

SOUTH AUSTRALIA

DISTRICT COURT (CRIMINAL AND MISCELLANEOUS) RULES 1992

PART IV – THE CRIMINAL DIVISION

(current to Amendment No. 13 (29 July 2012))

PART IV - THE CRIMINAL DIVISION

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Preliminary

IV-1.01 These rules apply to the exercise by the Court of its criminal jurisdiction.

Sittings of the Court

IV-2.01 The sittings of the Court at Adelaide as a court of Oyer and Terminer and General Gaol Delivery 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.

IV-2.02 The sittings of the Court at places other than Adelaide as a court of Oyer and Terminer and General Gaol Delivery shall be at such times and places as the Chief Judge shall from time to time direct.

Appearance of Persons Committed for Trial or Sentence

IV-3.01 Persons committed for trial or sentence in Adelaide, whether in custody or on bail, shall 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.

IV-3.02 Persons committed for trial or sentence at a place other than Adelaide, whether in custody or on bail, shall 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.

IV-3.03 Notwithstanding the provisions of Rules 3.01 and 3.02, 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 date or at a later date than that provided for in such Rules.

IV-3.04 A person may be presented for trial before the date fixed in accordance with Rules 3.01 or 3.02 respectively if a Judge shall so order.

IV-3.05 Subject to Rule 3.06, a person who has appeared before the Court pursuant to Rule 3.01 or Rule 3.02 and been remanded in custody for trial or sentence, will 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.

IV-3.06 Subject to section 59IQ of the *Evidence Act 1929* and to any contrary direction by the Court persons in custody will appear before the District Court for the following hearings by audio visual link:

- 3.06.1 directions hearings;
- 3.06.2 bail applications ;
- 3.06.3 pre-trial conferences conducted under Rule 7;
- 3.06.4 such other applications as the Court may order.

IV-3.07 A party may object to the use of an audio visual link for a hearing to which Rule

3.06 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 24. 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 3.06 refers, or otherwise).

IV-3.08 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.

Time

IV-4.01 Where 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 Section 27(1) of the *Acts Interpretation Act 1915*.

IV-4.02 Where any period of time prescribed by these Rules or any order or direction of the Court expires on or after the 24th day of 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

IV-5.01 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.

IV-5.02 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.

Directions Hearings and the Listing of Trials

- IV-6.01** Where upon arraignment a person committed for trial pleads not guilty to an offence which is not within the exclusive jurisdiction of the Supreme Court, counsel for the prosecution and the defence (or a defendant who is unrepresented) may make submissions pursuant to Section 110 of the *Summary Procedure Act 1921* as to the appropriate court of trial.
- IV-6.02** A decision as to whether any matter referred to in Rule 6.01 is to be removed for trial in the Supreme Court will not be made on the occasion of the first arraignment of the person committed for trial, but shall be made at any time prior to trial by the Chief Judge or such other Judge or Judges to whom he may delegate this function.
- IV-6.03** When consideration is being given to the making of any order referred to in Rule 6.02, regard will be had to the matters set forth in Section 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.
- IV-6.04** (1) The certificate required by Section 8(2) of the *Criminal Law (Legal Representation) Act 2001* is to be in Form 3.
(2) The assurance to be given by an unrepresented defendant pursuant to Section 8(3) of the *Criminal Law (Legal Representation) Act 2001* is to be in Form 6.
- IV-6.05** Where upon arraignment or attendance for arraignment:-
(a) a person committed for trial pleads not guilty to an offence;
(ab) an issue of fitness to stand trial has been raised and no plea has been entered;
(b) a person committed for trial pleads guilty to all offences with which he is charged but it appears that there is to be a dispute as to the facts upon which he is to be sentenced;
(c) it appears that there will be a dispute as to the facts in respect of a person committed for sentence.
A directions hearing is to be held as directed by the Court.
- IV-6.06** 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 3.06;
(d) the directions hearing will be held in court as in chambers.
- IV-6.07** (1) On a directions hearing under Rule 6 the Court may without the need for any written application under Rule 9:
(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 pursuant to Section 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;
 - (iiiA) abridgment or extension of the time for service of a subpoena.
 - (iv) permitting inspection of documents produced on subpoena prior to the commencement of the trial;
 - (v) dispensation from compliance with the Rules relating to election for trial by Judge alone;
 - (vi) amending the Information;
 - (vii) abridging the time for service of a subpoena interstate under Section 30 of the *Commonwealth Service and Execution of Process Act 1992*;
 - (viiA) orders under Parts VI and 6C of the Evidence Act 1929 relating to obtaining evidence out of the State;
 - (viiB) issuing a bench warrant;
 - (viiC) the making of orders pursuant to sections 285BA(1), 285BB(1) and 285BB(4) of the *Criminal Law Consolidation Act, 1935*.
 - (viii) any other matter concerning the conduct of the case and of the trial.
- (2) Where any proceedings under (1)(e) is contested, the Court may direct that it be heard in open Court.

IV-6.08 Nothing contained in Rule 6.07 shall:-

- (a) restrict the power of the Chief Judge (or such other Judge as he may from time to time delegate the function of supervising the listing of trials for hearing) at any time of his own motion or at the request of any party to the proceedings to set aside or vary by an administrative direction any listing of any trial;
- (b) restrict the power of a Judge once a person committed for trial has been arraigned before him for trial to adjourn the trial or to give any other necessary directions as to how it is to proceed thereafter.

Pretrial Conferences

IV-7.01 Where a criminal trial is pending, a pretrial conference may be held before a Judge under and pursuant to these Rules.

IV-7.02 A pretrial conference may be convened by a Judge who is authorised by Rule 7.05 to convene such a conference of his own motion or on the application of a party.

IV-7.03 Except by permission of a Judge, no affidavit shall be filed in relation to any pretrial conference.

IV-7.04 A Judge may, after hearing the parties or their counsel, order the conduct of a pretrial conference then and there or at a time and on a day specified in the order.

IV-7.05 A pretrial conference may be convened or conducted by the Chief Judge, such other Judge as he may from time to time delegate the function of 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.

- IV-7.06** A pretrial conference shall be attended by counsel briefed to appear at the trial (or, if the attendance of any party's counsel is not practicable, by that party's solicitor), and subject to Rule 3.06, by the person committed for trial, and shall 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.
- IV-7.07** At a pretrial conference the Judge before whom the conference is held shall discuss with counsel and any unrepresented party such matters (including any arising by virtue of section 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.
- IV-7.08** Nothing said by or on behalf of a person committed for trial at a pretrial conference and no failure by a person committed for trial or his solicitor or counsel to answer a question at a pretrial conference shall be used in any subsequent trial or shall be made the subject of any comment at that trial.
- IV-7.09** For the purpose of giving effect to any agreement arrived at between the parties in the course of a pretrial 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.
- IV-7.10** Directions given at a pretrial conference may be added to or varied at an adjourned or subsequent pretrial conference.
- IV-7.11** An order made pursuant to Rule 7 shall be drawn up at the direction of and signed by the Judge.
- IV-7.12** Subject to these Rules and notwithstanding any rule of evidence or normal practice to the contrary, the trial of a person committed for trial shall be conducted in conformity with the provisions of any such order.
- IV-7.13** In the course of a pretrial 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.

IV-7.14 Notwithstanding any order made pursuant to Rule 7.09 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 any subject matter of the provision be conducted in accordance with the law generally and regularly applicable thereto.

IV-7.15 Nothing in these Rules, or any order made pursuant thereto, shall preclude a trial Judge from making any order or giving any direction at the trial that, in the opinion of a trial 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

IV-8.01 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) shall be made by issuing and serving an application in Form No. 1 in the schedule to this Part.

IV-8.02 Such application shall unless a Judge otherwise directs:-

- (a) be 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) be supported by any affidavit upon which the person committed for trial relies in support of the application, which affidavit shall be filed with the notice of the application;
- (c) be served with copies of any supporting affidavit upon all other interested parties as soon as possible after it has been filed;
- (d) be returnable before a Judge in open court whether he is to be the Judge upon the trial of the accused or not.

IV-8.03 When an application to quash proceedings or stay proceedings has been dismissed, no further application to quash or stay proceedings upon the same charges, or charges to substantially similar effect, upon the same or similar grounds, may be made or considered unless there has been a material change of circumstances, and the grounds of any such further application must be confined to such a change of circumstances.

Preliminary Applications

IV-9.01 Where 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;

(e) 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;

(f) a Judge directs that a written application should be made;

the application shall be made by issuing and serving an application in Form No. 1 in the schedule to this Part.

IV-9.02 Where an application is made under Rule 9.01 it shall state:-

(a) the order or orders sought;

(b) sufficient particulars of the grounds relied upon to enable any other party to have proper notice of whether the calling of evidence will be necessary in order to resolve the issues raised;

(c) the nature of any question of law sought to be raised.

IV-9.03 An application under Rule 9.01 shall be filed and served on all other parties not less than fourteen days prior to the date fixed for the hearing of the trial in such proceedings.

IV-9.04 The Registrar shall endorse the application with the date, time and place of its hearing.

IV-9.05 Where 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.

IV-9.06 No question or matter of a kind referred to in Rule 9.01 shall be raised at the trial of the proceedings unless application shall have been made in accordance with Rule 9 or unless the trial Judge shall in his discretion consider that there are circumstances which justify his waiving compliance with the Rule.

Arraignment of Persons Committed for Trial on more than one Charge

IV-10.01 If:-

(a) a person committed for trial is to be arraigned upon 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 in the exercise of his discretion allow that person to be arraigned in the manner provided by Rule 10.02.

IV-10.02 The arraignment pursuant to this Rule of a person committed for trial shall proceed in the following manner:-

(a) A true copy of the information shall be provided to the person either prior to or at the time of his arraignment;

(b) A summary of the offences charged shall be read to the person by a person directed by the Judge;

(c) The person shall either prior to or at the time of his arraignment write against each charge on a true copy of the information his plea to such charge;

(d) At the time of his arraignment, the person shall sign his name at the foot of

that true copy of the information and his signature shall be witnessed by his solicitor or counsel or, if the person shall not be represented, by a person directed by the Judge;

- (e) The Judge before whom the person has been so arraigned shall, in accordance with the signed copy of the information, record the respective pleas;
- (f) Where 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.

Proceedings under the Commonwealth *Proceeds of Crime Act 2002*

- IV-10A.01** Rule 10A applies to proceedings under the Commonwealth *Proceeds of Crime Act 2002* which for the purposes of this Rule only is referred to as ‘the Act’.
- IV-10A.02** Where any proceedings under the Act may be dealt with by the Court in its criminal jurisdiction any party may initiate those proceedings by an application in Form 1 which is to comply with Rule 9.
- IV-10A.03** An application under Rule 10A.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 6.07.
- IV-10A.04** 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.
- IV-10A.05** At any point before its final determination a Judge may direct that an application under the Act 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 applicable Civil Rules.

Proceedings under the *Criminal Assets Confiscation Act 2005*

- IV-10B.01** Rule 10B applies to proceedings under the *Criminal Assets Confiscation Act 2005* which for the purposes of this Rule only is referred to as “the Act”.
- IV-10B.02** Where any proceeding under the Act may be dealt with by the Court in its criminal jurisdiction any party may initiate those proceedings by an application in Form 1 which is to comply with Rule 9.
- IV-10B.03** An application under Rule 10B.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 6.07.
- IV-10B.04** 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.

Subpoenas

- IV–11.01** (1) In this Rule, 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.
- IV–11.02** (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.

IV-11.03

- (1) A subpoena must be in Form 8.
- (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.

IV-11.03A Alteration of date for attendance or production

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.
- (2) When notice is given under sub-rule (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.

- IV–11.04**
- (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 Rule 11.04 (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.
- IV–11.05**
- (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.
- IV–11.06**
- (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 11.05 (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 2 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 Rule 11.06 (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 15.
- (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.

- IV–11.07**
- (1) This Rule applies if an addressee produces a document or thing in accordance with Rule 11.06 (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.
 - (4) ***** deleted *****
 - (5) ***** deleted *****

IV–11.08 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.

- IV–11.09**
- (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 11.06 (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 11.06 (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 unless the addressee, a party or any person having a sufficient interest objects to the inspection under this Rule.
 - (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 Rule 11.09 (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 Rule 11.09 (9) subject to conditions or refuse to grant the application.

- IV-11.10** (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 15.

- (2) Unless the Court otherwise orders, the Registrar must not return any document or thing under Rule 11.10 (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 8A in the Schedule;
- (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.

- IV-11.11** (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 Rule 11.11 (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.

- IV-11.12** (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 11.05 (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) Rules 11.12 (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.
- IV-11.13** (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.

Contempt of Court

- IV-12.01** The provisions of Chapter 14 (Contempt of Court) of the *District Court Civil Rules 2006* apply *mutatis mutandis* in the criminal jurisdiction of the Court.

Court Records

- IV-14.01** The records of the Court in its criminal jurisdiction shall be in the custody and under the control of the Registrar.
- IV-14.02** 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 or bespeak a copy thereof on payment of the appropriate copying fee except to the extent that the same would be contrary to any Act, or Rule or order of the Court.
- IV-14.03** Subject to the provisions of section 54 of the Act and subject to the provisions of Rule 14.02, a person shall not be entitled to search or inspect any such record or to take or bespeak any copy thereof without first having obtained the permission of a Judge.

IV-14.04 No such record shall be taken out of the Court without the order of a Judge.

IV-14.05 Where 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) Subject to paragraph (f) of this Rule it shall 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;
- (b) 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;
- (c) Subject to compliance with any such conditions, the proper officer shall 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;
- (d) The Court or Tribunal to which any record is sent under this Rule shall keep it in safe custody and shall return it by registered post to the Registrar as soon as such Court or Tribunal no longer requires it;
- (e) A register shall be kept in the office of the Registrar containing a description of each record sent, the date when it is sent, the Court or Tribunal to which it is sent and the date of its return. The proper officer shall see that each record is duly returned within a reasonable time and shall make enquiries and report to the Registrar if it is not so returned;
- (f) In any case in which he 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) Notwithstanding 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, he 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 shall 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.

Exhibits

IV-15.01 The Registrar shall 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 shall 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.

IV-15.02 The Registrar shall keep a record of any order or direction of the trial Judge given under Rule 15.01.

IV-15.03 The Registrar shall cause a list of all of the exhibits put in during the trial to be

made.

- IV-15.04** The list of exhibits when completed shall form part of the record of proceedings.
- IV-15.05** For the purposes of this Rule a bundle of documents may be treated and counted as one exhibit.
- IV-15.06** Subject to Section 54 of the Act, the Trial Judge may at any time make such order as he thinks fit for the custody, disposal or production at the conclusion of the trial of any exhibit.
- IV-15.07** Subject to any order made pursuant to Rule 15.06 and subject to the Registrar not having received any notice of appeal, the exhibits shall be returned by the Registrar at the expiration of 21 days from the conclusion of the trial 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 shall be liable for any costs incurred by the Registrar in so returning such exhibit.
- IV-15.08** Where notice of appeal shall have been received by the Registrar prior to his returning the exhibits, then, subject to any order made by the trial judge pursuant to Rule 15.06, the Registrar shall retain the exhibits in his custody until he is required to transmit them to the Court of Criminal Appeal or until such time as it shall appear to him that the person who has given notice of appeal has not prosecuted his appeal in accordance with the Supreme Court Criminal Appeal Rules 1990.
- IV-15.09** 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 his appeal in accordance with the Supreme Court Rules, the Registrar shall return the exhibits in like manner to that prescribed and with similar consequences to those contained in Rule 15.07.
- IV-15.10** In the event that an exhibit shall be returned at a time when the due prosecution of an appeal shall be pending or authorised by law, the person to whom any exhibit is returned shall, so far as it is practicable having regard to the nature of the exhibit, keep it marked and labelled as before so that in the event of the prosecution of an appeal, he may be able to produce the exhibit so marked and labelled at the hearing of the appeal if he is required to do so.
- IV-15.11** 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.
- IV-15.12** Where 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.

Practitioners

- IV-16.01** A solicitor instructed to act for any person committed for trial or sentence shall, not less than seven days prior to that person's first appearance in the Court, give notice in writing to the Registrar that he is so acting, whereupon such solicitor shall become the solicitor on the record for such person and service of any document,

notice or proceeding authorised by the Act or these Rules to be served by or upon a solicitor so acting may be served by or upon him.

- IV-16.02** A legal practitioner instructed by a solicitor to appear in court to represent any person committed for trial or sentence shall announce to the Court the name of the solicitor who shall have instructed him. If such solicitor shall not previously have given notice pursuant to Rule 16.01, he shall thereafter be deemed to have done so.
- IV-16.03** A solicitor who shall have given notice in accordance with Rule 16.01, or who shall be deemed to have given such notice by virtue of Rule 16.02, shall be deemed to be the solicitor acting for the person on whose behalf he has given or been deemed to have given notice until notice of change of solicitor has been duly given pursuant to Rule 16.04 or an order has been made pursuant to Rule 16.05.
- IV-16.04** Any person committed for trial or sentence who has instructed a solicitor shall be at liberty to change his solicitor without any order for that purpose, but when any such change is made he or his new solicitor shall give notice in writing to the Registrar of the name and place of business of the new solicitor.
- IV-16.05** Where a solicitor who has acted for any person committed for trial or sentence has ceased so to act and notice of change has not been given in accordance with the provisions of Rule 16.04, the solicitor may make application in writing for an order that he cease to be the solicitor on the record for that person. Unless a Judge otherwise directs, a copy of such application shall be served upon the person committed for trial or sentence. Any such application shall be heard by a Judge who may make such order thereon as is considered appropriate.
- IV-16.06** Unless and until the solicitor on the record for a person committed for trial or sentence has obtained an order that he shall have ceased to be the solicitor on the record for that person, he shall be considered the solicitor of that person until the final conclusion of the proceedings before the Court.

Miscellaneous Matters

- IV-17.01** The Court shall have power at any time to 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.
- IV-17.02** 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 pretrial conference) either of his 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, which 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. Any such list and copies of the documents referred to therein may be ordered to be filed and served either in the form of a typewritten engrossment or in such electronic form as the Judge may specify, or both.

- IV-17.03** When an order is made by the Court pursuant to section 269O of the *Criminal Law Consolidation Act 1935*, the warrant to be issued by the Court may be in the Form 4 to these Rules.
- IV-17.04** When an order is made by the Court pursuant to section 269U of the *Criminal Law Consolidation Act 1935*, the warrant to be issued by the Court may be in the Form 5 to these Rules.
- IV-17.05** The Masters have the power, authority and jurisdiction to make interlocutory orders in criminal proceedings governed by Part IV only in respect of:
- (a) the listing and delisting of matters for trial;
 - (b) the taxation of costs;
 - (c) any matter referred to them by a Judge.
- IV-17.06** An application under sections 269P or 269U of the *Criminal Law Consolidation Act 1935* (other than a telephone application under section 269U(1)) is to be in Form 7.

Victim Impact Statements

- IV-19.01** A person wishing to furnish the Court with a victim impact statement under s7(2a) or s7A of the *Criminal Law (Sentencing) Act 1988* or s269R (3) of the *Criminal Law Consolidation Act 1935* shall provide such statement in writing to the Director of Public Prosecutions (the DPP).
- IV-19.02** A copy of the statement shall 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 *Criminal Law Consolidation Act 1935*.
- IV-19.03** The DPP may apply 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.
- IV-19.04** The presiding judge shall appoint the time at which the statement will be read 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.
- IV-19.05** If the person providing the statement is not in the Court when the presiding judge gives directions pursuant to Rule IV-19.04, the DPP shall advise the person of the time fixed by the Court for the reading or playing of the statement.

- IV-19.06** 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.
- IV-19.07** The presiding judge may direct that irrelevant material in the statement not be read or played to the Court.
- IV-19.08** A person who has furnished a statement in accordance with s7A(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

- 19A.01** In this rule “community impact statement” means “a neighbour impact statement” or a “social impact statement” as defined in s7B of the *Criminal Law (Sentencing) Act 1988*.
- 19A.02** If the DPP 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 shall 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 *Criminal Law Consolidation Act 1935*.
- 19A.03** Subject to Rule 19A.04 the presiding judge shall 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.
- 19A.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.
- 19A.05** The presiding judge may direct that irrelevant material in the statement not be read out to, or taken into account by, the Court.

Admission of facts by the defence

- IV-20.01** An application by the Director of Public Prosecutions for permission to serve on an unrepresented defendant a notice to admit specified facts pursuant to section 285BA of the *Criminal Law Consolidation Act 1935* is to be in Form 9 and, unless the Court otherwise orders, must be filed in the Court and served on the defendant no later than 14 days prior to the first directions hearing.
- IV-20.02** A notice to the defendant or the defendant’s solicitor to admit specified facts pursuant to section 285BA of the *Criminal Law Consolidation Act 1935* is to be in Form 10.
- IV-20.03** The defence response to a notice to admit specified facts is to be in Form 11.

Notification by the defence of an intention to adduce certain kinds of evidence

- IV-21.01** An application by the Director of Public Prosecutions 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 section 285BB(1) of the *Criminal Law Consolidation Act 1935* is to be in Form 9.
- IV-21.02** Unless the Court otherwise directs, an application under Rule IV-21.01 is to be filed in the Court and served on the defence no later than 14 days prior to the first directions hearing.
- IV-21.03** An order made pursuant to section 285BB(1) requiring the defence to give the Director of Public Prosecutions notice of an intention to adduce evidence is to be in Form 12.
- IV-21.04** A notice of intention to adduce evidence in response to an order made pursuant to section 285BB(1) is to be in Form 13.

Notification by the defence pursuant to an order made under Section 285BB(4) of the *Criminal Law Consolidation Act 1935* advising whether it consents to dispensing with the calling of certain prosecution witnesses.

- IV-22.01** An application by the Director of Public Prosecutions pursuant to section 285BB(4) of the *Criminal Law Consolidation Act 1935* for an order requiring the defence to notify the Director of Public Prosecutions in writing whether it consents to dispensing with the calling of certain prosecution witnesses is to be in Form 9 and, unless the Court otherwise orders, must be filed in the Court and served on the defence no later than 14 days prior to the first directions hearing.
- IV-22.02** An order made pursuant to section 285BB(4) of the *Criminal Law Consolidation Act 1935* requiring the defence to give notification pursuant to that section is to be in Form 14.
- IV-22.03** The defence response to an order made under section 285BB(4) of the *Criminal Law Consolidation Act 1935* is to be in Form 15.

Notice of intention by the defence to call expert evidence

- IV-23.01** Notice required by section 285BC of the *Criminal Law Consolidation Act 1935* of an intention by the defence to call expert evidence is to be in Form 16.

Matters committed for trial to a Circuit Court

- IV-24.01** Unless the Court otherwise orders, applications by the Director of Public Prosecutions for the making of orders pursuant to sections 285BA(1), 285BB(1) and 285BB(4) of the *Criminal Law Consolidation Act 1935* in a matter committed for trial to a Circuit Court must be filed in the Court and served on the defence no later than 14 days prior to the date appointed for the commencement of the circuit.
- IV-25.01** 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.

- IV-25.02** The procedure and powers of the Court on a directions hearing under Rule IV-25.01 shall be the same as those which apply to a directions hearing under Rule IV-6.

Appeals under section 57 of the *Child Sex Offenders Registration Act 2006*

- IV-26** An appeal to the Court pursuant to section 57 of the *Child Sex Offenders Registration Act 2006* is governed by the *District Court Civil Rules 2006*.

Note - there are no rules 27 to 29

Applications for special arrangements for the giving of evidence by vulnerable witnesses under section 13a of the *Evidence Act 1929*

- IV-30.01** An application for special arrangements for the giving of evidence by a vulnerable witness shall be made by issuing and serving on the other party (“the respondent”) an application in Form 21.
- IV-30.02** The application shall 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 14 days of being filed.
- IV-30.03** When the respondent objects to the application, a notice of objection shall be made in Form 22.
- IV-30.04** 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.
- IV-31** **Note** – There is no Rule IV-31 in the District Court.

Notices of Intention to Adduce Evidence of Discreditable Conduct under s 34P of the *Evidence Act 1929*

- IV-32.01** The Notice required by s 34P(4) of the Evidence Act 1929 of an intention to adduce evidence of a discreditable conduct is:
- (a) in the case of a Notice being given by the Director of Public Prosecutions (State or Commonwealth), to be in Form 25;
 - (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 26.
- IV-32.02** 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 of Public Prosecutions (State or Commonwealth), 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.
- IV-32.03** 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 27.

IV-32.04 The Notice of Objection under Rule 32.03 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 of Public Prosecutions (State or Commonwealth), 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.

IV- 32.05 The Court may enlarge or shorten the time within which any Notice under this Rule may be filed and served.

Form 3
Certificate Under Section 8 of the *Criminal Law (Legal Representation) Act 2001*

R v

1. I, of
act for the abovenamed 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

.....

[Signed]

Form 4

DISTRICT COURT

Criminal Law Consolidation Act 1935 - Section 269O

File No:

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 District 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*. 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.

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.

.....
Judge

Form 5

DISTRICT COURT

Criminal Law Consolidation Act 1935 - section 269U

File No:

Particulars of Defendant

Name:

Date of Birth:

Address:

Other Details

Offence/s charged:

Section and Act under which offence/s charged:

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 was committed to detention with a limiting term pursuant to Part 8A of the *Criminal Law Consolidation Act*. The defendant was subsequently released on licence but on the day of , the District 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.

.....
Judge

Form 5A

DISTRICT COURT

Criminal Law Consolidation Act 1935 - section 269X(1)

WARRANT OF REMAND IN CUSTODY

File No:

Particulars of Defendant

Name:

Date of Birth:

Address:

Other Details

Offence/s charged:

Section and Act under which offence/s charged:

Date Warrant issued:

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

The District 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 James Nash House and you, the Minister of Health, are directed to detain the defendant until the conclusion of the investigation.

.....
Judge

* Delete whichever is inapplicable.

Form 5B

DISTRICT COURT

Criminal Law Consolidation Act 1935 - section 269X(1)

WARRANT OF REMAND IN CUSTODY

File No:

Particulars of Defendant

Name:

Date of Birth:

Address:

Other Details

Offence/s charged:

Section and Act under which offence/s charged:

Date Warrant issued:

Correctional 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 District 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 correctional institution referred to above and you, the Chief Executive, Department of Correctional Services, are directed to detain the defendant in that institution until the conclusion of the investigation.

.....
Judge

* Delete whichever is inapplicable.

Form 5C

DISTRICT COURT

Criminal Law Consolidation Act 1935 - section 269X(2)

WARRANT OF REMAND IN CUSTODY

File No:

Particulars of Defendant

Name:

Date of Birth:

Address:

Other Details

Offence/s charged:

Section and Act under which offence/s charged:

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 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 James Nash House and you, the Minister of Health, 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.

.....
Judge

Form 5D

DISTRICT COURT

Criminal Law Consolidation Act 1935 - section 269X(2)

WARRANT OF REMAND IN CUSTODY

File No:

Particulars of Defendant

Name:

Date of Birth:

Address:

Other Details

Offence/s charged:

Section and Act under which offence/s charged:

Date Warrant issued:

Correctional 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 and you, 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.

.....
Judge

Form 6

The Queen v

Court of Trial

ASSURANCE PURSUANT TO CRIMINAL LAW (LEGAL REPRESENTATION) ACT 2001 section 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

.....
[Signature of defendant]

Form 7

APPLICATION

(Name and address of applicant) applies to the District Court under Section of the *Criminal Law Consolidation Act* against (full name of the defendant) for the following orders:

(Set out the orders sought.)

DATED.....

.....

Signed by applicant.

The above application will be heard by a Judge on (insert time and date of hearing) in a courtroom at the Sir Samuel Way Building, Victoria Square, Adelaide.

.....
Registrar of the Court.

FORM 8
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)*

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 2 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 or 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

Insofar 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.

Insofar 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 2 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 the 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 a copy of it 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 insofar 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. Insofar 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 there more than one address is so specified, at any one of those addresses, so that they are received not less than 2 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' 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 the 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.

Form 8A

SUBPOENA – DECLARATION BY ADDRESSEE

(RULE IV-11.10)

In the District Court
File No:

R v

Notice to 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]

.....

Form 9

The Queen v _____

APPLICATION BY DIRECTOR OF PUBLIC PROSECUTIONS

The Director of Public Prosecutions for the State/Commonwealth hereby applies to the Court pursuant to _____ (refer to section) of the *Criminal Law Consolidation Act, 1935* for the making of the following orders:

(Set out the orders sought)

Dated the _____ day of _____ 20 .

.....
Director of Public Prosecutions for the State/Commonwealth

TAKE NOTICE that the above application will be heard on the _____ day of _____, 20 at _____ a.m./p.m. at Sir Samuel Way Building, Victoria Square, Adelaide.

Dated the _____ day of _____, 20 .

.....
Registrar

Form 10

The Queen v _____

NOTICE TO ADMIT FACTS

Criminal Law Consolidation Act, 1935 – Section 285BA

To _____ (name of defendant).

The Director of Public Prosecutions seeks admissions from you in relation to 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 or within such time as the Court may fix on an application by you.
- 2 Your response to the notice is to be in Form No. 11 of the District Court (Criminal and Miscellaneous) Rules Part IV.
- 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 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

Form 11

The Queen v _____

RESPONSE TO NOTICE TO ADMIT FACTS ISSUED PURSUANT TO SECTION 285BA OF THE CRIMINAL LAW CONSOLIDATION ACT, 1935

TO THE DIRECTOR OF PUBLIC PROSECUTIONS FOR THE STATE/Commonwealth

In response to the Notice to Admit Facts dated the _____ day of _____ 20 :
I admit the facts set out in*

I do not admit the facts set out in*

Dated the _____ day of _____ 20 .

.....
Defendant

* Refer to paragraphs in the notice to admit facts.

Form 12

The Queen v _____

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

Criminal Law Consolidation Act, 1935 – Section 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 13 of the District Court (Criminal and Miscellaneous) Rules Part IV 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 .

.....
Judge

* Delete whichever is inapplicable

Form 13

The Queen v _____

NOTICE OF INTENTION TO ADDUCE CERTAIN KINDS OF EVIDENCE

Criminal Law Consolidation Act, 1935 – Section 285BB(1)

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

I _____ of _____

HEREBY STATE:

- 1 I am the defendant in these proceedings.
- 2 The defence intends to introduce at the trial evidence of the following kind(s):

Dated the _____ day of _____ 20 .

.....
Defendant

Form 14

The Queen v _____

ORDER REQUIRING DEFENCE TO NOTIFY THE DIRECTOR OF PUBLIC PROSECUTIONS WHETHER IT CONSENTS TO DISPENSING WITH THE CALLING OF CERTAIN PROSECUTION WITNESSES

Criminal Law Consolidation Act, 1935 – Section 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 15 of the District Court (Criminal and Miscellaneous) Rules Part IV 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 .

.....
Judge

* Cross out whichever is inapplicable.

Form 15

The Queen v _____

RESPONSE TO ORDER REQUIRING DEFENCE TO NOTIFY THE DIRECTOR OF PUBLIC PROSECUTIONS WHETHER IT CONSENTS TO DISPENSING WITH THE CALLING OF CERTAIN PROSECUTION WITNESSES

Criminal Law Consolidation Act, 1935 – Section 285BB(4)

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

I _____ of _____

HEREBY STATE:

- 1 I am the defendant in these proceedings.
- 2 I consent to the prosecution dispensing with the need to call witnesses to establish the admissibility of the following:

- 3 I do not consent to the prosecution dispensing with the need to call witnesses to establish the following:

Dated the _____ day of _____ 20 .

.....
Defendant

* Cross out whichever is inapplicable.

Form 16

The Queen v _____

NOTICE OF INTENTION TO INTRODUCE EXPERT EVIDENCE

Criminal Law Consolidation Act, 1935 – Section 285BC

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

I _____ of _____

HEREBY STATE:

- 1 I am the defendant in these proceedings.
- 2 The defence intends to introduce at the trial /during submissions on sentence*, expert evidence from
[Set out name(s) and qualifications of the expert(s).]

- 3 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

NOTE: If the Director of Public Prosecutions receives notice of an 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.

Note: Form 23- There is no Form No 23 in the District Court

Form 24
District Court

Notice of Objection to Appearance by Audio Visual Link

R v [*Insert name of accused*]

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

object to..... [*insert full name of person in custody*]
appearing by audio visual link in the District 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*]

Form 25

In the DISTRICT COURT

File No.:

R v _____

**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 adduce evidence of discreditable conduct of *[insert name]* and provides the following particulars:

1. the nature of the discreditable conduct: _____

2. the witness or witnesses from whom the evidence is to be led:

3. the use or uses of the evidence which are said to be permissible uses under s 34P(2):

4. if the evidence is to be adduced as circumstantial evidence of a fact in issue, the fact or facts in issue to which the evidence relates:

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 27 which sets out the grounds of your objection.

Form 26

In the DISTRICT COURT

File No.:

R v _____

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 gives the following 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 theday of20

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.

Form 27

In the DISTRICT COURT

File No.:

R v _____

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 grounds of objection are: [*set out the grounds of objection*]

Dated the.....day of20

.....
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.