing required in relation to prescribed proceedings as defined in s 275(3) of the Act or in relation to proceedings in which an accused person is a serious and organised crime suspect will be held as soon as possible and, in any event, within four weeks of the arraignment.
- 12.09 Subject to rule 12.10, at the first directions hearing the Director and accused persons are to address the means by which:
- (a) proceedings which are prescribed proceedings may be expedited; and
  - (b) the trial of proceedings involving an accused person who is a serious and organised crime suspect may commence within six months after the making of the determination that an accused is such a suspect.
- 12.10 Any application by the Director or an accused for a determination under s 275(3) of the Act that exceptional circumstances exist justifying the trial not commencing within six months of the determination that an accused is a serious and organised crime suspect is to be filed and served at least seven days before the first directions hearing.
- 12.11 Any application by the Director for a determination under s 7(3a) of the *Juries Act 1927*

that a trial be heard by Judge alone is to be made in form 7 not later than 7 days after the date on which the trial date is fixed.

### **Pre-trial conferences**

- 13.01 When a criminal trial is pending, a pre-trial conference may be held before a Judge on the Judge's own motion or on the application of a party.
- 13.02 A pre-trial conference may be convened or conducted by a Judge supervising the listing of trials for hearing, a Judge before whom a person committed for trial appears for arraignment, a Judge presiding over a directions hearing or a Judge to whom a trial has been assigned in accordance with the regular procedures of the Court.
- 13.03 A Judge may, after hearing the parties or their counsel, order the conduct of a pre-trial conference then and there or at a time and on a day specified in the order.
- 13.04 Except by permission of a Judge, no affidavit is to be filed in relation to any pre-trial conference.
- 13.05 Counsel briefed to appear at the trial (or, if the attendance of any party's counsel is not practicable, that party's solicitor) and, subject to rule 10.02, the person committed for trial are to attend at the pre-trial conference, which will be held not later than 24 hours before the day set for the commencement of the trial unless, in the opinion of the Judge, it is just and expedient to hold the conference at a later time.
- 13.06 At a pre-trial conference, the Judge will discuss with counsel and any unrepresented party such matters (including any arising by virtue of s 59J of the *Evidence Act 1929*) with respect to the trial of the person committed for trial which the Judge considers necessary to ensure that the trial will be conducted in an expeditious and fair manner.
- 13.07 Nothing said by or on behalf of a person committed for trial at a pre-trial conference and no failure by a person committed for trial or his solicitor or counsel to answer a question at a pre-trial conference may be used in any subsequent trial or be made the subject of any comment at that trial.
- 13.08 For the purpose of giving effect to any agreement arrived at between the parties in the course of a pre-trial conference, the Judge may by order direct that, for the purposes of a trial:
- (a) a specified fact may be proved in a specified manner which is not in accordance with the rules of evidence;
  - (b) a specified fact is to be treated as admitted or established without proof;
  - (c) a specified exhibit is to be admitted in evidence without proof of its authenticity;
  - (d) specified evidence may be read or a specified statement may be tendered without a witness being called;
  - (e) with respect to any specified matter or topic, the usual and regular course of practice and procedure at the trial may be modified or varied in order to facilitate proof of facts.
- 13.09 In the course of a pre-trial conference, a Judge may consider any submissions as to any proposal to produce and use, in the course of the trial, such 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. After hearing counsel or any unrepresented party, a Judge may, by order, give such directions or rulings,

not inconsistent with the rules of evidence, as may be considered just and expedient in the same manner as may otherwise have been done after the commencement of a trial. Any such order may be made subject to such terms and conditions specified therein as the Judge shall consider proper.

- 13.10 Directions given at a pre-trial conference may be supplemented or varied at an adjourned or subsequent pre-trial conference.
- 13.11 An order made under rule 13 is to be drawn up at the direction of and signed by the Judge.
- 13.12 Subject to these rules and despite any rule of evidence or normal practice to the contrary, the trial of a person committed for trial is to be conducted in conformity with the provisions of any such order.
- 13.13 Despite any order made under rule 13, a party may, by permission of the trial Judge, withdraw agreement to any provision contained in that order whereupon that provision shall cease to have effect and the trial shall thereafter with respect to the subject matter of that provision be conducted in accordance with the law generally and regularly applicable thereto.
- 13.14 Nothing in these rules, or any order made under them, precludes a trial Judge from making any order or giving any direction at the trial which, in the opinion of the Judge, ought to be made in the interest of justice, and in order to ensure that there is a fair trial according to law.

#### **Applications to quash or stay proceedings**

- 14.01 Any application to quash any proceedings before the Court in its criminal jurisdiction or to stay any such proceedings (including an application made on the ground of an abuse of process) is to be made by filing and serving an application in form 7.
- 14.02 Unless a Judge otherwise directs, such application is to be:
  - (a) filed in the Court and made returnable before the person committed for trial has pleaded to the charges which are to be the subject of the application;
  - (b) supported by any affidavit upon which the person committed for trial relies in support of the application, which affidavit is to be filed with the notice of the application;
  - (c) served with copies of any supporting affidavit upon all other interested parties as soon as possible after it has been filed;
  - (d) returnable before a Judge in open court whether that Judge is to be the Judge upon the trial of the accused or not.

#### **Preliminary hearings**

- 15.01 When in the course of any criminal proceedings:
  - (a) a person committed for trial seeks separate trials of different charges alleged against him in the same information;
  - (b) a person committed for trial seeks a separate trial from that of another person committed for trial and charged in the same information;
  - (c) a party seeks to raise any question relating to the admissibility of evidence or any other question of law affecting the conduct of the trial prior to the opening of the

- case for the prosecution or the calling of witnesses;
- (d) a party desires to make an application which, if granted, would have the effect of postponing or delaying a trial which has been listed for hearing;
  - (e) a party desires to make some other application which can not reasonably be made without notice to the other party or parties;
  - (f) a Judge directs that a written application should be made;
- the application is to be made by issuing and serving an application in form 7.
- 15.02 When an application is made under rule 15.01, it is to state:
- (a) the order or orders sought;
  - (b) sufficient particulars of the grounds relied upon to enable each other party to consider whether evidence will be necessary in order to resolve the issues raised;
  - (c) the nature of any question of law sought to be raised.
- 15.03 An application under rule 15.01 is to be filed and served on all other parties not less than 14 days prior to the date fixed for the hearing of the trial in such proceedings.
- 15.04 The Registrar is to endorse the application with the date, time and place of its hearing.
- 15.05 If a date for trial has already been fixed, the Registrar may endorse the application that it is to be heard by the trial Judge at or immediately prior to the commencement of the trial.
- 15.06 No question or matter of a kind referred to in rule 15.01 is to be raised at the trial of the proceedings unless an application has been made in accordance with rule 15 or unless the trial Judge considers that there are circumstances which justify waiving compliance with the rule.
- 15.07 Applications by the Crown under s 3A(1) of the *Bail Act 1985* for a determination that a person is a serious and organised crime suspect or under s 19A of the *Bail Act 1985* for the cancellation of bail are to be in form 8 and are to be supported by an affidavit in which the deponent deposes to the matters relied upon by the Crown for the application.
- 15.08 The applicant is to serve the application and supporting affidavit filed under rule 15.07 on the person who is the subject of the application.

## **CHAPTER 5 – NOTICE OF EVIDENCE AND ADMISSIONS**

### **Notice of intention to adduce evidence of discreditable conduct**

- 16.01 The notice required by s 34P(4) of the *Evidence Act 1929* of an intention to adduce evidence of discreditable conduct is:
- (a) in the case of a notice being given by the Director, to be in form 9;
  - (b) in all other cases, and whether the evidence is to be led in evidence-in-chief or adduced in cross-examination, to be in form 10.
- 16.02 The notice must be filed in the Court and served on all other parties to the proceedings:
- (a) in the case of a notice by the Director, no later than 21 days after the date on which the proceedings are listed for trial;
  - (b) in all other cases, not less than 21 days before the listed trial date.
- 16.03 Any party who intends to object to the admission of proposed evidence of discreditable conduct must file in the Court and serve on all other parties to the proceedings a written



notice of objection using form 11.

- 16.04 The notice of objection under rule 16.03 must be filed in the Court and served on all other parties to the proceedings:
- (a) in the case of an objection to evidence proposed to be led by the Director, no later than 28 days after the filing of the Director's Notice;
  - (b) in all other cases, not less than seven days before the listed trial date.
- 16.05 The Court may enlarge or shorten the time within which any notice under rule 16 may be filed and served.

#### **Notice by the defence advising whether it consents to dispensing with calling certain prosecution witnesses**

- 17.01 An application by the Director under s 285BB(4) of the Act for an order requiring the defence to notify the Director in writing whether it consents to dispensing with the calling of certain prosecution witnesses is to be in form 7.
- 17.02 Unless the Court otherwise orders, the application must be filed in the Court and served on the defence no later than 14 days prior to the first directions hearing or in a matter committed for trial to a Circuit Court no later than 14 days prior to the date appointed for the commencement of the circuit.
- 17.03 An order made under s 285BB(4) of the Act requiring the defence to give notification pursuant to that section is to be in form 12, and is to state the time within which it is proposed the defence must respond.
- 17.04 The defence response to an order made under s 285BB(4) of the Act is to be in form 13.

#### **Admission of facts by the defence**

- 18.01 An application by the Director for permission to serve on an unrepresented defendant a notice under s 285BA of the Act to admit specified facts is to be in form 7.
- 18.02 Unless the Court otherwise orders, an application must be filed in the Court and served on the defendant no later than 14 days prior to the first directions hearing, or in a matter committed for trial to a Circuit Court no later than 14 days prior to the date appointed for the commencement of the circuit.
- 18.03 A notice to the defendant or the defendant's solicitor to admit specified facts under s 285BA of the Act is to be in form 14.
- 18.04 The defence response to a notice to admit specified facts is to be in form 15.

#### **Notice of intention by the defence to adduce certain kinds of evidence**

- 19.01 An application by the Director to serve on the defendant or the defendant's solicitor a notice requiring the defence to give written notice of an intention to introduce any of the kinds of evidence set out in s 285BB(1) of the Act is to be in form 7, and is to state the time within which it is proposed the defence must respond.
- 19.02 Unless the Court otherwise orders, an application is to be filed in the Court and served on the defence no later than 14 days prior to the first directions hearing or, in a matter committed for trial to a Circuit Court, no later than 14 days before the date appointed for

the commencement of the circuit.

- 19.03 An order made under s 285BB(1) requiring the defence to give to the Director notice of an intention to adduce evidence is to be in form 16.
- 19.04 A notice of intention to adduce evidence in response to an order made under s 285BB(1) is to be in form 17.

### **Notice of intention by the defence to call expert evidence**

- 20.01 Notice required by s 285BC of the Act of an intention by the defence to call expert evidence is to be in form 18.

## **CHAPTER 6 – EVIDENCE AND SUBPOENAS**

### **Evidence out of the State**

- 21.01 Rule 21 applies to proceedings under Part 6B of the *Evidence Act 1929*, which for the purpose of rule 21 only is referred to as *the Act*.
- 21.02 A party seeking that evidence be taken under the Act out of the State, may file an application seeking such an order. The application is to be in form 7.
- 21.03 A request pursuant to s 59E(1)(c) of the Act is to be in form 19.
- 21.04 The party obtaining the order is to:
- (a) be 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
  - (b) file a draft letter of request (form 19).

### **Audio visual evidence**

- 22.01 Rule 22 applies to proceedings under Part 6C of the *Evidence Act 1929*, which for the purpose of rule 22 only is referred to as *the Act*.
- 22.02 Notice of an application or a direction under s 59IE or s 59IQ of the Act is to be in form 20.
- 22.03 The applicant is to file the notice at least 14 days before the commencement of the hearing or trial at which the person, the subject of the application, is due to appear to give evidence or to make a submission to the Court.
- 22.04 As soon as practicable after the filing of the notice, the applicant is to serve a copy on every other party.
- 22.05 An applicant who no longer requires the person, the subject of the application, to appear before or give evidence or make a submission to the Court by audio visual link or audio link, is to notify the Registrar forthwith.
- 22.06 Unless the Court otherwise orders, the appropriate amount, as fixed by the Court in respect of an application under s 59IE, is to be paid in the first instance by the applicant for the order.
- 22.07 (1) A party to proceedings who has obtained an order of a recognised court (as defined in s 59IA of the Act) under the provisions of Division 3 of Part 6C of the Act, and who wishes to enforce the order, 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 which are filed under subrule (1). Such register may be maintained in electronic format.
- (3) After the filing of the order of the recognised court, the party seeking to enforce the same may do so in accordance with the provisions of s 59IL(2) of the Act.

### **Evidence by vulnerable witnesses and recorded evidence**

[Heading amended by Supreme Court Criminal Rules 2013 (Amendment No. 1)]

- 23.01 An application for special arrangements for the giving of evidence by a vulnerable witness is to be made by issuing and serving on the other party (*the respondent*) an application in form 21.
- 23.02 The application is to be filed in the Court not less than 28 days before the commencement of the trial, or at such earlier time as may be directed by the Court at a directions hearing, and must be served on the respondent within seven days of being filed.
- 23.03 When the respondent objects to the application, a notice of objection is to be made in form 22.
- 23.04 The notice of objection must be filed in the Court and served on the applicant within 14 days of the service of the application on the respondent.

[Sub-rule 23.05 inserted by Supreme Court Criminal Rules 2013 (Amendment No. 1)]

- 23.05 Subject to any contrary order by the Court, a party who is authorised by the Court under s 13C(3) of the Evidence Act 1929 to take custody of an audio visual record of evidence:
  - (1) will be provided with a duplicate copy of the record;
  - (2) is to use the duplicate copy of the record for the sole purpose of the related proceedings in respect of which the authorising order is made;
  - (3) is not to copy or disseminate the duplicate record to any third party; and
  - (4) is to ensure the safekeeping of the duplicate record and to return it to the Court at the conclusion of the related proceedings in respect of which the authorising order is made.

[Sub-rule 23.06 inserted by Supreme Court Criminal Rules 2013 (Amendment No. 1)]

- 23.06 If editing of an official record of evidence is required under s 13D(3) of the Evidence Act 1929:
  - (1) the party will be provided with a duplicate copy of the official record and the editing is to be carried out on the duplicate copy;
  - (2) the party is to ensure that the edited version is prepared in a form which, if tendered, may be displayed on the Court's audio or audio visual equipment; and
  - (3) the party is to keep all edited versions of the official record in safekeeping and, at the conclusion of the proceeding, is to return to the Court all edited versions which are not otherwise already in the custody of the Court.

### **Subpoenas**

- 24.01 (1) In rule 24, unless the contrary intention appears -  
*addressee* means a person who is the subject of the order expressed in a subpoena;

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

24.02 (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 Registrar is empowered to issue subpoenas on the Court's behalf.

(3) The Registrar:

- (a) may issue a subpoena if requested by a party to a proceeding to do so;
- (b) may refuse to issue a subpoena which is vexatious, oppressive or an abuse of the process of the Court;
- (c) may refer to a Judge for consideration any subpoena which the Registrar considers may be vexatious, oppressive or an abuse of the process of the Court;
- (d) must issue a subpoena if directed by the Court to do so.

(4) A subpoena which is vexatious, oppressive or an abuse of the process of the Court may be set aside by a Judge.

(5) A subpoena is not to issue:

- (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 issue 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.

24.03 (1) A subpoena must be in form 23.

(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 to produce must:
- (a) identify the document or thing to be produced; and
  - (b) specify the date, time and place for production.
- (4) A subpoena to attend to give evidence must specify, for each addressee who is required to attend, the date, time and place for attendance.
- (5) 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 in an approved form 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.
- (6) The last date for service of a subpoena:
- (a) is the date falling 14 days before the earliest date on which an addressee is required to comply with the subpoena or an earlier or later date fixed by a Judge; and
  - (b) must be specified in the subpoena.
- (7) If an addressee is a company, the company must comply with the subpoena by its appropriate or proper officer.
- (8) 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.
- 24.04 (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.
- 24.05 (1) The Court may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or in 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.
- 24.06 (1) A subpoena must be served personally on the addressee on or before the last 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.
- 24.07
- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence 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.
  - (3) Despite rule 24.06(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 (7) and (8), 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 two clear 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.
  - (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) The Registrar must take custody of documents and things produced to the Court in response to a subpoena, and of all exhibits tendered in proceedings before the Court, and deal with them -
    - (i) if they have not become, and it is apparent that they will not become, exhibits in proceedings – as authorised by these rules; or
    - (ii) if they have become exhibits in proceedings – as required by rule 25.
  - (7) 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.
  - (8) The copy of a document may be:
    - (a) a photocopy; or
    - (b) in PDF format on CD-ROM.
- 24.08
- (1) This rule applies if an addressee produces a document or thing in accordance with rule 24.07(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.
- 24.09 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.
- 24.10
- (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 24.07(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 24.07(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 24.06(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 solicitor or a barrister briefed by the solicitor in the proceeding; 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.
- 24.11 (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 required by rule 25.
- (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 days' notice of the intention to do so and that period has expired.
- (3) The issuing party must attach, to the front of a subpoena to produce to be served on the addressee, a notice and declaration in the form of form 24.
- (4) The addressee must complete the notice and declaration and attach it to the subpoena or copy of the document which accompanies the documents produced to the Court 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 proceedings 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.
- 24.12 (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.
- 24.13 (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 24.06(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.
- 24.14 (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
  - (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
    - (ii) as the Court directs.

### **Exhibits**

- 25.01 The Registrar will appoint an officer of the Court to take charge of every document or object put in as an exhibit during a trial and such officer will mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in and with a number so that all of the exhibits put in by a party are numbered in one consecutive series unless otherwise ordered by the Judge at the trial.
- 25.02 The Registrar will keep a record of any order or direction of the trial Judge given under rule 25.01.
- 25.03 The Registrar will cause a list of all of the exhibits put in during the trial to be made.
- 25.04 The list of exhibits when completed is to form part of the record of proceedings.
- 25.05 For the purposes of rule 25, a bundle of documents may be treated and counted as one exhibit.
- 25.06 Subject to s 131 of the *Supreme Court Act 1935*, a Judge may at any time make such order as he or she thinks fit for the custody, disposal or production at the conclusion of the trial of any exhibit.
- 25.07 Subject to any order made under rule 25.06 and subject to the Registrar not having received any notice of appeal, the Registrar may, at the expiration of 21 days from the conclusion of the trial, return the exhibits to the custody of the person producing the same or of the solicitor for the party tendering the same, as may be appropriate, and the person to whose custody any exhibit is returned is liable for any costs incurred by the Registrar in so returning such exhibit.
- 25.08 If a notice of appeal is received by the Registrar prior to returning the exhibits, then subject to any order made by the trial Judge under rule 25.06, the Registrar will retain the exhibits in custody until required to transmit them to the Court of Criminal Appeal or until such time as it shall appear that the person who has given notice of appeal has not prosecuted the appeal in accordance with the *Supreme Court Criminal Appeal Rules 1996*.
- 25.09 Upon the exhibits being returned to the Registrar on the determination of an appeal or upon it appearing to the Registrar that a party who has given notice of appeal has not prosecuted the appeal in accordance with the *Supreme Court Criminal Appeal Rules 1996*, the Registrar will return the exhibits in like manner to that prescribed and with similar consequences to those contained in rule 25.07.
- 25.10 If an exhibit is returned at a time when the due prosecution of an appeal is pending or authorised by law, the person to whom any exhibit is returned is, so far as it is practicable having regard to the nature of the exhibit, to keep it marked and labelled as before so that in the event of the prosecution of an appeal, the person may be able to produce the exhibit

so marked and labelled at the hearing of the appeal if required to do so.

- 25.11 Any party to a trial may apply for, and on payment of the prescribed fee obtain, an office copy of the list of exhibits for the purpose of an appeal or otherwise.
- 25.12 If there is an appeal, the Registrar shall include the list of exhibits amongst the documents supplied to the proper officer of the Court of Criminal Appeal for the purposes of the appeal.

### **Material containing child pornography**

- 26.01 In rule 26 “child pornography” means child pornography as defined in s 62 of the Act and, in relation to a Commonwealth prosecution, child pornography material as defined in s 473.1 of the *Criminal Code* (Cth).

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

- 26.02 The procedures in rule 26 apply in relation to the tender of material, including exhibits, containing child pornography in proceedings in the criminal jurisdiction of the Court, and are intended to ensure that the handling and storing of such exhibits is lawful, safe and efficient.
- 26.03 A party who proposes tendering material containing child pornography in the form of a compact disc, DVD or other electronic medium must, in a reasonable time before the tender, inform the Registrar of the computer software or operating system which is required for access to the material.
- 26.04 A party tendering material comprising an encrypted compact disc, DVD or other electronic medium containing child pornography must, at the same time, tender in a sealed envelope marked with the title and file number of the proceedings and a description of the material, the code or password enabling access to the material and, if the Court does not have that means of access, provide at the time of the tender the equipment which will enable the system to be viewed.
- 26.05 Subject to s 131 of the *Supreme Court Act 1935*, other than during a hearing to which the material relates, tendered material containing child pornography and codes may be viewed only by order of a Judge, and then only for the purposes of the proceedings in which the material is tendered and, if in electronic format, only on the computer or computers maintained by the Registrar or provided by the tendering party for that purpose.
- 26.06 Subject to rule 26.07, the Registrar will keep all tendered material containing child pornography and any relevant codes or passwords in secure storage.
- 26.07 The Judges’ staff will, during the course of proceedings, keep any tendered material containing child pornography in secure storage or, alternatively, deliver the material to the Registrar for it to be kept in secure storage.
- 26.08 The Registrar will maintain a computer or computers especially designated for the viewing of tendered material in the form of compact discs, DVDs or other electronic medium containing child pornography and, except when the computers are being used in accordance with rule 26, will keep them in safe storage.

- 26.09 On the completion of the viewing of any compact disc, DVD or other electronic medium containing child pornography, the disc, DVD, other medium, computer and any code or password necessary for the viewing of the material are to be returned to the Registrar and the Registrar will:
- (a) cause all images to be erased from all drives of the computer;
  - (b) place the disc, DVD or other electronic medium and the code in a sealed envelope marked “Not to be opened except by order of a Judge”; and
  - (c) keep the envelope containing the disc, DVD or other electronic medium and the code in secure storage.
- 26.10 If copies of exhibits containing child pornography are provided during a trial for the assistance of the jury, the Sheriff will, at the conclusion of the trial, ensure that all copies are retrieved from the jury and deliver them to the Registrar for secure storage in accordance with rule 26.06 and, provided that no marks have been made by the jury on the material, for return to the party who tendered it, in accordance with rule 26.12.
- 26.11 If any exhibit copy has been marked by a jury member, the Registrar will, immediately upon delivery by the Sheriff, destroy the copy by an appropriate means.
- 26.12 Subject to any contrary order of the Court, the Registrar will, no later than six months after the finalisation of proceedings (including any appeal), return any material containing child pornography, and any codes relating to such material, to the party who tendered them and, for this purpose, may open the sealed envelope in which they are contained.

## **CHAPTER 7 - SENTENCING**

### **Victim impact statements**

- 27.01 A person wishing to furnish the Court with a victim impact statement under s 7(2a) or s 7A of the *Criminal Law (Sentencing) Act 1988* or s 269R(3) of the Act is to provide such statement in writing to the Director.
- 27.02 A copy of the statement is to be provided to the presiding Judge and the defence upon the defendant pleading guilty to, or being found guilty of, the offence or offences or upon the Court declaring that the defendant is liable to supervision under Part 8A of the Act.
- 27.03 The Director may request to the Court to:
- (a) allow an audio or audio visual record of the person reading the statement to be played to the Court;
  - (b) exercise, in relation to the person making the statement, any of the powers that it has with regard to a vulnerable witness;
  - (c) order that the defendant or, if the defendant is a body corporate, a director or some other representative of the body corporate satisfactory to the Court, be present when the statement is read or played to the Court.
- 27.04 The presiding Judge may appoint the time at which the statement will be read or played to

the Court and may refuse to postpone the reading or playing of the statement if the resulting delay would be unreasonable in the circumstances.

- 27.05 If the person providing the statement is not in the Court when the presiding Judge gives directions under rule 27.04, the Director will advise the person of the time fixed by the Court for the reading or playing of the statement.
- 27.06 The person making the statement may amend it at any time prior to the time at which it is read or played to the Court.
- 27.07 The presiding Judge may direct that irrelevant material in the statement not be read or played to the Court.
- 27.08 A person who has furnished a statement in accordance with s 7A(1) of the *Criminal Law (Sentencing) Act 1988* may at any time withdraw the statement, in which event the statement will not be read or played to the Court or be taken into account by the Court.

### **Community impact statements**

- 28.01 In rule 28, **community impact statement** means “a neighbour impact statement” or a “social impact statement” as defined in s 7B of the *Criminal Law (Sentencing) Act 1988*.
- 28.02 If the Director or the Commissioner for Victims’ Rights wishes to furnish the Court with a community impact statement in proceedings to determine sentence or to fix a limiting term, he or she is to provide a copy of the statement to the presiding Judge and the defence upon the accused pleading guilty to, or being found guilty of, an offence or upon the Court declaring that the defendant is liable to supervision under Part 8A of the Act.
- 28.03 Subject to rule 28.04, the presiding Judge is to appoint the time at which the statement will be read to the Court and may refuse to postpone the reading of the statement if the resulting delay would be unreasonable in the circumstances.
- 28.04 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.
- 28.05 The presiding Judge may direct that irrelevant material in the statement not be read out to, or taken into account by, the Court.

## **CHAPTER 8 – STATUTORY APPLICATIONS**

### **Mental impairment applications and warrants**

- 29.01 An application under ss 269P or 269U of the Act (other than a telephone application under s 269U(1)) is to be in form 7.
- 29.02 When an order is made by the Court under s 269O or s 269U of the Act, the warrant to be issued by the Court may be in form 25.
- 29.03 When an order is made by the Court under s 269X(1)(b) of the Act, the warrant to be issued by the Court may be in form 26.
- 29.04 When an order is made by the Court under s 269X(2)(b) of the Act, the warrant to be issued by the Court may be in form 27.

### **Applications for proceeds of crime orders**

- 30.01 Rule 30 applies to proceedings, insofar as they provide for or permit applications to be made in the criminal jurisdiction of the Court and which are so instituted, under the *Proceeds of Crime Act 2002* (Cth) or the *Criminal Assets Confiscation Act 2005* which for the purposes of rule 30 only is referred to as *the Acts*.
- 30.02 Any party may initiate proceedings under the Acts which are permitted by the Acts to be so instituted in the Court's criminal jurisdiction by an application under rule 15.
- 30.03 An application under rule 30.02 is to proceed in accordance with such directions as are given by a Judge in open court or on a directions hearing under rule 12.
- 30.04 Without prejudice to the right of any party to adduce further evidence, the Court may receive any evidence given in criminal proceedings concerning the person to whom the application relates and may give such weight to that evidence as it sees fit.
- 30.05 A Judge may direct that an application under the Acts in the criminal jurisdiction of the Court be transferred to the civil jurisdiction of the Court, and in that event the application will thereafter be governed by the *Civil Rules*.

### **Applications for detention of persons unable or unwilling to control sexual instincts**

- 31.01 An application by the Attorney-General under s 23(2a) of the *Criminal Law (Sentencing) Act 1988* to have a person dealt with under that section is to be made by filing in the Court a notice in form 7.
- 31.02 An application under rule 31.01 is to be served on the person to whom it relates within seven days of its filing in the Court.
- 31.03 An application under rule 31.01 is, in the first instance, to be listed in an arraignment list and is to proceed in accordance with such directions as are given by a Judge.
- 31.04 Without prejudice to the right of any party to adduce further evidence, the Court may receive any evidence given in criminal proceedings concerning the person to whom the application relates and may give such weight to that evidence as it sees fit.

### **Applications for dangerous offender declarations**

- 32.01 An application by the Attorney-General under s 33A(1) of the *Criminal Law (Sentencing) Act 1988* to have a person declared to be a dangerous offender is to be made by filing an application in form 28.
- 32.02 An application under rule 32.01 is to be served within seven days of its filing in the Court on the person to whom the application relates, the Director (if the Director is not representing the Attorney-General) and on the Commissioner for Victims' Rights.
- 32.03 An application under rule 32.01 is, in the first instance, to be listed in an arraignment list and will proceed in accordance with such directions as are given by a Judge.
- 32.04 The written notice of the date upon which the proceedings to determine the application are to be conducted which is required by s 33A of the *Criminal Law (Sentencing) Act 1988* is to be in form 29.
- 32.05 Without prejudice to the right of any party to adduce further relevant evidence, the Court may receive any evidence given in criminal proceedings concerning the person to whom the application relates and may give such weight to that evidence as it sees fit.

### **Applications to suspend reporting obligations**

- 33.01 An application under s 37 of the *Child Sex Offenders Registration Act 2006*:
- (a) is to be in form 7;
  - (b) is to be accompanied by an affidavit of the applicant which:
    - (i) specifies the child sex offender registration order, if any, to which the applicant is subject, including the date upon which it was made, the Court which made it, the offence or offences for which the applicant was sentenced at the time the order was made and, in the case of an applicant who is subject to a restraining order under s 99AA of the *Summary Procedure Act 1921*, the terms of that order;
    - (ii) specifies, in the event that the applicant is not subject to a child sex offender registration order, each sentence imposed on the applicant which has the effect that the applicant is a registrable offender;
    - (iii) sets out, so far as is known to the applicant, details of the applicant's antecedent criminal history;
    - (v) has exhibited to it the report of any expert upon which the applicant proposes to rely;
    - (vi) has exhibited to it a copy of any other documentary evidence upon which the applicant proposes to rely;
    - (vii) identifies any evidence other than that referred to in (d) or (e) upon which the applicant proposes to rely; and
    - (viii) insofar as it has not already been covered by sub-paragraphs (a)-(e), sets out the facts and grounds upon which the application is made.
  - (c) is, with the applicant's affidavit, to be served within two working days of being filed upon the Commissioner of Police.
- 33.02 An application under s 37 will be listed in an arraignment list for initial directions.
- 33.03 The Court may, on the application of the Commissioner of Police, direct that the applicant submit to examination by such legally qualified medical practitioners or other persons as the Court shall direct, and may obtain from any such practitioner, or any other person, such report relating to an issue arising in relation to the application as the Court thinks fit.
- 33.04 If the applicant fails to comply with a direction to submit to an examination ordered pursuant to rule 33.03, the Court may stay the hearing of the application until the applicant complies with that direction.

### **Applications for orders relating to assumed identities**

- 34.01 An application under s 12 or s 13 of the *Criminal Investigation (Covert Operations) Act 2009* is to be made using form 7.
- 34.02 The application is to be supported by an affidavit or affidavits sworn by the applicant or some other person authorised by the applicant to make the affidavit, setting out the relevant facts and circumstances.
- 34.03 Upon receiving oral notification by or on behalf of the applicant that an application is to be made, the Registrar will appoint a time for the hearing of the application by a Judge.

- 34.04 The application and any affidavit or affidavits are not to be filed in the Registry but are to be tendered to the Judge on the hearing of the application, together with minutes of the order or orders sought.
- 34.05 The Judge may make such order or orders under the *Criminal Investigation (Covert Operations) Act 2009* as may be appropriate and may give such consequential directions to give effect to those orders and to ensure the confidentiality of the proceedings as the Judge thinks fit.
- 34.06 When the Judge makes an order, the Judge will arrange for the seal of the Court to be affixed to the formal order and will provide a copy of the sealed order to the applicant.
- 34.07 At the conclusion of the hearing of the application, the application, the order (if made), the affidavit or affidavits in support and any other documents relating to the application will be placed in a sealed envelope which is to be retained by the Registrar in a secure repository. Such envelope is not to be opened without the written direction of a Judge.

## **CHAPTER 9 – MISCELLANEOUS**

### **Contempt of Court**

- 35.01 The provisions of Chapter 14 (Contempt of Court) of the *Civil Rules* apply, with any necessary changes, in the criminal jurisdiction of the Court.

## Court records

- 36.01 The records of the Court in its criminal jurisdiction are to be in the custody and under the control of the Registrar.
- 36.02 Any party to a proceeding in the Court or that party's solicitor may search or inspect any such record in the said proceeding or take a copy thereof on payment of the appropriate copying fee except to the extent that the same would be contrary to any Act, rule or order of the Court.
- 36.03 No such record may be taken out of the Court without the order of a Judge.
- 36.04 Subject to the provisions of s 131 of the *Supreme Court Act 1935* and subject to rules 36.02 and 36.03, no person is entitled to search or inspect any such record or to take any copy thereof without first having obtained the permission of a Judge.
- 36.05 When any such record is required to be produced to any Court or Tribunal (including an umpire or arbitrator), the following procedure may be adopted in lieu of an officer of the Court being served with a subpoena to attend for the purpose of producing the record:
- (a) Upon receipt of a request in writing for such production, a Judge may direct that such request be complied with subject to such conditions (if any) as the Judge may direct.
  - (b) Subject to compliance with any such conditions, the proper officer will thereupon send the record to the Court or Tribunal indicated in the request, together with a certificate signed by the Registrar certifying that such record is filed in or in the custody of the Court and specifying the date upon which and the matter in which it was filed or lodged.
  - (c) Subject to paragraph (f) of this rule, it will not be necessary for an officer of the Court to attend for the purpose of producing the record, but the record may be sent to such Court or Tribunal by messenger or by registered post.
  - (d) The Court or Tribunal to which any record is sent under this rule is to keep it in safe custody and is to return it by registered post to the Registrar as soon as such Court or Tribunal no longer requires it.
  - (e) The Registrar will keep a register containing a description of each 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 proper officer will ensure that each record is duly returned within a reasonable time and make enquiries and report to the Registrar if it is not so returned.
  - (f) In any case in which the Registrar considers it proper so to do, the Registrar may require that an officer of the Court attend the Court or Tribunal for the purpose of producing the record.
  - (g) Despite the foregoing provisions of this rule, unless the Registrar is satisfied that there is a good reason why the original of any record should be produced in any other Court or Tribunal, the Registrar may answer a request for the production of that record by sending a copy of it certified by him to be a true copy for which the person seeking the production of the record is to be liable to pay the charges prescribed by regulation. In such a case, the copy of the record need not be returned to the Court.



## **Recording Events in Court**

[Rule 37 inserted by Supreme Court Criminal Rules 2013 (Amendment No. 2)]

- 37**
- (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):
    - (a) a party to a proceeding which is being heard by the Court, a legal practitioner, law clerk, student or a 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 proceedings for the sole purpose of verifying notes and for no other purpose.
  - (4) Any record made in court permitted by this Rule must:
    - (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceedings;
    - (b) not interfere with the Court's sound system or other technology; and
    - (c) not generate sound or require speaking into a device.
  - (5) Any 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.

## **Electronic Communications to and from Court Rooms**

[Rule 38 inserted by Supreme Court Criminal Rules 2013 (Amendment No. 2)]

- 38**
- (1) Subject to this rule and to any contrary direction of the Court, communication by means of an electronic device to and from a court room 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 which is being heard by the Court, a legal practitioner or a bona fide member of the media may communicate by means of an electronic device to and from a court room during the conduct of proceedings.
  - (4) Any electronic communication permitted by this Rule must:
    - (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceedings;

- (b) not interfere with the Court's sound system or other technology; and
  - (c) not generate sound or require speaking into a device.
- (5) A communication of evidence adduced or a submission made in proceedings, 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, cellular phones, computers, personal digital assistants, digital or analogue audio and/or visual cameras or similar devices).

**THE SCHEDULE**

**Form 1**

**ACTION HEADING**

**IN THE SUPREME COURT OF SOUTH AUSTRALIA  
IN THE CRIMINAL JURISDICTION  
SCCRM-\_\_-\_\_\_\_**

**THE QUEEN**

**v.**

**[NAME(S) OF DEFENDANT(S)]  
Defendant(s)**

*[OR]*

**[NAME(S)]**

**Applicant(s)**

**and**

**[NAME(S)]**

**Respondent(s)**

FRONT SHEET

IN THE SUPREME COURT OF SOUTH AUSTRALIA  
IN THE CRIMINAL JURISDICTION  
SCCRM-\_\_-\_\_\_\_

THE QUEEN

v.

[NAME(S) OF DEFENDANT(S)]  
Defendant(s)

[OR]

[NAME(S)]  
Applicant(s)

and

[NAME(S)]  
Respondent(s)

---

[Document type, eg Application, Notice, etc.]

---

Filed on behalf of [Name of Party/Parties] by [Solicitor]  
[OR]  
Filed by [Name of Party/Parties]

[Address]

[Telephone]

[Mobile]

[Email]

[Action Heading]

**INFORMATION**

For arraignment on.....

*Information of the Director*

[insert name(s)] is charged with the following offence (offences):

[Front Sheet]

**NOTICE OF OBJECTION TO APPEARANCE BY AUDIO VISUAL LINK**

.....  
.....[insert name and address of person objecting]

objects to..... [insert full name of person in custody] appearing  
by audio visual link in the Court on the following hearing(s)

.....  
[insert details of the hearing or hearings which are the subject of the objection]

The grounds of the objection are as follows:

.....  
.....  
.....

[insert a brief statement of the grounds of objection]

Dated the            day of            20

.....  
[Signed by the objector or the objector's solicitor]

.....  
.....  
[Insert objector's address for service]

[Front Sheet]

**CERTIFICATE BY LAWYER CONCERNING LEGAL REPRESENTATION**

*Criminal Law (Legal Representation) 2001 Act s 8(2)*

1. I, ..... of .....  
act for the above named defendant.

2. I certify that the defendant is an assisted person.

*or*

I undertake that the defendant will be provided with legal representation for the duration of the trial.

*or*

I certify that the defendant is not an assisted person and I am not prepared to give an undertaking that the defendant will be provided with legal representation for the duration of the trial.

*[Delete whichever is inapplicable]*

Dated this ..... day of .....20

.....  
[Signed]

[Action Heading]

**ASSURANCE THAT DEFENDANT DOES NOT WANT LEGAL REPRESENTATION**

*Criminal Law (Legal Representation) Act 2001 s 8(3)*

I, ..... of .....

.....  
[insert name and address]

HEREBY STATE:

- 1. I am the defendant in these proceedings.
- 2. I am charged with [set out charge/charges]:

.....  
 .....  
 .....  
 .....

- 3. I do not want to be legally represented at the trial of the above charge/charges.

Dated this ..... day of ..... 20 .. .

.....  
[Signature of defendant]



[Front Sheet]

**APPLICATION**

[Name of applicant] of [Address]

hereby applies to the Court seeking the making of the following orders:

[Set out the orders sought in separate numbered paragraphs]

Particulars of the grounds relied upon are as follows:

[Set out sufficient particulars to give proper notice of the issues to be raised so that the other party may determine whether or not there will be any dispute on the relevant facts]

The nature of any question of law to be raised is as follows:

[Set out particulars]

Dated the            day of            , 20    .

.....  
[Signed by applicant or applicant's solicitor]

TO:

[Insert name and address of other party(ies) and others to whom notice of the application is to be given]

[Where the application is to be given a separate listing date, the following will be completed by the Court]

TAKE NOTICE that the above application will be heard/listed for an initial directions hearing\* before

   on the            day of            , 20    .

at            a.m./p.m. in Court/Chambers at Sir Samuel Way Building, Victoria Square, Adelaide.

Dated the            day of            , 20    .

REGISTRAR

\* Cross out which ever is inapplicable

[Front Sheet]

**APPLICATION FOR SERIOUS AND ORGANISED CRIME SUSPECT DETERMINATION**

*Bail Act 1985 s 3A(1)*

No        of 20

*R v (insert name of accused(s))*

The *(insert name of applicant)* of *(insert address)*

hereby applies to the Court for:

- (1) a determination that *(insert name and address)* is a serious and organised crime suspect for the purposes of the *Bail Act 1985*;
- (2) an order cancelling the right of *(insert name)* to be at liberty under the bail agreement entered into on *(insert date)*.\*

\*Delete (1) or (2) if either is inapplicable.

Particulars of the grounds relied upon are as follows:

*(Set out sufficient particulars so as to give proper notice of the matters relied upon)*

Dated the .....day of .....20....

.....

*(Signature of Applicant)*

TO:

*(Insert name(s) and address(es) of the other parties to whom notice of the application is to be given)*

TAKE NOTICE that the above application will be heard on the .....day of ..... 20..... at .....am/pm. The Applicant and all persons served with this application are required then to attend if they wish to be heard on the application and, in their absence, the Court may make such order as it sees fit.

Dated the .....day of.....20....

.....  
**Deputy Registrar (Criminal)**

[Front Sheet]

**NOTICE OF INTENTION BY THE DIRECTOR OF PUBLIC PROSECUTIONS  
TO ADDUCE EVIDENCE OF DISCREDITABLE CONDUCT**

*Evidence Act 1929 s 34P(4)*

To: *[insert name(s) of defendant(s)]* .....

The Director of Public Prosecutions gives notice of the intention of the Director at trial to seek to seek to adduce evidence of discreditable conduct of..... *[insert name]* and, in respect of each count and each allegation of discreditable conduct, provides the following separate particulars:

- 1. the nature of the discreditable conduct: .....
- 2. the witness or witnesses from whom the evidence is to be led:  
.....
- 3. the fact or facts in issue in respect of which the evidence of discreditable conduct is circumstantial evidence under s 34P(2)(b):  
.....  
.....

Dated the .....day of .....20

*[signed]*.....  
Director of Public Prosecutions

NOTE: If you wish to object to the admission of the evidence of discreditable conduct proposed to be adduced by the Director of Public Prosecutions you must, within 28 days of the filing of this Notice, file in the Court and serve on all other parties to the proceedings a Notice using form 11 which sets out the grounds of your objection.

[Front Sheet]

**NOTICE OF INTENTION BY A DEFENDANT TO ADDUCE EVIDENCE OF DISCREDITABLE CONDUCT**

*Evidence Act 1929 s 34P(4)*

To: the Director of Public Prosecutions:

And to:[insert name of any other defendant(s)] .....

The defendant [insert name] .....gives notice of the intention of the defendant at the trial to seek to adduce evidence of discreditable conduct of [insert name of co-defendant] .....and, in respect of each count and each allegation of discreditable conduct, provides the following separate particulars:

1. the nature of the discreditable conduct is .....
2. the witness or witnesses from whom the evidence is to be led, whether in examination-in-chief or in cross-examination, is/are .....
3. the use or uses of the evidence which are said to be permissible under s 34P(2) is/are .....

Dated the .....day of ..... 20

Signed.....  
Defendant

NOTE: This Notice must be filed in the Court and served on all other parties to the proceedings at least 21 days before the listed trial date.

[Front Sheet]

**NOTICE OF OBJECTION TO PROPOSED EVIDENCE OF DISCREDITABLE CONDUCT**

*Evidence Act 1929 s 34P(4)*

Take notice that *[insert name or title of party objecting]* .....  
will object to the evidence of discreditable conduct proposed to be adduced by *[insert name of relevant party]* .....

The evidence of discreditable conduct to which objection is taken is *[specify the particular proposed evidence of discreditable conduct to which objection is taken]*  
.....

The grounds of objection are: *[set out, separately in relation to each allegation if discreditable conduct, the grounds of objection]*  
.....  
.....  
.....

Dated the .....day of .....20

.....  
Director of Public Prosecutions\*

.....  
Defendant\*

*[\*delete whichever is inapplicable]*

NOTE: This Notice must be filed in the Court and served on all other parties to the proceedings at least 7 days before the listed trial date, unless the objection is to evidence proposed to be led by the Director of Public Prosecutions, in which case the notice must be filed and served no later than 28 days after the Director of Public Prosecutions filed his or her Notice of Intention to Adduce Discreditable Conduct.

[Action Heading]

**ORDER REQUIRING DEFENCE TO NOTIFY WHETHER IT CONSENTS TO DISPENSING WITH CALLING CERTAIN PROSECUTION WITNESSES**

*Criminal Law Consolidation Act 1935 s 285BB(4)*

TO \_\_\_\_\_ (*name of defendant*)

The Court requires you to notify the Director of Public Prosecutions for the State/ Commonwealth\* whether you consent to dispensing with the calling of prosecution witnesses to establish the admissibility of evidence of the following:

*(Set out a description of the evidence and the names of the witnesses)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are required to give a written reply to this Notice in form 13 of the *Criminal Rules 2013* within \_\_\_\_ days of the service of this order on you or your solicitor.

If you fail to reply within this time your consent to the tender of the evidence specified in this Notice will be conclusively presumed.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

.....  
Justice [*name*]

\* *Cross out whichever is inapplicable.*



[Front Sheet]

**RESPONSE TO ORDER REQUIRING DEFENCE TO NOTIFY WHETHER IT  
CONSENTS TO DISPENSING WITH CALLING CERTAIN PROSECUTION  
WITNESSES**

*Criminal Law Consolidation Act 1935 s 285BB(4)*

TO THE DIRECTOR OF PUBLIC PROSECUTIONS FOR THE STATE/COMMONWEALTH.\*

In response to the order dated \_\_\_\_\_

The defendant \_\_\_\_\_ (*name of defendant*) consents to the prosecution  
dispensing with the need to call witnesses to establish the admissibility of the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The defendant does not consent to the prosecution dispensing with the need to call witnesses to  
establish the admissibility of the other evidence identified in the order.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

.....  
Defendant/Defendant's solicitor

\* *Cross out whichever is inapplicable.*

[Front Sheet]

**NOTICE TO ADMIT FACTS**

*Criminal Law Consolidation Act 1935 s 285BA*

To \_\_\_\_\_ (*name of defendant*).

The Director of Public Prosecutions seeks that you admit the following facts:

*(Each fact is to be set out in a separate numbered paragraph)*

---



---



---



---

NOTE:

- 1 You must provide your response to this Notice within \_\_\_\_\_ days of the service of the Notice upon you (as fixed by the Court) unless the Court has extended the time for your response on an application by you.
- 2 Your response to the notice is to be in form 15 of the *Criminal Rules 2013*.
- 3 You are not required to admit these facts, but if you are convicted, the Court is required to take an unreasonable failure to make an admission in response to this notice into account in fixing sentence.

You would unreasonably fail to admit facts if, for example, you claimed privilege against incriminating yourself as a reason for not making the admission and thus made the prosecution prove facts which were not seriously contested at your trial.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

.....

Director of Public Prosecutions for the State/Commonwealth

[Front Sheet]

**RESPONSE TO NOTICE TO ADMIT FACTS**

*Criminal Law Consolidation Act 1935 s 285BA*

TO THE DIRECTOR OF PUBLIC PROSECUTIONS FOR THE STATE/COMMONWEALTH\*

In response to the Notice to Admit Facts dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 :

The defendant \_\_\_\_\_ (*name of defendant*) admits the facts set out in\*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The defendant does not admit the facts set out in the remaining paragraphs of the Notice to Admit Facts.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

.....  
Defendant/Defendant's solicitor

\* *Delete whichever is inapplicable*

\* *Refer to paragraphs in the notice to admit facts.*

[Action Heading]

**ORDER REQUIRING DEFENCE TO GIVE PROSECUTION NOTICE OF INTENTION TO ADDUCE EVIDENCE**

*Criminal Law Consolidation Act 1935 s 285BB(1)*

TO \_\_\_\_\_ (name of defendant)

The Court requires you to give the Director of Public Prosecutions for the State/Commonwealth\* notice of an intention to introduce evidence of the following kind(s):

[Set out a description of the kind(s) of evidence]

You are required to give written notice in form 17 of the *Criminal Rules 2013* of your intention to call evidence of the kind(s) set out above within \_\_\_\_\_ days of the service of this order on you or your solicitor.

NOTE: Non-compliance with this order does not render evidence inadmissible, but the prosecutor or the judge (or both) may comment on the non-compliance to the jury.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

.....  
Justice [name]

\* Delete whichever is inapplicable



[Front Sheet]

**NOTICE OF INTENTION TO ADDUCE EVIDENCE**

*Criminal Law Consolidation Act 1935 s 285BB(1)*

TO THE DIRECTOR OF PUBLIC PROSECUTIONS FOR THE STATE/COMMONWEALTH\*

In response to the order dated

The defendant \_\_\_\_\_ (*name of defendant*) intends to introduce at the trial evidence of the following kind(s):

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Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

\* *Delete whichever is inapplicable*

.....  
Defendant/Defendant's solicitor

[Front Sheet]

**NOTICE OF INTENTION TO INTRODUCE EXPERT EVIDENCE**

*Criminal Law Consolidation Act 1935 s 285BC*

To The Director of Public Prosecutions for the State/Commonwealth.\*

The defendant \_\_\_\_\_ (*name of defendant*) intends to introduce at the trial/during submissions on sentence\*, expert evidence from

[*Set out name(s) and qualifications of the expert(s)*]

\_\_\_\_\_  
\_\_\_\_\_

The witness(es) will give the following evidence:

[*Set out the general nature of the evidence and what it tends to establish*]

\_\_\_\_\_  
\_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

.....  
Defendant/Defendant’s Solicitor

NOTE: If the Director of Public Prosecutions does not receive notice of intention to introduce expert evidence:

- (a) in the case of trial, on or before the date of the first directions hearing, and, in the case of sentence, at least 28 days before the date appointed for submissions on sentence; or
  - (b) if the evidence does not become available to the defence until later—as soon as practicable after it becomes available to the defence;
- unless exempted by the Court, the evidence cannot be adduced without the Court’s permission.

NOTE: If the Director of Public Prosecutions receives notice of intention to introduce expert evidence less than 28 days before the date of trial or the date appointed for submissions on sentence, the Court may, on application by the prosecutor, adjourn the case to allow the prosecution a reasonable opportunity to obtain evidence on the proposed evidence.

\* *Cross out whichever is inapplicable.*

[Action Heading]

**LETTER OF REQUEST***Evidence Act 1929 s 59E*

To the Competent Judicial Authority of [Place],  
in [Country].

An action has been commenced in the [Court] Court of South Australia, in which [name(s)] of [address(es)] [is/are] the [role of party(ies)] and [name(s)] of [address(es)] [is/are] the [role of party(ies)].

It is necessary, for the determination of the matters in dispute, that the following persons, resident within your jurisdiction, be examined as witnesses upon oath concerning those matters:

*[Insert names and addresses of proposed witnesses]*

I [name], the Registrar of the [Court] Court of South Australia, request pursuant to s 59E of the *Evidence Act 1929* (SA) that, for the assistance of such Court, you summon the said witnesses to attend, at such time and place as you shall appoint, before such person as, according your procedure, is competent to take examination of witnesses, and that you cause such witnesses to be examined orally with regard to the matters in question, in the presence of the agents of the party(s), or such of them as shall, on due notice given, attend the examination.

I further request that you permit the agents of [name of party seeking that witness be called], to examine such witnesses, and permit any other party to cross examine the witnesses and the party producing any witness for examination to re-examine that witness orally.

I also request that the evidence of all witnesses be reduced into writing and all books, letters, papers and documents produced upon the examination be duly marked for identification, and that you further authenticate such examination by the seal of your Court or in such other way as is in accordance with your procedure, and return the same to me together with a note of the charges and expenses payable in respect of this request through the Attorney-General from whom the same was received, for transmission to the [Court] Court of South Australia.

I finally request that you cause me, or the agents of the parties, if appointed, to be informed of the date and place where the examination is to take place.

*[Facsimile Seal]*

[Name]

For Registrar



[Front Sheet]

**APPLICATION TO ADDUCE AUDIO VISUAL EVIDENCE**

***Evidence Act 1929 s 59IE/59IQ\****

To the *[Nature of Party / Parties]*, *[Name(s)]*.

The *[Nature of Party / Parties]*, *[Name(s)]* intend/s to apply to the Court for specific directions that the *[specify whether “the hearing of the application for.....” or “the trial of this action”]* be conducted with the aid of an *[specify either “audio” or “audio visual”]* link.

The following information is provided in support of the application for directions:

- 1. It is proposed that such link be utilised in relation to *[specify whether “the whole of the proceeding” or “portion only of the proceeding, namely.....”]*.
- 2. The link is required from *[originating City/town]* to *[receiving City/town]*.
- 3. Details of the persons to appear before the Court, or give evidence by the proposed link are as follows:

*[Set out names and roles]*

- 4. The suggested time for the commencement of the link is *[time and date]*.
- 5. The estimated duration of the link is *[period]*.
- 6. The application is made *[with/without]* the consent of all parties to the proceedings.  
*[If all parties do not consent indicate who are dissenting parties and the nature of the objection raised by them]*
- 7. *[If a hearing date has been fixed, indicate time and place]*.

*[Signed]* .....  
*[Solicitor for the [Nature of Party / Parties]]*

[OR]

*[Name(s)], [Nature of the Party / Parties]*

*\* Delete whichever is inapplicable*

[Front Sheet]

**APPLICATION FOR A VULNERABLE WITNESS PROTECTION ORDER**

*Evidence Act 1929 s 13A*

[Insert name of party] applies to the Court for an order that special arrangements be made for taking the evidence of [insert name of witness].

The applicant seeks the following order:

[Set out the special arrangements which are sought]

The application is made on the following grounds:

[Set out the nature of the vulnerability of the witness and the reasons for the special arrangements which are sought]

Dated the            day of                               , 20      .

.....  
 [Signed by the applicant/applicant’s solicitor]

NOTE: This application must be filed in the Court not less than 28 days before the commencement of the trial, or at such earlier time as may be directed by the Court at a directions hearing, and served on the respondent within 7 days of being filed.

The respondent may file a notice in form 22 objecting to the application on the ground that the witness is not a vulnerable witness as defined in s 4 of the *Evidence Act 1929*. The notice must be filed within 14 days of the service of the application.



[Action Heading]

**SUBPOENA**

To: [name]  
[address]

**YOU ARE ORDERED:**

- \*to attend to give evidence—see Section A of this form; or
- \*to produce this subpoena or a copy of it and the documents or things specified in the Schedule—see Section B of this form; or
- \*to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule—see Section C of this form

\* *Select one only of these three options.*

**Failure to comply with this subpoena without lawful excuse is a contempt of Court and may result in your arrest.**

The last date for service of this subpoena is: *(See Note 1)*

*[Insert only if applicable]:* The last date for service was fixed by order made by Justice *[name]* dated *[date]*.

**Please read Notes 1 to 15 at the end of this subpoena.**

*[Seal or authentication]*

Date:

Issued at the request of *[name of party]*, whose address for service is:

**A. Details of subpoena to attend to give evidence only**

---

Date, time and place at which you must attend to give evidence unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time

Place:

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

## **B. Details of subpoena to produce only**

---

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than two clear days before the date specified for attendance and production. *(See Notes 5-11)*

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar  
*[Name of Court ....etc as the case may be]*

### **Schedule**

The documents and things you must produce are as follows:

*[If insufficient space attach list]*

### C. Details of subpoena both to attend to give evidence and to produce

---

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place:

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

---

In so far as you are required by this subpoena to produce the subpoena or a copy of it and documents or things, you must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than two clear days before the date specified for attendance and production.  
(See Notes 5-11)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar  
[Name of Court ... etc as the case may be]'

### Schedule

The documents and things you must produce are as follows:  
[If insufficient space attach list]

---

## **NOTES**

### **Last day for service**

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

### **Informal service**

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

### **Addressee a corporation**

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

### **Conduct money**

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date on which your attendance is required.

### **Production of subpoena or copy of it and documents or things by delivery or post**

5. In so far as this subpoena requires production of the subpoena or a copy of it and a document or thing, instead of attending to produce the subpoena or a copy of it and the document or thing, you may comply with the subpoena by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than two clear days before the date specified in the subpoena for attendance and production or, if you receive notice of a later date or time from the issuing party, before that later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, the Registrar may permit the parties to the proceeding to inspect the document or thing.

### **Production of a number of documents or things**

8. If you produce more than one document or thing, you must, if requested by the Registrar, produce a list of the documents or things produced.

### **Production of copy instead of original**

9. If the subpoena requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
- 9A. The copy of a document may be:
  - (i) a photocopy; or

- (ii) in PDF format on a CD-ROM.

**Return or destruction of documents or copies**

- 10. You may, at the time of production, inform the Court that any document or copy of a document produced need not be returned and may be destroyed.
- 11. If you have so informed the Court, the Registrar may destroy the document or copy instead of returning it to you.

**Applications in relation to subpoena**

- 12. You have the right to apply to the Court:
  - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
  - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

**Loss or expense of compliance**

- 13. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

**Contempt of court—arrest**

- 14. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
- 15. Note 14 is 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.



[Action Heading]

**SUBPOENA – DECLARATION BY ADDRESSEE**

The **Addressee** is the person to whom the subpoena is addressed and who will be the recipient of the subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in PDF format on a CD-ROM.

**You must complete the Declaration below, attach it to the subpoena or a copy of the subpoena, and return them with the documents or things you provide to the Court under the subpoena.**

If you declare that the materials you produce are copies of documents, the Registrar may, without further notice to you, destroy the copies after the expiry of four months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.

If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

**Declaration by Addressee (Subpoena Recipient)**

*[Tick the relevant option below, provide your address as appropriate, sign and date]*

**All** of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.

**Some or all** of the material I am providing to the Court in compliance with the attached subpoena is an **original** document. Once the material is no longer required, all of the material should be returned to me at the following address:

.....  
[Signature of addressee]

.....  
[Name of addressee]

.....  
[Date] .....

[Action Heading]

**WARRANT FOR DETENTION**

*Criminal Law Consolidation Act 1935 s 269O/269U\**

**Particulars of Defendant**

Name:

Date of Birth:

Address:

**Other Details**

Offence/s charged:

Section and Act under which offence/s charged:

Court which made order:

Terms of Supervision Order:

Date of Supervision Order:

Period of limiting term:

Date Warrant issued:

To the Sheriff, the Commissioner of Police and Members of the Police Force and the Minister of Health.

\*The defendant named in this warrant has been dealt with by the Court and, having been declared liable to supervision, committed to detention with a limiting term pursuant to Part 8A of the *Criminal Law Consolidation Act 1935*. Particulars of the charge/s against the defendant, the Court which made the supervision order and the limiting term which was fixed appear on this warrant.

\*The defendant named in this warrant was committed to detention with a limiting term pursuant to Part 8A of the *Criminal Law Consolidation Act 1935*. The defendant was subsequently released on licence but on the            day of            ,            the Court cancelled the release.

You, the Sheriff, and you, the Commissioner of Police and Members of the Police Force, are directed to convey the defendant to James Nash House and you, the Minister of Health are directed to detain the defendant in accordance with the supervision order.

.....  
Justice [*name*]

\* *Delete whichever is inapplicable.*

[Action Heading]

**WARRANT OF REMAND IN CUSTODY PENDING INVESTIGATION**

*Criminal Law Consolidation Act 1935 s 269X(1)*

**Particulars of Defendant**

Name:

Date of Birth:

Address:

**Other Details**

Offence/s charged:

Section and Act under which offence/s charged:

Date Warrant issued:

Institution to be taken to:

To the Sheriff, the Commissioner of Police and Members of the Police Force and the Chief Executive, Department of Correctional Services.

The Court has ordered an investigation into:

The mental competence of the defendant named in this warrant to commit the offence(s) charged.\*

The mental fitness of the defendant named in this warrant to stand trial on the offence(s) charged.\*

You, the Sheriff, and you, the Commissioner of Police and Members of the Police Force, are directed to convey the defendant to the institution referred to above.

The defendant is to be taken to the institution referred to above until a placement at a secure mental health facility is available and then the defendant is to be transferred to the care of the Minister of Health.

You, the Minister of Health/the Chief Executive, Department of Correctional Services\*, are directed to detain the defendant until the conclusion of the investigation.

.....  
Justice [name]

\* Delete whichever is inapplicable.

[Action Heading]

**WARRANT OF REMAND IN CUSTODY AFTER DECLARED LIABLE TO SUPERVISION**

*Criminal Law Consolidation Act 1935 s 269X(2)*

**Particulars of Defendant**

Name:

Date of Birth:

Address:

**Other Details**

Offence/s charged:

Section and Act under which offence/s charged:

Date Warrant issued:

Institution to be taken to:

To the Sheriff, the Commissioner of Police and Members of the Police Force and the Chief Executive, Department of Correctional Services.

The defendant named in this warrant has been declared liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935* (SA) (“the Act”).

You, the Sheriff, and you, the Commissioner of Police and Members of the Police Force, are directed to convey the defendant to the correctional institution referred to above.

\*The defendant is to be taken to the institution referred to above until a placement at a secure mental health facility is available and then the defendant is to be transferred to the care of the Minister of Health.

\*You, the Minister of Health/the Chief Executive, Department of Correctional Services\*, are directed to detain the defendant in that institution until such time as the Court makes all orders which are required to be made pursuant to s 269O of the Act.

.....  
Justice [name]

\* Delete whichever is inapplicable.

[Front Sheet]

**APPLICATION FOR DANGEROUS OFFENDER DECLARATION**

***Criminal Law (Sentencing) Act 1988 s 33A***

To : *[insert name of person to whom the application relates]*

: the Director of Public Prosecutions (if not representing the Attorney-General)

: the Commissioner for Victims' Rights

Take notice that the Attorney-General of the State of South Australia applies to the Supreme Court under s 33A(1) of the *Criminal Law (Sentencing) Act 1988* for a declaration that *[insert name of person to whom the application relates]* is a dangerous offender and for an order that his/her non-parole period be negated.

The grounds upon which the application is made are: *[set out the grounds upon which the application is made]*.

Dated the .....day of .....20.....

.....  
 [Signed by the Attorney-General/Solicitor for the Attorney-General]

The above application is listed for initial directions on the .....day of ..... 20.... at .....am/pm *[insert date and time of hearing]* in a courtroom in the Sir Samuel Way Building, Victoria Square, Adelaide.

Dated the .....day of .....20.....

.....  
 Registrar

[Action Heading]

**NOTICE OF HEARING OF APPLICATION FOR DANGEROUS OFFENDER  
DECLARATION**

*Criminal Law (Sentencing Act) 1988 s 33A*

- To : the Attorney-General
- : *[insert name of person to whom the application relates]*
- : the Director of Public Prosecutions (if not representing the Attorney-General)
- : the Commissioner of Victims' Rights

Take notice that the Supreme Court intends to conduct the proceedings for the determination of the application of the Attorney-General on the .....day of ..... 20..... at .....am/pm in the Sir Samuel Way Building, Victoria Square, Adelaide, and thereafter on such further dates and times as will be fixed by the Court.

Dated the .....day of ..... 20 .....

.....  
Registrar

NOTE: Section 33A(3) of the *Criminal Law (Sentencing) Act 1988* requires that the person to whom the application under s 33A relates must be given at least 14 days written notice of the day on which the Court intends to conduct the proceedings to determine the application.

## History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
23 heading	am1	1 July 2013
23.05	ins1	1 July 2013
23.06	ins1	1 July 2013
37	ins 2	1 October 2013
38	ins 2	1 October 2013
Form 9	am1 <b>sub3</b>	1 July 2013 <b>1 December 2013</b>
Form 10	am1	1 July 2013
Form 11	am1	1 July 2013