# JOINT CRIMINAL RULES 2022

# SOUTH AUSTRALIA

**The Joint Criminal Rules 2022 that came into operation on 29 August 2022 (*South Australian Government Gazette* 26 August 2022, pages 2750-4055) have been varied by Joint Criminal Amending Rules:**

| *No.* | *Date* | *Gazette* | *Date of operation* |
|---|---|---|---|
| 1 | 13 December 2022 | 22 December 2022, p. 6946 | 3 January 2023 |
| 2 | 6 June 2023 | 22 June 2023, p. 1874 | 3 July 2023 |
| 3 | 11 December 2023 | 22 December 2023, p. 4212 | 1 January 2024 |
| 4 | 7 August 2024 | 21 August 2024, p. 2472 | 26 August 2024 |
| 5 | 6 December 2024 | 12 December 2024, p. 4673 | 16 December 2024 |
| 6 | 26 March 2025 | 3 April 2025, p. 688 | 3 April 2025 |
| **7** | **10 April 2025** | **24 April 2025, p. 790** | **28 April 2025** |

**The Chief Justice of the Supreme Court, the Chief Judge of the District Court, the Senior Judge of the Environment Resources and Environment Court, the Judge of the Youth Court and the Chief Magistrate of the Magistrates Court make the following Joint Criminal Rules 2022 under the *Supreme Court Act 1935*, the *District Court Act 1991*, the *Environment Resources and Development Court Act 1993*, the *Youth Court Act 1993* and the *Magistrates Court Act 1991*, and all other enabling powers.**

# Table of Contents—

**Note—**

The numbering convention adopted in these Rules provides for a gap in the numbering of rules between chapters. The rule numbering in each chapter begins with a new factor of ten. For example, the last rule in Chapter 1 is rule 3 but the first rule in Chapter 2 is rule 11.

**Note—**

Each individual form in the Index to Schedule 2—Forms is available separately on the *Rules, Forms and Fees* page of the CAA website.

# Chapter 1—Preliminary

## Part 1—Introduction

### 1.1—Title

These Rules may be cited as the *Joint Criminal Rules 2022*.

### 1.2—Commencement

These Rules come into effect—

(a) subject to subrule (b), on the date of their publication in the Gazette;

(b) if these Rules are published in the Gazette on a day other than a Monday, on the date that is the first Monday following that publication.

### 1.3—Repeal

The Previous Rules are repealed.

### 1.4—Transition

(1) Unless the Court otherwise orders—

(a) these Rules apply to—

(i) a proceeding commenced; and

(ii) a step in a proceeding taken,

on or after the commencement date; and

(b) the Previous Rules continue to govern a step in a proceeding taken before the commencement date.

(2) If the time to commence or take a step in a proceeding under the Previous Rules has not expired as at the commencement date, the time to commence or take a step in the proceeding continues to be governed by the Previous Rules (unless these Rules provide for a longer time).

(3) Despite subrule (1), provisions of the Previous Rules applying to the name of the informant in a Lower Court proceeding commenced before the commencement date or in an appeal (whenever commenced) from or in respect of such a Lower Court proceeding continue to apply after the commencement date in respect of that Lower Court proceeding or any such appeal.

(4) Despite rules 75.1(3), 82.3(1) and 93.2(4), unless the Court otherwise orders, if material that would have been contained in an evidentiary material brief if these Rules had been in force previously has been filed in a proceeding before the commencement date, any evidentiary material brief filed in the proceeding in that court or another court to which the proceeding is transferred or the defendant or youth committed for trial or sentence must be filed in hard copy form.

(5) Despite rules 75.1(4), 82.3(2) and 93.2(5), unless the Court otherwise orders, if material that would have been contained in an evidentiary material brief if these Rules had been in force previously has been served in a proceeding before the commencement date, any evidentiary material brief served in the proceeding in that court or another court to which the proceeding is transferred or the defendant or youth committed for trial or sentence must be served in hard copy form.

### 1.5—Object

(1) The object of these Rules is to facilitate the just, efficient, timely and cost-effective determination of proceedings governed by these Rules.

**Notes—**

Section 3 of the *Legislation Interpretation Act 2021* generally applies the provisions of the Act to "legislative instruments".

These Rules are a "legislative instrument" within the meaning of the *Legislation Interpretation Act 2021*.

Section 14 of the *Legislation Interpretation Act 2021* provides that, in interpreting a provision of an Act or a legislative instrument, the interpretation that best achieves the purpose or object of the Act or the instrument (whether or not that purpose or object is expressly stated in the Act or instrument) is to be preferred to any other interpretation.

(2) The practice, procedure and processes of the Court shall have as their goals—

(a) the elimination of any lapse of time from the commencement of a proceeding to its final determination beyond that reasonably required for the identification of the factual and legal issues in dispute between the parties and the preparation of the case for trial or other determination; and

(b) encouraging the resolution of proceedings to the extent possible or of issues in proceedings.

(3) These Rules are not intended to defeat a proper prosecution by or frustrate a proper defence of a party who is genuinely endeavouring to comply with the procedures of the Court.

(4) Proceedings in the Court will be managed and supervised with a view to best attaining the objects in subrules (1) and (2).

(5) These Rules are to be construed and applied, and the processes and procedures of the Court conducted, so as to best attain the objects in subrules (1) and (2).

### 1.6—Application of Rules

(1) Subject to the following subrules, unless the Court orders otherwise, these Rules apply to all criminal proceedings and appellate proceedings in the Supreme Court, District Court, Environment, Resources and Development Court, Youth Court and Magistrates Court of South Australia.

(2) A provision of these Rules appearing under a heading referring to Lower Courts only applies as a rule of the Lower Courts and does not apply as a rule of the Higher Courts.

(3) A provision of these Rules appearing under a heading referring to Higher Courts only applies as a rule of the Higher Courts and does not apply as a rule of the Lower Courts.

(4) A provision of these Rules appearing under a heading referring to a specified Court or Courts only applies as a rule of the specified Court or Courts and does not apply as a rule of another Court.

## Part 2—Interpretation

### 2.1—Definitions

(1) In these Rules—

***address for service***—see rule 35.2;

***alibi*** means a case or suggestion that the defendant or youth was in a particular place or within a particular area at a particular time and therefore tending to rebut an allegation made against the defendant or youth in the proceeding;

***answer charge appearance*** means a hearing in a committal proceeding that is after the committal appearance,

and includes—

(a) a hearing that when listed is intended to comprise an answer charge hearing within the meaning of section 109(1)(b) and section 113 of the Procedure Act;

(b) a hearing of a committal oral examination application;

(c) a hearing at which a witness is cross-examined pursuant to leave granted under section 114(1)(b)(ii) of the Procedure Act; and

(d) a hearing that comprises an answer charge hearing within the meaning of section 109(1)(b) and sections 113 and 114 of the Procedure Act;

***answer charge date*** means the date fixed for the answer charge appearance;

***answer charge contested hearing*** means—

(a) a hearing of a committal subpoena application;

(b) a hearing of a committal oral examination application;

(c) a hearing at which a witness is cross-examined pursuant to leave granted under section 114(1)(b)(ii) of the Procedure Act; or

(d) a hearing of a no case submission after a defendant or youth has given a no case submission notice;

***appeal***—see rule 181.1;

***appellant***—see rule 181.1;

***appellate hearing***—see rule 181.1;

***appellate proceeding***—see rule 181.1;

***audio link*** means audio communication between the Court and a participant by telephone or other electronic means for the purpose of a court hearing;

***audio visual link*** means audio visual communication between the Court and a participant by video or other electronic means for the purpose of a court hearing;

***authorised witness*** means—

(a) a person authorised under section 27A and Schedule 1 clause 2 of the *Oaths Act 1936* to take an affidavit in South Australia; and

**Note—**

Section 27A and Schedule 1 clause 2 of the *Oaths Act 1936* authorise the following persons to take affidavits:

(a) a Commissioner for taking affidavits in the Supreme Court;

(b) a justice of the peace;

(c) a police officer, other than a police officer who is a probationary constable;

(d) a person admitted and enrolled as a notary public of the Supreme Court;

(e) any other person of a class prescribed by regulation.

Regulation 7 of the *Oaths Regulations 2021* prescribes the additional class of any person empowered, authorised or permitted by or under any Act or rules of a court or tribunal to take affidavits.

(b) in respect of an affidavit made outside South Australia—a person authorised to take an affidavit under the laws of the place where the affidavit is made;

***Bail Act*** means the *Bail Act 1985*;

***bail application*** means an application relating to bail and includes—

(a) an application for release on bail in accordance with sections 4 and 8 of the Bail Act;

(b) an application for review of a decision by a police officer on an application for under section 15 of the Bail Act;

(c) an application for a determination that a person is a serious and organised crime suspect under section 3A(1) of the Bail Act;

(d) an application to revoke a bail agreement or issue a warrant under section 6(4), 18(1) or 19A of the Bail Act;

(e) an application to vary a condition of a bail agreement under section 6(4) of the Bail Act;

(f) an application to vary or revoke a guarantee in respect of a bail agreement under section 7(4) of the Bail Act;

(g) an application for estreatment under section 19 of the Bail Act; or

(h) any other application under the Bail Act except an application for review of a bail decision governed by Chapter 9, Part 2 of these Rules;

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

***business day*** means a day other than a Saturday, Sunday or public holiday;

***by consent*** means with the written consent or consent given orally in court by all affected parties;

***CAA website*** means the website operated by the Courts Administration Authority to which the public has access;

***charge category*** means—

(a) if the offence is a State offence—a major indictable offence, a minor indictable offence or a summary offence as defined by section 5 of the Procedure Act;

(b) if the offence is a Commonwealth offence—a Commonwealth indictable offence or a summary offence as defined by section 4H of the Crimes Act; or

(c) in either case—a summary offence not punishable by imprisonment or detention;

***charge determination appearance*** means a hearing in a Lower Court in a proceeding in which the Information includes a charge of an indictable offence, when it has not

been determined that the defendant or youth is to be tried or sentenced in the Lower Court, that is listed for hearing after a charge determination is expected to have been made;

***Chief Executive*** means—

(a) in respect of a proceeding in the Youth Court—the Chief Executive within the meaning of the *Youth Justice Administration Act 2016* (presently the Chief Executive of the Department of Human Services); or

(b) in respect of a proceeding in a Court other than the Youth Court—the CE within the meaning of the *Correctional Services Act 1982* (presently the Chief Executive of the Department for Correctional Services);

***Chief Judge*** means the Chief Judge of the District Court;

***Chief Judicial Officer*** means—

(a) in respect of the Supreme Court—the Chief Justice or acting Chief Justice;

(b) in respect of the District Court—the Chief Judge or acting Chief Judge;

(c) in respect of the Environment, Resources and Development Court—the Senior Judge or acting Senior Judge of that Court;

(d) in respect of the Youth Court—the Judge or acting Judge of that Court; and

(e) in respect of the Magistrates Court—the Chief Magistrate or acting Chief Magistrate;

***Chief Justice*** means the Chief Justice of the Supreme Court;

***Chief Magistrate*** means the Chief Magistrate of the Magistrates Court;

***commencement date*** means the date on which these Rules come into effect under rule 1.2;

***Commissioner of Police*** means the Commissioner within the meaning of the *Police Act 1988*;

***committal appearance*** means a hearing in a committal proceeding that is after a pre-committal appearance and before the answer charge appearance,

and includes—

(a) a hearing or adjourned hearing that when listed is intended to comprise a committal appearance within the meaning of section 109(1)(a) and section 110 of the Procedure Act; and

(b) a hearing that comprises a committal appearance within the meaning of section 109(1)(a) and section 110 of the Procedure Act;

***committal oral examination application*** means an application under section 114(1)(b)(ii) of the Procedure Act for leave to call a witness for oral examination;

***committal proceeding*** means a proceeding—

(a) in the Magistrates Court in which the highest charge category is a major indictable offence and it has not been determined that the defendant is to be sentenced in the Magistrates Court;

(b) in the Magistrates Court in which the highest charge category is a Commonwealth minor indictable offence and the prosecution and defendant

have not consented under Chapter 3 Part 6 for trial or sentence in the Magistrates Court;

(c) in the Magistrates Court in which the highest charge category is a Commonwealth indictable offence and the prosecution has not requested under Chapter 3 Part 6 that the proceeding be heard and determined in the Magistrates Court;

(d) in the Magistrates Court or Environment Resources and Development Court in which the highest charge category is a minor indictable offence and the defendant has elected for trial or sentence in a Higher Court;

(e) in the Youth Court in which the highest charge category is a homicide-related offence; or

(f) in the Youth Court in which the highest charge category is not a homicide-related offence and the youth has elected, or the prosecution has requested, that the youth be dealt with as an adult in a Higher Court;

***committal subpoena*** means a subpoena to produce issued for the purpose of committal proceedings and includes a subpoena governed by section 107 of the Procedure Act;

***committal subpoena application*** means an application under section 107(b) of the Procedure Act; for leave to issue a subpoena to produce in relation to proceedings for an indictable offence which application is made before committal proceedings relating to the offence have been completed in accordance with Part 5 Division 3 of the Procedure Act;

***Commonwealth indictable offence*** means an indictable offence within the meaning of section 4G of the Crimes Act;

***Commonwealth minor indictable offence*** means a Commonwealth indictable offence—

(a) that is—

(i) punishable by imprisonment for a period not exceeding 10 years other than an offence against Division 80, 82, 91 or 92 of the *Criminal Code* enacted by the *Criminal Code Act 1995* (Cth); or

(ii) not punishable by imprisonment and punishable by a pecuniary penalty of not more than 600 penalty units for an individual or 3,000 penalty units for a body corporate;

(b) that is not created by a law that provides that the offence may be heard and determined by a court of summary jurisdiction;

(c) that does not relate to property whose value does not exceed $5,000; and

(d) in respect of which a contrary intention does not appear;

**Note—**

See sections 19J and 19JA of the Crimes Act.

***company*** means a company as defined by section 9 of the *Corporations Act 2001* (Cth);

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

***Court*** means—

(a) the Supreme Court, District Court, Environment, Resources and Development Court, Youth Court or Magistrates Court as applicable and, when the context indicates, a judicial officer having power to act in the manner the subject of the relevant provision of these Rules; and

(b) in the context of Chapter 9 Part 5, means the Court of Appeal or a Judge when a Judge has power to act in the manner the subject of the relevant provision of these Rules;

the ***Court of Appeal*** means the Court of Appeal as defined in section 5(1) of the *Supreme Court Act 1935*;

***court officer*** means a judicial officer or an officer or employee of the Court Administration Authority working in the Court;

***Crimes Act*** means the *Crimes Act 1914* (Cth);

***criminal proceeding*** or ***proceeding*** means a criminal proceeding against a person for an offence including (without limitation) a committal proceeding, a proceeding in relation to bail and a proceeding in relation to sentence or an application to vary, revoke or enforce an order made in such a proceeding but does not, unless the context otherwise indicates, include an appellate proceeding;

***cross appeal***—see rule 181.1;

***directions hearing*** means any hearing in a ***cross appeal*** or appellate proceeding other than a pre-trial conference, trial, sentencing hearing or final hearing;

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

***document***—see definition in section 4 of the *Legislation Interpretation Act 2021*;

***electronic material*** means evidentiary material in native format (for example photographs in JPEG format or audio visual material in MPEG format) other than material that is in or has been converted into pdf format;

***Electronic System***—see rule 22.1;

***email service***—see rule 33.3;

***Evidence Act*** means the *Evidence Act 1929*;

***evidentiary material*** means a document or thing of potential evidentiary value and includes a document or thing that the Court determines should be produced to determine whether it has evidentiary value;

***expert*** means a person having, or purporting to have, expertise or experience in a field qualifying them to give expert evidence within the field (and, to avoid doubt, includes a party, partner or associate of a party or person employed by a party);

***expert report*** means a written report by an expert relevant to issues in the proceeding in question;

***first arraignment date*** means—

(a) if the defendant was committed by a Lower Court for trial or sentence in the Supreme Court or District Court—the arraignment date fixed by the Lower Court under section 120(1) of the Procedure Act; or

(b) if the defendant was not committed by a Lower Court for trial or sentence—the arraignment date shown in the Information;

***fit to stand trial***—see definition of unfit to stand trial;

***hearing*** means a hearing (whether or not in the presence of the parties) and unless the context otherwise indicates—

(a) includes a directions hearing;

(b) includes a sentencing hearing;

(c) includes a pre-trial conference;

(e) includes an appellate hearing; but

(e) does not include a trial;

***Higher Court*** means the Supreme Court or District Court;

***homicide-related offence*** means homicide, or an offence consisting of an attempt to commit, or assault with intent to commit homicide;

***in chambers*** means a hearing, determination or making of an order by a judicial officer in the judicial officer's chambers or in a courtroom as if in the judicial officer's chambers (whether in the presence or absence of the parties);

***in court*** means a hearing, determination or making of an order by a judicial officer in a courtroom or via audio visual link or audio link, except one in a courtroom as if in the judicial officer's chambers;

***interested party***—see rule 23.1;

***Intervention Orders Act*** means the *Intervention Orders (Prevention of Abuse) Act 2009*;

***judicial officer*** means—

(a) in respect of the Supreme Court—a Justice or Auxiliary Justice of the Court;

(b) in respect of the District Court—a Judge or Auxiliary Judge of the Court or an Associate Judge or Judicial Registrar exercising power of the Court conferred by rule 11.2;

(c) in respect of the Environment, Resources and Development Court— a Judge of the Court or an Associate Justice or Judicial Registrar exercising power of the Court conferred by rule 11.3;

(d) in respect of the Youth Court—the Judge or a Magistrate of the Court or a Special Justice exercising power of the Court conferred by rule 11.4; and

(e) in respect of the Magistrates Court—a Magistrate of the Court or a Judicial Registrar, Special Justice or two Justices of the Peace exercising power of the Court conferred by rule 11.5;

***Juries Act*** means the *Juries Act 1927*;

***law firm*** means a law practice within the meaning of the *Legal Practitioners Act 1981* and includes—

(a) the Crown Solicitor, Australian Government Solicitor, Office of the Director of Public Prosecutions or any other government body practicing as solicitors;

(b) the Legal Services Commission, Aboriginal Legal Rights Movement, a community legal centre or any other body providing legal aid services practising as solicitors; and

(c) an in-house government, corporate or other solicitor;

**Note—**

It is the responsibility of a solicitor to ensure that the solicitor is lawfully entitled to so practice under the *Legal Practitioners Act 1981*. For example, section 51 of that Act identifies which legal practitioners are entitled to practise before a State court on behalf, amongst others, of the State Government, State Government bodies, the Legal Services Commission, community legal centres or the Law Society.

***law firm or office*** means a law firm or the SAPOL Prosecution Branch;

***lawyer*** means a law firm, a solicitor working in a law firm or a barrister;

***Lower Court*** means the Environment, Resources and Development Court, Youth Court or Magistrates Court;

***Lower Court costs scale***—see rule 159.3;

***major indictable offence*** means a major indictable offence within the meaning of section 5(3)(b) of the Procedure Act;

***mental competence***—see definition of mental incompetence;

***mental incompetence*** means—

(a) in the context of an Information alleging State offences—a defendant or youth was mentally incompetent to commit a charged offence within the meaning of section 269C of the Consolidation Act;

(b) in the context of an Information alleging Commonwealth offences—a defendant or youth was not criminally responsible for a charged offence under section 7.3 of the *Criminal Code* enacted by the *Criminal Code Act 1995* (Cth);

and ***mental competence*** has the reverse meaning;

***mentally incompetent***—see definition of mental incompetence;

***minor indictable offence*** means a minor indictable offence within the meaning of section 5(3)(a) of the Procedure Act;

***notifiable offence*** means—

(a) a qualifying offence within the meaning of the *Children and Young People (Safety) Act 2017*;

(b) a prescribed offence or presumptive disqualification offence within the meaning of the *Child Safety (Prohibited Persons) Act 2016*; or

(c) a disqualification offence or presumptive disqualification offence within the meaning of the *Disability Inclusion Act 2018*;

***original service***—see rule 33.7;

***party*** means an informant, defendant, the Crown, an applicant, an appellant, a respondent or an interested party in a proceeding or appellate proceeding;

***personal service***—see rule 33.1;

***post service***—see rule 33.4;

***pre-committal appearance*** means the first hearing in a committal proceeding, any adjourned hearing of the first hearing, the charge determination appearance and any adjournment of the charge determination appearance;

***prescribed form***—see rule 28.3;

***pre-trial conference***—see rule 76.3 and rule 101.1;

***pre-trial conference date*** means the date listed for a pre-trial conference or, if there is to be no pre-trial conference, the date when the matter is to be listed for trial;

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

***Previous Rules*** means—

(a) in the context of the Supreme Court—the *Supreme Court Criminal Rules 2014* and the *Supreme Court Criminal Supplementary Rules 2014*;

(b) in the context of the District Court—the *District Court Criminal Rules 2014* and the *District Court Criminal Supplementary Rules 2014*;

(c) in the context of the Environment, Resources and Development Court—Part 16 of the *Environment Resources and Development Rules 2003*; and

(d) in the context of the Youth Court—the *Youth Court (Young Offenders) Rules 2016* and the *Youth Court (General) Rules 2016*;

(e) in the context of the Magistrates Court—the *Magistrates Court Rules 1992*;

***priority proceeding*** means a proceeding in which a person—

(a) is charged with a serious and organised crime offence within the meaning of section 5(1) of the Consolidation Act and the proceeding is a "prescribed proceeding" within the meaning of section 127(2) of the Procedure Act;

(b) is a serious and organised crime suspect; or

(c) is charged with a sexual offence within the meaning of section 48B of the *Magistrates Court Act 1991*, section 50B of the *District Court Act 1991* or section 126A of the *Supreme Court Act 1935* where the alleged victim of the offence is a child or a person with a disability that adversely affects their capacity to give a coherent account of their experiences or to respond rationally to questions;

***Procedure Act*** means the *Criminal Procedure Act 1921*;

***proceeding***—see definition of criminal proceeding;

***prosecution*** means—

(a) in the context of a proceeding in a Lower Court—the informant;

(b) in the context of a proceeding in a Higher Court—the Director;

***public authority*** means—

(a) the Commissioner of Police;

(b) an officer of the Australian Federal Police;

(c) the Director;

(d) an (other) instrumentality, agency or officer of the Crown in right of the State or the Commonwealth having the legal capacity to institute and prosecute proceedings;

(f) a council constituted under the *Local Government Act 1999*;

(g) the Royal Society for the Prevention of Cruelty to Animals (SA) Inc; or

(h) an officer or employee of a body that is a public authority acting in that capacity;

***public officer*** means an officer or employee of a public authority acting in that capacity;

***Principal Registrar*** means—

(a) in respect of the Supreme Court—the Registrar or Acting Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(b) in respect of the District Court—the Registrar or Acting Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(c) in respect of the Environment, Resources and Development Court—the Registrar or Acting Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(d) in respect of the Youth Court—the Registrar or Acting Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(e) in respect of the Magistrates Court—the Principal Registrar or Acting Principal Registrar of the Court and includes a person to whom a function of the Principal Registrar has been delegated;

***Registrar*** means—

(a) in respect of the Supreme Court—the Registrar, a Deputy Registrar or a person acting as the Registrar or a Deputy Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(b) in respect of the District Court—the Registrar, a Deputy Registrar or a person acting as the Registrar or a Deputy Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(c) in respect of the Environment, Resources and Development Court—the Registrar or a person acting as the Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(d) in respect of the Youth Court—the Registrar or Deputy Registrar or a person acting as the Registrar or a Deputy Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(e) in respect of the Magistrates Court—the Principal Registrar, a Registrar, a Deputy Registrar or a person acting as the Principal Registrar, a Registrar or a Deputy Registrar of the Court;

***respondent***—see rule 23.1;

***responsible solicitor*** in a proceeding—see rule 24.3 and rule 25.3;

***Rules*** means the *Joint Criminal Rules 2022;*

***SAPOL*** means South Australia Police within the meaning of section 4 of the *Police Act 1988*;

***SAPOL Prosecution Branch*** means—

(a) the Prosecution Services Branch of SAPOL;

(b) the Professional Conduct Section of the Ethical and Professional Services Branch of SAPOL; or

(c) the Licensing Enforcement Branch of SAPOL;

***Senior Judge*** means the Senior Judge of the Environment, Resources and Development Court;

***sentence*** means—

(a) an order imposing or varying a penalty (for example imprisonment, a fine, a community service obligation or other obligation), including fixing, extending or negating a non-parole period;

(b) a decision to offer a defendant or youth an opportunity to enter into a bond, recognizance or other undertaking and entry into such a bond, recognizance or other undertaking;

(c) any other order affecting penalty, including a decision to discharge a defendant or youth without imposing a penalty or without recording a conviction;

(d) a costs order, an order for compensation or any other order that imposes an obligation for moneys to be paid in a proceeding; or

(e) any other order made in consequence of a defendant or youth being convicted or found guilty of an offence;

***sensitive material*** has the meaning given by section 67H of the Evidence Act;

***Sentencing Act*** means the *Sentencing Act 2017*;

***sentencing hearing*** means a hearing related to the orders to be made after a defendant or youth has pleaded or been found guilty, has been found unfit to plead or has been found mentally incompetent to commit an offence (including a hearing at which evidence is adduced or submissions made for that purpose or at which such orders are made);

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

***Service and Execution of Process Act*** means the *Service and Execution of Process Act 1992* (Cth);

***sheriff*** means the sheriff within the meaning of the *Sheriff's Act 1978* and where the context requires includes deputy sheriffs and sheriff's officers within the meaning of section 6 of the *Sheriff's Act 1978*;

***a State*** means a State of Australia, the Northern Territory or the Australian Capital Territory;

***the State*** means the State of South Australia;

***statutory provision*** includes—

(a) an Act within the meaning of the *Legislative Interpretation Act 2021* and, where applicable, legislation of another polity that would be an Act if made in or under the laws of South Australia;

(b) a legislative instrument within the meaning of the *Legislative Interpretation Act 2021* and, where applicable, an instrument of another polity that would be a legislative instrument if made in or under the laws of South Australia;

(c) these Rules and any other applicable rules of court; and

(d) a provision of such an Act, legislative instrument or rules of court;

***step*** in relation to a proceeding or appellate proceeding includes a document filed, process issued, action taken or order made in the proceeding;

***subpoena***—see rule 122.1;

***summary offence*** means a summary offence within the meaning of section 5(2) of the Procedure Act or section 4H of the Crimes Act as the context requires;

***trial*** means a hearing to determine whether the defendant or youth is guilty or not guilty of an offence charged or is unfit to stand trial or was mentally incompetent to commit an offence charged or whether the objective elements of an offence charged are established (and includes delivery of the verdict);

***trial date*** means the date listed for the trial to commence;

***unfit to stand trial*** means—

(a) in the context of an Information alleging State offences—a defendant or youth is mentally unfit to stand trial on a charge of an offence within the meaning of section 269H of the Consolidation Act;

(b) in the context of an Information alleging Commonwealth offences—a defendant or youth is unfit to be tried on a charge of an offence within the meaning of section 20B of the Crimes Act;

and ***fit to stand trial*** has the reverse meaning;

***Uniform Special Statutory Rules*** means *Uniform Special Statutory Rules 2022*;

***without notice*** means without serving or informing another party with or of an application to be made to the Court;

***witness statement*** means a witness statement in the form of an affidavit in compliance with section 111(4) or, if section 111(6) applies to the witness, in compliance with section 111(5) of the Procedure Act;

***Young Offenders Act*** means the *Young Offenders Act 1993*.

(2) In these Rules, unless the contrary intention appears, a term defined in the Bail Act, Consolidation Act, Crimes Act, Procedure Act or Sentencing Act that is not defined in these Rules has the same meaning when used in these Rules in respect of the Court governed by that Act.

**Notes—**

Section 7 of the *Legislation Interpretation Act 2021* provides that, if a word or phrase has a defined meaning, other parts of speech and grammatical forms of the word or phrase have, unless the contrary intention appears, corresponding meanings.

A term that is defined in this rule or at the beginning of a Chapter, Part, Division, Subdivision or in a rule is underlined to indicate that it is a defined term, unless it is a commonly used term.

However, an underlined term may bear a different meaning to the defined meaning where the context so indicates.

Certain commonly used terms are not underlined or hyperlinked to their definitions. They are:

***appeal***

***appellant***

***appellate proceeding***

***applicant***

***Bail Act***

***Commissioner of Police***

***Consolidation Act***

***Court***

***Crimes Act***

***Director***

***document***

***Evidence Act***

***judicial officer***

***Juries Act***

***law firm***

***lawyer***

***party***

***prescribed form***

***Procedure Act***

***proceeding***

***prosecution***

***respondent***

***Rules***

***Sentencing Act***

***Service and Execution of Process Act***

***statutory provision***

***Young Offenders Act***

***youth***

## 2.2—Calculation of time

(1) This rule applies to the calculation of time fixed by or under these Rules or an order of the Court and is subject to manifestation of a contrary intention.

(2) A reference to a ***day*** is a reference to a calendar day.

(3) If time is fixed by reference to a date or event, the day of the date or on which the event occurs is not to be counted.

**Examples—**

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

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

(4) When the time for a document to be filed is fixed prospectively, if that period would otherwise end on a day when the Registry is closed, that period is extended to end on the next day on which the Registry is open.

*Supreme Court and District Court*

(5) Time does not run between 25 December and 1 January for the purpose of the period fixed by these Rules for filing an appeal or taking a step in a proceeding or appellate proceeding.

## 2.3—Interpretation

(1) In these Rules, notes, examples and references to prescribed forms are part of these Rules.

**Note—**

Section 19 of the *Legislation Interpretation Act 2021* identifies material that, subject to any express provision to the contrary, does and does not form part of a legislative instrument.

(2) In these Rules, unless the contrary intention appears—

(a) if the word "or" appears at the end of the penultimate item in a list, all of the preceding items in the list are to be read as if the word "or" appeared at the end of each; and

(b) if the word "and" appears at the end of the penultimate item in a list, all of the preceding items in the list are to be read as if the word "and" appeared at the end of each.

**Note—**

Sections 6 to 20 of the *Legislation Interpretation Act 2021* contain rules of construction. Those rules of construction apply to these Rules subject to manifestation of a contrary intention.

## 2.4—Statutory equivalent language

(1) In these Rules, if an applicable statutory provision refers to permission to appeal or to take a step in a proceeding, a reference in these Rules to leave to appeal or leave to take a step in a proceeding is to be understood as a reference to permission to appeal or to take a step in a proceeding.

(2) In these Rules, if an applicable statutory provision refers to a summons to a witness, a reference in these Rules to a subpoena is to be understood as a reference to a summons to a witness.

# Part 3—Power of Chief Judicial Officer to vary rules

## 3.1—Emergency power

(1) This rule applies if—

(a) the State or Federal Government declares, or exercises powers based on there being, the existence of emergency conditions; or

(b) the Chief Judicial Officer determines that emergency conditions affecting the Court or the community justify exercise of the power conferred by this rule.

(2) When this rule applies, the Chief Judicial Officer may declare that particular rules are modified or disapplied in particular circumstances in a manner and for a time that is necessary or desirable to deal with the emergency conditions giving rise to the existence of the power conferred by this rule.

(3) A declaration under subrule (2) may apply to—

(a) a particular proceeding or class of proceedings;

(b) a particular party or class of parties;

(c) a particular lawyer or law firm or class of lawyers; or

(d) a particular step or class of steps.

(4) The Principal Registrar must publish any declaration made under this rule on the CAA website.

# Chapter 2—General

## Part 1—The Court

### Division 1—Jurisdiction

**Note—**

This Division addresses original jurisdiction. Appellate jurisdiction is addressed in Chapter 9.

#### 11.1—Original jurisdiction—Supreme Court

The jurisdiction of the Supreme Court may be exercised by a Justice in court or in chambers in all proceedings.

**Note—**

Section 46A of the *Supreme Court Act 1935* provides that, subject to any provision of an Act or any rule to the contrary, the court's proceedings must be open to the public.

#### 11.2—Original jurisdiction—District Court

(1) The jurisdiction of the District Court may be exercised by a Judge in court or in chambers in all proceedings.

**Note—**

Section 23 of the *District Court Act 1991* provides that, subject to any Act or rule to the contrary, the court's proceedings must be open to the public.

(2) The jurisdiction of the District Court to hear and determine an interlocutory application or make interlocutory orders (which for the avoidance of doubt do not include a variation or enforcement application or order governed by Chapter 8) may be exercised by an Associate Judge or Judicial Registrar in court or in chambers in proceedings to the extent that the Chief Judge directs.

**Note—**

Section 20(1)(b) of the *District Court Act 1991* provides that, subject to that section, if a matter lies within a jurisdiction of the Court conferred by any statute or the rules on Associate Judges, the Court may be constituted of an Associate Judge. Section 51(1)(b) empowers the Court to make rules authorising Associate Judges or Judicial Registrars to exercise any part of the jurisdiction of the Court. Section 16C(1) provides that Judicial Registrars may exercise such jurisdiction of the Court as assigned by the Chief Judge or the rules.

#### 11.3—Original jurisdiction—Environment Resources and Development Court

The jurisdiction of the Environment, Resources and Development Court may be exercised by a Judge in court or in chambers in all proceedings.

#### 11.4—Original jurisdiction—Youth Court

(1) The jurisdiction of the Youth Court may be exercised by the Judge or a Magistrate in court or in chambers in all proceedings.

(2) If there is no Judge, Magistrate or Judicial Registrar available to constitute the Court, the jurisdiction of the Youth Court may be exercised, subject to the limitations imposed by the *Youth Court Act 1993*, by a Special Justice in court or in chambers in relation to matters of a class specified by the Judge.

(3) A Special Justice may refer a matter in respect of which the Special Justice has jurisdiction to the Judge or a Magistrate.

(4) The jurisdiction of the Youth Court to adjourn a proceeding may be exercised by the Principal Registrar.

**Notes—**

Section 14(3) of the *Youth Court Act 1993* provides that the Court may be constituted of a Special Justice if there is no Judge, Magistrate or Judicial Registrar available to constitute the Court.

Section 14(7)(b) of the *Youth Court Act 1993* provides that the Registrar may adjourn proceedings.

## 11.5—Original jurisdiction—Magistrates Court

(1) The jurisdiction of the Magistrates Court may be exercised by a Magistrate in court or in chambers in all proceedings.

(2) The jurisdiction of the Magistrates Court may be exercised, subject to the limitations imposed by the *Magistrates Court Act 1991*, by a Judicial Registrar in court or in chambers in relation to matters of a class specified by the Chief Magistrate.

(3) The jurisdiction of the Magistrates Court may be exercised, subject to the limitations imposed by the *Magistrates Court Act 1991*, by a Special Justice in court or in chambers in relation to—

(a) a charge of an offence referred to in section 9A(1)(b) of the *Magistrates Court Act 1991*; or

(b) matters of a class specified by the Chief Magistrate if there is no Magistrate or Judicial Registrar available to constitute the Court.

(4) The jurisdiction of the Magistrates Court may be exercised by two justices of the peace in court or in chambers in relation to a bail application if there is no Magistrate, Judicial Registrar or Special Justice available.

(5) A Judicial Registrar, Special Justice or two justices of the peace may refer a matter in respect of which they have jurisdiction to a Magistrate.

**Notes—**

Section 7A(1a) of the *Magistrates Court Act 1991* provides that Judicial Registrars may exercise such jurisdiction of the Court as assigned by the Chief Magistrate or the rules.

Section 7A(2)(c) of the *Magistrates Court Act 1991* provides that the Court may be constituted of a Special Justice if there is no Magistrate or Judicial Registrar available.

Section 7A(2)(a) of the *Magistrates Court Act 1991* provides that the Court may be constituted of a Special Justice in its Petty Sessions Division and section 9A(1)(b) provides that the Court in its Petty Sessions Division has jurisdiction to hear and determine any of the charges identified in subparagraphs (i), (ii) or (iii) thereof.

Section 7A(2a) of the *Magistrates Court Act 1991* provides that the Court may be constituted of 2 justices for the purposes of an application under the Bail Act if no Magistrate, Judicial Registrar or Special Justice is available.

Section 15(b) of the *Magistrates Court Act 1991* provides that a Registrar may adjourn proceedings.

Section 18 of the *Magistrates Court Act 1991* provides that, subject to any Act or rule to the contrary, the court's proceedings must be open to the public.

## Division 2—Judicial powers

### 12.1—General powers

(1) The Court may on its own initiative, or on application by any person, make any order that it considers appropriate in the interests of justice.

(2) Without affecting the generality of subrule (1), the Court may—

(a) order that a provision of these Rules not apply or apply in a modified way or dispense with compliance (whether before or after compliance is or was required);

(b) make an order that is inconsistent with or in lieu of a provision of these Rules;

(c) fix or vary the time fixed by or under a provision of these Rules or a court order;

(d) make an order subject to conditions;

(e) specify consequences of an event referred to in, or of non-compliance with, an order;

(f) make or refuse any order sought by a person or make a different order;

(g) make an order on its own initiative;

(h) set aside a step taken in a proceeding in breach of these Rules or an order, or for other cause;

(i) direct the Registrar to do or not to do a thing;

(j) make an order about the form of a document to be filed, including imposing additional requirements about the filing or form of documents;

(k) order the amendment of, or itself amend, a document;

(l) order that a document be uplifted and removed from a file;

(m) order production of a document notwithstanding that a lawyer or other person claims a lien over it;

(n) order the stay of a proceeding, of a step in or order made in a proceeding, or of enforcement of an order; or

(o) to the extent that the Court has jurisdiction to do so, make any order as to costs.

(3) Without affecting the generality of subrule (1), the Court may give directions about the procedure to be followed in a proceeding—

(a) when these Rules do not address or address fully a procedural matter that arises in a proceeding;

(b) to resolve uncertainty about the correct procedure to be adopted, including commencing a proceeding or appellate proceeding; or

(c) in any other case, when the Court thinks fit.

(4) The conferral by these Rules of specific powers on the Court does not affect the generality of the power conferred by this rule.

## Division 3—Divisions

### 13.1—Supreme Court

These Rules govern proceedings in the General Division and the Court of Appeal.

### 13.2—District Court

(1) These Rules govern proceedings in the Criminal Division of the Court.

(2) The Chief Judge may give directions relating to the assignment of proceedings to a division of the Court, the assignment of judicial officers to manage and hear proceedings in a division of the Court, or the administration of a division of the Court.

**Notes—**

Section 7 of the *District Court Act 1991* divides the Court into four divisions being the Civil, Criminal, Criminal Injuries and Administrative and Disciplinary Divisions.

These Rules do not govern proceedings in the Civil, Criminal Injuries or Administrative and Disciplinary Divisions.

### 13.3—Magistrates Court

(1) These Rules govern proceedings in the Criminal and Petty Sessions Divisions of the Court other than reviews of decisions of the Chief Recovery Officer under section 23 of the *Fines Enforcement and Debt Recovery Act 2017*.

(2) The Chief Magistrate may give directions relating to the assignment of proceedings to a division of the Court, the assignment of judicial officers to manage and hear proceedings in a division of the Court, or the administration of a division of the Court.

**Notes—**

Section 7 of the *Magistrates Court Act 1991* divides the Court into six divisions being the Civil (General Claims), Civil (Consumer and Business) and Civil (Minor Claims) Divisions as well as the Criminal Division, the Nunga Court Division and Petty Sessions Division.

These Rules do not govern proceedings in the Civil (General Claims), Civil (Consumer and Business) or Civil (Minor Claims) Divisions.

Reviews of decisions of the Chief Recovery Officer under section 23 of the *Fines Enforcement and Debt Recovery Act 2017* in the Petty Sessions Divisions of the Court are governed by the *Uniform Civil Rules 2020*.

## Division 4—Lists

### 14.1—Establishment of lists

(1) This Division creates or continues certain lists, being defined categories of proceedings or types of hearings that are convenient to manage in distinct lists.

(2) The Chief Judicial Officer may re-define an existing list or establish another list for the management and hearing of defined categories of proceedings or types of hearings.

### 14.2—Management of proceedings

(1) The Chief Judicial Officer may appoint a judicial officer of the Court as a managing Judge or Magistrate of a list.

(2) The Chief Judicial Officer or the managing Judge or Magistrate may give directions about proceedings in a list.

### 14.3—Supreme Court

The following lists are established—

(a) Arraignment list—for the first arraignment on a committal for trial (including as to fitness to be tried or mental competence) or sentence; on a remittal after appeal; after

withdrawal of a guilty plea; on an ex officio Information; or on a variation, revocation or enforcement application; or an arraignment adjourned from a previous arraignment;

(b) Directions hearing list—for the first directions hearing and any subsequent directions hearing; and

(c) Appeal callover list—for the listing of appellate proceedings before the Court of Appeal.

## 14.4—District Court

The following lists are established—

(a) Arraignment (not guilty) list—for the first arraignment in Adelaide on a committal for trial (including as to fitness to be tried or mental competence), on a remittal after appeal; after withdrawal of a guilty plea; on an ex officio Information; or on a variation, revocation or enforcement application; or an arraignment adjourned from a previous arraignment;

(b) Arraignment (guilty) list—for the first arraignment in Adelaide on a committal for sentence; when a defendant intends to plead guilty; or on an allegation of breach of bond; or an arraignment adjourned from a previous arraignment;

(c) Circuit arraignment list—for the first arraignment in Port Augusta or Mount Gambier on a committal for trial (including as to fitness to be tried or mental competence) or sentence; on a remittal after appeal; after withdrawal of a guilty plea; on an ex officio Information; or on variation, revocation or enforcement application; or an arraignment adjourned from a previous arraignment;

(d) First directions hearing callover list—for the first directions hearing after arraignment and for the hearing of other applications as determined by the Court;

(e) Second directions hearing callover list—for a directions hearing approximately four weeks before the trial date and for the hearing of other applications as determined by the Court before trial and any other directions hearing on an application listed for a second directions hearing callover;

(f) Circuit callover list—for listing trials at Port Augusta or Mount Gambier;

(g) Bail list—for bail applications not addressed in another list;

(h) Pre-trial conference list—for pre-trial conferences.

## 14.5—Youth Court

The following lists are established—

(a) Treatment Intervention Court list—for hearings in matters where drug addiction or mental impairment is a criminogenic factor suitable to be managed with a view to the youth's rehabilitation before determination of sentence;

(b) Aboriginal Sentencing Court list—for sentencing hearings in matters where the youth is Aboriginal;

(c) Department of Transport list—hearings in matters where the offences charged are in connection with public transport;

(d) Pre-trial conference list—for pre-trial conferences;

(e) Video conference list—for hearings where a youth is in detention.

### 14.6—Magistrates Court

The following lists are established—

(a) Treatment Intervention Court list—for hearings in matters where drug addiction is a criminogenic factor suitable to be managed with a view to the defendant's rehabilitation before determination of sentence;

(b) Family Violence Court list—for hearings in matters where family violence is a criminogenic factor suitable to be managed with a view to the defendant's rehabilitation before determination of guilt or sentence;

(c) Aboriginal Community Court list—for hearings in matters where the defendant is Aboriginal;

(d) Aboriginal Sentencing Court list—for sentencing hearings in matters where the defendant is Aboriginal and has pleaded guilty;

(e) Nunga Court list—for hearings in matters where the defendant is Aboriginal and has a continuing connection with the Aboriginal community in an area serviced by a Nunga Court established by direction of the Chief Magistrate;

(f) Part 8A list—for hearings in matters where an issue has been raised as to whether the defendant is fit to stand trial or with regard to their mental competence to commit an offence charged;

(g) Tax list—for hearings in matters where the offences charged are Commonwealth taxation offences;

(h) Commonwealth prosecutions list—for hearings in matters where the offences charged are Commonwealth offences other than taxation offences;

(i) Committal list—for hearings of major indictable and Commonwealth indictable offences after the first hearing (unless the proceeding is not to be the subject of a committal) and of minor indictable matters when the defendant has elected to be tried in a Higher Court;

(j) Committal severed files list—for proceedings charging summary or minor indictable offences arising out of the same facts as a major indictable proceeding and which are awaiting the outcome of the major indictable proceeding;

(k) Pre-trial conference list—for pre-trial conferences;

(l) Pre-trial conference following files list—for uncontested proceedings awaiting the outcome of contested proceedings listed for pre-trial conference;

(m) Trial callover list—for the allocation of trials to Magistrates and courtrooms on the morning of trial and for the hearing of pre-trial applications;

(n) Special Justices list—for proceedings capable of being finalised by a Special Justice.

## Division 5—Sittings

### 15.1—Sittings

The Principal Registrar must publish determinations by the Chief Judicial Officer of the times and places at which the Court will sit on the CAA website.

**Notes—**

Section 45 of the *Supreme Court Act 1935* provides for the Court to sit as such times and places as the Chief Justice (in respect of the general division) or President (in respect of the appeal division) direct.

Section 21 of the *District Court Act 1991* provides for the Court to sit as such times and places as the Chief Judge directs.

Section 18 of the *Environment, Resources and Development Court Act 1993* provides for the Court to sit as such times and places as the Senior Judge directs.

Section 15 of the *Youth Court Act 1993* provides for the Court to sit as such times and places as the Judge directs.

Section 16 of the *Magistrates Court Act 1991* provides for the Court to sit as such times and places as the Chief Magistrate directs.

# Part 2—Administration of the Court

## Division 1—General

### 16.1—Chief Judicial Officer

(1) The Chief Judicial Officer may delegate any administrative function conferred on the Chief Judicial Officer to another judicial officer.

(2) A delegation under subrule (1)—

(a) must be by instrument in writing;

(b) may be absolute or conditional;

(c) does not derogate from the power of the Chief Judicial Officer to act in any matter; and

(d) is revocable at will.

(3) A function delegated under subrule (1) may, if the instrument of delegation so provides, be further delegated.

### 16.2—Registrar

(1) The Principal Registrar must establish systems—

(a) for filing documents in the Court;

(b) for issuing the Court's process;

(c) for communication within the Court and between the Court and other persons;

(d) for listing hearings and trials;

(e) for creation, retention and destruction of official records of the Court;

(f) for receipt, retention and return or destruction of documents and things—

(i) tendered in proceedings;

(ii) produced in response to a subpoena; or

(iii) otherwise delivered into the custody of the Court; and

(g) for controlled access by court officers and other persons to court records.

(2) If a statutory provision assigns an administrative function to the Court, the function is to be carried out by the Principal Registrar.

(3) The Principal Registrar may delegate or assign an administrative function conferred on the Principal Registrar by these Rules to another officer of the Court indefinitely or for such period and subject to such conditions as the Principal Registrar thinks fit.

(4) A delegation under subrule (2) or (3)—

(a) must be by instrument in writing;

(b) may be absolute or conditional;

(c) does not derogate from the power of the delegating officer to act in any matter; and

(d) is revocable at will.

(5) A person who wishes to ask the Court to carry out an administrative function must file an application to Registrar in the prescribed form.

**Prescribed form—**

Form 91 Application to Registrar

**Notes—**

See also the specific forms prescribed for specific proceedings by rule 19.1 and rule 129.3(2) and (3).

If these Rules require a proceeding to be instituted by filing an application to Registrar in the prescribed form without identifying a specific form, the prescribed form is Form 91 Application to Registrar.

## 16.3—Seek directions

(1) The Principal Registrar, a Registrar or court officer may refer to the Court any question arising in the course of the performance of an administrative function.

(2) The Court may on such referral—

(a) give such directions as it thinks fit; or

(b) assume control of the matter.

## 16.4—Review of exercise of administrative function

(1) The Court may, on application by a person having an interest in the exercise or on its own initiative, review an exercise of administrative power by the Principal Registrar, a Registrar or court officer and may make such orders as it thinks fit with respect to the matter in relation to which the power was exercised.

(2) An application for review must be made as soon as practicable, and in any event within 7 days after the exercise of power the subject of the application, by an interlocutory application in accordance with rule 39.1 supported by an affidavit.

**Notes—**

An exercise, either at first instance by the Principal Registrar, a Registrar or court officer, or by a Judge or Magistrate on review under this rule, of administrative power (as opposed to judicial power) is not subject to appeal.

(3) An application for review under subrule (2) may not be made if the exercise of administrative power by the Principal Registrar, a Registrar or court officer was pursuant to a direction by the Court under rule 16.3.

(4) Unless the Court otherwise orders and subject to subrule (5), an application for review under subrule (2) will be listed for hearing before—

(a) a Judge in the Supreme Court;

(b) a Judge in the District Court;

(c) a Judge in the Environment, Resources and Development Court;

(d) the Judge or a Magistrate in the Youth Court;

(e) a Magistrate in the Magistrates Court.

(5) A review may be determined without a hearing if the judicial officer conducting the review thinks fit.

## Division 2—Registry

### 17.1—Registry hours

(1) The Principal Registrar must determine when the Registry is to be open for business.

(2) The Principal Registrar must establish procedures for a party or lawyer to request the performance of a function by the Registry (relating to the filing of an urgent document or listing of an urgent hearing or otherwise), upon payment of the prescribed fee, when the Registry is not open for business.

(3) The Principal Registrar must publish the opening hours and procedures referred to in this rule on the CAA website.

## Division 3—Access to court documents

### 18.1—Document access

The Principal Registrar must establish practices and procedures—

(a) determining what information or documents in respect of a proceeding are accessible to parties, lawyers, members of the public or any other class of persons; and

(b) for a person to request access to information or documents or copies of documents in respect of a proceeding (when applicable on payment of a fee).

### 18.2—Production of court records

(1) This rule applies to a request by another court or tribunal, including an umpire or arbitrator, for production of a hard copy court record of the Court.

(2) Subject to subrule (4), unless the Principal Registrar or a Registrar is satisfied that there is good reason why the original of a record should be produced, they are to answer a request for production of a court record by sending a copy of the record certified to be a true copy, which need not be returned to the Court.

(3) The court or tribunal requesting production of the record is liable to pay the charges prescribed by notice for the copy.

(4) The Court may direct that the original court record be produced subject to such conditions, if any, as the Court thinks fit.

(5) If the Court directs or the Principal Registrar or a Registrar decides that an original court record should be produced, subject to any condition stipulated by the Court or the Principal Registrar or a Registrar, a copy of the record must first be made, and then the original record is to be sent to the requesting court or tribunal together with a certificate certifying that the record was filed in or is in the custody of the Court and specifying the date of filing and the proceeding in which it was filed.

(6) The original record must be sent to the requesting court or tribunal—

(a) by courier or certified mail; or

(b) if the Principal Registrar or a Registrar thinks fit, by hand delivery by an officer of the Court.

(7) The court or tribunal to which an original record is sent under this rule must—

(a) keep the record in safe custody; and

(b) return it by courier or certified mail to the Principal Registrar immediately after it is no longer required.

(8) The Principal Registrar must ensure that each original record is duly returned within a reasonable time.

(9) The Principal Registrar must cause to be kept a register containing a description of any original record sent, the date on which it is sent, the court or tribunal to which it is sent and the date of its return.

## Division 4—Court fees

### 19.1—Remission or reduction

(1) An application for remission or reduction of the fee to institute a proceeding or appellate proceeding must be made by an application to the Registrar for remission or reduction of fees in the prescribed form lodged at the Registry.

(2) An application for remission or reduction of a fee otherwise payable in an existing proceeding or appellate proceeding must be made by filing in that proceeding an application to the Registrar for remission or reduction of fees in the prescribed form.

**Prescribed form—**

Form 91A Application to Registrar for Remission or Reduction of Court Fees

### 19.2—Summary recovery

(1) The Principal Registrar may report to the Court a default by a party or lawyer in payment of a fee when due.

(2) The Court will list the matter for hearing and the Principal Registrar must ensure that notice of the hearing in the prescribed form is given to the party or lawyer in question.

**Prescribed form—**

Form 98 Notice of Hearing

(3) The Principal Registrar may, with the agreement of the Crown Solicitor, commit to the Crown Solicitor the conduct of the proceeding by the Principal Registrar.

(4) The Court may, if satisfied that the fee is owing by the party or lawyer in question, make such order as it thinks fit to enforce payment, including (without limitation)—

(a) an order granting judgment in favour of the Courts Administration Authority against the party or lawyer in question; or

(b) an order as to costs.

## Division 5—Notices from the Court

### 20.1—Notices

(1) If these Rules or a direction by the Court require written notification to be given to a party or other person other than notice of a hearing or trial, the notification must be made—

(a) by the relevant notice in the prescribed form; or

**Prescribed forms—**

Form 97 Notice from Court

Form 30 Notice of Order for Stay of Release on Application for Review

Form 148 Notice of Penalty Imposed

Form 149 Notice for the Payment of Money (Youth Court)

Form 151 Notice of Qualifying Offence

Form 152 Notice of Prescribed, Disqualification and or Presumptive Disqualification Offence

Form 153 Notice of Intervention Order

Form 154 Notice that Person has been Declared Liable to Supervision

Form 189 Notice of Judge's Decision to Refuse Application

Form 200 Notice of Final Determination of Appellate Proceeding

(b) as directed by the Court.

## Division 6—Advisors, elders and experts: Lower Courts

### 21.1—Appointment and remuneration

(1) The Court may appoint such cultural advisors, Aboriginal elders or respected persons or experts within any field as it thinks fit to advise it in the conduct of its work.

(2) The Court may pay such advisors, elders or experts in accordance with rates determined by the Principal Registrar from time to time.

# Part 3—Electronic court management system

### 22.1—Establishment and operation

(1) The Principal Registrar must establish and administer an electronic court management system (***Electronic System***) to perform such of the Principal Registrar's general functions (including those referred to in rule 16.2) and for use by court officers and external users as the Principal Registrar determines.

(2) For example, the Electronic System may enable—

(a) the creation, filing or service of documents in electronic form;

(b) the use of electronic signatures by parties, lawyers or other persons;

(c) the electronic issue of the Court's process;

(d) the use of electronic signatures by court officers, sheriff's officers or other persons performing functions on behalf of the Court;

(e) communications between users and the Court in electronic form;

(f) the electronic listing of hearings and trials;

(g) the creation, retention or deletion of electronic records of proceedings in the Court;

(h) the receipt, retention or deletion of electronic documents tendered in proceedings, produced in response to a subpoena or otherwise produced to the Court; or

(i) controlled access by internal or external users to court records.

(3) The Principal Registrar may determine that it is mandatory that all or specified classes of documents lodged for filing by all or specified classes of persons be filed electronically via the Electronic System, and to that extent, the Registry will not accept physical documents for filing.

(4) The Electronic System may be established and administered by the Principal Registrar in conjunction with other courts.

(5) If it is mandatory for a person to file a document electronically via the Electronic System, the Principal Registrar, a Registrar or the Court may waive that requirement if and to such extent and on such conditions as they think fit.

## 22.2—Registered users

(1) A person other than a court officer of a court participating in the Electronic System is only permitted to have access to the Electronic System if the person is a registered user.

(2) The Principal Registrar may establish a system for a person to become a registered user and may exercise a general discretion whether to admit a person as a registered user.

(3) The Principal Registrar may impose conditions on the use of the Electronic System by registered users, a class of registered users or individual registered users.

(4) The Principal Registrar may cancel the registration of a person if, in the opinion of the Principal Registrar, the person—

(a) is not a fit and proper person to be a registered user;

(b) should not have been admitted as a registered user; or

(c) has breached a condition of the terms of use of the Electronic System published by the Principal Registrar on the Electronic System's portal or CAA website.

## 22.3—Originals of documents uploaded into Electronic System

(1) This rule applies to a law firm or office, other representative of a party or an unrepresented party who uploads a document electronically to the Electronic System.

(2) A document comprising or including an affidavit, the original of which is in hard copy form and which is uploaded electronically to the Electronic System, must be uploaded by scanning the original bearing the original signature of the deponent and attesting witness and not by scanning a copy.

(3) A person or entity to whom this rule applies who uploads a document electronically to the Electronic System undertakes to the Court that—

(a) the document uploaded is identical to the original document;

(b) if the document comprises or includes an affidavit, the original signed version of which is in hard copy form—

(i) that the document uploaded is the original document bearing the original signature of the deponent and attesting witness and not a copy; and

(ii) to retain possession of the original document until finalisation of the proceeding and any appeal and expiration of any appeal period;

(c) if the document comprises or includes an affidavit, the original signed version of which is in electronic form—

(i) that the document uploaded is identical to the original electronic document bearing the signature of the deponent and attesting witness and not a copy; and

(ii) to retain possession of the original electronic document until finalisation of the proceeding and any appeal and expiration of any appeal period.

### 22.4—Official record of the Court

(1) If a document is filed with, or issued by, the Court in electronic form or converted by the Court by scanning or otherwise into electronic form, the document in electronic form represents the official record.

(2) If no electronic version of a document is created by the Court, the physical document is the official record.

# Part 4—Parties and representation

## Division 1—Parties

### 23.1—Party types

(1) Subject to subrules (4) and (6), parties to a proceeding in the Magistrates Court and Environment, Resources and Development Court are the informant prosecuting the proceeding and the defendant against whom the proceeding is brought.

(2) Subject to subrules (4) and (6), parties to a proceeding in the Youth Court are the informant prosecuting the proceeding and the youth against whom the proceeding is brought.

(3) Subject to subrules (4) and (6), parties to a proceeding in the Supreme Court and District Court are the Queen or King (as the case may be), with the Director prosecuting the proceeding, and the defendant against whom the proceeding is brought.

(4) Parties to a new variation or enforcement proceeding governed by Chapter 8 are the applicant bringing the variation or enforcement application and the respondent against whom the application is brought.

(5) Parties to an appellate proceeding governed by Chapter 9 are the appellant bringing the appellate proceeding and the respondent against whom the appellate proceeding is brought.

(6) The Court may, if it thinks fit, join another person as an interested party in a proceeding or appellate proceeding.

**Examples—**

If it is alleged in a proceeding that a non-party is guilty of contempt, the Court might join the person alleged to be in contempt as an interested party.

(7) When there are multiple parties of the same party type (for example, two defendants), the first named party of that type is designated as [Party Type] 1 and so on.

**Example—**

John Doe
First Defendant or Defendant 1

Jane Doe
Second Defendant or Defendant 2

## 23.2—Identity of informant in Lower Courts

(1) In this rule—

***body corporate*** means a company or a body corporate created by or under a statutory provision;

***individual*** means a natural person;

***officer holder*** means the holder (from time to time) of an office created by a statutory provision.

(2) The informant may be an individual, a body corporate of an office holder.

(3) If the informant is an individual who brings the proceeding because they hold a position within an organisation, the title of the informant may be shown as the name of the individual with the position and organisation shown in parenthesis after the name (for the avoidance of doubt, the words in parenthesis do not affect the fact that the informant is the individual and not the holder of the position).

**Example—**

If the informant is shown as "Jane Smith (Chief Executive Officer, Department of Justice)" [where the Department of Justice is a hypothetical Department of the South Australian government], the informant is Jane Smith and not the CEO of that Department from time to time.

(4) If the informant is an office holder who brings the proceeding in the name of the office, the title of the informant is to be shown as the name of the office and the informant is the person holding that office from time to time.

**Example—**

If the informant is shown as "Commissioner of Police", the informant is the Commissioner of Police appointed under section 12 of the *Police Act 1988* or its successor.

(5) In a prosecution by SAPOL in a Lower Court, the prosecution is to be brought by and in the name of Commissioner of Police as the informant.

(6) The Commissioner of Police may delegate or otherwise authorise the function of instituting or conducting a proceeding or appellate proceeding in the name of the Commissioner of Police.

## 23.3—Change of parties

(1) The Court may at any stage order the joinder or disjoinder of a party to a proceeding or appellate proceeding on such conditions as it thinks fit.

(2) The Court may at any stage order the correction of the name of a party.

(3) If the informant dies or becomes unable or unwilling to continue to conduct a proceeding or to conduct or defend an appellate proceeding as the appellant or

respondent, the Court may order the substitution of another person as the informant, appellant or respondent as the case may be.

## Division 2—Representation: lawyers

### 24.1—Right of representation of parties

A party may be represented in a proceeding or appellate proceeding by a law firm legally entitled to practise in South Australia.

### 24.2—Law firm acting for party

(1) A law firm retained to act for a party in a proceeding or appellate proceeding must file a notice of acting in the prescribed form for the party in the proceeding as soon as practicable after acceptance of the retainer.

**Prescribed form—**

Form 14 Notice of Acting

**Note—**

A duty solicitor who appears on a one-off basis for a defendant or youth is not regarded, for the purpose of this rule, as being retained to act for the defendant or youth in the proceeding and is not required to file a notice of acting.

(2) A party who is no longer represented by a law firm in a proceeding or appellate proceeding must file a notice of acting in the prescribed form as soon as practicable after termination of the law firm's retainer, unless a different law firm has been retained to represent the party in the proceeding and the new law firm files a notice of acting.

**Prescribed form—**

Form 14 Notice of Acting

(3) A law firm whose retainer to act for a party in a proceeding or appellate proceeding has been terminated must, if a notice of acting by another law firm or the party is not filed within 7 days—

(a) file and serve on its client an interlocutory application in the prescribed form supported by an affidavit in the prescribed form seeking leave to cease to act; and

**Prescribed forms—**

Form 92 Interlocutory Application

Form 93 Affidavit

(b) appear at the next hearing of the proceeding to seek appropriate orders.

(4) A law firm is to be regarded as representing a party in a proceeding or appellate proceeding if and from the time when—

(a) the law firm files a notice of acting for the party in the proceeding; or

(b) the law firm's name is announced to the Court as the party's law firm by a lawyer appearing in court to represent the party in the proceeding.

**Note—**

A lawyer who appears as a friend of the Court is not regarded as representing a party in the proceeding.

(4A) A law firm is to be regarded as representing a defendant in a proceeding in a Higher Court from the commencement of that proceeding if the defendant was committed by a Lower Court for trial or sentence and the law firm was regarded as representing that defendant or youth in the proceeding in the Lower Court at the time of committal for trial or sentence.

(5) A law firm is to be regarded as ceasing to represent a party in a proceeding or appellate proceeding if and from the time when—

(a) a different law firm files a notice of acting for the party in the proceeding under subrule (1);

(b) the party files a notice of acting in the proceeding under subrule (2); or

(c) the Court so orders.

(6) If there is a change in the physical address, email address or telephone number of a law firm or the responsible solicitor shown in a party's address for service, a notice of change of address for service must be filed and served on all parties within 7 days.

**Prescribed form—**

Form 15 Notice of Change of Address for Service

### 24.3—Responsible solicitor acting for party

(1) When a law firm commences to represent a party in a proceeding or appellate proceeding, it must nominate an individual solicitor who has the overall responsibility for representation of the party in the proceeding (the ***responsible solicitor***).

**Note—**

The mere fact that a lawyer undertakes work on a matter (including appearing at a hearing) does not entail that the lawyer is the responsible solicitor if there is a lawyer on record as the responsible solicitor who continues to have overall responsibility for the conduct of the matter.

(1A) When a law firm is to be regarded as representing a defendant as a result of the operation of subrule 24.2(4A), the person who was the responsible solicitor at that law firm in the proceeding in the Lower Court at the time of committal for trial or sentence is to be regarded as the responsible solicitor at that law firm in the proceeding in the Higher Court from the commencement of that proceeding in the Higher Court.

(2) A law firm may file a notice of acting nominating a different individual as the responsible solicitor.

(3) An individual nominated as the responsible solicitor continues to have overall responsibility for representation of the party in the proceeding or appellate proceeding unless and until the law firm files a notice of acting nominating a different individual as the responsible solicitor.

### 24.4—Counsel for party

A party may appear or be represented in a proceeding or appellate proceeding by one or more counsel who is a solicitor or barrister legally entitled to practise in South Australia.

## Division 3—Representation: police prosecution

**Note—**

The rules in this Division do not prevent the Commissioner of Police being represented by a law firm (such as the Director or the Crown Solicitor's Office) or a lawyer under Division 2.

## 25.1—Right of representation of Commissioner

The Commissioner of Police as an informant, or as an applicant or respondent in a variation or revocation or enforcement proceeding governed by Chapter 8, may be represented in a proceeding by the SAPOL Prosecution Branch.

## 25.2—SAPOL Prosecution Branch acting for Commissioner

(1) If the SAPOL Prosecution Branch representing the Commissioner of Police files a document in a proceeding, the SAPOL Prosecution Branch must be shown in the filing party details box as the "law firm/office".

(2) If there is a change in the physical address, email address or telephone number of the SAPOL Prosecution Branch shown in the Commissioner's address for service, a notice of change of address for service must be filed and served on all parties within 7 days.

**Prescribed form—**

Form 15 Notice of Change of Address for Service

## 25.3—Responsible solicitor

(1) If the SAPOL Prosecution Branch is representing the Commissioner of Police, it may, but is not required to, nominate an individual sworn police prosecutor or prosecuting solicitor who has the overall responsibility for representation of the Commissioner of Police in the proceeding (the ***responsible solicitor***).

**Note—**

The fact that a sworn police prosecutor is not a lawyer does to prevent the prosecutor being regarded as the "responsible solicitor".

(2) The SAPOL Prosecution Branch may file a notice of acting nominating a different individual as the responsible solicitor.

(3) An individual nominated as the responsible solicitor continues to have overall responsibility for representation of the Commissioner of Police in the proceeding unless and until the SAPOL Prosecution Branch files a notice of acting nominating a different individual as the responsible solicitor.

## 25.4—Counsel for Commissioner

The Commissioner of Police as informant, or as an applicant or respondent in a variation or revocation or enforcement proceeding governed by Chapter 8, may appear or be represented in a proceeding by a sworn police prosecutor or prosecuting solicitor of the Prosecution Services Branch.

## 25.5—Commissioner bound by conduct of Prosecution Services Branch

The Commissioner of Police bound by the conduct of the SAPOL Prosecution Branch and a police prosecutor or prosecuting solicitor representing or appearing for the Commissioner in the proceeding.

## 25.6—Duties to the Court

A police prosecutor and a prosecuting solicitor of the SAPOL Prosecution Branch who represents or appears for the Commissioner of Police as an informant, an applicant or a respondent in a proceeding owes the same duties to the Court as solicitors and counsel representing or appearing for an informant or applicant or respondent respectively owe to the Court.

## Division 4— Representation: non-lawyers

### 26.1—No right of representation by non-lawyer

(1) Subject to Division 3 and the following subrules and any applicable statutory provision, a person may not be represented or appear in a proceeding or appellate proceeding by a person other than a law firm or lawyer legally entitled to practice in South Australia.

(2) To avoid doubt, this rule does not prevent an individual from acting or appearing as a self-represented party without any representation.

(3) The Court may give leave for a person other than a law firm or lawyer to represent or appear for the informant in a proceeding or appellate proceeding on such terms as the Court thinks fit if—

(a) the informant is a public authority;

(b) the representative is a public officer of the public authority;

(c) the representative has power to bind the informant in the proceeding; and

(d) the Court considers that it is in the interests of justice to give such leave.

(4) The Court may give leave for a person other than a law firm or lawyer to represent or appear for a party in a proceeding or appellate proceeding on such terms as the Court thinks fit if—

(a) the party is a company or other legal entity not being an individual;

(b) the representative is a director of the company or officer of the other legal entity;

(c) the representative has power to bind the party in the proceeding; and

(d) the Court considers that it is in the interests of justice to give such leave.

(5) The Court may, if it thinks fit, give leave to a self-represented party to be assisted in the presentation of their case at a hearing or trial by a person approved by the Court but, unless the Court otherwise orders, such leave does not permit the person assisting to address the Court.

## Division 5—Obligations of parties and lawyers

### 27.1—Overarching obligations

(1) A party (other than a youth in the Youth Court) must in relation to a proceeding or an appellate proceeding—

(a) act honestly;

(b) not engage in misleading conduct;

(c) not take a step that is frivolous, vexatious or an abuse of process;

(d) be prepared for and ready to proceed with a hearing, trial or appellate hearing at the appointed time; and

(e) use reasonable endeavours to act promptly and minimise delay.

(2) A lawyer acting or appearing for a party (including a youth) must, in relation to a proceeding or an appellate proceeding—

(a) act in accordance with subrule (1); and

(b) not engage in conduct that causes or permits that party to act contrary to subrule (1).

(3) If a party is represented by a lawyer and the lawyer has reason to believe that they may not be ready to proceed to trial on the trial date, the lawyer must—

(a) expeditiously inquire into the matter that may result on their not being ready to proceed to trial on the trial date; and

(b) inform the Court that there is or may be an issue about their readiness to proceed to trial on the trial date as soon as practicable.

(4) If a party is not represented by a lawyer and the party has reason to believe that they may not be ready to proceed to trial on the trial date, the party must—

(a) expeditiously inquire into the matter that may result on their not being ready to proceed to trial on the trial date; and

(b) inform the Court that there is or may be an issue about their readiness to proceed to trial on the trial date as soon as practicable.

## 27.2—Breach of obligations

(1) In exercising any power in relation to a proceeding or appellate proceeding, the Court may take into account a failure by a person to comply with the obligations imposed by rule 27.1.

(2) The Court may make such order as it thinks fit in the interests of justice by reason of a failure by a person to comply with the obligations imposed by rule 27.1.

(3) A trial date that has been fixed will not be postponed unless the justice of the case, assessed having regard to the obligations imposed by rule 27.1, so requires.

(4) If an application is made at or shortly before trial to amend the Information or for any other order which application ought to have been made earlier, the Court may, if it thinks fit, refuse such application—

(a) if the grant of the application would cause the postponement or adjournment of the trial;

(b) in order to protect the integrity of the Court's caseflow management system; or

(c) in order to implement the Court's requirement that trials proceed at the time appointed for trial.

## 27.3—Communications with the Court

(1) The Principal Registrar must establish protocols relating to communications by email or telephone between parties or their lawyers and the Court.

(2) The Principal Registrar must publish the protocols referred to in this rule on the CAA website.

# Part 5—Documents

## Division 1—Document form and content
## Subdivision 1—General

### 28.1—Definitions

In this Part—

***prescribed formats***—see rule 28.2.

***prescribed forms***—see rule 28.3.

### 28.2—Prescribed formats and layout of filed documents

(1) The Principal Registrar must prescribe—

(a) the physical format of documents in physical or electronic form; and

(b) the electronic file format of documents in electronic form;

required in respect of documents to be filed at court (***prescribed formats***).

### 28.3—Prescribed forms

(1) The forms contained in Schedule 2 prescribe the form and content of defined types of documents to be filed at court (***prescribed forms***).

(2) If a proceeding is in the Court of Appeal, a document filed in the proceeding must show "Court of Appeal" in the court heading immediately below the name of the court and reference to the criminal jurisdiction.

(3) The Chief Judicial Officer may—

(a) modify or delete a prescribed form contained in Schedule 2; or

(b) prescribe the form and content of additional defined types of documents to be filed at court (***prescribed forms***).

(4) When these Rules refer to a prescribed form, that form (as modified under subrule (3) when applicable) must, subject to rule 28.5, be used for that purpose or in those circumstances.

(5) If there is no specific prescribed form for a particular type of document, the generic prescribed form must be used.

**Prescribed form—**

Form 221 Miscellaneous

(6) Subrule (7) applies when these Rules refer to a prescribed form that is—

(a) an order to be used in specific circumstances (as opposed to the generic forms being Form 100, Form 142 and Form 199);

(b) a bail agreement, bond, recognizance, guarantee or other document agreed or executed by a party or other person; or

(c) any other document issued by the Court or to which the Court is a party.

(7) The content of a form referred to subrule (6) is presumptive only and the wording of orders, conditions or other content may be changed by the Court.

(8) If the number of a prescribed form has the suffix "e", it—

(a) must be used if the form is filed using the Electronic System; and

(b) may be used if the form is filed physically at a registry of the Court if the form is completed electronically.

(9) If the number of a prescribed form has the suffix "h", it may be used if the form is filed physically at a registry of the Court if the form is completed manually.

### 28.4—Publication of prescribed requirements

The Principal Registrar must cause the prescribed formats and prescribed forms in force from time to time to be published on the CAA website.

### 28.5—Compliance with prescribed requirements

(1) A document to be filed in a proceeding must be in accordance with the requirements contained under rule 28.2 and in rule 28.3.

(2) A document that does not substantially comply with subrule (1) may be rejected for filing by the Registrar or by the Electronic System.

(3) The Court may give directions about the format or form of documents to be filed at court in a proceeding, including varying the requirements contained under rule 28 2 and in rule 28 3.

### 28.6—Document drawn or settled by counsel

There is no need for the name or signature of counsel who drafts or settles a document to be filed in a proceeding to appear on the document other than a summary of argument or written submissions.

## Subdivision 2—Affidavits

### 28.7—Form and content

(1) An affidavit must be in the prescribed form.

**Prescribed forms—**

Form 93 Affidavit

Form 94 Exhibit Front Sheet

**Note—**

This rule applies to all affidavits governed by these Rules including witness statements that are in the form of an affidavit.

(2) An affidavit must contain the address of the deponent but the address—

(a) may be a business address at which the deponent is regularly in attendance; or

(b) if the deponent reasonably fears that disclosure of their address will endanger the deponent or another person or if the Court so orders and—

(i) if a law firm or office acts for the deponent—may be care of that law firm or office;

(ii) if a law firm or office acts for the party filing the affidavit—may be care of that law firm or office; or

(iii) in any other case—may be shown instead on a separate document filed on a court access basis as defined in rule 29.2.

(3) An affidavit must be witnessed and attested by an attesting witness under rule 28.9.

(4) Each page of an affidavit must be dated and signed at the foot by the deponent and attesting witness.

(5) The signing clause of an affidavit must—

(a) subject to subrules (6) and (7), be signed by the deponent;

(b) show the name, qualification and address of and be signed by the attesting witness; and

(c) follow immediately on from the text of the affidavit (not on a separate page).

(6) If the deponent is illiterate or blind—

(a) the affidavit must be read to the deponent in the presence of the attesting witness;

(b) the deponent must indicate that the deponent approves the content of the affidavit; and

(c) the attesting witness must state the above matters in the attestation clause.

(7) If the affidavit is in English and the deponent does not sufficiently understand English—

(a) an accredited interpreter must interpret its content to the deponent in the presence of the attesting witness;

(b) the deponent must indicate that the deponent approves its content in the presence of the attesting witness (via the interpreter if necessary);

(c) the interpreter must interpret the oath or affirmation to the deponent;

(d) the deponent must swear or affirm that the content of the affidavit is true (via the interpreter if necessary); and

(e) the attesting witness must state the above matters in the attestation clause.

**Note—**

Section 14(2) of the Evidence Act provides for the making of an affidavit or other written deposition in a language other than English.

(8) Unless there is a specific reason to do so, an affidavit must not exhibit a copy of a document already on the court file but only describe it (by reference to its name, date and filed document number) so that it can be identified.

(9) If an affidavit refers to an exhibit or exhibits—

(a) each exhibit must be identified by a combination of the deponent's initials and a number;

(b) subject to paragraph (c), the number component must start at 1 for the first exhibit and continue consecutively for subsequent exhibits;

(c) the numbering of exhibits to a further affidavit by the same deponent filed in the proceeding must be consecutive to the numbering of the previous affidavit's exhibits;

(d) if there are 2 or more exhibits, the affidavit must include an index to the exhibits (showing number, short description and page number) immediately after the body of the affidavit and immediately after the exhibit front sheet to the exhibits referred to in paragraph (e); and

(e) the exhibit or exhibits must have a single exhibit front sheet (covering all exhibits when there is more than one) in the prescribed form signed and dated by the deponent and attesting witness.

**Prescribed form—**

Form 94 Exhibit Front Sheet

(10) If an affidavit refers to a sequence of documents (such as a sequence of correspondence), the sequence should be made a single exhibit.

(11) An affidavit must contain a single pagination sequence commencing with the first page of the affidavit and ending with the last page of the last exhibit.

(12) If an affidavit is permitted to contain hearsay, it must in respect of each statement based on hearsay—

(a) state that the deponent believes the statement;

(b) identify the source of the statement (for example, the person who made the statement to the deponent or the document from which the deponent obtained the statement); and

(c) make it clear that the hearsay is firsthand hearsay.

## 28.8—Composition

(1) This rule applies in respect of an affidavit filed by a party as a physical version if—

(a) unless the Court otherwise orders, it contains five or more exhibits or the exhibits comprise 50 or more pages;

(b) the filing party so elects; or

(c) the Court so orders.

(2) An affidavit to which this rule applies—

(a) must be filed without the pages being stapled, bound or otherwise physically joined; and

(b) must have each exhibit clearly marked with its exhibit designation and tagged so that its commencement can be seen without opening the bundle.

## 28.9—Attesting witness

(1) The attesting witness to an affidavit must be an authorised witness.

(2) An affidavit may not be made before the party or an employee or agent of the party filing it unless—

(a) the attesting witness is a lawyer acting for the party;

(b) the attesting witness is a police officer who is not the party; or

(c) the party is the Crown.

## 28.10—Original of affidavit uploaded into Electronic System

(1) This rule applies to a law firm or office, other representative of a party or an unrepresented party who uploads a document comprises or includes an affidavit electronically to the Electronic System or files with or produces to the Court such a document for the Court to upload to the Electronic System.

(2) A person or entity to whom this rule applies undertakes to the Court to retain possession of the original document until finalisation of the proceeding and any appeal and expiration of any appeal period.

## Subdivision 3—Sensitive material

### 28.11—Production of sensitive material

(1) This rule applies if a party files, tenders or otherwise produces to the Court sensitive material.

(2) Before a party files, tenders or otherwise produces to the Court sensitive material, the party must—

(a) inform the Principal Registrar or the Court of the intention to file, tender or produce the sensitive material;

(b) inform the Principal Registrar or the Court of any special computer software or hardware required to access the material;

(c) inform the Principal Registrar or the Court of any conditions imposed by the prosecution under section 67I of the Evidence Act on access to the defence to the material;

(d) upon request by the Principal Registrar or the Court, provide any special computer software or hardware required to access the material; and

(e) comply with any direction given by the Principal Registrar or the Court as to the method of production to the Court of the material, including whether it is to be produced in physical or electronic form.

(3) A party who files, tenders or otherwise produces to the Court sensitive material in electronic form must, subject to any contrary direction by the Principal Registrar or order by the Court, produce it on a USB drive contained in a sealed envelope marked with the title and case number of the proceeding, a description of the material, the name of the party producing it and any code needed to access it.

(4) If, after sensitive material is first produced to the Court, the prosecution determines to impose any conditions under section 67I of the Evidence Act on access to the defence to the sensitive material, the prosecution must inform the Principal Registrar of as soon as practicable

### 28.12—Filing of sensitive material

(1) This rule applies if a party files sensitive material.

(2) If a party files a document that has an attachment (whether in physical or electronic form) that comprises or includes sensitive material, the attachment must not be filed electronically but must be filed physically in accordance with the provisions of this rule.

**Example—**

If an item of evidentiary material comprising sensitive material is listed in an evidentiary material brief and would otherwise be filed electronically with the evidentiary material brief, the item must not be filed electronically but must be filed physically in accordance with the provisions of this rule. The balance of the evidentiary material brief must be filed electronically when these Rules require electronic filing.

(3) If a party files a document that comprises or includes sensitive material, the document must not be filed electronically but must be filed physically in accordance with the provisions of this rule.

(4) Sensitive material filed under this rule must—

(a) be filed in a sealed envelope marked with the title and case number of the proceeding, a description of the material and the name of the party producing it;

(b) be accompanied by a document identifying any conditions imposed by the prosecution under section 67I of the Evidence Act on access of the defence to the material;

(c) if and to the extent that it comprises electronic material, be contained on a USB drive in the sealed envelope and accompanied by any instructions or code needed to access it.

(5) A party who files sensitive material under this rule must, upon request by the Principal Registrar, provide any special computer software or hardware required to access the material.

(6) If, after sensitive material is filed, the prosecution determines to impose any conditions under section 67I of the Evidence Act on access of the defence to the sensitive material, the prosecution must inform the Principal Registrar as soon as practicable.

## 28.13—Other production of sensitive material

(1) This rule applies if a party tenders or otherwise produces to the Court sensitive material other than by filing it under rule 28.12.

(2) Sensitive material tendered or produced to the Court under this rule must—

(a) be produced in a sealed envelope marked with the title and case number of the proceeding, a description of the material and the name of the party producing it;

(b) be accompanied by a document identifying any conditions imposed by the prosecution under section 67I of the Evidence Act on access of the defence to the material;

(c) if and to the extent that it comprises electronic material, be contained on a USB drive in the sealed envelope and accompanied by any instructions or code needed to access it.

(3) A party who produces sensitive material under this rule must, upon request by the Court, provide any special computer software or hardware required to access the material.

(4) If, after sensitive material is produced, the prosecution determines to impose any conditions under section 67I of the Evidence Act on access of the defence to the sensitive material, the prosecution must inform the Court of as soon as practicable.

### 28.14—Access to sensitive material

(1) The Court will keep sensitive material and any relative code in secure storage.

(2) Subject to any statutory provision to the contrary, sensitive material and any relative code kept by the Court may only be accessed by a party or third person—

(a) by order of the Court;

(b) for the purpose of the proceeding in which the material is received into the custody of the Court; and

(c) if in electronic format—on a computer caused to be maintained by the Principal Registrar, or provided by the producing party, for that purpose.

*Higher Courts*

(3) If copies of exhibits containing sensitive material are provided during a trial to assist the jury, at the conclusion of the trial, the Sheriff must ensure that all of the copies of the sensitive material are retrieved from the jury and delivered to the Principal Registrar.

*All Courts*

(4) When access to the sensitive material is no longer required for the purpose of the proceeding, the material and any relative code are to be returned to the Principal Registrar and the Principal Registrar must—

(a) cause any images to be erased from all drives of the computer;

(b) cause the sensitive material and any relative code to be placed in a sealed envelope marked "Not to be opened except by order of a [Judge or Magistrate as the case may be]"; and

(c) cause the envelope to be placed in secure storage.

(5) Unless the Court otherwise orders, no later than six months after finalisation of the proceeding including any appeal, the Principal Registrar must cause the sensitive material and any relative code to be returned to the party who produced it.

(6) After finalisation of the proceeding including any appeal, a sealed envelope containing sensitive material may only be opened by order of the Court or for the purpose of complying with subrule (5).

## Division 2—Filing of documents

### 29.1—Filing of documents

(1) Subject to subrule (3) and rule 29.3, a document lodged for filing in electronic form—

(a) if it is the first document to be filed for a proceeding—is conditionally accepted for filing if a case number is allocated to the proceeding, a filed document number is allocated to the document and the Court's seal is applied to the document by the Electronic System;

(b) in any other case—is conditionally accepted for filing if a filed document number is allocated, or the Court's seal is applied, to the document (as applicable) by the Electronic System;

(c) if accepted for filing when the registry is open—is conditionally treated as filed on the day and at the time at which it is accepted for filing; or

(d) if accepted for filing when the registry is not open—is conditionally treated as filed on the next day at the next time at which the registry is open.

(2) Subject to subrule (3), a document lodged for filing in physical form—

(a) if it is the first document to be filed for a proceeding—is filed if and when a case number is allocated to the proceeding, a filed document number is allocated to the document and the Court's seal is applied to the document; or

(b) in any other case—is filed if and when a filed document number is allocated, or the Court's seal is applied, to the document (as applicable).

(3) The Court, the Principal Registrar or a Registrar may, if it thinks, fit order that a document be treated as having been filed on the date or at a time when the document was lodged for filing.

(4) If a document is required to be served, the original of which is in electronic form on the Electronic System, it is sufficient that a version of the document downloaded from the Electronic System is served.

(5) If a document is required to be served, the original of which is filed in physical form in the Registry, the person lodging the document for filing—

(a) may serve a downloaded version of the document after it has been uploaded to the Electronic System by the Registry as if subrule (4) applied; or

(b) in any other case—must produce to the Registry additional copies to be sealed for the purpose of service.

(6) A party, upon payment of the prescribed fee, may request the Principal Registrar to provide a certified copy of a filed document.

## 29.2—Filing of documents on restricted access basis

(1) In this rule—

***court access basis*** means that, unless the Court otherwise orders, access to view, download or copy a document is limited to court officers;

***excluded access basis*** means that, unless the Court otherwise orders, access to view, download or copy a document is excluded for the judicial officer assigned or expected to hear and determine the proceeding;

***judiciary access basis*** means that, unless the Court otherwise orders, access to view, download or copy a document is limited to judicial officers;

***lawyer access basis*** means that, unless the Court otherwise orders, access to view, download or copy a document is limited to court officers together with counsel or solicitors for the parties who must not, without leave of the Court, disclose the content of the document to any person not entitled to access;

***party access basis*** means that, unless the Court otherwise orders, access to view, download or copy a document is limited to court officers together with the parties, counsel or solicitors for the parties who must not, without leave of the Court, disclose the content of the document to any person not entitled to access;

***restricted access basis*** means a court access basis, an excluded access basis, a judiciary access basis, a lawyer access basis or a party access basis.

(2) The Court may order that a document be filed, or if already filed be treated as filed, on a restricted access basis.

(3) A party may, at the same time as filing a document, apply by an interlocutory application in accordance with rule 39.1 for an order that the document be treated as filed on a restricted access basis, specifying the access basis sought.

(4) If a party files a document under subrule (3) and makes a request for interim treatment under this subrule at the same time, it will be treated on an interim basis as filed on the specified restricted access basis until the Court hears and determines the application under subrule (3).

## 29.3—Rejection of document for filing

(1) The Principal Registrar or a Registrar may reject a document lodged for filing if—

(a) it does not substantially comply with the requirements contained under rule 28.2 or in rule 28.3;

(b) it otherwise does not substantially comply with these Rules;

(c) it is frivolous, vexatious, scandalous or an abuse of the process of the Court;

(d) the person lodging it has been declared a vexatious litigant under section 39 of the *Supreme Court Act 1935*, if filed it would institute a proceeding within the meaning of that section and leave has not been obtained to do so;

(e) the Court directs that it not be accepted; or

(f) the Court has directed that any document not be accepted from the person lodging it without the prior leave of the Court and such leave has not been obtained.

(2) The Principal Registrar or a Registrar may reject a document under subrule (1) that was lodged for filing via the Electronic System and conditionally accepted for filing under rule 29.1 if—

(a) the rejection is made within 7 days of the conditional acceptance;

(b) _2.1—Definitionsthe person is informed of the ground for rejection; and

(c) if the rejection is made under paragraph (a) or (b) of subrule (1)—the person who lodged the document is given an opportunity to lodge a substituted document within 7 days rectifying the matter that caused the original document to be rejected.

(3) If the Principal Registrar or a Registrar accepts a substituted document under subrule (2)(c), unless the Court otherwise orders, it will be treated as having been filed on the date on which the rejected document was conditionally accepted for filing.

**Notes—**

The Court might otherwise order, for example, if the lodging party did not attempt in good faith to comply with the relevant rule.

A document which is not rejected for filing but which falls within a paragraph of subrule (1) will be amenable to an application to strike it out under rule 30.3.

(4) If the Principal Registrar or a Registrar rejects a document under subrule (2) and does not accept a substituted document under subrule (3), it will be treated as not having been filed and will be deleted from the records of the Court.

### 29.4—Documents not filed

(1) The Court or the Principal Registrar or a Registrar may accept from a party a document without its being filed or served on any other party if in the opinion of the Court, Principal Registrar or Registrar it is necessary or desirable to do so.

(2) Without affecting the generality of subrule (1), a document may be accepted under subrule (1) if in the opinion of the Court, Principal Registrar or Registrar a person may be at risk of harm if the existence or content of the document is disclosed.

(3) If a document is accepted under this rule, steps will be taken to preserve the confidentiality of the document.

### 29.5—Directions by Court

The Court may, on its own initiative, on referral by the Principal Registrar or a Registrar or on application by a person—

(a) direct that a document not be accepted; or

(b) direct that any document not be accepted from the person lodging it without the prior leave of the Court.

## Division 3—Amendment or strike out of filed documents

### 30.1—Entitlement to amend filed documents

(1) An Information may be amended by the prosecutor in accordance with rule 63.1 or rule 97.1.

(2) An evidentiary material brief may be amended by the prosecutor in accordance with rule 82.1 and rule 82.2 or rule 93.1.

(3) Subject to subrules (4) and (5), a filed document may be amended by the filing party by leave or by consent.

(4) An appellate document filed in the Court of Appeal may be amended in accordance with rule 188.2 or rule 201.3.

(5) Subject to subrule (6), an affidavit may not be amended but, if found to be erroneous, may be the subject of a further affidavit by the deponent correcting the error.

(6) The Court may permit a deponent under oath or affirmation to amend a document referred to in subrule (4) by deleting, adding or altering, and initialling, a word or words to correct an unintended statement contained in it.

(7) In this rule—

***by leave*** means with the prior leave of the Court which may be granted subject to conditions and which, unless expressed otherwise, expires 14 days after the grant of leave.

### 30.2—Manner of amendment

(1) Unless the Court otherwise orders, if a filed document may be amended in accordance with rule 30.1, it must be amended by filing a revised version of the filed document in the relevant prescribed form—

(a) showing a revision number in accordance with the relevant prescribed form after the title of the form; and

**Examples—**

The first time a document is amended, the amended document will be shown as "Revision 1". For example, "Information Revision 1".

The second time a document is amended, the amended document will be shown as "Revision 2". For example, "Information Revision 2".

(b) preserving the existing numbering (such as numbering an additional paragraph inserted between existing paragraphs 10 and 11 as paragraph 10A).

(2) The Court may give directions about the mode of amendment of a filed document.

(3) Unless the Court otherwise orders, a party who files an amended document must serve it on each other party as soon as practicable unless the document it amends was not to be served.

### 30.3—Strike out of filed documents

(1) The Court may order that a filed document or part of a filed document be struck out if—

(a) it does not comply with these Rules; or

(b) it is frivolous, vexatious or an abuse of the process of the Court.

(2) If the Court strikes out all or part of a document under subrule (1), it may if it thinks fit grant leave to file within a specified time an amended or substituted document rectifying the matter that caused the original document to be struck out.

## Division 4—Issue of court documents

### 31.1—Issue of court documents

(1) A document is issued by the Court when—

(a) a filed document number is allocated to the document;

(b) the Court's seal is applied to the document; or

(c) the signature of a court officer is applied to the document,

by the Electronic System or the Registry.

(2) If an issued document is required to be served, the original of which is in electronic form on the Electronic System, it is sufficient that a version of the document downloaded from or in the same terms as the original in the Electronic System is served.

(3) If an issued document is required to be served, the original of which is filed in physical form at the Registry, the person lodging the document for filing—

(a) may serve a downloaded version of the document after it has been uploaded to the Electronic System by the Registry as if subrule (2) applied; or

(b) in any other case—must produce to the Registry additional copies to be sealed for the purpose of service.

(4) A party, upon payment of the prescribed fee, may request the Principal Registrar to provide a certified copy of a document issued by the Court.

# Part 6—Service of documents

## Division 1—Obligation to serve

### 32.1—Service of filed documents on other parties

A party or other person who files a document must as soon as practicable serve it on all other parties to the proceeding or appellate proceeding unless—

(a) the document is a subpoena or a request for a subpoena, in which case the party must comply instead with rule 123.5 when applicable;

(b) these Rules provide that the document need not be served on any party or the party in question; or

(c) the Court otherwise orders.

### 32.2—Ineffective service

If a party becomes aware that service of a document on a person at an address or in a particular manner will or may not be effective, the party must—

(a) inform the Court as soon as practicable of that fact;

(b) inform the Court as soon as practicable of any step taken in the proceeding reliant on service at that address or in that manner having been effective; and

(c) not, without leave of the Court, attempt to effect service of any document at that address or in that manner.

## Division 2—Types of service

### 33.1—Personal service

(1) A document is served by ***personal service*** on an individual if—

(a) the document is given to and accepted by the person; or

(b) each of the following apply—

(i) the document is offered to the person;

(ii) the person is unwilling to accept the document;

(iii) the person is informed of the nature of the document; and

(iv) the document is put down in the presence of the person.

(2) A document is served in South Australia by ***personal service*** on a body corporate—

(a) that is a company—if it is served in accordance with section 109X of the *Corporations Act 2001* (Cth);

(b) that is a registered body—if it is served in accordance with section 601CX of the *Corporations Act 2001* (Cth); or

(c) otherwise—if it is left at or sent by prepaid post to the head office, registered office or principal place of business of the body corporate.

(3) A document is served elsewhere in Australia by ***personal service*** on a body corporate—

(a) that is a company or registered body—if it is served in accordance with section 9 of the Service and Execution of Process Act; or

(b) otherwise—if it is served in accordance with section 10 of the Service and Execution of Process Act.

(4) If a document is served by prepaid post under subrule (2) or (3), there is a rebuttable presumption that it was received at the address to which it was posted at the time at which it would have arrived in the ordinary course of post for the postal service used.

## 33.2—Delivery service

(1) A document is served by ***delivery service*** on a person (the ***recipient***) if it is left for the recipient at—

(a) the recipient's last known residential or business address with someone apparently over the age of 16 years; or

(b) the physical address that is part of the recipient's address for service in the proceeding or appellate proceeding under rule 35.2 with someone apparently over the age of 16 years.

## 33.3—Email service

(1) A document is served by ***email service*** on a person (the ***recipient***) if—

(a) it is sent as an attachment in a PDF or Microsoft Word format to an email address;

(b) either—

(i) the recipient has consented to the document or a class of documents encompassing the document being served on the recipient by email sent to that email address; or

(ii) the email address is part of the recipient's address for service in the proceeding or appellate proceeding under rule 35.2;

(c) the party on whose behalf the document is to be served has not received and does not receive information suggesting that the email address is not being used by the recipient; and

(d) the sender's or recipient's email service does not notify the sender that the email was not delivered or that the recipient may not be responding to emails.

(2) A document is also served by ***email service*** on a person (the ***recipient***) if it is sent as an attachment in a PDF or Microsoft Word format to the person at an email address and the person replies to or acknowledges receipt of the email.

(3) To avoid doubt, a response generated automatically from the recipient's email account is not a reply or acknowledgement for the purposes of subrule (2).

(4) Unless the Court otherwise orders, a document served by email service under this rule is to be regarded as having been served—

(a) under subrule (1)—when the sender's email account records the email as having been sent; or

(b) under subrule (2)—when the recipient replies to or acknowledges receipt of the document.

## 33.4—Post service

(1) A document is served by ***post service*** on a person (the ***recipient***) if—

(a) it is sent by express post via Australia Post in an envelope to a physical address;

(b) one of the following applies—

(i) the recipient has consented to the document or a class of documents encompassing the document being served on the recipient by post sent to that address;

(ii) the address is the recipient's last known residential or business address; or

(iii) the address is part of the recipient's address for service in the proceeding or appellate proceeding under rule 35.2;

(c) the party on whose behalf the document is to be served has not received and does not receive information suggesting that the address is not being used by the recipient; and

(d) the sender obtains from Australia Post proof of delivery via Australia Post's online tracking facility showing when the envelope was delivered to that address, provided that the tracking number matches the envelope containing the document that was posted.

(2) A document is also served by ***post service*** on a person (the ***recipient***) if it is sent by express post via Australia Post to the person and the person replies to a covering letter attaching the document or acknowledges receipt of the document.

(3) In the case of a person in custody or detention in a government institution—a document is served by ***post service*** on a person (the ***recipient***) if it is sent by express post via Australia Post in an envelope marked "private and confidential" addressed to the prisoner, care of the CE.

(4) Unless the Court otherwise orders, a document served by post service is to be regarded as having been served—

(a) under subrule (1)—when Australia Post's online tracking facility records the envelope containing the document as having been delivered to the address;

(b) under subrule (2)—when the recipient replies to or acknowledges receipt of the document; or

(c) under subrule (3)—3 business days after Australia Post's online tracking facility records the envelope containing the document as having been delivered to the address.

(5) In this rule, the ***CE*** means—

(a) in respect of a person in detention—the Chief Executive within the meaning of the *Youth Justice Administration Act 2016* (presently the Chief Executive of the Department for Human Services); or

(b) in respect of a person in custody—the CE within the meaning of the *Correctional Services Act 1982* (presently the Chief Executive of the Department of Correctional Services).

## 33.5—Electronic service

(1) A document is served by ***electronic service*** on a person (the ***recipient***) if—

(a) it is contained in a data storage device sent to the recipient in accordance with rule 33.1, rule 33.2, rule 33.3 or rule 33.4; and

(b) one of the following applies—

(i) the recipient has consented to the document or a class of documents encompassing the document being served on the recipient by such service; or

(ii) the Court orders that service may be effected in this manner.

**Example—**

An example of an electronic data storage device is a USB drive.

(2) A document is also served by ***electronic service*** on a person (the ***recipient***) if—

(a) it is contained at an internet address;

(b) it can be accessed at and downloaded from that internet address with a link;

(c) such a link is sent to the recipient in accordance with rule 33.1, rule 33.2, rule 33.3 or rule 33.4; and

(d) one of the following applies—

(i) the recipient has consented to the document or a class of documents encompassing the document being served on the recipient by such service; or

(ii) the Court orders that service may be effected in this manner.

## 33.6—Portal service

(1) A document is served by ***portal service*** on a party (the ***recipient***) if each of the following applies—

(a) it is contained in the case maintained on the Electronic System;

(b) it is accessible to the party or a lawyer acting for the party to be served upon their being granted access to the case;

(c) the party serving the document sends to the party to be served or a lawyer acting for them an email or text message identifying the case number maintained on the Electronic System (or otherwise identifying the case), the existence of the document in the case and the title, date and FDN of the document;

(d) either—

(i) the email address to which an email referred to in paragraph (c) is sent is an email address—

(A) that the party to be served has provided to the party serving for the purpose of communications in relation to the case; or

(B) contained in the address for service of the party to be served; or

(ii) the mobile phone number to which a text message referred to in paragraph (c) is sent is a mobile phone number that the party to be served has provided to the party serving for the purpose of communications in relation to the case; and

(e) the party to be served or a lawyer acting for them is or becomes a registered user of the Electronic System and has been granted or is granted access to the case maintained on the Electronic System.

(2) A document served by portal service under subrule (1) is to be regarded as having been served on the date and at the time when the last event referred to in under subrule (1) occurs.

(3) A document is also served by ***portal service*** on a party (the ***recipient***) if—

(a) it is contained in the case maintained on the Electronic System; and

(d) the party to be served or a lawyer acting for them views or downloads the document in the case maintained on the Electronic System.

(4) A document served by portal service under subrule (3) is to be regarded as having been served on the date and at the time when the party or their lawyer first views or downloads the document in the case maintained on the Electronic System.

### 33.7—Original service

(1) A document is served by ***original service*** if it is served in accordance with rule 33.1, rule 33.2, rule 33.3, rule 33.4, rule 33.5 or rule 33.6.

### 33.8—Time of service

Unless the Court otherwise orders, a document that is served after 5.00 pm on a particular day is not to be treated as served, for the purpose of time running against the person served, until the next business day.

## Division 3—Service requirements

### 34.1—Information

Service of the original Information in a proceeding or a document initiating an appellate proceeding must be effected by original service in accordance with rule 33.7.

### 34.2—Subpoena

Service of a subpoena must be effected in accordance with rule 123.5.

### 34.3—Other documents

Unless the Court otherwise orders, a document that is to be served on a person in a proceeding must be served—

(a) if the person is to be regarded as represented by a law firm or office under rule 24.2 or rule 25.2 or by a person or entity under rule 26.1(3) or (4) which has an address for service in the proceeding—by service at that address;

(b) if the person otherwise has an address for service in the proceeding—by service at that address; or

(c) in any other case—by original service.

## Division 4—Address for service
## Subdivision 1—Obligation to provide address for service

### 35.1—Obligation to provide address for service

(1) A party—

(a) for whom a current address for service has not been provided; and

(b) who wishes to file a document in a proceeding or appellate proceeding,

must provide to the Court an address for service in accordance with rule 35.2 in the manner specified in subrule (2) or (3).

(2) If a party is initiating a proceeding or appellate proceeding, the party must provide an address for service—

(a) if the initiating document is lodged using the Electronic System—by entering the address for service details in the course of initiating the proceeding;

(b) if the initiating document is lodged without using the Electronic System—by causing the address for service details to be displayed on the initiating document.

**Note—**

The initiating document is an Information for a proceeding; a Notice of Appeal or Notice of Review or Notice of Case Stated or Notice of Petition for Mercy for an appellate proceeding; and an Originating Application for a new proceeding initiated under Chapter 8.

(3) If a party is filing a document in an existing proceeding or appellate proceeding, the party must provide an address for service—

(a) if the document is lodged using the Electronic System—by entering the address for service details, obtaining approved access to the case and causing a notice of acting in the prescribed form to be generated; or

(b) if the document is lodged without using the Electronic System—by filing a notice of acting in the prescribed form.

**Prescribed form—**

Form 14 Notice of Acting

(4) A party—

(a) for whom a current address for service has not been provided; and

(b) who appears at a hearing or trial of a proceeding or appellate proceeding,

must at or before the appearance provide to the Court the details required to be included in an address for service in accordance with rule 35.2.

## 35.2—Content of address for service

(1) Subject to subrules (2) and (3), an ***address for service*** must include—

(a) the party title and full name of the party;

(b) whether the party is represented by a law firm or office and, if so, the name of the law firm or office and, subject to rule 25.3, of the individual responsible solicitor;

(c) a physical address at which documents in or in relation to the proceeding can be served which must—

(i) if the party does not provide an email address—be in South Australia; or

(ii) if the party provides an email address—be in Australia;

(d) an email address at which documents in or in relation to the proceeding can be served; and

(e) a telephone number at which the party or, if represented, the party's law firm or office can be contacted.

**Note—**

If a document is filed by a law firm, the law firm will need to be identified by an L code and the responsible solicitor will need to be identified by a P code. A law firm or individual solicitor who does not have an L code or P code can obtain one on request to the Law Society of South Australia.

(2) If a party is in custody and is not represented by a law firm, the party's physical address for service may be care of the CE and the party need not provide an email address or telephone number.

(3) The Court may, on such terms as it thinks fit, excuse a party from including a physical address, email address or telephone number if the party does not have available and cannot reasonably obtain a physical address, email address or telephone number for the purpose of service or if it is in the interests of justice to do so.

(4) If a party is on bail and is not represented by a law firm, the party's physical address for service must, unless the Court otherwise orders, be the same as the party's bail address.

(5) In this rule, the ***CE*** means—

(a) in respect of a person in detention—the Chief Executive within the meaning of the *Youth Justice Administration Act 2016* (presently the Chief Executive of the Department for Human Services); or

(b) in respect of a person in custody—the CE within the meaning of the *Correctional Services Act 1982* (presently the Chief Executive of the Department of Correctional Services).

## 35.3—Continuation of address for service

(1) A party's address for service remains the last address for service provided to the Court unless and until—

(a) a notice of acting is filed in accordance with rule 24.2 or rule 35.1 showing a different address for service;

(b) a notice of change of address for service is filed in accordance with rule 35.4 showing a different address for service; or

(c) the Court otherwise orders.

(2) If it comes to the attention of a party that a document sent to another party's address for service was not received by the recipient party, the sending party must bring that fact to the attention of the recipient party and, if unable to do so, must inform the Court.

(3) The Court may strike out all or part of a party's address for service if it appears that documents sent to that address are not being received by that party.

## 35.4—Change of address for service

(1) If there is a change in the physical address, email address or telephone number shown in a party's address for service, a notice of change of address for service in the prescribed form must be filed and served on all parties within 7 days.

**Prescribed form—**

Form 15 Notice of Change of Address for Service

(2) If there is a change of the individual responsible solicitor within a law firm or office acting for a party, a notice of acting in the prescribed form showing the new responsible solicitor must be filed and served on all parties within 7 days.

**Prescribed form—**

Form 14 Notice of Acting

**Note—**

See also rule 24.2 and rule 25.3 in relation to a change in the representation status of a party or change of law firm or office acting for a party.

## Subdivision 2—Service at address for service

### 35.5—Service at address for service

A document is served on a party with an address for service in a proceeding if it is—

(a) served at the party's physical address for service by personal service in accordance with rule 33.1;

(b) delivered to the party's physical address for service by delivery service in accordance with rule 33.2;

(c) sent as an attachment in a PDF or Microsoft Word format to the party's email address for service in accordance with rule 33.3;

(d) sent by express post in an envelope addressed to that party at the party's physical address for service in accordance with rule 33.4;

(e) made available by electronic service in accordance with rule 33.5;

(f) made available by portal service in accordance with rule 33.6; or

(g) delivered in any other way that the Court orders.

### 35.6—Issue by Court of documents to address for service

(1) The Court may give notice to a party with an address for service in a proceeding by sending a notice in any manner referred to in rule 35.5.

(2) Rule 33.3 and rule 33.4 as to when a document served by email or post is to be regarded as having been served apply, with any necessary changes, to a notice from the Court sent by email or post.

## Division 5—Proof of service

### 36.1—Method of proof of service

(1) Subject to the following subrules, when it is sought to prove service of a document, service must be proved—

(a) by an affidavit of service in the prescribed form; or

(b) if the process server is a public officer—by a certificate of service or affidavit of service in the prescribed form.

**Prescribed form—**

Form 11 Affidavit of Proof of Service

Form 12 Certificate of Proof of Service

(2) Service may also be proved by oral evidence and must be so proved if the Court so orders.

(3) The Court may dispense with compliance with this rule if satisfied that the requisite service was effected.

### 36.2—Requirements for affidavit or certificate of proof of service

An affidavit of proof of service or certificate of proof of service must—

(a) unless the Court otherwise orders or these Rules otherwise provide, be made by the person who served the document;

(b) either exhibit a copy of the document served (including any notice required to be served with the document) or, if it has been filed at court, refer to the document by its name, date and filed document number; and

(c) depose to sufficient facts to prove service in accordance with the relevant part of Division 2, Division 3 or Division 4.

### 36.3—Attempted service report

If a party or process server is unable to effect service of an Information or other document before a hearing, they must file an attempted service report in the prescribed form at least 2 business days before the hearing.

**Prescribed form—**

Form 13 Attempted Service Report

# Part 7—Hearings, applications and orders

## Division 1—Application of Part

### 37.1—Application of Part

(1) This Part applies, unless the context indicates otherwise, to all forms of hearings including sentencing hearings, trials and appellate hearings.

(2) In this Part, unless the context indicates otherwise, ***hearing*** includes a sentencing hearing, trial or appellate hearing.

## Division 2—Hearings
## Subdivision 1—Powers of court

### 38.1—Powers of the Court at hearings

(1) At a hearing, the Court may—

(a) record the entry of a plea;

(b) accept, reject or defer acceptance of a guilty plea;

(c) record the withdrawal of a count or the entry of a *nolle prosequi*;

(d) accept, reject or defer acceptance of withdrawal of a count;

(e) give directions and set time limits for steps in the proceeding;

(f) hear sentencing submissions;

(g) record a conviction for or finding proved for an offence;

(h) hear or determine any application made under Chapter 2 Part 7 Division 3;

(i) set or alter the date or place for the commencement of a trial;

(j) make an order for any interpreter, communication assistance or accompaniment that may be required for a hearing;

(k) make an order in relation to bail;

(l) adjourn the hearing to a subsequent hearing;

(m) remand a defendant or youth on bail or in custody; or

(n) make any other order concerning the conduct of the proceeding or appellate proceeding or of a trial or sentencing hearing.

(2) Directions given at a hearing may be supplemented or varied at a subsequent hearing.

(3) The Court may make an order—

(a) on its own initiative or on the application of any person in relation to a proceeding;

(b) in court or in chambers.

(4) If a party seeks lengthy or detailed orders, the party must file or provide to the Court a draft order in the prescribed form.

**Prescribed forms—**

Form 100 Order

Form 142 Order

Form 199 Order

(5) A party may consent to an order by filing and serving a consent to order in the prescribed form.

**Prescribed form—**

Form 96 Consent to Order

## Subdivision 2—Attendance of parties and public

### 38.2—Hearings ordinarily in presence of parties

(1) Hearings are ordinarily held in the presence of the parties or their lawyers or other representatives, whether physically or by audio visual link or audio link.

(2) The Court may, where appropriate, conduct a hearing or direct that a hearing be conducted without notice to or in the absence of a party (including a party's lawyer) if—

(a) the party does not yet have an address for service;

(b) the Court determines that the hearing does not affect the party;

(c) the party has been excused from attending the hearing or, having been given notice of it, does not attend the hearing;

(d) the hearing is to determine whether to make an interim order having effect pending a subsequent hearing at which the party may attend;

(e) the Court determines that the risk that another party will otherwise suffer prejudice justifies that course;

(f) the Court determines that the risk that the party will disrupt the hearing justifies that course; or

(g) the Court determines that it is in the interests of justice to do so.

## 38.3—Appearance of defendant or youth in custody by audio visual link

(1) Unless the Court otherwise orders, subject to the succeeding subrules, a defendant or youth who is in custody will appear before the Court for any hearing other than one governed by rule 38.4 by audio visual link or, if the Court so orders, by audio link.

(2) A party may object to the use of an audio visual link or audio link in respect of a hearing—

(a) by filing a notice of objection in the prescribed form at least 14 days before the relevant hearing; or

**Prescribed form—**

Form 95 Notice of Objection

(b) by oral application at a previous hearing.

(3) A notice of objection may be determined at the discretion of the Court—

(a) at a hearing in court or in chambers;

(b) without hearing from any party; or

(c) at a hearing using an audio visual link or audio link.

(4) If during the course of a hearing by audio visual link or audio link counsel is required to take instructions on a matter that could not reasonably have been anticipated, counsel will where possible be provided with access to a private link to the custodial institution in which the defendant or youth is held.

(5) Another person must not listen to, intercept or record a private communication the subject of subrule (4).

## 38.4—Appearance of defendant or youth in custody physically

(1) Unless the Court otherwise orders, a defendant or youth who is in custody will appear before the Court physically at trial.

(2) Unless the Court otherwise orders, a defendant or youth who is in custody on a charge of an indictable offence will appear before the Court physically at a sentencing hearing and upon sentencing.

**Notes—**

Section 21(1) of the Sentencing Act provides that, subject to subsection (2), a defendant who is to be sentenced for an indictable offence must be present when the sentence is imposed and throughout all proceedings relevant to the determination of sentence.

Section 21(2)(b) of the Sentencing Act provides that if a defendant is in custody and facilities exist for dealing with proceedings by means of an audio visual link or audio link, the court may, if of the opinion that it is appropriate in the circumstances to do so, deal with the proceeding by audio visual link or audio link without requiring the personal attendance of the defendant.

Section 21(2)(a) of the Sentencing Act empowers the court to excuse the defendant from attendance.

Section 21(2)(c) of the Sentencing Act empowers the court to exclude the defendant from the courtroom if satisfied that the exclusion is necessary in the interests of safety or for the orderly conduct of the proceeding.

## 38.5—Appearance by audio link or audio visual link

(1) The Court may direct or permit one or more participants (parties, lawyers and witnesses) to appear at a hearing remotely by audio link or by audio visual link.

**Note—**

Appearance remotely is an exception to the general rule that appearances of parties, lawyers and witnesses is in person and a remote appearance therefore needs to be justified in the circumstances.

Some other rules provide for remote appearances. They include rules 38.3, 77.2, 99.2, 101.1, 102.1(3)(c), 107.2, 129.3, 130.6 and 183.8.

(2) Unless the Court otherwise orders, the costs incurred by the Court in conducting an audio visual hearing at the request of a party must be paid by the requesting party.

Remote appearance by party or lawyer

(3) A request for a party or lawyer to appear by audio link or by audio visual link must be made by—

(a) an interlocutory application in the prescribed form;

**Prescribed form—**

Form 92D Interlocutory Application for Hearing by Audio or Audiovisual Link

(b) oral application at a prior hearing;

(c) ticking the remote appearance box on a form filed using the Electronic System; or

(d) email sent to the chambers of the judicial officer before whom the hearing is to be conducted.

(4) A request under subrule (3) must identify the reason why the party or lawyer seeks to appear remotely rather than in person.

(5) A request under subrule (3) must be made to the Court in sufficient time before the hearing to allow the Court to decide whether to allow the request and, if so, make appropriate arrangements.

(6) If the Court is unable to contact the party or lawyer at any time within 15 minutes after the time appointed for the hearing at the nominated facility, or by the nominated audio visual link number, the party or lawyer will be regarded as having failed to appear at the hearing for the purposes of these Rules.

Remote appearance by witness

(7) An application for a witness to appear by audio link or by audio visual link must be made by—

(a) an interlocutory application in the prescribed form supported by an affidavit in the prescribed form; or

**Prescribed forms—**

Form 92D Interlocutory Application for Hearing by Audio or Audiovisual Link

Form 93 Affidavit

(b) oral application at a prior hearing.

(8) An application under subrule (7) must identify the reason why the requesting party seeks that the witness appear remotely rather than in person.

(9) An application under subrule (7) must be made to the Court—

(a) in sufficient time before the hearing to allow the Court to decide whether to allow the application and, if so, make appropriate arrangements; and

(b) in any event at least seven days before the hearing at which the evidence is to be given.

### 38.6—Hearings ordinarily in court in public

*All Courts except Youth Court*

(1) Hearings, except pre-trial conferences, are ordinarily open to the public.

**Notes—**

Section 46A of the *Supreme Court Act 1935* provides that, subject to any provision of an Act or any rule to the contrary, the court's proceedings must be open to the public.

Section 23 of the *District Court Act 1991* provides that, subject to any Act or rule to the contrary, the court's proceedings must be open to the public.

Section 20(1) of the *Environment Resources and Development Court Act 1935* provides that, subject to the Act or any relevant Act, the proceedings of the Court must be open to the public. Section 20(2) empowers the Court to hold a hearing in private for any sufficient reason.

Section 18 of the *Magistrates Court Act 1935* provides that, except where an Act or the rules otherwise provide, the Court's proceedings must be open to the public.

*Youth Court*

(2) Hearings are not open to the public.

**Note—**

Section 24(1) of the *Youth Court Act 1993* provides that no person may be present at any sitting of the Court except certain classes of persons, including parties, a guardian or advisor of the youth, lawyers for the parties, alleged victims and support persons, and a genuine representative of the news media.

*District Court*

(3) Directions hearings are not ordinarily open to the public.

*All Courts*

(4) The Court may conduct a hearing in chambers if it considers that it is in the interests of justice to do so.

### 38.7—Exclusion of persons from the court

(1) The Court may, on its own initiative or on application by any person, order that specified persons, or all persons except those specified, absent themselves from a hearing under section 69 of the Evidence Act.

*Youth Court*

(2) The Court may, on its own initiative or on application by any person, order that specified persons absent themselves from a hearing under section 24(2) of the *Youth Court Act 1993*.

## Subdivision 3—Production of prisoner before Court

### 38.8—Warrant or summons to produce prisoner

(1) A warrant to produce a person held in custody in the State to give evidence or attend at a hearing of a proceeding or appellate proceeding must be in the prescribed form.

**Prescribed form—**

Form 116 Warrant to Produce Person in Custody

(2) A summons to produce a person held in custody in the State to give evidence or attend at a hearing of a proceeding or appellate proceeding must be in the prescribed form.

**Prescribed form—**

Form 115 Summons to Produce Person in Custody

**Notes—**

Section 117(1) of the *Supreme Court Act 1935* empowers the Court to order that a prisoner whose evidence is required in a proceeding be brought before the Court for examination.

Section 28 of the *District Court Act 1991* empowers the issue of a warrant or summons to produce a person held in custody in the State.

Section 21 of the *Youth Court Act 1993* empowers the issue of a warrant or summons to produce a person held in custody in the State.

Section 25 of the *Environment Resources and Development Court Act 1993* empowers the issue of a warrant or summons to produce a person held in custody in the State.

Section 23 of the *Magistrates Court Act 1991* empowers the issue of a warrant or summons to produce a person held in custody in the State.

Section 28(2) of the *Correctional Services Act 1982* empowers a court to direct the Chief Executive to cause a prisoner to be brought before the court as a party or a witness.

## Subdivision 4—Summaries of argument, written submissions and lists of authorities

### 38.9—Summary of argument and written submissions

(1) A summary of argument must be in the prescribed form.

**Prescribed form—**

Form 101 Summary of Argument

(2) Written submissions must be in the prescribed form.

**Prescribed form—**

Form 102 Written Submissions

(3) Written submissions or a summary of argument must include at the end of the document the name of counsel who settles the document (if applicable) or, if no counsel did so, the name of the solicitor who is responsible for the document (when a law firm is acting for the party).

(4) In this rule, "counsel" and "solicitor" include a sworn police prosecutor or prosecuting solicitor referred to in Chapter 2 Part 4 Division 3 of these Rules.

### 38.10—List of authorities

(1) A list of authorities must be in the prescribed form.

**Prescribed form—**

Form 103 List of Authorities

## Subdivision 5—Conduct in court

### 38.11—Recording events in court

(1) Unless the Court otherwise orders and subject to the following subrules, the making in a court of a record of persons, things or events is not permitted.

(2) This rule does not apply to court officers acting in the course of their office or employment.

(3) Subject to subrules (4) and (5)—

(a) a party to a proceeding being heard by the Court, a lawyer, law clerk, student or bona fide member of the media may make a handwritten or electronic note of persons, things or events in a court; and

(b) a bona fide member of the media may make an audio recording of a proceeding for the sole purpose of verifying notes and for no other purpose.

(4) Any record made in a court permitted by subrule (3) must—

(a) be made in a manner that does not interfere with proceedings, court decorum or the Court's sound system or other technology; and

(b) not involve speech or otherwise generate sound.

(5) Any audio recording made by a bona fide member of the media under subrule (3)(b) must—

(a) not record any private conversation in a court;

(b) not be made available to any other person or used for any other purpose; and

(c) be erased within 48 hours of the recording.

(6) In this rule, ***record*** means a record by any means whatsoever, including without limitation handwriting, other physical means, audio or visual recording or an electronic record.

**Note—**

This rule does not affect the operation of the *Surveillance Devices Act 2016*, which amongst other things regulates the use of listening devices and optical surveillance devices.

## 38.12—Electronic communications in court

(1) Unless the Court otherwise orders and subject to the following subrules, communication using an electronic device to and from a court during proceedings is not permitted.

(2) This rule does not apply to court officers acting in the course of their office or employment.

(3) Subject to subrules (4) and (5)—

(a) a party to a proceeding being heard by the Court or a lawyer may communicate using an electronic device to and from a court during proceedings; and

(b) a bona fide member of the media may communicate using an electronic device to and from a court during proceedings for the sole purpose of reporting on a proceeding.

(4) Any electronic communication permitted by subrule (3) must—

(a) be made in a manner that does not interfere with proceedings, court decorum or the Court's sound system or other technology; and

(b) not involve speech or otherwise generate sound.

(5) Any electronic communication of evidence adduced or a submission made in a proceeding by a bona fide member of the media permitted by subrule (3)(b) must not be made until at least 15 minutes have elapsed since the later of—

(a) the evidence or submission being given or made; and

(b) the Court ruling on any application for suppression or objection made in relation to the evidence or submission within that period of 15 minutes.

(6) In this rule, ***electronic device*** means any device capable of transmitting or receiving information, audio, video or other matter (including without limitation a cellular phone, computer, personal digital assistant or audio or visual camera).

**Note—**

This rule does not affect the operation of sections 69A and 70 of the Evidence Act, which amongst other things forbid the publication of matters the subject of a suppression order.

## 38.13—Attire

(1) The Chief Judicial Officer may determine what comprises appropriate attire for lawyers or other persons appearing or attending in the Court.

(2) The Principal Registrar must publish any such determination on the CAA website.

## 38.14—Interpreters in court

(1) Interpreting facilities provided by the Interpreting and Translation Centre branch of the Department of Human Services or an alternative interpreter service provider are for witnesses giving evidence and persons accused of criminal offences.

(2) The service does not provide interpreters for lawyers taking instructions from clients or for parties to communicate with their lawyers.

## 38.15—Facilities in court

If a party or lawyer or other representative will require any special facilities for an appearance or attendance at a hearing, they must notify the Registry in sufficient time for the facilities (if available) to be arranged.

**Examples—**

Examples of special facilities are the need for an interpreter, an audio visual link or audio link, equipment to play an audio visual recording, hearing enhancement facilities or wheelchair access.

## 38.16—Information for court reporters

(1) To ensure that the court's reporters have the correct details for any authority cited during a hearing, a represented party or an unrepresented party must, before commencement of the hearing, give a copy of any list of authorities or, if there is no list of authorities, a summary of argument or written submissions to a court officer present in court.

(2) A represented party or unrepresented party must, before a witness is called, give the name of the witness to a court officer present in court.

(3) In this rule—

***represented party*** means a lawyer or other person appearing for a party;

***unrepresented party*** means a party that is not represented.

### 38.17— Requirement to produce hard copies

If a party intends to put to a witness or tender in evidence a document at trial or a hearing, the party must provide to the Court two hard copies of that document at or before the time of putting or tender.

## Division 3—Applications

### 39.1—Written application

(1) Unless the Court otherwise orders, the following applications must be made by an interlocutory application in the prescribed form—

(a) a bail application under sections 3A(1), 6(4)(a) or 19A of the Bail Act, or governed by section 10A of the Bail Act;

(b) an application to quash or stay a proceeding on the ground of abuse of process or otherwise;

(c) an application for separate trials of different counts or different defendants or youths charged in the same Information;

(d) an application seeking a ruling before trial relating to the admissibility of evidence (including the admission of evidence of an interview, admission or search) or any other question of law affecting the conduct of the trial;

(e) an application for a pre-trial special hearing or to vary or revoke an order for a pre-trial special hearing;

(f) an application for admission of a record of evidence under section 13BA, 13BB or 13D of the Evidence Act;

(g) an application for communication assistance under sections 13A and 14A of the Evidence Act or for special arrangements for the protection of a witness under section 13 or 13A of the Evidence Act;

(h) an application for exemption of a close relative from giving evidence under section 21 of the Evidence Act;

(i) an application for taking evidence outside the State under section 59E of the Evidence Act;

(j) an application for adducing evidence or making submissions by audio visual link or audio link under section 59IE or 59IQ of the Evidence Act;

(k) an application for an order requiring notice of intention to adduce evidence of a type referred to in rule 75.5 or rule 105.2;

(l) an application that, if granted, would have the effect of delaying the trial date;

(m) an application to set aside or vary a conviction or order;

(n) an application otherwise required by these Rules to be made by written application;

(o) an application that relies on evidence that is potentially contentious;

(p) an application that cannot reasonably be made without notice;

(q) an application that the applicant seeks to be determined in chambers under rule 40.1.

**Prescribed forms—**

Form 21A Interlocutory Application for Bail

Form 21C Interlocutory Application to Vary or Revoke Bail Agreement

Form 21D Interlocutory Application to Vary or Revoke Guarantee of Bail

Form 92 Interlocutory Application

Form 92A Interlocutory Application for Admission of Audiovisual Record

Form 92B Interlocutory Application for Pre-trial Special Hearing

Form 92C Interlocutory Application for Special Arrangements

Form 92D Interlocutory Application for Hearing by Audio or Audiovisual Link

Form 92E Interlocutory Application for Disclosure of Operative's Identity

Form 134 Interlocutory Application for Vehicle Forfeiture or Impounding

Form 172A Interlocutory Application for Set Aside and Re-hearing

(2) An interlocutory application must set out—

(a) the orders sought; and

(b) sufficient particulars of the grounds relied on to enable each other party to consider whether evidence will be necessary in respect of the issues raised (which may be addressed in a supporting affidavit if a supporting affidavit is filed).

(3) For the avoidance of doubt—

(a) different orders governed by different rules may be sought in one interlocutory application; and

(b) if these Rules prescribe the use of a specific form for an application for a specific order (as opposed to the generic form being Form 92), a single interlocutory application may be filed seeking orders governed by different rules provided that the application incorporates the elements of each specific form prescribed to be used for each application if made separately.

(4) An interlocutory application must be supported by an affidavit—

(a) if it is an application under section 3A(1) or 19A or governed by section 10A of the Bail Act; or

(b) if it relies on evidence that is potentially contentious.

(5) For the avoidance of doubt, a single affidavit may be filed in support of applications governed by different rules (whether one or more interlocutory applications are filed to make the applications) provided that the affidavit complies with the relevant rules and any applicable prescribed form.

(6) An interlocutory application for taking evidence outside the State must be accompanied by a draft letter of request in the prescribed form.

**Prescribed form—**

Form 114 Letter of Request

(7) Unless the Court otherwise orders, an interlocutory application must be filed and served at least 7 days before the hearing at which the orders are to be sought.

**Notes—**

Rule 66.1 also prescribes times by reference to stages of a proceeding by which various applications in the Lower Courts must be made.

Rule 102.1 also prescribes times by reference to stages of a proceeding by which various applications in the Higher Courts must be made.

### 39.2—Oral application

Unless the Court otherwise orders, an application other than one referred to in rule 39.1 may be made by oral application at a hearing.

**Examples—**

The following are examples of applications that can generally (unless they cannot reasonably be made without notice) be made orally at a hearing—

(1) an application to amend the Information;

(2) a bail application other than one referred to in rule 39.1;

(3) an application to issue a bench warrant;

(4) an application for leave to make a subpoena for documents returnable before commencement of trial;

(5) an application to abridge or extend time for service of a subpoena including a subpoena served or to be served interstate under section 29 of the Service and Execution of Process Act;

(6) an application for leave to inspect documents produced in response to a subpoena.

### 39.3—Draft orders and consents to orders

(1) If a party seeks lengthy or detailed orders, the party must file a draft order in the prescribed form as an editable Microsoft Word document.

**Prescribed form—**

Form 100 Order

Form 142 Order

Form 199 Order

(2) A party may consent to an order by filing and serving a consent to order in the prescribed form.

**Prescribed form—**

Form 96 Consent to Order

### 39.4—Subpoena

A subpoena for the purpose of a hearing other than a trial may only be issued with leave of the Court.

**Note—**

The issue of summonses to witnesses is governed by Chapter 6 Part 2 Division 1.

## Division 4—Orders
## Subdivision 1—General

### 40.1—Orders not in presence of parties

The Court may make orders in a proceeding other than in the presence of the parties if—

(a) it is by consent or not contentious;

(b) a determination is to be made on written submissions;

(c) judgment has been reserved after hearing submissions; or

(d) the Court determines that to do so would not prejudice any party.

## 40.2—Pronouncement and record of order by Court

(1) Unless the Court otherwise orders, an order of the Court takes effect—

(a) if the Court pronounces the order orally in court—at the end of the hearing at which the pronouncement is made; or

(b) in any other case—when the Court notifies the terms of the order to the parties.

(2) The Court may order that an order take effect earlier or later than under subrule (1).

**Notes—**

The time to appeal (if applicable) runs from the date when an order takes effect.

A person who fails to do an act required or does an act prohibited by an order will be in contempt of court if the person breaches the terms of the order once it has taken effect (provided that the person has notice of the order).

(3) An order of the Court is perfected by being entered in the records of the Court—

(a) when a record of outcome in the prescribed form is signed (physically or electronically) by the presiding judicial officer; or

(b) a formal order is entered in the records of the Court under rule 40.4,

(whichever occurs first).

**Prescribed forms—**

Form 24 Record of Outcome – Order

Form 99 Record of Outcome – Order

Form 123 Record of Outcome

Form 141 Record of Outcome

Form 173 Record of Outcome

Form 198 Record of Outcome

Form 215 Record of Outcome

Form 100 Order

Form 142 Order

Form 199 Order

(4) The Court may, before an order is entered into the records of the Court under subrule (3), vary (without limitation) the terms of the order pronounced under subrule (1).

## 40.3—Subsequent variation of order

The Court may make a later order varying or setting aside an earlier order other than an order determining a trial or appellate proceeding or an order imposing sentence.

### 40.4—Entry of formal order

(1) A party to an order may file an application to Registrar in the prescribed form in accordance with rule 16.2(5) to enter a formal order.

(2) Unless the Principal Registrar or a Registrar otherwise directs, a request for a formal order under subrule (1) must be accompanied by a draft order in the prescribed form as an editable Microsoft Word document.

**Prescribed form—**

Form 100 Order

Form 142 Order

Form 199 Order

(3) The Principal Registrar or a Registrar may, on their own initiative, and must if directed to do so by the Court, enter a formal order in accordance with a record of outcome.

(4) A formal order must be in the prescribed form.

**Prescribed form—**

Form 100 Order

Form 142 Order

Form 199 Order

(5) A formal order is entered in the records of the Court when it is signed by a court officer and the Court's seal is applied to it.

## Subdivision 2—Specific orders

### 40.5—Order authorising publication of complainant's name

The written record of an order authorising publication of information about the identity of the alleged victim of the sexual offence under section 71A(4) of the Evidence Act must be in the prescribed form.

**Prescribed form—**

Form 99 Record of Outcome – Order

### 40.6—Order requiring compliance with positive or negative requirements

A formal order requiring a person to do or refrain from doing an act must be endorsed with a warning, in the prescribed form, of the consequences of failing to comply with the order.

**Prescribed form—**

Form 100 Order

### 40.7—Firearms prohibition order

(1) This rule applies if the Court makes an order in the course of a proceeding and before a finding of guilt that a defendant or youth be subject to a firearms prohibition order until further order under section 66(2) of the *Firearms Act 2015*.

(2) The written record of an order that a defendant or youth be subject to a firearms prohibition order must be in the prescribed form.

**Prescribed form—**

Form 99 Record of Outcome – Order

(3) The Principal Registrar must cause a formal order in the prescribed form to be issued and served on the defendant or youth.

**Prescribed form—**

Form 100A Firearms Order and Acknowledgement

(4) A firearms prohibition order may be acknowledged by the defendant or youth before a witness who is a judicial officer, a Registrar of the Court, or a Justice of the Peace.

(5) The Principal Registrar must cause the Registrar of Firearms to be notified of the order by service of the order electronically on the Registrar of Firearms as soon as practicable.

**Note—**

Section 66(4) of the *Firearms Act 2015* requires the registrar to notify the Registrar of Firearms of the details of the order.

# Part 8—Remand: bail and custody

## Division 1—Bail

### 41.1—Eligibility to make bail application

A bail application may be made to the Court under these Rules if it relates to a charge in an Information laid or to be laid in the Court or the subject of committal for trial or sentence to the Court and—

(a) the defendant or youth the subject of the charge has not been committed for trial or sentence to another court;

(b) the charge is not the subject of an order transferring the proceeding to another court; and

(c) the charge is not the subject of a remand of the defendant or youth to be dealt with by another court.

**Note—**

If a bail application cannot be made to a particular Court under these Rules, it should be made in another Court if it can be made under this rule, or otherwise it should be made under Chapter 6 Part 2 of the Uniform Special Statutory Rules.

### 41.2—Telephone reviews under section 15: Magistrates Court and Youth Court

(1) This rule applies if—

(a) an arrested person (the ***applicant***) who applied for release on bail to a police officer is dissatisfied with the police officer's decision; and

(b) there is no magistrate in the vicinity immediately available to review the decision; and

(c) the applicant is—

(i) a child; or

(ii) an adult who cannot be brought before the Court constituted of a magistrate by not later than 4 pm on the next day following the day of arrest; and

(d) the applicant is not an adult prescribed applicant within the meaning of section 10A of the Bail Act.

(2) If this rule applies, the police officer must arrange for a telephone review to be heard by a Magistrate under section 15 of the Bail Act.

(3) The police officer who makes the telephone contact must ensure that an application for bail in the prescribed form is prepared to record the application and its result.

**Prescribed form—**

Form 21B Interlocutory Application for Review of Bail by Telephone

## 41.3—Making bail application

(1) Unless the Court otherwise orders, a bail application under section 3A(1) or 19A or governed by section 10A of the Bail Act must be made by—

(a) filing an application for bail in the prescribed form; or

**Prescribed form—**

Form 21A Interlocutory Application for Bail

(b) if the Court grants leave, by oral application at a hearing.

(2) An application to vary or revoke a bail agreement or a guarantee of bail must be made—

(a) by filing an application to vary or revoke a bail agreement or a guarantee of bail in the prescribed form; or

**Prescribed forms—**

Form 21C Interlocutory Application to Vary or Revoke Bail Agreement

Form 21D Interlocutory Application to Vary or Revoke Guarantee of Bail

(b) by oral application at a hearing.

(3) Any other bail application must be made—

(a) by an interlocutory application in accordance with rule 39.1; or

(b) by oral application at a hearing.

(4) Unless the Court otherwise orders, a bail application may but need not be supported by an affidavit.

## 41.4—Prosecution response to bail application

Unless the Court otherwise orders, if the hearing is listed for a date and time more than 48 hours after the application is served, the prosecution must, within 48 hours of receipt of a

written bail application by a defendant or youth or guarantor, file and serve on the applicant a prosecution response to bail application in the prescribed form.

**Prescribed form—**

Form 22 Prosecution Response to Bail Application

## 41.5—Request for reports

A request by the Court for a report for the purpose of a bail application must be in the prescribed form.

**Prescribed form—**

Form 23 Report Request Form – Generic Report

[Form 23A Report Request Form – Bail Enquiry Report]

[Form 23B Report Request Form – Bail Enquiry (Home Detention) Report]

[Form 23C Report Request Form – Bail Remand Information Report (Youth)]

[Form 23D Report Request Form – Bail Enquiry (Home Detention Youth) Report (Youth)]

## 41.6—Orders relating to bail

(1) A record of outcome containing orders relating to bail must be in the prescribed form.

**Prescribed form—**

Form 24 Record of Outcome – Order

(2) If the Court makes a direction under section 11A of the Bail Act that a defendant or youth surrender any firearm, ammunition or firearm part, a written direction in the prescribed form must be given to the defendant or youth before they are released from custody.

**Prescribed form—**

Form 28 Direction to Surrender Firearms and Ammunition

(3) If the terms of bail require a defendant or youth to surrender their passport to a Registrar, not to apply for a new passport and not to approach any point of international departure, the Court may direct the Principal Registrar or a Registrar to cause a request to be sent to the Minister for Foreign Affairs to refuse to issue an Australian passport in the prescribed form.

**Prescribed form—**

Form 29 Request to the Minister for Foreign Affairs to Refuse to Issue Australian Passport

(4) If the prosecution applies for review of a decision by the Court to release a defendant or youth on bail and an order is made under section 16 of the Bail Act that the release be deferred, the Principal Registrar must cause to be issued a notice of stay of release on application for review in the prescribed form to the Sheriff and the Chief Executive.

**Prescribed form—**

Form 30 Notice of Order for Stay of Release on Application for Review

## 41.7—Bail agreements, variations and guarantees

(1) A bail agreement or bail variation must be in the prescribed form, subject to any modification ordered by the Court.

**Prescribed form—**

Form 25 Bail Agreement

Form 25A Bail Agreement Variation

(2) A bail guarantee must be in the prescribed form, subject to any modification ordered by the Court.

**Prescribed form—**

Form 26 Guarantee of Bail

(3) A bail agreement or bail guarantee must be witnessed by—

(a) the judicial officer granting bail;

(b) the Registrar;

(c) a person referred to in section 6(3) of the Bail Act;

(d) a delegate of any of these persons;

(e) any other person or class of persons specified by the Court.

## 41.8—Warrant of apprehension

The Court may, if it appears that a defendant or youth released on bail has contravened or failed to comply with a term or condition of a bail agreement or for other sufficient reason, issue a warrant of apprehension in the prescribed form.

**Prescribed form—**

Form 31 Warrant of Apprehension of Defendant

## 41.9—Bail forfeiture rescission or reduction

Unless the Court otherwise orders, an application for rescission of an order for forfeiture or reduction of the amount forfeited under section 19(3) of the Bail Act must be made by filing an application for bail in the prescribed form.

**Prescribed form—**

Form 172B Interlocutory Application for Rescission or Reduction of Bail Forfeiture

## 41.10—Intervention orders

(1) If the prosecution seeks, or the Court is considering whether to make an intervention order under section 23A of the Bail Act, the prosecution must file on a court access basis a Protected Person Details for Intervention Order in the prescribed form.

**Prescribed form—**

Form104e Protected Person Details for Intervention Order

Form 104h Protected Person Details for Intervention Order

(2) A record of outcome containing an interim intervention order must be in the prescribed form.

**Prescribed form—**

Form 24 Record of Outcome – Order

(3) If the Court makes an interim intervention order under section 23A of the Bail Act—

(a) the Principal Registrar must ensure that an interim intervention order is issued in the prescribed form; and

**Prescribed form—**

Form 27 Order – Interim Intervention Order

(b) unless the order is given to the defendant or youth in the court, the prosecution is responsible for serving the interim intervention order on the defendant or youth against whom the order is made.

(4) If the Court makes an interim intervention order under section 23A of the Bail Act, the Court will create a new special statutory application case under the Uniform Special Statutory Rules and all further steps in relation to the intervention order will be governed by the Uniform Special Statutory Rules.

## Division 2—Remand in custody

### 42.1—Definitions

In this Division—

the ***Minister for Health*** means the Minister responsible for the administration of the *Mental Health Act 2009* (presently the Minister for Health and Wellbeing).

### 42.2—Warrant of remand/mandate

(1) If the Court remands a defendant or youth in custody to the date of the next hearing, the Principal Registrar must cause to be issued a warrant of remand or mandate in the prescribed form to the Sheriff, SAPOL and the Minister for Health or Chief Executive.

**Prescribed form—**

Form 34A Warrant of Remand or Mandate

*Lower Courts*

(2) If the Court remands a defendant or youth in custody on committal of the person for trial or sentence, the Principal Registrar must cause to be issued a warrant of remand or mandate in the prescribed form to the Sheriff, SAPOL and the Minister for Health or Chief Executive.

**Prescribed form—**

Form 34B Order of Remand or Mandate

*Higher Courts*

(3) If the Court remands a defendant in custody, unless the Court otherwise orders, the Principal Registrar must cause to be issued a warrant of remand in the prescribed form to the Sheriff, SAPOL and the Minister for Health or Chief Executive.

**Prescribed form—**

Form 34B Order of Remand or Mandate

### 42.3—Warrant of interim detention

(1) If the Court remands a defendant in custody (whether in a hospital or prison) under section 20B of the Crimes Act, the Principal Registrar must cause to be issued a warrant of interim detention in the prescribed form to the Sheriff, SAPOL and the Minister for Health or Chief Executive.

**Prescribed form—**

Form 34C Warrant of Interim Detention – Crimes Act section 20B

(2) If the Court remands a defendant in custody (whether in a hospital or prison) under section 20BB of the Crimes Act, the Principal Registrar must cause to be issued a

warrant of interim detention in the prescribed form to the Sheriff, SAPOL and the Minister for Health or Chief Executive.

**Prescribed form—**

Form 34D Warrant of Interim Detention – Crimes Act section 20BB

# Part 9—Pleas

## 43.1—Entry of plea in court

(1) If there are multiple counts and the Court is satisfied that a defendant or youth is literate, the Court may if it thinks fit take pleas under subrule (2).

(2) Upon pleas being taken under this rule—

(a) a copy of the Information is to be or to have been provided to the defendant or youth;

(b) the defendant or youth is to write or to have written against each count on a copy of the Information their plea;

(c) a short form summary of the offences is to be read to the defendant or youth;

(d) the defendant or youth is to sign their name at the foot of the copy of the Information and their signature is to be witnessed by their lawyer or, if not represented, by a person directed by the court;

(e) the Court will record the respective pleas in accordance with the signed copy of the Information; and

(f) if a defendant pleads not guilty on an arraignment in the presence of a jury panel or a jury—a copy of the Information bearing the pleas may be given to the jury.

## 43.2—Calling matter on for entry of guilty plea

(1) If a defendant or youth requests that a proceeding be called on in court for the purpose of preserving the maximum discount applicable under Part 2 Division 2 Subdivision 4 of the Sentencing Act, the defendant or youth must file a request to have the matter called on for guilty plea in the prescribed form.

**Prescribed form—**

Form 52 Request to have Matter Called on for Guilty Plea

(2) A request to have the matter called on for guilty plea must be served on the prosecution as soon as practicable after being filed.

## 43.3—Acceptance of guilty plea

The Court may decline to accept a guilty plea if there is doubt whether the defendant or youth is fit to stand trial, the plea is to a lesser of alternative charges, the prosecution has not yet determined whether a more serious alternative charge may be laid, it appears to the Court that despite the plea the defendant or youth does not accept guilt or for other good reason.

## 43.4—Withdrawal of guilty plea

A guilty plea may only be withdrawn with the leave of the Court.

# Part 10—Consolidation, division and transfer of proceedings

## Division 1—Consolidation and division

### 44.1—Consolidation

The Court may order charges contained in separate Informations be dealt with together in the same proceeding on such conditions as it thinks fit.

**Note—**

Section 51(2)(b) of the Procedure Act provides that a court may direct that charges contained in separate Informations be dealt with together in the same proceeding.

Section 102(5)(b) of the Procedure Act provides that a court may direct that charges contained in separate Informations be dealt with together in the same proceeding (provided that a court may only direct that charges contained in separate Informations be tried together if the charges could, in accordance with section 102(1), have been joined together in the same Information).

### 44.2—Division

The Court may order charges contained in a single Information be dealt with in separate proceedings on such conditions as it thinks fit.

**Note—**

Section 51(2)(a) of the Procedure Act provides that a court may direct that charges contained in a single Information be dealt with in separate proceedings.

Section 102(5)(a) of the Procedure Act provides that a court may direct that charges contained in a single Information be dealt with in separate proceedings.

## Division 2—Transfer between courts

### 45.1—Supreme Court

An application for—

(a) transfer of a proceeding to the District Court under section 24(1)(b) of the *District Court Act 1991* or section 118(1) of the Procedure Act;

(b) transfer of a proceeding to the Magistrates Court under section 19(2a) of the *Magistrates Court Act 1991*; or

(c) remittal of summary offence charges to a Lower Court under section 102(4) or 119(2) of the Procedure Act,

may be made by an oral application at a hearing or by an interlocutory application in accordance with rule 39.1.

### 45.2—District Court

An application for—

(a) transfer of a proceeding to the Supreme Court under section 24(2) of the *District Court Act 1991* or section 118(3) of the Procedure Act; or

(b) remittal of summary offence charges to a Lower Court under section 102(4) or 119(2) of the Procedure Act,

may be made by an oral application at a hearing or by an interlocutory application in accordance with rule 39.1.

### 45.3—Magistrates Court

An application for transfer of a proceeding from the Magistrates Court to the District Court under section 9(7) of the *Magistrates Court Act 1991* may be made by an oral application at a hearing or by an interlocutory application in accordance with rule 39.1.

# Part 11—Experts

**Note—**

This Part contains harmonised rules.

## Division 1—Expert code of conduct

### 46.1—General duties to Court

An expert is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceeding or other person retaining the expert, to assist the Court impartially on matters relevant to the area of expertise of the witness.

### 46.2—Content of report

An expert report (including a supplementary report) must comply with the requirements set out in Division 2.

### 46.3—Change of opinion

When an expert has provided to a party an expert report, and the expert subsequently changes their opinion on a material matter, the expert must as soon as practicable provide to the party a supplementary report in accordance with rule 47.2(1).

### 46.4—Conferral with prior expert

(1) An expert preparing a report in response to, or in the same field of expertise or dealing with the same subject matter as, an expert report by another expert (a ***prior expert***) should, to the extent practicable, confer with the prior expert about their respective assumptions and opinions.

(2) A prior expert asked to confer should, to the extent practicable, confer with the subsequent expert about their respective assumptions and opinions.

## Division 2—Content of expert report

### 47.1—Content of report

An expert report prepared by an expert must—

(a) state clearly the opinion, or opinions, of the expert;

(b) state the name and address of the expert;

(c) include an acknowledgment that the expert has read this Part and agrees to be bound by its provisions;

(d) state the qualifications of the expert to prepare the report;

(e) state the assumptions and material facts on which each opinion expressed in the report is based (whether by annexing a letter of instructions or otherwise);

(f) identify the reasons for, and any literature or other materials utilised in support of, such opinion;

(g) state (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;

(h) identify any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;

(i) to the extent to which any opinion that the expert has expressed involves the acceptance of another person's opinion, identify that other person and the opinion expressed by that other person;

(j) include a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

(k) state any qualifications on an opinion expressed in the report without which the report is, or may be, incomplete or inaccurate;

(l) state whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason;

(m) where the report is lengthy or complex, include a brief summary of the report at the beginning of the report;

(n) identify documents and other materials that the expert has been asked to consider (whether by annexing a letter of instructions or otherwise);

(o) attach copies of documents that record instructions given to the expert; and

(p) be signed by the expert.

### 47.2—Supplementary report

(1) When an expert has provided to a party an expert report, and the expert subsequently changes their opinion on a material matter, the expert must as soon as practicable provide to the party a supplementary report which shall state or provide the information referred to in paragraphs (a), (d), (e), (f), (g), (h), (i), (j), (k) and (l) of rule 47.1.

(2) In any subsequent report (whether prepared in accordance with subrule (1) or not), the expert may refer to material contained in the earlier report without repeating it.

# Part 12—Contempt

## Division 1—Introduction

### 48.1—Definitions

In this Part—

***accused*** means the person charged with contempt of court;

***prosecutor*** means the person prosecuting the charge of contempt of court and, when applicable, denotes the Principal Registrar.

## Division 2—Court initiated proceeding

### 49.1—Initiation

(1) If contempt is committed in the face of the Court and it is necessary to deal urgently with it, the Court may direct the Principal Registrar to formulate a charge of contempt and in the meantime—

(a) order that the accused be taken into custody; or

(b) order the issue of a warrant of apprehension in the prescribed form to have the accused apprehended and brought before the Court to be dealt with on the charge.

**Prescribed form—**

Form 33 Warrant of Apprehension – Contempt or Breach of Condition

(2) In any other case, the Court may direct the Principal Registrar to formulate a charge of contempt.

### 49.2—Formulation of charge

(1) If the Court makes an order under rule 49.1(1) or a direction under rule 49.1(2), the Principal Registrar must as soon as practicable formulate a charge containing reasonable details of the alleged contempt and file an interlocutory application in accordance with rule 39.1 charging the accused with contempt.

**Prescribed form—**

Form 92 Interlocutory Application

(2) Upon an application being filed under subrule (1), the Court may order the issue of—

(a) a summons in the prescribed form requiring the accused to attend before the Court to answer the charge; or

(b) a warrant of apprehension in the prescribed form to have the accused apprehended and brought before the Court to be dealt with on the charge.

**Prescribed forms—**

Form 32 Summons for Contempt or Breach of Condition

Form 33 Warrant of Apprehension – Contempt or Breach of Condition

## Division 3—Party initiated proceeding

### 50.1—Application by party

(1) If a party claims that another party, a witness or another person has committed contempt of court in relation to a proceeding, the party may apply by an interlocutory application in accordance with rule 39.1 for the accused to be charged with contempt and supporting affidavit containing reasonable details of the alleged contempt.

(2) If the Court is satisfied that there are reasonable grounds to suspect that the accused committed the alleged contempt, the Court may—

(a) require the Principal Registrar; or

(b) permit the party who filed the interlocutory application,

to formulate a charge containing reasonable details of the alleged contempt and file an interlocutory application in accordance with rule 39.1 charging the accused with contempt.

(3) If the Court makes an order under subrule (2)(a), the Court may order that the party who filed the interlocutory application indemnify the Principal Registrar in respect of costs incurred, or ordered to be paid, by the Principal Registrar in prosecuting the contempt charge.

(4) Upon an interlocutory application charging the accused with contempt being filed, the Court may order the issue of—

(a) a summons in the prescribed form requiring the accused to attend before the Court to answer the charge; or

(b) a warrant of apprehension in the prescribed form to have the accused apprehended and brought before the Court to be dealt with on the charge.

**Prescribed forms—**

Form 32 Summons for Contempt or Breach of Condition

Form 33 Warrant of Apprehension – Contempt or Breach of Condition

## Division 4—Hearing and determination of charge

### 51.1—Prosecution by Registrar

If the prosecution of the contempt charge is undertaken by the Principal Registrar, the Principal Registrar may retain a law firm or office to act, or counsel to appear, for the Principal Registrar.

### 51.2—Hearing and determination

(1) If the accused admits the charge, the Court may act on the admission.

(2) If the accused does not admit the charge, at the hearing of the charge of contempt—

(a) evidence may be adduced by the prosecutor or the accused (in addition to oral testimony and the tender of documents) in the form of an affidavit, provided that the other party has an opportunity to cross-examine the deponent;

(b) the Court may, on its own initiative, adduce evidence;

(c) if the Court calls a witness to give evidence—the prosecutor and the accused may cross-examine the witness; and

(d) after hearing submissions by the parties, the Court will determine whether the charge has been proved beyond reasonable doubt.

(3) If the Court finds the accused guilty, or the accused admits guilt of the contempt, the Court will hear submissions concerning penalty.

(4) The Court may exercise, with respect to the charge, any power that it has with respect to a charge of an offence and, with respect to the accused, any power that it has in relation to a person charged with an offence.

### 51.3—Penalty

(1) This rule applies when the accused admits guilt or the Court finds the accused guilty of contempt.

(2) The Court may punish contempt by a fine or, if the accused is an individual, by imprisonment.

(3) If the Court imposes imprisonment, the Principal Registrar must ensure that a warrant of commitment in the prescribed form is issued.

**Prescribed form—**

Form 218 Warrant of Commitment – Contempt

(4) If the Court imposes a fine, the Court may—

(a) fix the time for payment of the fine; or

(b) if the accused is an individual—fix a term of imprisonment in default of payment of the fine.

(5) The Court may—

(a) if the accused undertakes to the Court to observe conditions determined by the Court and to appear for the determination of penalty upon a breach of those conditions—release the accused without imposing penalty; or

(b) if the accused undertakes to the Court, in the prescribed form, to observe conditions determined by the Court—suspend the carrying into effect of a penalty for contempt.

**Prescribed form—**

Form 219 Undertaking–Contempt

## 51.4—Subsequent proceedings

(1) If the Court makes an order under rule 51.3(5) and it subsequently appears that the accused may have breached a condition of the undertaking, the Court may order the issue of—

(a) a summons in the prescribed form requiring the accused to attend before the Court; or

(b) a warrant of apprehension in the prescribed form to have the accused apprehended and brought before the Court.

**Prescribed forms—**

Form 32 Summons for Contempt or Breach of Condition

Form 33 Warrant of Apprehension – Contempt or Breach of Condition

(2) If the Court finds that the accused breached a condition of an undertaking entered into under rule 51.3(5)(a), the Court may—

(a) impose a penalty on the accused for the contempt; or

(b) make any other or further order as it thinks fit.

(3) If the Court finds that the accused breached a condition of an undertaking entered into under rule 51.3(5)(b), the Court may—

(a) cancel the suspension of the penalty and order that the penalty be carried into effect; or

(b) make any other or further order as it thinks fit.

(4) The Court may, at any stage, cancel or reduce a penalty imposed for contempt.

# Chapter 3—Proceedings in Lower Courts

## Part 1—Scope of Chapter

### 61.1—Scope

(1) Subject to subrules (2) and (3), this Chapter applies to the commencement and conduct of all proceedings in the Lower Courts up to but not including matters governed by Chapter 6, Chapter 7 or Chapter 8.

(2) Part 3 Division 3 and Part 4 Division 2, Division 4 Subdivision C and Division 5 of this Chapter do not apply to matters governed by Chapter 4.

(3) Part 8 and Part 9 of this Chapter only apply to proceedings that are to proceed to trial in a Lower Court.

**Notes—**

Chapter 4 also governs committal proceedings.

Chapter 6 governs trials.

Chapter 7 governs sentencing and costs.

## Part 2—Commencement and service of proceeding

### 62.1—Information

(1) A proceeding must be instituted by filing an Information in the prescribed form.

(2) If the defendant or youth has been arrested in respect of a charge contained in the Information, the Information must be in the prescribed form.

**Prescribed form—**

Form 1 Information Lower Courts

(3) If the defendant or youth has not been arrested in respect of a charge contained in the Information, the Information must be in the prescribed form.

**Prescribed form—**

Form 2 Information and Summons Lower Courts

(4) Each defendant or youth must be identified in the Information by name, date of birth and drivers licence number (to the extent known).

(5) The Information must identify the highest charge category in respect of the offences charged, on the basis that the charge categories in descending order are—

(a) major indictable;

(b) Commonwealth indictable;

(c) minor indictable;

(d) summary; and

(e) summary offence not punishable by imprisonment or detention.

(6) The Information must show each offence charged in a separate numbered count.

(7) The Information must include the following details in respect of each count as required by the prescribed form—

(a) offence details being the short name of the offence and statutory provision if applicable;

(b) particulars of the essence of the elements of the offence and in accordance with rule 62.2;

**Note—**

Section 100(1)(b) of the Procedure Act requires an Information charging an indictable offence to contain "such particulars as are necessary for giving reasonable information as to the nature of the charge".

(c) if it is alleged that the offence is an aggravated offence—the circumstances of aggravation alleged;

(d) classification of offence by reference to charge category; and

(e) if the offence is or may be a notifiable offence—a statement to that effect in respect of each type of notifiable offence.

(9) The Information must identify any special orders sought in addition to penalty and costs.

(10) If the proceeding is a priority proceeding, the Information must identify that the proceeding is a priority proceeding and its type in accordance with the prescribed form.

(11) If the informant is not a public authority, the Information must be signed by the informant or the lawyer acting for the informant before an authorised witness.

*Magistrates Court*

(12) The informant must, when filing an Information, identify the location at which the applicant requests that the proceeding be heard, being a location at which the Court sits and either close to where the offence or one of the offences charged was allegedly committed or where the defendant lives.

**Note—**

The Court will take into account the request in listing the first hearing but it is in the discretion of the Court as to the location of the first hearing. It is in the discretion of the Court as to the location of any subsequent hearings or of any trial.

*All Courts*

(13) An Information is not open to objection by reason only of failure to comply with this rule or with rule 62.2 or rule 62.3.

## 62.2—Particulars

(1) If an offence comprises—

(a) any one of several different acts or omissions;

(b) an act or omission in any one of several capacities;

(c) an act or omission with any one of several intentions; or

(d) any other element in the alternative,

the acts, omissions, capacities, intentions or other matters in the alternative may be stated in the alternative in the count charging the offence.

(2) 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 statutory provision creating the offence.

(3) The description or designation of a person to whom reference is made (other than a defendant or youth) must be sufficient to identify the person, without necessarily stating their full and correct name or address.

(4) If such a description or designation cannot be given, the best description or designation must be given, or the person may be described as "a person unknown".

(5) The description of property must be sufficient to identify the property.

(6) Unless an offence depends on the special ownership or value of property, it is not necessary to state the owner or value of the property.

(7) If reference is made to property with multiple owners, it is sufficient to describe it as owned by one named person "with others".

(8) If owners of 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 an individual.

(9) The description of a document or instrument must be sufficient to identify it.

(10) It is sufficient to describe a document or instrument by a name or designation by which it is generally known, or by its effect, without setting out a copy of it.

(11) The description of a place, time, thing, matter, act or omission must be sufficient to identify it.

(12) Figures and abbreviations may be used to express anything commonly expressed in that manner.

(13) If a rule of law or statutory provision limits the particulars required to be given, this rule does not require more detailed particulars than those required by the rule or statutory provision.

## 62.3—Accompanying documents

(1) Subject to subrules (2) and (3), the informant must file with the Information or immediately upon the Information being filed at court—

(a) a summary of the allegations in the prescribed form in respect of each count;

**Prescribed form—**

Form 9A Summary of Allegations

(b) an antecedent report in the prescribed form providing particulars of any previous convictions of each defendant or youth; and

**Prescribed form—**

Form 9B Antecedent Report

(c) if a defendant or youth has been granted bail by a police officer under section 5(1)(e) of the Bail Act—the bail agreement.

(2) The informant may, instead of filing a separate summary of allegations and separate antecedent report under paragraphs (a) and (b) of subrule (1), file a combined summary

of allegations and separate antecedent report in the prescribed form (showing the Antecedent Report on a different page to the Summary of allegations).

**Prescribed form—**

Form 9C Combined Summary of Allegations and Antecedent Report

(3) The informant may, instead of filing a bail agreement under paragraph (c) of subrule (1), provide to the Court data in an acceptable format identifying the date and conditions of the bail agreement.

(4) A Summary of Allegations, Antecedent Report and bail agreement filed under this rule will be treated as being filed on a party access basis.

## 62.4—Service of Information

(1) The Information and the documents referred to in rule 62.3 must be served on each defendant or youth.

(2) A notice in the prescribed form appropriate to the highest charge category and Court must be served with the Information.

**Prescribed forms—**

**Highest charge category major indictable**

Form 8A Notice to Defendant – Major Indictable Offence

**Highest charge category Commonwealth indictable**

Form 8B Notice to Defendant – Commonwealth Indictable Offence

**Highest charge category minor indictable**

Form 8C Notice to Defendant – Minor Indictable Offence

**Highest charge category indictable (major or minor)**

Form 8CY Notice to Youth – Indictable Offence

**Highest charge category summary**

Form 8D Notice to Defendant – Summary Offence

Form 8DY Notice to Youth – Summary Offence

**Highest charge category summary not punishable by imprisonment or detention**

Form 8E Notice to Defendant – Summary Offence not Punishable by Imprisonment

Form 8EY Notice to Youth – Summary Offence not Punishable by Detention

(3) If the highest charge category for any offence charged in the Information is a summary offence not punishable by imprisonment or detention, a pro forma Written Guilty Plea in the prescribed form must be served with the Information.

**Prescribed form—**

Form 51 Written Guilty Plea

(4) If the highest charge category for any offence charged in the Information is minor indictable, a pro forma Election for Trial in District Court in the prescribed form must be served with the Information.

**Prescribed form—**

Form 66 Election for Trial in District Court

(5) If the highest charge category for any offence charged in the Information is indictable, a pro forma Election to be Dealt with as an Adult in the prescribed form must be served with the Information.

**Prescribed form—**

Form 67 Election to be Dealt with as an Adult

(6) The Information must be served—

(a) if a Form 1 Information Lower Courts—as soon as practicable; and

(b) if a Form 2 Information and Summons Lower Courts—as soon as practicable and in any event at least 7 days before the first hearing date.

(7) Unless the Court otherwise orders, service of the Information must be effected by original service.

**Notes—**

Service of an Information in another State is effective only if there is compliance with section 16 of the Service and Execution of Process Act.

# Part 3—Amendment, challenge and further particulars

## Division 1—Amendment of Information

### 63.1—Amendment with or without leave

(1) Subject to subrules (3), (4) and (5), the informant may amend the Information (including to add an additional defendant or youth or count or to amend an existing count)—

(a) if the matter is proceeding towards a trial in the Court—at any time up to the pre-trial conference date;

(b) if the matter is proceeding towards a committal for trial—at any time up to 4 weeks before the answer charge date.

(2) Subject to subrules (3), (4) and (5), the informant may amend the Information (including to add or amend an existing count)—

(a) if the matter is proceeding towards a trial in the Court—at any time before the trial date if the amendment is not capable of increasing the length of the trial or affecting the trial proceeding on the trial date;

(b) if the matter is proceeding towards a committal for trial—at any time before the answer charge date if the amendment is not capable of—

(i) causing an adjournment of an answer charge appearance;

(ii) causing an increase in the length of an answer charge contested hearing;

(iii) affecting an answer charge contested hearing being heard when it would otherwise be heard; or

(iv) causing an application to be made or notice to be issued by a defendant or youth resulting in an answer charge contested hearing that would not otherwise have occurred.

(3) The informant may not amend under subrule (1) or (2) if the amendment would add a count against a party that is statute barred due to the effluxion of time.

(4) If the informant files a revised Information under subrule (1) or (2), a defendant or youth may apply for an order disallowing the amendment in whole or in part.

(5) A count cannot be withdrawn (or deleted from an information) other than by announcement in Court.

(6) The informant may amend the Information (including to add an additional defendant or youth or count or to delete or amend an existing count) at any time with the leave of the Court.

(7) If the informant seeks leave to amend the Information, the informant must file, and serve on each defendant or youth who has been served with the original Information, a draft revised Information either as a standalone filed document in the prescribed form or as an exhibit to an affidavit.

**Prescribed form—**

Form 4 Draft Revised Information Lower Courts

(8) If the informant files a revised Information, any additional defendant or youth must be added in sequential order (after all existing defendants or youths) and any additional count must be added in sequential order (after all existing counts) on the Information.

**Note—**

There is no limit on the number of times the Information may be amended under this rule.

### 63.2—Method of amendment

(1) If the informant is entitled to amend an Information under rule 63.1, the amendment must be made by filing a revised version of the Information in accordance with rule 30.2.

(2) The informant must serve a revised Information on each defendant or youth as soon as practicable.

### 63.3—Notifiable offences

If the informant becomes aware after an Information has been filed that an offence alleged in the Information is or may be a notifiable offence, the informant must file a notice of notifiable offence in the prescribed form providing the required information.

**Prescribed form—**

Form 76 Notice of Notifiable Offence

### 63.4—Priority proceeding

If the informant becomes aware after an Information has been filed that the proceeding is a priority proceeding, the informant must file a notice of priority proceeding in the prescribed form providing the required information.

**Prescribed form—**

Form 75 Notice of Priority Proceeding

## Division 2—Challenges

### 64.1—Strike out

(1) The Court may strike out a count in an Information if—

(a) it does not comply with these Rules;

(b) it is frivolous, vexatious or an abuse of the process of the Court; or

(c) it does not disclose an offence.

(2) If the Court strikes out a count under subrule (1), it may if it thinks fit grant leave to file within a specified time a revised Information rectifying the matter that caused the count to be struck out.

### 64.2—Challenge to offence category

(1) A challenge under section 5(8) of the Procedure Act must be made—

(a) by an interlocutory application in accordance with rule 39.1; or

(b) by an application made orally at a hearing.

(2) A challenge must be made before the proceeding is listed for trial.

## Division 3—Better particulars

### 64A.1—Better particulars

(1) A defendant or youth may by written notice request better particulars of a count in an Information.

(2) A request for better particulars must be served within 28 days, or such other period as may be ordered by the Court, of service of the first Information containing the count the subject of the request.

(3) If the informant receives a notice under subrule (1) within the time specified in subrule (2), the informant must, within 14 days or such other period as may be ordered by the Court, provide a written response responding in respect of each request by either—

(a) providing better particulars;

(b) offering to provide better particulars and indicating when they will be provided; or

(c) declining to provide better particulars.

(4) The Court may order the informant to provide better particulars of a count by—

(a) filing and serving a revised Information containing such particulars; or

(b) filing and serving a separate document containing such particulars.

# Part 4—Hearings and applications

## Division 1—Hearings

### 65.1—Hearings

(1) In the normal course, the first hearing of a proceeding initiated by a Form 1 Information Lower Courts will be listed as soon as practicable.

(2) In the normal course, the first hearing of a proceeding initiated by a Form 2 Information and Summons Lower Courts will be listed several weeks after the Information is filed.

(3) At the first hearing or any subsequent hearing to which the proceeding is adjourned, if a defendant or youth pleads guilty, the Court may, as it thinks fit—

(a) accept the plea and hear sentencing submissions at that hearing if the defendant or youth can be sentenced by the Court;

(b) accept the plea and commit the defendant or youth to a Higher Court for sentence if the defendant or youth is to be sentenced by a Higher Court;

(c) accept the plea and adjourn the matter to a subsequent hearing and give such directions as it thinks fit; or

(d) decline to accept the plea at that stage and adjourn the matter to a subsequent hearing and give such directions as it thinks fit.

(4) At the first hearing or any subsequent hearing to which the matter is adjourned, if a defendant or youth does not plead guilty, the Court may—

(a) give such directions as it thinks fit and adjourn the matter to a subsequent hearing;

(b) if the matter is to be tried in the Court, adjourn the matter to a pre-trial conference; or

(c) if the matter is not to be tried in the Court, list the matter for a hearing governed by Chapter 4 and give such directions as it thinks fit.

## 65.2—Attendance of parties

(1) This rule does not apply to a hearing at which orders are made in the absence of the parties.

(2) Unless the Court otherwise orders, the informant must attend (themselves or by a lawyer) at a hearing.

(3) Unless the Court otherwise orders, a defendant or youth must attend (themselves or by a lawyer) at a hearing.

(4) A defendant or youth—

(a) who is on bail—must attend in person at every hearing unless excused on application;

(b) who is in custody—must attend in accordance with rule 38.3 and rule 38.4 unless excused on application; or

(c) who is not on bail or in custody—must attend at a trial or sentencing hearing unless excused on application.

## 65.3—Priority proceedings

If a proceeding is a priority proceeding and the Information does not refer to the proceeding being a priority proceeding, the informant must inform the Court at the first hearing.

## 65.4—Documents for use at hearings

(1) Unless the Court otherwise orders, an affidavit, report, reference or other document to be relied on at a hearing must be provided to the Court and served at least 2 business days before the listed hearing date.

(2) Unless the Court otherwise orders, written submissions or a summary of argument to be relied on at a hearing must be filed and served at least 2 business days before the listed hearing date.

## 65.5—Consent orders

(1) Unless the Court otherwise orders, if the parties consent to an order to be made at or in lieu of a hearing (including, without limitation, an order adjourning the hearing or

extending time to take a step in the proceeding), the terms of the consent order and fact of the consent to the order must be communicated to the Court at least 2 business days before the hearing date.

(2) Unless the Court otherwise orders, if the parties wish to request an order in chambers in the absence of the parties adjourning a hearing, the request together with the reason for the request and the purpose of the proposed adjournment must be communicated to the Court at least 2 business days before the hearing date.

## Division 2—Applications

### 66.1—Time for making certain applications

(1) An application—

(a) relating to joinder or severance or for separate trials;

(b) to quash or stay a proceeding;

(c) relating to cross-admissibility of evidence;

(d) relating to the legality of a search;

(e) relating to continuity of custody of exhibits;

(f) relating to the admissibility of other prosecution evidence;

(g) raising any other point of law; or

(h) for a pre-trial special hearing,

must be made at least 14 days before the pre-trial conference date.

(2) An application for admission of an audio visual record of evidence under section 13BA of the Evidence Act must be made by the pre-trial conference date.

(3) An application—

(a) for an order requiring notice of intention to adduce evidence of a type referred to in rule 75.4;

(b) for taking evidence outside the State; or

(c) to adduce evidence or make submissions by audio visual link or audio link,

must be made at least 28 days before the trial date.

(4) An application for special arrangements for the protection of a witness under section 13 or 13A of the Evidence Act must be made at least 14 days before the trial date.

(5) Any other application to determine an issue before the commencement of the trial must be made at least 14 days before the trial date.

**Note—**

Rule 39.1(7) also requires an interlocutory application to be filed and served at least 7 days before the hearing at which the orders are to be sought.

## Division 3—Identification of potential mental incapacity issues

### 67.1—Unfitness to stand trial

(1) If a defendant or youth is represented by a lawyer and the lawyer has reason to believe that the defendant or youth may be unfit to stand trial, the lawyer must—

(a) expeditiously inquire into whether the defendant or youth is fit to stand trial; and

(b) inform the Court as soon as practicable that there is or may be an issue about whether the defendant or youth is fit to stand trial.

(2) If a defendant or youth not represented by a lawyer has doubt about their fitness to stand trial, they must inform the Court that there is or may be an issue about their fitness to stand trial as soon as practicable.

(3) If the prosecution has doubt whether a defendant or youth is fit to stand trial, they must inform the Court that there is or may be an issue about the defendant's or youth's fitness to stand trial as soon as practicable.

### 67.2—Mental incompetence to commit offence

(1) If a defendant or youth is represented by a lawyer and the lawyer has reason to believe that the defendant or youth may have been mentally incompetent to commit an offence charged, the lawyer must—

(a) expeditiously inquire into the mental competence of the defendant or youth to commit the offence; and

(b) inform the Court that there is or may be an issue about the mental competence of the defendant or youth to commit the offence as soon as practicable.

(2) If an unrepresented defendant or youth has doubt about their mental competence to commit an offence charged, they must inform the Court that there is or may be an issue about their mental competence as soon as practicable.

(3) If the prosecution has doubt whether a defendant or youth was mentally competent to commit an offence charged, they must inform the Court that there is or may be an issue about the defendant's or youth's mental competence to commit the offence charged as soon as practicable.

### 67.3—Presumption of incapacity to commit offence due to age: Youth Court

(1) If a youth who was between 10 and 13 years old (inclusive) at the time of an alleged offence is represented by a lawyer and the lawyer has reason to believe that the youth may not have had capacity to commit an offence charged (disregarding the common law presumption of *doli incapax*), the lawyer must—

(a) expeditiously inquire into the capacity of the youth to commit the offence; and

(b) inform the Court that there is or may be an issue about the capacity of the youth to commit the offence (disregarding the common law presumption) as soon as practicable.

(2) If a youth who was between 10 and 13 years old (inclusive) at the time of an alleged offence is not represented by a lawyer and their parent or guardian has doubt about the youth's capacity to commit an offence charged (disregarding the common law presumption), they must inform the Court that there is or may be an issue about the youth's capacity to commit the offence (disregarding the common law presumption) as soon as practicable.

**Note—**

At common law there is a presumption of *doli incapax*, namely that a youth aged at least 10 and less than 14 years old is not capable of committing a criminal offence.

# Division 4—Non-appearance of defendant or youth
# Subdivision A—Preliminary

## 68.1—Application of Division

This Division applies if a defendant or youth does not attend—

(a) at the first hearing of a proceeding after the defendant or youth was served with an Information and summons issued under rule 62.1(3);

(b) at the first hearing of a proceeding after the defendant or youth was arrested and released on bail to attend at the hearing;

(c) at any adjourned hearing when the defendant has been remanded on bail to appear at the hearing;

(d) at any adjourned hearing when the defendant or youth or their lawyer was present at a previous hearing at which the adjourned hearing date was fixed;

(e) at any adjourned hearing of which notice has been given to the defendant or youth or their lawyer; or

(f) at the trial of a proceeding.

**Notes—**

Sections 27C, 58(b) and 62 of the Procedure Act provide for the exercise of powers when the defendant or youth fails to appear in answer to a summons served a reasonable time before the hearing.

Section 62A of the Procedure Act provides for the exercise of powers when the defendant or youth fails to appear at a hearing after having been released on bail when they were originally arrested.

Section 62BA of the Procedure Act provides for the exercise of powers when the defendant or youth fails to appear at a hearing when they were originally served with a summons.

# Subdivision B—Warrant of apprehension

## 68.2—Issue warrant of apprehension

(1) Subject to subrule (2), on the non-attendance of a defendant or youth at a hearing or trial, the Court may order the issue of a warrant of apprehension of the defendant or youth under the relevant provision of the Procedure Act.

(2) This rule does not apply in respect of a defendant or youth who has filed a written guilty plea under rule 70.2 at the time of the hearing in question.

(3) A warrant of apprehension ordered under this rule must be in the prescribed form.

**Prescribed form—**

Form 31 Warrant of Apprehension of Defendant

(4) If the Information is required to be substantiated on oath before a warrant can be issued, it is not necessary that the substantiation be by the informant.

**Note—**

If a warrant is to be issued under section 49(4)(b), 58(a) or 104(b)(i) of the Procedure Act, those provisions require that the Information first be substantiated on oath.

## Subdivision C—Proceed to hear

### 68.3—Proceed to hear and adjudicate Information

On the non-attendance of a defendant or youth at a hearing or trial, if the Court does not issue a warrant of apprehension, the Court may—

(a) proceed to hear and adjudicate the Information in the absence of the defendant or youth under the relevant provision of the Procedure Act; or

(b) adjourn the hearing and adjudication of the Information in the absence of the defendant or youth under the relevant provision of the Procedure Act.

## Division 5—Non-appearance of informant

### 69.1—Orders on non-appearance

(1) This rule applies if the defendant or youth attends but the informant, having had due notice, does not attend at a hearing or trial.

**Note—**

Section 63 of the Procedure Act provides for the exercise of powers when the informant, having had due notice, fails to appear.

(2) If this rule applies, the Court may dismiss the Information or adjourn the hearing or trial under section 63 of the Procedure Act.

# Part 5—Guilty pleas

### 70.1—Entry of plea in court

Subject to rule 70.2, a plea must be entered in court during a hearing or trial.

### 70.2—Entry of written guilty plea

(1) This rule applies if—

(a) the highest charge category for any offence charged in the Information is summary not punishable by imprisonment or detention; and

(b) a defendant or youth wishes to plead guilty to every count in the Information pressed by the prosecution.

**Note—**

Section 57A of the Procedure Act empowers the making of rules to provide for a person against whom an Information has been laid for an offence that is not punishable by imprisonment (either for a first or subsequent offence) to elect to plead guilty to the offence without appearing in the Court in obedience to a summons.

(2) If this rule applies, a defendant or youth may elect to plead guilty in writing by filing a written guilty plea in the prescribed form.

**Prescribed form—**

Form 51 Written Guilty Plea

(3) A written guilty plea must be signed—

(a) by the defendant or youth before a justice of the peace for a State, a solicitor admitted and entitled to practise in a State or a police officer of a State; or

(b) by a solicitor acting for and signing on the authority of the defendant or youth.

(4) If the defendant or youth is represented by a lawyer, the lawyer must complete the certification contained in the prescribed form.

(5) Unless the Court otherwise orders, a written guilty plea must be filed at least 7 days before the date of appearance shown in the Information.

(6) A written guilty plea must be served on the informant as soon as practicable after being filed.

# Part 6—Election or requirement for trial or sentencing by Lower Court

## Division 1—Election or requirement for sentencing by Lower Court

### 71.1—Major indictable offence: Magistrates Court

(1) If the highest charge category of the offences to which a defendant has pleaded or is to plead guilty is major indictable, a consent by the prosecution and defendant to the defendant being sentenced by the Magistrates Court under section 116(1) of the Procedure Act must be made by filing a consent to sentencing for a major indictable offence in Magistrates Court in the prescribed form.

**Prescribed form—**

Form 61 Consent to Sentencing for Major Indictable Offence in Magistrates Court

(2) A consent to sentencing for a major indictable offence in the Magistrates Court must be signed—

(a) by the defendant before an authorised witness or a lawyer admitted and entitled to practise in a State; or

(b) by a solicitor acting for and signing on the authority of the defendant.

(3) If the defendant is represented by a lawyer, the lawyer must complete the certification contained in the prescribed form.

### 71.2—Minor indictable offence: Magistrates Court and Environment Resources and Development Court

If the highest charge category of the offences to which a defendant has pleaded or is to plead guilty is minor indictable, the defendant will be sentenced by the Lower Court.

### 71.3—Indictable offence: Youth Court

If the highest charge category of the offences with which the youth is charged is major indictable or minor indictable or Commonwealth indictable and the offences do not include

a homicide-related offence, the youth will be tried or sentenced by the Lower Court unless an election or order is made under rule 74.1.

## Division 2—Election for trial or sentencing by Lower Court: Magistrates Court

### 72.1—Commonwealth minor indictable offence

(1) This rule applies if the highest charge category of the offences with which a defendant is charged is Commonwealth minor indictable.

(2) A consent by the prosecution and defendant to a defendant being tried or sentenced by the Magistrates Court under section 4J(1) or 4JA(1) of the Crimes Act must be made by filing a consent to Commonwealth indictable offence being heard and determined in a court of summary jurisdiction in the prescribed form.

**Prescribed form—**

Form 62 Consent to Commonwealth Indictable Offence being Heard and Determined in Court of Summary Jurisdiction

(3) A consent to a Commonwealth minor indictable offence being heard and determined in the Magistrates Court must be signed—

(a) by the defendant before an authorised witness or a lawyer admitted and entitled to practise in a State; or

(b) by a solicitor acting for and signing on the authority of the defendant.

(3) If the defendant is represented by a lawyer, the lawyer must complete the certification contained in the prescribed form.

### 72.2—Commonwealth indictable property offence

(1) This rule applies if—

(a) the highest charge category of the offences with which a defendant is charged is Commonwealth indictable; and

(b) the offences relate to property whose value does not exceed $5,000.

(2) A request by the prosecution that the proceeding be heard and determined by the Magistrates Court under section 4J(4) of the Crimes Act must be made by filing a prosecution request for Commonwealth indictable offence to be heard and determined in the Magistrates Court in the prescribed form.

**Prescribed form—**

Form 63 Prosecution Request for Commonwealth Indictable Offence to be Heard and Determined in Magistrates Court (Cth)

# Part 7—Election or order for trial or sentence by Higher Court

## Division 1—Election for trial by Higher Court

### 73.1—Minor indictable offence: Magistrates Court and Environment Resources and Development Court

(1) If the highest charge category of the offences with which a defendant is charged is minor indictable, an election by the defendant for trial in a superior court under

section 108(1) of the Procedure Act must be made by filing an election for trial in the District Court in the prescribed form.

**Prescribed form—**

Form 66 Election for Trial in District Court

**Note—**

Section 7(2) of the Juries Act provides that no election for trial by Judge alone may be made under subsection (1) where the defendant is charged with a minor indictable offence and has elected to be tried in the District Court.

(2) An election for trial in the District Court must be signed—

(a) by the defendant before an authorised witness or a lawyer admitted and entitled to practise in a State; or

(b) by a solicitor acting for and signing on the authority of the defendant.

(3) If the defendant is represented by a lawyer, the lawyer must complete the certification contained in the prescribed form.

(4) An election for trial in the District Court must be filed by the second hearing of the Information.

(5) If an election for trial in the District Court is not filed by the second hearing of the Information, the matter will proceed to be heard and determined summarily by the Lower Court in accordance with section 108(1) of the Procedure Act.

## Division 2—Election or order for trial or sentence by Higher Court

### 74.1—Indictable offence: Youth Court

(1) This rule applies if the highest charge category of the offences with which a youth is charged is major indictable or minor indictable and the offences do not include a homicide-related offence.

(2) A request by a youth to be tried or sentenced by a Higher Court under section 17(3)(b) of the Young Offenders Act must be made—

(a) by filing an election to be dealt with as an adult in the prescribed form; or

**Prescribed form—**

Form 67 Election to be Dealt with as an Adult (Youth Court)

(b) if the Court grants leave—by the youth expressing their request at a hearing and satisfactory evidence being provided that the youth has obtained the requisite independent legal advice.

(3) An election to be dealt with as an adult must be signed—

(a) by the youth before an authorised witness or a lawyer admitted and entitled to practise in a State; or

(b) by a solicitor acting for and signing on the authority of the youth.

(4) If the youth is represented by a lawyer, the lawyer must complete the certification contained in the prescribed form.

(5) An application by the prosecution for a youth to be tried or sentenced by a Higher Court under section 17(3)(c) of the Young Offenders Act must be made—

(a) by an interlocutory application in the prescribed form in accordance with rule 39.1; or

(b) by an application made orally at a hearing.

**Prescribed form—**

Form 68 Application for Youth to be Dealt with as an Adult

**Note—**

Section 17(3)(a) of the Young Offenders Act provides that, if the offence with which the youth is charged is a homicide, or an offence consisting of an attempt to commit, or assault with intent to commit homicide, the youth must be committed for trial or sentence to a Higher Court.

# Part 8—Pre-trial disclosure of evidence

## 75.1—Prosecution disclosure of evidentiary material

(1) Evidentiary material required to be disclosed by the prosecution to the defence in accordance with the prosecution's common law duty of disclosure must be disclosed by serving on the defendant or youth an evidentiary material brief in the prescribed form.

**Prescribed form—**

If served in electronic form - Form 71e Evidentiary Material Brief

If served in physical (hard copy) form - Form 71h Evidentiary Material Brief

(2) Unless the Court otherwise orders, the informant need not file an evidentiary material brief.

(3) Unless the Court otherwise orders, if the informant files an evidentiary material brief, it must be in electronic form and—

(a) if its contents exceed 30 megabytes (or such other capacity limit as may be specified by the Principal Registrar from time to time), it must be uploaded in separate documents containing not more than 30 megabytes;

(b) subject to paragraph (c), the version filed must not include any electronic material in mpeg or alternative formats containing audiovisual material;

(c) if the version served includes material that is admissible under section 13BA or 13BB of the Evidence Act, the version filed must be accompanied by a USB drive (or such other storage device as may be specified by the Principal Registrar from time to time) containing such material.

(4) Unless the Court otherwise orders, the informant must serve an evidentiary material brief (including any required witness statements and other evidentiary material attached) in electronic form if the defendant or youth has an address for service that includes an email address.

(5) Unless the Court otherwise orders, the informant may serve an evidentiary material brief by sending an email informing the defendant or youth of the filing of the brief and that it may be accessed on the Court's electronic portal if—

(a) the informant files an evidentiary material brief in electronic form;

(b) the defendant or youth has an address for service that includes an email address;

(c) the email is sent to that email address for service; and

(d) the party to be served or a lawyer acting for them is a registered user of the Electronic System and has been granted access to the case maintained on the Electronic System.

(6) The informant must serve as an attachment to the evidentiary material brief the witness statements identified in the evidentiary material brief.

(7) The informant may serve other evidentiary material not attached to the witness statements identified in the evidentiary material brief or alternatively may retain possession of any such other evidentiary material.

(8) If the informant wishes to amend or supplement an evidentiary material brief previously served, the informant must do so by serving a revised version of the evidentiary material brief showing the relevant revision number.

(9) If the informant files or serves a revised evidentiary material brief in electronic form, the informant must include any witness statements or evidentiary material attached to a previous evidentiary material brief.

(10) If the informant files or serves a revised evidentiary material brief in physical form, the informant is not required to file or serve again any witness statements or evidentiary material attached to a previous evidentiary material brief.

## 75.2—Discreditable conduct evidence

(1) Notice of intention to adduce evidence of discreditable conduct under section 34P(4) of the Evidence Act must be in the prescribed form and filed and served on all other parties at least 14 days before the pre-trial conference date.

**Prescribed form—**

Form 79 Notice of Intention to Adduce Discreditable Conduct Evidence

(2) A party who intends to object to the admission of proposed evidence of discreditable conduct the subject of a notice of intention must file and serve on all other parties a notice of objection in the prescribed form within 14 days after service of the notice of intention.

**Prescribed form—**

Form 80 Notice of Objection to Discreditable Conduct Evidence

## 75.3—Expert evidence

If a party intends to adduce expert evidence at trial, they must file and serve on each other party a notice of intention to adduce expert evidence in the prescribed form at least 7 days before the pre-trial conference date.

**Prescribed form—**

Form 77B Notice of Intention to Adduce Expert Evidence (Lower Courts)

**Note—**

Section 49(1)(ca) of the *Magistrates Court Act 1991* provides that Rules of the Court may be made imposing mutual obligations on parties to proceedings in the Court to disclose to each other the contents of expert reports or other material of relevance to the proceedings before the proceedings are brought to trial.

Sections 18 of the Young Offenders Act provides that the procedure to be followed by and the powers of the Youth Court on the trial of an offence are, subject to that Act, to be the same as for the trial of a summary offence in the Magistrates Court.

Section 7(3a) of the *Environment Resources and Development Court Act 1993* provides that the Court will deal with a charge of a summary offence or a minor indictable offence in the same way as the Magistrates Court deals with such a charge (and in accordance with the procedures that would apply if the Magistrates Court were dealing with such a charge) and the *Summary Procedure Act 1921* applies to the Court subject to any additions, exclusions or modifications prescribed by the regulations as if references to the Magistrates Court extended to the Court.

## 75.4—Alibi evidence

(1) If a defendant or youth intends to adduce evidence in relation to an alibi at trial, they must file and serve on each other party a notice of intention to adduce the alibi evidence in the prescribed form at least 7 days before the pre-trial conference date.

(2) If the informant intends to adduce evidence in relation to alibi at trial, they must prepare a summary of the evidence complying with this rule and serve it on each other party within 28 days of receipt of a notice of intention to adduce alibi evidence.

**Prescribed form—**

Form 78B Notice of Intention to Adduce Alibi Evidence (Lower Courts)

## 75.5—Other evidence: Magistrates Court and Environment Resources and Development Court

(1) Section 134 of the Procedure Act applies, with the modifications made by the following subrules and any other necessary modifications, to the trial by the Court of a defendant charged with an indictable offence.

**Notes—**

Section 117(2) of the Procedure Act provides that the rules may provide that specified provisions of the Procedure Act apply with necessary adaptations and modifications to the trial by the Magistrates Court of a person charged with an indictable offence.

Section 7(3a) of the *Environment Resources and Development Court Act 1993* provides that the Court will deal with a charge of a summary offence or a minor indictable offence in the same way as the Magistrates Court deals with such a charge (and in accordance with the procedures that would apply if the Magistrates Court were dealing with such a charge) and the *Summary Procedure Act 1921* applies to the Court subject to any additions, exclusions or modifications prescribed by the regulations as if references to the Magistrates Court extended to the Court.

In the Supreme and District Courts, section 134 of the Procedure Act applies of its own force.

(2) Subject to subrule (3), the Court may order that, if a defendant intends to adduce evidence in relation to a prescribed matter at trial, they must by such date as the Court specifies file and serve on each other party a notice of intention to adduce evidence in the prescribed form.

**Prescribed form—**

Form 81B Notice of Intention to Adduce Evidence pursuant to Order (Lower Courts)

**Note—**

Section 134(3) of the Procedure Act provides that non-compliance with a requirement under subsection (1) does not render evidence inadmissible, but the prosecutor or the Judge (or both) may comment on the non-compliance.

(3) The Court may only make an order under this rule if satisfied that the prosecution has no existing, but unfulfilled, obligations of disclosure to the defence.

(4) An application for an order under this rule must be—

(a) supported by an affidavit deposing to the basis of the application and to the fact that the prosecution has no existing, but unfulfilled, obligations of disclosure to the defence; and

(b) filed and served at least 28 days before the trial date.

(5) In this rule, ***prescribed matter*** means one or more of the following—

(a) whether the defendant was mentally incompetent to commit the alleged offence;

(b) whether the defendant is unfit to stand trial;

(c) whether the defendant acted for a defensive purpose;

(d) whether the defendant acted under provocation;

(e) whether the defendant acted under automatism;

(f) whether the alleged offence occurred by accident;

(g) whether the defendant acted out of necessity;

(h) whether the defendant acted under duress;

(i) whether the defendant acted under a claim of right;

(j) whether the defendant acted under intoxication.

(6) The written record of an order requiring the parties to give notice of intention to adduce evidence in relation to a prescribed matter must be in the prescribed form.

**Prescribed form—**

Form 99 Record of Outcome – Order

# Part 9—Pre-trial conferral and listing for trial

## 76.1—Disclosure by prosecution

(1) Unless the Court otherwise orders, the prosecution must have completed all investigations that may result in the preparation of evidentiary material in sufficient time to complete disclosure in accordance with subrule (2).

(2) Unless the Court otherwise orders, the prosecution must have completed disclosure in accordance with their obligations by 14 days before the pre-trial conference date.

## 76.2—Conferral by parties

(1) The parties must before the pre-trial conference date have conferred fully and frankly for the purpose of ascertaining the precise matters in issue as to detailed facts and law.

(2) The conferral must be such as to—

(a) explore fully the possibility of disposing of the proceeding or a charge other than by way of trial or to narrow the issues;

(b) enable the duration of the trial to be estimated as accurately as possible,

(c) determine what evidence if any may be proved by affidavit; and

(d) facilitate the course of the trial.

(3) The parties must inform the Court at the pre-trial conference as to each of the matters referred to in subrule (2).

## 76.3—Pre-trial conference

(1) The Court may order that there be a pre-trial conference before the listing of a trial date or at any other stage.

(2) The principal purpose of a pre-trial conference is—

(a) to explore fully the possibility of disposing of the proceeding or a charge other than by way of trial or to narrow the issues;

(b) to enable the duration of the trial to be estimated as accurately as possible;

(c) to determine what evidence if any may be proved by affidavit;

(d) for the prosecution to identify the witnesses to be called;

(e) for the prosecution to give an assurance that disclosure is complete or, if not, identify what is outstanding and when it will be provided to enable orders to be made relating to disclosure; and

(f) to facilitate the course of the trial.

(3) A pre-trial conference must be attended by—

(a) the defendant or youth (but that attendance may be by audio visual link or audio link under rule 38.3);

(b) the informant or an authorised representative; and

(c) if a party is represented by a law firm, the solicitor having the principal conduct of the matter or counsel or both.

(4) Unless the Court otherwise orders, a pre-trial conference will not be open to the public.

(5) Nothing said or not said at a pre-trial conference can be used for any purpose at a subsequent trial, sentencing hearing or other substantive hearing.

(6) At the end of a pre-trial conference, if the matter is not resolved the Court will generally list the matter for trial.

(7) Parties must attend a pre-trial conference ready for the matter to be listed for trial if it is not resolved.

## 76.4—Listing for trial

(1) The Court will usually list a proceeding for trial at the pre-trial conference if the matter is not resolved.

(2) The Court expects the parties (by their counsel when applicable or, if counsel have not been briefed, by their solicitors or other representatives when applicable) to make realistic and achievable estimates of the length of trials to be listed.

(3) The Court expects counsel to be available for the whole of the period for which the trial has been listed.

**Note—Magistrates Court**

When the Court sets a date for trial, unless the Court otherwise orders, the proceeding will be listed to continue as follows:

**Adelaide Magistrates Court**

On successive days over the balance of the week in which it is listed and thereafter on successive days for the balance of the week to which it is adjourned/remanded until the sworn evidence is completed.

**Regional Courts**

On successive days until the sworn evidence is completed.

**Circuit Courts**

On such successive days as may be available during the circuit week.

### 76.5—Costs

If a party fails to comply with this Part, the Court may take the non-compliance into account on the question of costs.

## Part 10—Pre-trial directions hearings

### 77.1—Convening pre-trial directions hearing

(1) When a trial is pending, a directions hearing before commencement of the trial may be convened on the Court's own initiative or on application by a party.

(2) A pre-trial directions hearing may be listed at a pre-trial conference.

### 77.2—Proceedings at pre-trial directions hearing

(1) The purpose of a pre-trial directions hearing is to give directions (including any arising by virtue of section 59J of the Evidence Act) with respect to the trial to ensure that the trial commences on the trial date and will be conducted in an expeditious and fair manner.

(2) A pre-trial directions hearing must be attended by—

(a) the defendant or youth (but that attendance may be by audio visual link or audio link under rule 38.3);

(b) if a defendant or youth is represented by a law firm, their counsel briefed to appear at the trial or, by leave of the Court, if attendance of counsel is not practicable, by their solicitor; and

(c) the lawyer or police prosecutor intended to appear for the informant at the trial or, by leave of the Court, if their attendance is not practicable, by another lawyer or police prosecutor appearing for the informant.

# Chapter 4—Committal proceedings in Lower Courts

## Part 1—Scope of Chapter

### 81.1—Scope

This Chapter applies to committal proceedings in the Lower Courts—

(a) in the case of Informations in the Magistrates Court in which the highest charge category is major indictable—unless and until an election or order is made for the defendant to be sentenced in the Magistrates Court;

(b) in the case of proceedings in the Magistrates Court or Environment Resources and Development Court in which the highest charge category is minor indictable—from the point at which an election is made for trial in a Higher Court;

(c) in the case of Informations in the Magistrates Court or Environment Resources and Development Court in which—

(i) the highest charge category is Commonwealth minor indictable; or

(ii) the highest charge category is Commonwealth indictable and the offence relates to property whose value does not exceed $5,000,

—unless and until an order is made for the proceeding to be heard and determined in the Lower Court;

(d) in the case of Informations in the Youth Court in which the highest charge category is minor indictable or major indictable other than a homicide-related offence—if and from the point at which an election or order is made for trial or sentence in a Higher Court; and

(e) in respect of Informations in the Youth Court in which a homicide-related offence is charged.

## Part 2—Evidentiary material brief

### 82.1—Preliminary brief: Magistrates Court and Environment Resources and Development Court

(1) The preliminary brief to be filed and served pursuant to section 106(1)(c) of the Procedure Act must be in the prescribed form for an evidentiary material brief.

**Prescribed form—**

If served in electronic form - Form 71e Evidentiary Material Brief

If served in physical (hard copy) form - Form 71h Evidentiary Material Brief

**Note—**

Section 106(1)(c) of the Procedure Act requires the preliminary brief to be filed and served as soon as practicable after providing it to the Director.

(2) An informant other than the Commissioner of Police must file and serve a preliminary brief in the prescribed form for an evidentiary material brief as if—

(a) section 106(1)(a) of the Procedure Act required preparation by or for the informant of a brief containing the evidentiary material sufficient for a determination to be made by the prosecution as to the appropriate charge or charges to be proceeded with; and

(b) section 106(1)(c) of the Procedure Act required an informant other than SAPOL to file and serve on the defendant or youth the evidentiary material brief upon completion.

**Prescribed form—**

If served in electronic form - Form 71e Evidentiary Material Brief

If served in physical (hard copy) form - Form 71h Evidentiary Material Brief

(3) The informant must file and serve as an attachment to the evidentiary material brief the witness statements identified in the evidentiary material brief.

(4) The informant may file and serve other evidentiary material not attached to the witness statements identified in the evidentiary material brief, or alternatively may retain possession of any such other evidentiary material.

(5) The informant may, but is not required to, complete the sections of the evidentiary material brief in respect of witness statements and other evidentiary material not relied on at that stage by the prosecution.

(6) The preliminary brief must be filed and served by the second hearing of the proceeding.

(7) If the informant wishes to amend or supplement the preliminary brief (before filing and serving the committal brief), the informant must do so by filing and serving a revised version of the evidentiary material brief showing the relevant revision number.

## 82.2—Committal brief

(1) The committal brief required by section 111 of the Procedure Act to be filed and served must be in the prescribed form for an evidentiary material brief.

**Prescribed form—**

If served in electronic form - Form 71e Evidentiary Material Brief

If served in physical (hard copy) form - Form 71h Evidentiary Material Brief

**Note—**

Section 111(1) and (3) of the Procedure Act require the committal brief to be filed and served at least 4 weeks before the date appointed for an answer charge hearing.

(2) The informant must file and serve as an attachment to the evidentiary material brief the witness statements identified in the evidentiary material brief.

(3) The informant may serve other evidentiary material not attached to the witness statements identified in the evidentiary material brief or alternatively may retain possession of any such other evidentiary material.

(4) If the informant previously filed and served a preliminary brief, the committal brief must be in the form of a revised version of the earlier evidentiary material brief showing the relevant revision number.

(5) If the informant wishes to amend or supplement the committal brief, the informant must do so by filing and serving a revised version of the evidentiary material brief showing the relevant revision number.

## 82.3—Evidentiary material briefs generally

(1) Unless the Court otherwise orders, the informant must file an evidentiary material brief (including any required witness statements and other evidentiary material attached) in electronic form and—

(a) if its contents exceed 30 megabytes (or such other capacity limit as may be specified by the Principal Registrar from time to time), it must be uploaded in separate documents containing not more than 30 megabytes;

(b) subject to paragraph (c). the version filed must not include any electronic material in mpeg or alternative formats containing audiovisual material;

(c) if the version served includes material that is admissible under section 13BA or 13BB of the Evidence Act, the version filed must be accompanied by a USB drive (or such other storage device as may be specified by the Principal Registrar from time to time) containing such material.

(2) Unless the Court otherwise orders, the informant must serve an evidentiary material brief (including any required witness statements and other evidentiary material attached) in electronic form if the defendant or youth has an address for service that includes an email address.

(3) Unless the Court otherwise orders, the informant may serve an evidentiary material brief by sending an email informing the defendant or youth of the filing of the brief and that it may be accessed on the Court's electronic portal if—

(a) the informant files an evidentiary material brief in electronic form;

(b) the defendant or youth has an address for service that includes an email address;

(c) the email is sent to that email address for service; and

(d) the party to be served or a lawyer acting for them is a registered user of the Electronic System and has been granted access to the case maintained on the Electronic System.

(4) If the informant is permitted or required to file an evidentiary material brief in physical form, the informant must file two copies of the evidentiary material brief (including any attached material).

(5) If the informant files or serves a revised evidentiary material brief in electronic form, the informant may, but is not required to, include any witness statements or evidentiary material attached to a previous evidentiary material brief.

(6) If the informant files or serves a revised evidentiary material brief in physical form, the informant is not required to file or serve again any witness statements or evidentiary material attached to a previous evidentiary material brief.

# Part 3—Pre-committal appearances

## 83.1—First hearing

(1) The Court expects that generally there will only be one pre-committal appearance before the charge determination and the matter will be adjourned at the first hearing to a charge determination appearance.

(2) The informant must inform the Court at the first hearing or any adjournment of the first hearing if a defendant or youth has not been served with any of the documents required to be served under rule 62.4.

(3) If a defendant or youth has not been served with the information, a Form 9A or Form 9C Summary of Allegations, a Form 9B or Form 9C Antecedent Report and the applicable Form 8 Notice, the Court may—

(a) adjourn the first hearing; or

(b) order that the documents be served and adjourn the matter to a charge determination appearance.

**Note—**

Section 105(1) of the Procedure Act requires a defendant or youth charged with an indictable offence to be given these documents at or before the first appearance.

(4) The informant must inform the Court at the first hearing as to the likely length of time the prosecution requires in order to obtain witness statements and other material prior to the charge determination appearance and why that length of time is required.

**Note—**

Section 105(5) of the Procedure Act provides that the Court must, on adjourning the first appearance before the Court in relation to the charge, appoint a time and place for the second appearance before the Court in relation to the charge, having regard to any information provided by the prosecution as to the likely length of time the prosecution requires in order to obtain witness statements and other material prior to the next appearance (subject to any requirements applying under section 106).

### 83.2—Charge determination appearance

(1) The Court expects that a charge determination under section 106(1) of the Procedure Act will generally have been made by the date on which the charge determination appearance is listed.

(2) The informant must notify the Court and each defendant in writing whether a charge determination has or has not been made 2 days before the date on which the charge determination appearance is listed.

(1) The Court expects that generally there will only be one charge determination appearance and the matter will be adjourned at the charge determination appearance to a committal appearance.

### 83.3—Guilty plea matters

(1) This rule applies if and to the extent that a defendant or youth pleads guilty at a pre-committal appearance (whether a first hearing or a charge determination appearance).

(2) If the Court has power to sentence the defendant or youth, the parties must inform the Court whether they consent to the Court imposing sentence or seek that the defendant or youth be committed for sentence to a Higher Court.

**Note—**

See Chapter 3 Part 6 and Chapter 3 Part 7.

(3) If a defendant or youth is committed for sentence to a Higher Court, a notice must be provided to the defendant or youth in the prescribed form.

**Prescribed form—**

Form 125 Notice to Defendant or Youth Committed for Sentence in Supreme Court or District Court

## Part 4—Committal appearance

### 84.1—Guilty plea matters

(1) This rule applies if and to the extent that a defendant or youth pleads guilty at a committal appearance.

**Note—**

See section 110(1) of the Procedure Act.

(2) If the Court has power to sentence the defendant or youth, the parties must inform the Court whether they consent to the Court imposing sentence or seek that the defendant or youth be committed for sentence to a Higher Court.

**Note—**

See Chapter 3 Part 6 and Chapter 3 Part 7.

(3) If a defendant or youth is committed for sentence to a Higher Court, a notice must be provided to the defendant or youth in the prescribed form.

**Prescribed form—**

Form 125 Notice to Defendant or Youth Committed for Sentence in Supreme Court or District Court

## 84.2—Not guilty matters

(1) This rule applies if and to the extent that a defendant or youth pleads not guilty at a committal appearance.

**Note—**

See section 110(2) of the Procedure Act.

(2) The Court expects that generally the committal appearance will proceed immediately following the charge determination appearance.

(3) The informant must inform the Court at the committal appearance as to the witness statements and other material to be obtained for the purpose of completion of the committal brief in accordance with the requirements of section 111 of the Procedure Act and the time within which it is expected that the committal brief can be completed.

**Note—**

Section 110((2)(a) of the Procedure Act provides that the prosecution must provide the Court with information as to the witness statements and other material to be obtained for the purposes of completion of the committal brief in accordance with the requirements of section 111 and the time within which it is expected that the committal brief can be completed.

(4) The Court will give to the defendant or youth an opportunity to respond to the information provided by the prosecution.

(5) The Court will inquire of the parties whether any negotiations are taking place between a defendant or youth and the prosecution.

**Note—**

Section 110(2)(b) of the Procedure Act provides that the defendant must be given an opportunity to respond to the information provided by the prosecution and to advise the Court whether any negotiations are taking place with the prosecution or provide the Court with information as to any other relevant matter.

(6) The Court will generally adjourn the proceeding to an answer charge appearance but may in exceptional circumstances adjourn it to a future committal appearance.

**Note—**

Section 110(2)(c) of the Procedure Act provides the Court must adjourn the proceedings and appoint a time and place for the answer charge hearing, ensuring that sufficient time is allowed for the completion of the committal brief in accordance with the requirements of section 111.

# Part 5—Entry of guilty plea after committal appearance

## 85.1—Request for matter to be called on

(1) This rule applies if and to the extent that a defendant or youth wishes to plead guilty at after the committal appearance.

(2) If a defendant or youth wishes to request within four weeks after the committal appearance that the matter be called on under section 110(3) of the Procedure Act for the purpose of entering a guilty plea, the defendant or youth must, within four weeks after the committal appearance, file a request to have the matter called on for guilty plea in the prescribed form.

**Prescribed form—**

Form 52 Request to have Matter Called on for Guilty Plea

(3) If the Court has power to sentence the defendant or youth, the parties must inform the Court at the hearing whether they consent to the Court imposing sentence or seek that the defendant or youth be committed for sentence to a Higher Court.

**Note—**

See Chapter 3 Part 6 and Chapter 3 Part 7.

(4) If a defendant or youth is committed for sentence to a Higher Court, a notice must be provided to the defendant or youth in the prescribed form.

**Prescribed form—**

Form 125 Notice to Defendant or Youth Committed for Sentence in Supreme Court or District Court

# Part 6—Steps before answer charge appearance

## 86.1—Notices by defendant or youth

(1) A notice of intention to assert that there is no case to answer under section 112(1) of the Procedure Act (a ***no case submission notice***) must be in the prescribed form.

**Prescribed form—**

Form 121 Notice of Intention to Assert No Case to Answer

(2) A notice requesting oral examination of a witness or witnesses in a committal proceeding under section 112(2) of the Procedure Act (a ***cross-examination request notice***) must be in the prescribed form.

**Prescribed form—**

Form 122 Notice to Request Oral Examination of Witness in Committal Proceeding

(3) A notice governed by this rule must be filed and served at least 14 days before the answer charge date.

**Note—**

Section 112(4) of the Procedure Act provides that, if a notice is given to the prosecution less than 2 weeks before the answer charge hearing, the Court must, at the request of the prosecution, adjourn the answer charge hearing for up to 2 weeks (or such longer period as the Court thinks fit) to allow the prosecution time to consider the notice and properly prepare for the hearing.

If a notice governed by this rule is filed or served less than 14 days before the date fixed for the answer charge hearing, it is not invalid but the late filing and service may result in the Court

exercising its power under sections 189 to 189D of the Procedure Act to order that the defendant, youth or the law firm in question:

(a) pay the costs of the other parties;

(b) pay compensation to the Court for time wasted, caused by the late filing and service; or

(c) both (a) and (b).

### 86.2—Subpoena

(1) A committal subpoena application must be made—

(a) by an interlocutory application in accordance with rule 39.1 (which need not be supported by an affidavit) or orally at a hearing; and

(b) unless the Court otherwise orders, at least 5 weeks before the answer charge date.

(2) The Court will usually list a committal subpoena application for hearing before the answer charge date.

(3) Unless the Court otherwise orders, a committal subpoena must be—

(a) issued at least 3 weeks before the answer charge date; and

(a) returnable at least 1 week before the answer charge date.

(4) A subpoena governed by section 107 of the Procedure Act must be in the prescribed form and must comply with Chapter 6 Part 2 Division 2.

**Prescribed form—**

Form 112A Subpoena to Attend to Give Evidence (Magistrates, Youth and ERD Courts)

Form 112B Subpoena to Produce Documents (Magistrates, Youth and ERD Courts)

Form 112C Subpoena to Attend and to Produce Documents (Magistrates, Youth and ERD Courts)

## Part 7—Answer charge appearance

### 87.1—Oral examination application

(1) If a defendant or youth has given a cross-examination request notice, at the answer charge appearance the committal oral examination application—

(a) may be heard and determined on the answer charge date; but

(b) will usually be adjourned for hearing on a different date (the ***section 112(2) hearing date***).

(2) If the Court proceeds under subrule (1)(b), on the section 112(2) hearing date—

(a) if the Court grants leave on the committal oral examination application—the Court will usually adjourn the proceeding to a hearing at which the witness is or witnesses are to be orally examined and, if a notice governed by rule 86.1(1) was given, for hearing the assertion that there is no case to answer;

(b) if the Court does not grant leave on the committal oral examination application and a no case submission notice was given—the Court will usually adjourn the proceeding to a hearing whether there is no case to answer;

(c) if the Court does not grant leave on the committal oral examination application and a no case submission notice was not given—the Court will usually adjourn the proceeding to an answer charge appearance.

### 87.2—No case to answer submission

(1) If a defendant or youth has given a no case submission notice, at the answer charge appearance the proceeding will usually be adjourned for hearing on a different date (the ***section 114(1)(d) hearing date***).

(2) On the section 114(1)(d) hearing date, the Court will hear and usually determine whether there is a case to answer on the charges.

### 87.3—Other cases

(1) This rule applies if a defendant or youth has not given a no case submission notice and the Court has not granted leave on a committal oral examination application.

(2) If the defendant or youth does not plead guilty at the answer charge appearance, the Court will usually proceed to hear and determine whether the defendant or youth should be committed for trial.

(3) If the defendant or youth pleads guilty, at the answer charge appearance, the Court will usually proceed to determine whether the defendant or youth should be committed for sentence or should be sentenced by the Court.

### 87.4—Record of order for committal

The written record of an order of committal for trial or sentence must be in the prescribed form.

**Prescribed form—**

Form 123 Record of Outcome

### 87.5—Notices to defendant or youth

(1) If a defendant or youth is committed for trial, the written statement required to be provided to the defendant or youth under section 115(4) of the Procedure Act must be in the prescribed form.

**Prescribed form—**

Form 124 Notice to Defendant or Youth Committed for Trial in Supreme Court or District Court

(2) If a defendant or youth is committed for sentence, a notice must be provided to the defendant or youth in the prescribed form.

**Prescribed form—**

Form 125 Notice to Defendant or Youth Committed for Sentence in Supreme Court or District Court

## Part 8—Referral to Higher Court if Federal offence: Magistrates Court

### 88.1—Referral to Higher Court

The written record of an order that a proceeding be referred to a Higher Court for determination as to the defendant's fitness to be tried under section 20B(1) of the Crimes Act must be in the prescribed form.

**Prescribed form—**

Form 123 Record of Outcome

# Chapter 5—Proceedings in Higher Courts

## Part 1—Scope of Chapter

### 91.1—Scope

This Chapter applies to the commencement and conduct of all proceedings in the Higher Courts up to but not including matters governed by Chapter 6, Chapter 7 or Chapter 8.

## Part 2—Commencement and service of proceeding

### 92.1—Information

(1) Unless all defendants or youths are committed for sentence only, a proceeding must be instituted by filing an Information in the prescribed form.

**Prescribed form—**

Form 5 Information Higher Courts

Form 6 Information Higher Courts ex officio

(2) If a defendant or youth was committed for trial, the Information must be filed within 6 weeks after the committal for trial.

(3) If an ex officio Information is filed in respect of a defendant who was not committed for trial or sentence by a Lower Court, each such defendant must be identified in the Information by name, date of birth and any drivers licence number (to the extent known).

(4) The Information must show each offence charged in a separate numbered count.

(5) The Information must include the following details in respect of each count as required by the prescribed form—

(a) offence details being the short name of the offence and statutory provision if applicable;

(b) particulars of the essence of the elements of the offence and in accordance with rule 92.2;

**Note—**

Section 100(1)(b) of the Procedure Act requires an Information charging an indictable offence to contain "such particulars as are necessary for giving reasonable information as to the nature of the charge".

(c) if it is alleged that the offence is an aggravated offence—the circumstances of aggravation alleged; and

(d) if the offence is or may be a notifiable offence—a statement to that effect in respect of each type of notifiable offence.

(6) If the proceeding is a priority proceeding, the Information must identify that the proceeding is a priority proceeding and its type in accordance with the prescribed form.

(7) An Information is not open to objection by reason only of any failure to comply with this rule or with rule 92.2.

## 92.2—Particulars

(1) If an offence comprises—

(a) any one of several different acts or omissions;

(b) an act or omission in any one of several capacities;

(c) an act or omission with any one of several intentions; or

(d) any other element in the alternative,

the acts, omissions, capacities, intentions or other matters in the alternative may be stated in the alternative in the count charging the offence.

(2) 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 statutory provision creating the offence.

(3) The description or designation of a person to whom reference is made (other than a defendant) must be sufficient to identify the person, without necessarily stating their full and correct name and address.

(4) If such a description or designation cannot be given, the best description or designation must be given, or the person may be described as “a person unknown”.

(5) The description of property must be sufficient to identify the property.

(6) Unless an offence depends on the special ownership or value of property, it is not necessary to state the owner or value of the property.

(7) If reference is made to property with multiple owners, it is sufficient to describe it as owned by one named person “with others”.

(8) If owners of 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 an individual.

(9) The description of a document or instrument must be sufficient to identify it.

(10) It is sufficient to describe a document or instrument by a name or designation by which it is generally known, or by its effect, without setting out a copy of it.

(11) The description of a place, time, thing, matter, act or omission must be sufficient to identify it.

(12) Figures and abbreviations may be used to express anything commonly expressed in that manner.

(13) If a rule of law or statutory provision limits the particulars required to be given, this rule does not require more detailed particulars than those required by the rule or statutory provision.

## 92.3—Service of Information

(1) The Information must be served on each defendant.

(2) The Information must be served at least 6 weeks before the first arraignment date.

(3) Unless the Court otherwise orders, service of the Information must be effected by original service.

**Note—**

Service of an Information in another State is effective only if there is compliance with section 16 of the Service and Execution of Process Act.

### 92.4—Notification to Supreme Court

(1) If the defendant was committed for trial in the District Court or the Director files an ex officio Information under section 103 of the Procedure Act on a charge that includes a charge or charges to which this rule applies, the Director must within 14 days of filing the Information in the District Court give written notice to the Supreme Court that the charge is one to which this rule applies and the reason.

(2) This rule applies to an Information containing one or more of the following charges—

(a) manslaughter or cause death by dangerous driving;

(b) a terrorism offence within the meaning of the Crimes Act or an attempt or conspiracy to commit such an offence; or

(c) a charge or charges in which there is expected to be highly technical or complex expert evidence or the facts and issues are expected to be highly technical or complex.

### 92.5—Decision not to prosecute

(1) If a defendant or youth is committed for trial and the Director decides not to file an Information under section 122 of the Procedure Act, the Director must file and serve on the defendant or youth a certificate of prosecution declining to prosecute in the prescribed form.

**Prescribed form—**

Form 10 Certificate of Prosecution Declining to Prosecute (Higher Courts)

(2) The Court will issue a warrant of discharge in the prescribed form if—

(a) the Director files a certificate of prosecution declining to prosecute;

(b) a defendant or youth is in custody; and

(c) a Judge directs that the defendant or youth be discharged from custody under section 122(2)(a)(ii) of the Procedure Act.

**Prescribed form—**

Form 147 Warrant of Discharge

## Part 3—Disclosure

### 93.1—Case Statements

(1) If a proceeding is instituted by the Director laying an Information ex officio under section 103 of the Procedure Act—

(a) the Director must file and serve on each defendant a prosecution case statement complying with section 123(2) of the Procedure Act at least 6 weeks before the first arraignment date;

(b) each defendant must file and serve on the Director and any other defendant a defence case statement complying with section 123(3) of the Procedure Act at least 14 days before the first arraignment date;

(c) if the regulations made under the Procedure Act require the prosecution to serve a response to a defence case statement, the Director must file and serve on each defendant a response to the defence statement in the same circumstances as if section 123(9) and the regulations applied at least 7 days before the first arraignment date.

**Notes–**

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

Section 123(11) of the Procedure Act provides that, when proceedings have been instituted in a superior court by the Director laying an Information ex officio in accordance with section 103, sections 123 and 124 apply in relation to those proceedings with the modifications prescribed by the rules of the superior court.

(2) A prosecution case statement, defence case statement or prosecution response case statement required by section 123 of the Procedure Act or subrule (1) must be in the prescribed form.

**Prescribed forms—**

Form 72 Prosecution Case Statement

Form 73 Defence Case Statement

Form 74 Prosecution Response to Defence Case Statement

## 93.2—Prosecution disclosure of evidentiary material

(1) Evidentiary material required to be disclosed by the prosecution to the defence in accordance with the prosecution's common law duty of disclosure must be disclosed by serving on the defendant an evidentiary material brief in the prescribed form.

**Prescribed form—**

If served in electronic form - Form 71e Evidentiary Material Brief

If served in physical (hard copy) form - Form 71h Evidentiary Material Brief

(2) Unless the Court otherwise orders, the Director need not file an evidentiary material brief upon serving it, but must file an evidentiary material brief in accordance with subrule (3).

(3) Unless the Court otherwise orders, the Director must file an evidentiary material brief—

(a) if the matter has been committed for sentence or the defendant has pleaded guilty after committal for trial and the Director receives or creates evidentiary material relevant to sentence after committal—

(i) 4 weeks before arraignment; and

(ii) thereafter, whenever an evidentiary material brief is served;

(b) if the matter has been committed for trial and the Director receives or creates evidentiary material after committal—

(i) at the same time as filing the prosecution case statement;

(ii) 14 days before the date fixed (if any) for a pre-trial conference;

(iii) 14 days before the date fixed for a pre-trial directions hearing; and

(iv) thereafter, whenever an evidentiary material brief is served.

**Note—**

This subrule does not delay the Director's obligation to serve a revised evidentiary material brief upon receipt or creation of additional evidentiary material.

(4) Unless the Court otherwise orders, the Director must file an evidentiary material brief (including any required witness statements and other evidentiary material attached) in electronic form and—

(a) if its contents exceed 30 megabytes (or such other capacity limit as may be specified by the Principal Registrar from time to time), it must be uploaded in separate documents containing not more than 30 megabytes;

(b) subject to paragraph (c), the version filed must not include any electronic material in mpeg or alternative formats containing audiovisual material;

(c) if the version served includes material that is admissible under section 13BA or 13BB of the Evidence Act, the version filed must be accompanied by a USB drive (or such other storage device as may be specified by the Principal Registrar from time to time) containing such material.

(5) Unless the Court otherwise orders, the Director must serve an evidentiary material brief (including any required witness statements and other evidentiary material attached) in electronic form if the defendant has an address for service that includes an email address.

(6) Unless the Court otherwise orders, the Director may serve the evidentiary material brief by sending an email informing the defendant of the filing of the brief and that it may be accessed on the Court's electronic portal if—

(a) the Director files an evidentiary material brief in electronic form;

(b) the defendant has an address for service that includes an email address;

(c) the email is sent to that email address for service; and

(d) the party to be served or a lawyer acting for them is a registered user of the Electronic System and has been granted access to the case maintained on the Electronic System.

(7) The Director must file and serve as an attachment to the evidentiary material brief the witness statements identified in the evidentiary material brief.

(8) The Director may file and serve other evidentiary material not attached to the witness statements identified in the evidentiary material brief or alternatively may retain possession of any such other evidentiary material.

(9) If the Director wishes to amend or supplement an evidentiary material brief previously served, the Director must do so by filing or serving a revised version of the evidentiary material brief showing the relevant revision number.

(10) If the Director files a revised evidentiary material brief in electronic form, the Director may, but is not required to, include any witness statements or evidentiary material attached to a previous evidentiary material brief.

(11) If the informant files or serves a revised evidentiary material brief in physical form, the informant is not required to file or serve again any witness statements or evidentiary material attached to a previous evidentiary material brief.

**Note—**

An evidentiary material brief filed under this rule may but is not required to refer to or attach evidentiary material filed in a Lower Court in the relevant committal proceeding.

## 93.3—Expert evidence

(1) If a defendant intends to adduce expert evidence at trial, they must file and serve on each other party a notice of intention to adduce expert evidence in the prescribed form at or before the time fixed for filing a defence case statement.

(2) If expert evidence becomes available to the defence after the time referred to in subrule (1), the defendant must file and serve on each other party a notice of intention to adduce expert evidence in the prescribed form as soon as practicable.

(3) If any information relating to expert evidence specified in a notice under subrule (1) or (2) subsequently changes, the defendant must file and serve on each other party a notice or revised notice of intention to adduce expert evidence in the prescribed form as soon as practicable after the defence becomes aware of such change.

**Prescribed form—**

Form 77A Notice of Intention to Adduce Expert Evidence (Higher Courts)

**Note—**

Section 124(1) and (2) of the Procedure Act impose obligations on the defence to give notice of expert evidence.

## 93.4—Alibi evidence

If a defendant intends to adduce evidence in relation to alibi at trial, they must file and serve on each other party a notice of intention to adduce alibi evidence in the prescribed form at or before the time fixed for filing a defence case statement.

**Prescribed form—**

Form 78A Notice of Intention to Adduce Alibi Evidence (Higher Courts)

**Note—**

Section 124(1) of the Procedure Act imposes an obligation on the defence to give notice of alibi evidence.

## 93.5—Information for guilty plea

(1) If a matter is resolved before arraignment on the basis of the entry of a guilty plea or the defendant wishes to change their plea to guilty, the defendant must as soon as practicable file and serve on the Director a request to have the matter called on for a guilty plea in the prescribed form.

**Prescribed form—**

Form 52 Request to have Matter Called on for Guilty Plea

(2) If a defendant is committed for sentence, the Director must file and serve on the defendant at least 21 days before the first arraignment date a prosecution summary of the proposed factual basis for sentencing in the prescribed form, setting out a summary of the facts on which the Director intends to rely for sentencing and an antecedent report.

(3) If a defendant committed for sentence or who intends to plead guilty at arraignment is represented by a lawyer, the lawyer must, at least 7 days before the first arraignment date, file and serve on the Director an Information for arraignment on committal for sentence in the prescribed form.

**Prescribed form—**

Form 53 Information for Arraignment on Committal for Sentence

(4) If a defendant notifies the Director of a change of plea under subrule (1), the Director must as soon as reasonably practicable file and serve on the defendant a prosecution summary of the proposed factual basis for sentencing and an antecedent report in accordance with subrule (3).

**Prescribed form—**

Form 54 Prosecution Summary of Proposed Factual Basis for Sentencing

### 93.6—Priority proceedings

An application by the Director or a defendant for an order under section 127 of the Procedure Act that exceptional circumstances justify the trial not commencing within 6 months of the determination that a defendant is a serious and organised crime suspect must be—

(a) by an interlocutory application in accordance with rule 39.1; and

(b) filed and served at least 7 days before the first arraignment date.

# Part 4—Election or order for trial by judge alone

## Division 1—Election for trial by judge alone

### 94.1—Election requirements

(1) A judge alone election under section 7(1)(a) of the Juries Act (an ***election*** or a ***judge alone election***) must be made in the manner and at the time stipulated in this Division.

(2) The Court may extend the time for making or revoking an election under rule 94.5 or rule 94.6 if satisfied that there are special reasons for so doing or that it would be unjust not to do so notwithstanding that the prescribed period has expired.

### 94.2—Subject matter of election

(1) Subject to the succeeding subrules—

(a) a judge alone election must relate to the trial of all charges against all defendants in the Information in respect of which a trial is to be held; and

(b) an election that purports to be limited to certain charges only or is not made by all defendants is void.

(2) If two or more defendants are jointly charged with an offence, they must concur, as required by section 7(3) of the Juries Act, in making the election by jointly signifying their concurrence in the election or by each of them separately notifying their election in accordance with this Division.

(3) If a defendant who is charged with more than one count proposes to apply for a separate trial in respect of one or more counts, a separate election may be conditionally made as to the counts sought to be severed or as to the counts remaining in anticipation of an order for severance.

(4) If a defendant who is jointly charged with other defendants proposes to apply for a separate trial from the trial of others jointly charged, a separate election may be conditionally made by that defendant in anticipation of an order for separate trials.

(5) A conditional election under subrule (3) or (4) must be made in the manner and at the time stipulated in this Division and expressed to be conditional in accordance with subrule (3) or (4) as the case may be.

(6) A conditional election under—

(a) subrule (3) will be valid and effectual only if the application for severance is granted;

(b) subrule (4) will be valid and effectual only if the application for separate trials is granted or all defendants make a valid election in accordance with subrules (1) and (2).

## 94.3—Manner of making election

(1) A judge alone election must be made by filing a notice of election in the prescribed form.

**Prescribed form—**

Form 64 Election for Trial by Judge Alone

(2) A judge alone election must be signed—

(a) by the defendant before an authorised witness or a lawyer admitted and entitled to practise in a State; or

(b) by a solicitor acting for and signing on the authority of the defendant.

(3) If the defendant is represented by a lawyer, the lawyer must complete the certification contained in the prescribed form.

(4) An election made by counsel on behalf of a defendant under section 269W(2) of the Consolidation Act must be made by filing a notice of election in the prescribed form signed by counsel.

**Prescribed form—**

Form 64 Election for Trial by Judge Alone

(5) A notice of election must be served by the filing party as soon as practicable on the Director and on any other defendant.

(6) At any stage of the proceeding a—

(a) notice of election signed by a defendant or their solicitor; or

(b) certificate signed by a lawyer in a notice of election,

is admissible as evidence that the defendant before making the election sought and received advice from a lawyer in relation to the election.

## 94.4—Election irrevocable

(1) Subject to rule 94.6, a defendant who has made a judge alone election cannot revoke it without the leave of the Court.

(2) The Court may grant leave to revoke a judge alone election if satisfied that there are special reasons for so doing or that it would be unjust not to do so.

### 94.5—Time for making election

(1) A judge alone election must be made by the first arraignment date or within such time as the Court on the first arraignment orders.

(2) Subject to rule 94.6 and rule 94.1(2), if an election is not made in accordance with the subrule (1), a defendant is precluded from making an election subsequently notwithstanding that the Information may be revised.

### 94.6—Election after order for new trial

(1) Despite rule 94.5, if there has been a mistrial or a jury has been unable to reach a verdict or an appeal against conviction has been allowed and the defendant has been remanded for a new trial, the defendant may make a judge alone election in the manner set out in the preceding rules within 28 days after being remanded for a new trial.

(2) Despite rule 94.4, if an appeal against conviction by a Judge alone has been allowed and the defendant has been remanded for a new trial, the defendant may revoke a judge alone election by filing a notice of revocation in the prescribed form within 28 days after being remanded for a new trial.

**Prescribed form—**

Form 65 Revocation of Election for Trial by Judge Alone

(3) A revocation of a judge alone election must be signed—

(a) by the defendant before an authorised witness or a lawyer admitted and entitled to practise in a State; or

(b) by a solicitor acting for and signing on the authority of the defendant.

(4) If the defendant is represented by a lawyer, the lawyer must complete the certification contained in the prescribed form.

(5) A revocation of an election under subrule (2) made by counsel on behalf of a defendant under section 269W(2) of the Consolidation Act must be made by filing a notice of election in the prescribed form signed by counsel.

**Prescribed form—**

Form 65 Revocation of Election for Trial by Judge Alone

(6) At any stage of the proceeding a—

(a) notice of revocation signed by a defendant or their solicitor; or

(b) certificate signed by a lawyer in a notice of revocation,

is admissible as evidence that the defendant before making the revocation sought and received advice in relation to the revocation from a lawyer.

## Division 2—Order for trial by judge alone

### 95.1—Application by Director

An application by the Director for an order under section 7(3a) of the Juries Act that the trial of an Information that includes a charge of a serious and organised crime offence be heard by Judge alone must be made by an interlocutory application in accordance with rule 39.1 within 28 days after the first arraignment date.

# Part 5—Arraignment

## 96.1—Arraignment date

The Court may, if it thinks fit, vary the date of the first arraignment from the first arraignment date.

## 96.2—Priority proceedings

(1) If a proceeding is a priority proceeding and the Information does not refer to the proceeding being a priority proceeding, the Director must inform the Court at the first arraignment.

(2) If a proceeding is a priority proceeding, the following must be addressed at the first arraignment—

(a) the means by which the proceeding may be expedited; and

(b) if the defendant is a serious and organised crime suspect—the means by which the trial is to commence within 6 months after the determination by reason of which the defendant became a serious and organised crime suspect.

## 96.3—Procedure at arraignment: Supreme Court

(1) If a defendant pleads not guilty at arraignment, the proceeding will generally be remanded to a directions hearing.

(2) If at arraignment an issue of fitness to stand trial or mental competence of the defendant is raised, procedural orders will generally be made and the proceeding will be remanded to a directions hearing.

(3) If a defendant was committed for sentence or pleads guilty at arraignment, the proceeding will generally be remanded to a sentencing hearing.

## 96.4—Procedure at arraignment: District Court

(1) If a defendant pleads not guilty at arraignment in the not guilty arraignment list, the proceeding will generally be listed for trial and remanded to a first directions hearing callover.

(2) The Court expects parties (by their counsel when applicable or if counsel have not been briefed by their solicitors or other representatives when applicable) to make realistic and achievable estimates of the length of trials to be listed.

(3) The Court expects counsel to be available for the whole of the period for which the trial has been listed.

(4) If at arraignment an issue of a defendant's fitness to stand trial or mental competence is raised, the proceeding will generally be remanded either to a first directions hearing callover or to a hearing before the arraignment Judge.

(5) If a defendant was committed for sentence or pleads guilty at arraignment and there is to be a disputed fact hearing, the matter will generally be listed for a disputed fact hearing with or without sentencing submissions.

(6) If a defendant appears at arraignment in the guilty arraignment list, generally submissions on sentence are expected to be made on the arraignment date.

(7) If a defendant appears at arraignment in the not guilty arraignment list and pleads guilty, generally the defendant will be remanded for sentencing submissions.

**Note—**

For circuit matters, the procedures for listing trials, disputed fact hearings and sentencing submissions are adapted to the circumstances of circuit hearings and differ from the procedures set out in this rule.

### 96.5—Subsequent resolution

(1) If after arraignment the matter is resolved on the basis of entry of a guilty plea or the defendant wishes to change their plea to guilty, the defendant must as soon as practicable file and serve on the Director a request to have the matter called on for guilty plea in the prescribed form.

**Prescribed form—**

Form 52 Request to have Matter Called on for Guilty Plea

(2) Upon filing of a request to have matter called on for guilty plea under subrule (1), the matter will be placed into an arraignment list and any listed hearing or trial for that matter will be vacated.

## Part 6—Amendment of Information and Particulars

### 97.1—Amendment with or without leave

(1) Subject to subrules (4), (5) and (6), the Director may amend the Information (including to add an additional defendant or count or to delete or amend an existing count) at any time up to 6 weeks before the trial date.

(2) If the Director files a revised Information under subrule (1) and the amendment is capable of increasing the length of the trial or affecting the trial proceeding on the trial date, the Director must, upon filing the revised Information, notify the Court of this fact.

(3) Subject to subrules (4), (5) and (6), the Director may amend the Information (including to delete, add or amend an existing count) at any time before the trial date if the amendment is not capable of increasing the length of the trial or affecting the trial proceeding on the trial date.

(4) The Director may not amend under this rule if the amendment would add a count against a party that is statute barred due to the effluxion of time.

(5) The Director may not amend under subrule (1) or (2) if the trial of the proceeding has been allocated to, and pre-trial proceedings are being managed by, the trial Judge.

(6) If the Director files a revised Information under subrule (1) or (2), a defendant may apply for an order disallowing the amendment in whole or in part.

(7) The Director may amend the Information (including to add an additional defendant or count or to delete or amend an existing count) at any time with the leave of the Court.

(8) If the Director seeks leave to amend the Information, the Director must file, and serve on each defendant, a draft revised Information either as a standalone filed document in the prescribed form or as an exhibit to an affidavit.

**Prescribed form—**

Form 7 Draft Revised Information Higher Courts

(9) If the Director files a revised Information, any additional defendant must be added in sequential order (after all existing defendants) and any additional count must be added in sequential order (after all existing counts) on the Information.

**Note—**

There is no limit on the number of times the Information may be amended under this rule.

## 97.2—Method of amendment

If the Director is entitled to amend the Information under rule 97.1, the amendment must be made by filing a revised version of the Information in accordance with rule 30.2.

## 97.3—Notifiable offences

If the Director becomes aware after an Information has been filed that an offence alleged in the Information is or may be a notifiable offence, the Director must file a notice of notifiable offence in the prescribed form.

**Prescribed form—**

Form 76 Notice of Notifiable Offence

## 97.4—Priority proceeding

If the Director becomes aware after an Information has been filed that the proceeding is a priority proceeding, the Director must file a notice of priority proceeding in the prescribed form.

**Prescribed form—**

Form 75 Notice of Priority Proceeding

## 97.5—Better particulars

(1) A defendant may by written notice request better particulars of a count in an Information.

(2) A request for better particulars must be served within 28 days, or such other period as may be ordered by the Court, of service of the first Information containing the count the subject of the request.

(3) If the Director receives a notice under subrule (1) within the time specified under subrule (2), the Director must, within 14 days or such other period as may be ordered by the Court, provide a written response responding in respect of each request by either—

(a) providing better particulars;

(b) offering to provide better particulars and indicating when they will be provided; or

(c) declining to provide better particulars.

(4) The Court may order the Director to provide better particulars of a count by—

(a) filing and serving a revised Information containing such particulars; or

(b) filing and serving a separate document containing such particulars.

# Part 7—Matters before first directions hearing

## 98.1—Legal representation certificate or written assurance

(1) If a defendant is represented by a lawyer, the lawyer must at least 14 days before the first directions hearing file a certificate of legal representation under section 8(2) of the *Criminal Law (Legal Representation) Act 2001* in the prescribed form certifying that:

(a) the defendant is an assisted person;

(b) the lawyer undertakes that the defendant will be provided with legal representation for the duration of the trial; or

(c) the defendant is not an assisted person and the lawyer is not prepared to give an undertaking under paragraph (b).

**Prescribed form—**

Form 16 Certificate of Legal Representation

(2) A written assurance that the defendant does not want legal representation at trial under section 8(3)(c) of the *Criminal Law (Legal Representation) Act 2001* must be in the prescribed form.

**Prescribed form—**

Form 17 Assurance that Defendant does not Want Legal Representation

(3) At the first directions hearing, the Court will consider any legal representation certificate or written assurance that has been filed and will consider whether to make a direction under section 8 of the *Criminal Law (Legal Representation) Act 2001* that the defendant make an application to the Legal Services Commission for legal assistance.

# Part 8—Hearings and applications

## Division 1—Directions hearings

## 99.1—Convening directions hearing

(1) A directions hearing will be convened—

(a) when the proceeding is referred upon arraignment to a directions hearing under rule 96.3 or rule 96.4;

(b) when the proceeding is referred at a directions hearing to a further directions hearing;

(c) when convened by the Registrar; or

(d) when convened by the Court (including by a Judge before arraignment or by the trial Judge or another Judge in preparation for the trial) on the Court's own initiative or on the application of a party.

(2) Any directions hearing required in relation to a priority proceeding will be listed with appropriate priority as determined by the Court.

### 99.2—Attendance of parties at directions hearing

(1) Unless the Court otherwise orders, a directions hearing must be attended on behalf of the prosecution—

(a) if counsel has been assigned or briefed by the Director—by counsel or, by leave of the Court, if attendance of counsel is not practicable, by a solicitor; or

(b) otherwise—by a solicitor.

(2) Unless the Court otherwise orders, if a defendant is represented by a law firm, a directions hearing must be attended on behalf of the defendant—

(a) if counsel has been briefed—by counsel or, by leave of the Court, if attendance of counsel is not practicable, by a solicitor; or

(b) otherwise—by a solicitor.

(3) Unless the Court otherwise orders, a defendant must attend at a directions hearing but, unless the Court otherwise orders, if the defendant is in custody, the attendance will be by audio visual link or audio link under rule 38.3.

### 99.3—Attendance of public at directions hearing

Attendance at a directions hearing is governed by rule 38.6.

## Division 2—Listing for trial: Supreme Court

### 100.1—Listing for trial

(1) The Court will usually list a proceeding for trial at the first directions hearing.

(2) The Court expects the parties (by their counsel when applicable or if counsel have not been briefed by their solicitors or other representatives when applicable) to make realistic and achievable estimates of the length of trials to be listed.

(3) The Court expects counsel to be available for the whole of the period for which the trial has been listed.

## Division 3—Pre-trial conferences

### 101.1—Pre-trial conference

(1) The Court may order, on the application of a party or on its own initiative, that there be a pre-trial conference governed by this rule.

(2) The purpose of a pre-trial conference is to explore the possibility of disposing of the proceeding or a charge other than by way of trial or of narrowing the issues.

(3) Unless the Court otherwise orders, a pre-trial conference must be attended by—

(a) the defendant, but that attendance may be by audio visual link or audio link under rule 38.3; and

(b) each party's counsel briefed to appear at the trial or, by leave of the Court, if attendance of a party's counsel is not practicable, by that party's solicitor.

(4) Unless the Court otherwise orders, a pre-trial conference will not be open to the public.

(5) Nothing said or not said at a pre-trial conference can be used at a subsequent trial, sentencing hearing or other substantive hearing.

(6) If the matter resolves or partially resolves at the pre-trial conference on the basis of the entry of a guilty plea, an arraignment will generally be convened immediately for the plea to be entered in open court.

(7) If the matter does not fully resolve at the pre-trial conference, if it has already been listed for trial, it will remain in the trial list with its allocated trial date.

## Division 4—Applications

### 102.1—Time for making certain applications

(1) An application for—

(a) a pre-trial special hearing; or

(b) admission of a record of evidence under section 13BA, 13BB or 13D of the Evidence Act,

must be made by the date fixed for filing the relevant case statement.

(2) An application by a defendant prior to trial—

(a) relating to joinder or severance or for separate trials;

(b) to quash or stay a proceeding;

(c) relating to cross-admissibility of evidence;

(d) relating to the legality of a search;

(e) relating to continuity of custody of exhibits;

(f) relating to the admissibility of other prosecution evidence; or

(g) raising any other point of law,

must be made by the date fixed for filing the defendant's case statement.

(3) An application—

(a) for an order requiring notice of intention to adduce evidence of a type referred to in rule 105.2;

(b) for taking evidence outside the State;

(c) to adduce evidence or make submissions by audio visual link or audio link; or

(d) for special arrangements for the protection of a witness under section 13 or 13A of the Evidence Act,

must be made at least 6 weeks before the trial date.

(4) Any other application to determine an issue before the commencement of the trial must be made at least 6 weeks before the trial date.

**Note—**

Rule 39.1(7) also requires an interlocutory application to be filed and served at least 7 days before the hearing at which the orders are to be sought.

## Division 5—Fitness to stand trial and mental competence

### 103.1—Unfitness to stand trial

(1) If a defendant is represented by a lawyer and the lawyer has reason to believe that the defendant may be unfit to stand trial, the lawyer must—

(a) expeditiously inquire into whether the defendant is fit to stand trial; and

(b) inform the Court that there is or may be an issue about whether the defendant is fit to stand trial as soon as practicable.

(2) If an unrepresented defendant has doubt about their fitness to stand trial, they must inform the Court that there is or may be an issue about their fitness to stand trial as soon as practicable.

### 103.2—Mental incompetence to commit offence

(1) If a defendant is represented by a lawyer and the lawyer has reason to believe that the defendant may have been mentally incompetent to commit an offence charged, the lawyer must—

(a) expeditiously inquire into the mental competence of the defendant to commit the offence; and

(b) inform the Court that there is or may be an issue about the mental incompetence of the defendant to commit the offence as soon as practicable.

(2) If a defendant not represented by a lawyer has doubt about their mental competence to commit an offence charged, they must inform the Court that there is or may be an issue about their mental incompetence as soon as practicable.

## Division 6—Non-appearance of defendant

### 104.1—Issue warrant of apprehension

(1) The Court may order the issue of a warrant of apprehension of a defendant if—

(a) the defendant does not attend at a hearing or trial of a proceeding; and

(b) the defendant is not in custody.

(2) A warrant of apprehension ordered under this rule must be in the prescribed form.

**Prescribed form—**

Form 31 Warrant of Apprehension of Defendant

# Part 9—Pre-trial disclosure and applications

## Division 1—Pre-trial disclosure of evidence

### 105.1—Discreditable conduct evidence

(1) Notice of intention to adduce evidence of discreditable conduct under section 34P(4) of the Evidence Act must be in the prescribed form and filed and served on all other parties—

(a) in the case of a notice by the Director—by the time fixed for filing a prosecution case statement;

(b) in all other cases—at least 28 days before the trial date.

**Prescribed form—**

Form 79 Notice of Intention to Adduce Discreditable Conduct Evidence

(2) A party who intends to object to the admission of proposed evidence of discreditable conduct the subject of a notice of intention must file and serve on all other parties a notice of objection in the prescribed form within 14 days after service of the notice of intention.

**Prescribed form—**

Form 80 Notice of Objection to Discreditable Conduct Evidence

### 105.2—Other evidence

(1) The Court may order that, if a defendant intends to adduce evidence in relation to a prescribed matter at trial, they must file and serve on each other party by such date as the Court specifies a notice of intention to adduce evidence pursuant to order in the prescribed form.

**Prescribed form—**

Form 81A Notice of Intention to Adduce Evidence pursuant to Order (Higher Courts)

**Notes—**

The Court is empowered by section 134(1) of the Procedure Act to make such an order provided that the prosecution has provided the defence with the prosecution case statement in accordance with section 123 and the prosecution has no existing, but unfulfilled, obligations of disclosure to the defence.

Section 134(3) provides that non-compliance with a requirement under subsection (1) does not render evidence inadmissible, but the prosecutor or the Judge (or both) may comment on the non-compliance to the jury.

(2) An application for an order under this rule must—

(a) identify the basis of the application and the fact that the prosecution has no existing, but unfulfilled, obligations of disclosure to the defence; and

(b) be filed and served at least 28 days before the listed trial date.

(3) In this rule, ***prescribed matter*** means one or more of the following—

(a) whether the defendant was mentally incompetent to commit the alleged offence;

(b) whether the defendant is unfit to stand trial;

(c) whether the defendant acted for a defensive purpose;

(d) whether the defendant acted under provocation;

(e) whether the defendant acted under automatism;

(f) whether the alleged offence occurred by accident;

(g) whether the defendant acted out of necessity;

(h) whether the defendant acted under duress;

(i) whether the defendant acted under a claim of right;

(j) whether the defendant acted under intoxication.

(4) The written record of an order requiring a defendant to give notice of intention to adduce evidence in relation to a prescribed matter must be in the prescribed form.

**Prescribed form—**

Form 99 Record of Outcome – Order

## Division 2—Pre-trial dispensation with witnesses

### 106.1—Dispensing with prosecution witnesses

(1) An application to require a defendant to give to the Director notice whether they consent to dispensing with calling certain prosecution witnesses under section 134 of the Procedure Act must—

(a) be made by an interlocutory application in accordance with rule 39.1; and

(b) state the time within which it is proposed that the defence is to respond.

(2) An application must be filed and served at least 28 days before the listed trial date.

(3) The written record of an order requiring a defendant to give to the Director notice whether they consent to dispensing with calling certain prosecution witnesses must be in the prescribed form.

**Prescribed form—**

Form 99 Record of Outcome – Order

(4) The defence response to an order must be in the prescribed form.

**Prescribed form—**

Form 82 Notice whether Defendant Consents to Dispensing with Calling Prosecution Witnesses

# Part 10—Pre-trial directions hearings

### 107.1—Convening pre-trial directions hearing

*Supreme Court*

(1) When a trial is pending, a directions hearing before commencement of the trial may be convened on the Court's own initiative or on application by a party.

(2) A pre-trial directions hearing will ordinarily be conducted by the trial Judge but may be convened or conducted by another Judge if the trial Judge is unavailable.

*District Court*

(3) A pre-trial directions hearing, known as a second directions hearing, will generally be listed at the first directions hearing.

### 107.2—Proceedings at pre-trial directions hearing

(1) The purpose of a pre-trial directions hearing is to give directions (including any arising by virtue of section 59J of the Evidence Act) with respect to the trial to ensure that the trial commences on the trial date and will be conducted in an expeditious and fair manner.

(2) A pre-trial directions hearing must be attended by—

(a) the defendant (but that attendance may be by audio visual link or audio link under rule 38.3);

(b) if a defendant is represented by a law firm, their counsel briefed to appear at the trial or, by leave of the Court, if attendance of counsel is not practicable, by that defendant's solicitor; and

(c) counsel briefed by the Director to appear at the trial or, by leave of the Court, if attendance of such counsel is not practicable, by the solicitor having the principal conduct of the matter for the Director.

## Part 11—Hearings generally

### 108.1—Documents for use at hearings

(1) Unless the Court otherwise orders, an affidavit, report, reference or other document to be relied on at a hearing must be provided to the Court and served at least 2 business days before the listed hearing date.

(2) Unless the Court otherwise orders, written submissions or a summary of argument to be relied on at a hearing must be filed and served at least 2 business days before the listed hearing date.

### 108.2—Consent orders

(1) Unless the Court otherwise orders, if the parties consent to an order to be made at or in lieu of a hearing (including, without limitation, an order adjourning the hearing or extending time to take a step in the proceeding), the terms of the consent order and fact of the consent to the order must be communicated to the Court at least 2 business days before the hearing date.

(2) Unless the Court otherwise orders, if the parties wish to request an order in chambers in the absence of the parties adjourning a hearing, the request together with the reason for the request and the purpose of the proposed adjournment must be communicated to the Court at least 2 business days before the hearing date.

# Chapter 6—Trial

## Part 1—Scope of Chapter

### 121.1—Scope

This Chapter applies to certain matters in preparation for trial, to trial and to verdicts in all Courts.

## Part 2—Subpoenas

**Note—**

This Part contains harmonised rules.

## Division 1—Introduction

### 122.1—Interpretation

(1) In this Part—

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

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

***issuing officer*** means a court officer who is empowered to issue summonses to witnesses;

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

***subpoena*** means an order in writing requiring the 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***.

(4) A subpoena requiring an addressee to attend to give evidence and produce the subpoena or a copy of it and a document or thing, it is called a ***subpoena to attend to give evidence and produce***.

## Division 2—Issue and service

### 123.1—Issuing subpoenas

(1) The Court may, in any proceeding, by subpoena order the addressee—

(a) to attend to give evidence as directed by the subpoena;

(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) An issuing officer must not issue a subpoena—

(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 leave of the Court and that leave has not been given; or

(b) requiring the production of a document or thing in the custody of the Court or another court.

(3) The issuing officer must seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

(4) A subpoena is taken to have been issued when it is sealed or otherwise authenticated in accordance with subrule (3).

*Higher Courts*

(5) An application under section 126(1)(b) of the Procedure Act for issue of a subpoena to produce must be made by an interlocutory application in the approved form or by oral application at a hearing.

**Prescribed form—**

Form 92 Interlocutory Application

**Note 1—**

Section 126(1)(a) of the Procedure Act provides that a subpoena other than to attend to give evidence may only be issued by the Registrar of a superior court if all parties and each recipient consent. Section 126(1)(b) and (2) of the Procedure Act provides that a subpoena other than to attend to give evidence may only be issued by a Judge or Master of a superior court if satisfied that it is in the interests of justice for the subpoena to be issued.

**Note 2—**

Rule 39.4 provides that a subpoena for the purpose of a hearing other than a trial may only be issued with leave of the Court.

*Lower Courts*

(6) An application under section 107(b) of the Procedure Act for issue of a subpoena to produce must be made by an interlocutory application in the approved form or by oral application at a hearing.

**Prescribed form—**

Form 92 Interlocutory Application

**Note 1—**

Section 107(a) of the Procedure Act provides that a subpoena other than to attend to give evidence may only be issued by the registrar if the subpoena is sought in relation to a charge of a minor indictable offence and the registrar is satisfied that the defendant (or youth) will not be electing, in accordance with the rules, for trial in a superior court or all parties and each recipient consent to the grant of the subpoena.

Section 107(b) of the Procedure Act provides that a subpoena may be issued by a Magistrate if satisfied that it is in the interests of justice for the subpoena to be issued.

**Note 2—**

Rule 39.4 provides that a subpoena for the purpose of a hearing other than a trial may only be issued with leave of the Court.

## 123.2—Form of subpoena

(1) A subpoena must be in the prescribed form.

**Prescribed forms—**

**Higher Courts**

Form 111A Subpoena to Attend to Give Evidence (Supreme and District Courts)

Form 111B Subpoena to Produce Documents (Supreme and District Courts)

Form 111C Subpoena to Attend and to Produce Documents (Supreme and District Courts)

**Lower Courts**

Form 112A Subpoena to Attend to Give Evidence (Magistrates, Youth and ERD Courts)

Form 112B Subpoena to Produce Documents (Magistrates, Youth and ERD Courts)

Form 112C Subpoena to Attend and to Produce Documents (Magistrates, Youth and ERD Courts)

(2) A subpoena to attend to give evidence must not be addressed to more than one person.

(3) A subpoena must identify the addressee by name or by description of office or position.

(4) A subpoena to produce must—

(a) identify the document or thing to be produced; and

(b) specify the date, time and place for production.

(5) A subpoena to attend to give evidence must specify the date, time and place for attendance.

(6) The date specified in a subpoena must be the date of trial or any other date as permitted by the Court.

(7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.

(8) The last date for service of a subpoena—

(a) is—

(i) the date 5 business days before the earliest date the addressee is required to comply with the subpoena; or

(ii) an earlier or later date fixed by the Court; and

(b) must be specified in the subpoena.

**Notes—**

Section 30(1) of the Service and Execution of Process Act provides that service of a subpoena in another State is effective only if the period between service and the day on which the addressee is required to comply with the subpoena is not less than 14 days or such shorter period as the Court, on application, allows.

Section 30(2) provides that the Court may allow a shorter period only if it is satisfied that the giving of the evidence likely to be given by the addressee, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and there will be enough time for the addressee to comply with the subpoena without hardship or serious inconvenience and to make an application under section 33.

(9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

### 123.3—Change of date for attendance or production

(1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.

(2) When notice is given under subrule (1), the subpoena has effect as if the date or time notified appeared in the subpoena instead of the date or time which appeared in the subpoena.

### 123.4—Setting aside or other relief

(1) The Court may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or part, or grant other relief in relation to it.

(2) An 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 each other party or to any other person having a sufficient interest.

**Note—**

Sections 33, 43 and 44 of the Service and Execution of Process Act contain provisions governing applications to set aside summonses to witnesses served interstate.

### 123.5—Service

(1) A subpoena must be served personally on the addressee.

(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.

**Note—**

This rule does not require service of a subpoena on each other party if the subpoena is only to give evidence and does not require production of any documents.

## Division 3—Compliance

### 124.1—Compliance with subpoena

*Higher Courts*

(1) An addressee need not comply with the requirements of a subpoena to attend to give evidence if conduct money has not been handed or tendered to the addressee a reasonable time before the date on which attendance is required.

*Lower Courts*

(2) An addressee need not comply with the requirements of a subpoena to attend to give evidence—

(a) if served out of the State—if conduct money has not been handed or tendered to the addressee a reasonable time before the date on which attendance is required; or

(b) if served in the State—if the addressee—

(i) has, a reasonable time before the date for attendance, requested payment in advance of conduct money from the issuing party nominating a reasonable amount required or provision of tickets or vouchers or both for travel and any accommodation; and

(ii) has not received such payment or provision in sufficient time to enable compliance.

(3) 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.

**Notes—**

Section 30 of the Service and Execution of Process Act addresses this in the case of service in another State: see the notes to rule 123.2(8).

Section 31 of the Service and Execution of Process Act provides that, when a subpoena is served in another State, service is only effective if prescribed notices and a copy of any order under section 30 are attached to the subpoena served.

Section 32 of the Service and Execution of Process Act provides that, when a subpoena is served in another State, service is only effective if, a reasonable time before compliance is required, sufficient allowances and travelling expenses are paid or tendered to the person.

(4) Despite rule 123.5(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on the addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(5) The addressee must comply with a subpoena to produce by—

(a) attending at the date, time and place specified for production 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) delivering or sending the subpoena or a copy of it and the document or thing to the Principal Registrar at the address specified for that purpose in the subpoena, or, if more than one address is specified, at any one of those addresses, so that they are received not less than 2 business days before the date specified in the subpoena.

**Note—**

Section 34 of the Service and Execution of Process Act provides that, when a subpoena is served in another State, a document or thing may be delivered to the Registrar not less than 24 hours before the date for compliance.

(6) For 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 (5) does not discharge the addressee from the obligation to attend to give evidence.

(7) Unless a subpoena specifically requires the production of the original document, 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 an electronic form in any of the following electronic formats—

(i) .doc and .docx—Microsoft Word documents;

(ii) .pdf—Adobe Acrobat documents;

(iii) .xls and .xlsx—Microsoft Excel spreadsheets;

(iv) .jpg—image files;

(v) .rtf—rich text format;

(vi) .gif—graphics interchange format;

(vii) .tif—tagged image format; or

(viii) any other format agreed with the issuing party.

### 124.2—Production otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 124.1(5)(b).

(2) The Principal Registrar or a 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 Principal Registrar or a Registrar, provide a list of the documents or things produced.

(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

(5) The addressee may at the time of production tell the Principal Registrar or a Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

## Division 4—Dealing with documents

### 125.1—Removal, return, inspection, copying and disposal of documents and things

The Court may give directions about 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.

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

(1) This rule applies if an addressee produces a document or thing in accordance with rule 124.1(5)(b).

(2) On request in writing of a party, the Principal Registrar must tell the party whether production in response to a subpoena has occurred and, if so, include a description, in general terms, of the documents and things produced.

(3) Subject to this rule, a person may inspect a document or thing produced only if the Court has granted leave and the inspection is in accordance with that leave.

(4) The Principal 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 Principal 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 Principal Registrar in writing of the objection and of the grounds of the objection.

(7) On receiving notice of an objection under this rule, the Principal 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 Principal Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard.

(9) After being notified by the Principal Registrar under subrule (8), the issuing party must notify the addressee, the objector and each other party of the date, time and place at which the objection will be heard.

(10) The Principal Registrar may permit any document or thing produced to be removed from the Registry only on application in writing signed by a lawyer for a party.

(11) A lawyer who signs an application under subrule (10), and removes a document or thing from the Registry is taken to undertake to the Court that—

(a) the document or thing will be kept in the personal custody of the lawyer or a barrister briefed by the lawyer 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 Principal Registrar.

(12) The Principal Registrar may grant an application under subrule (10) subject to conditions or refuse to grant the application.

## 125.3—Return of documents and things produced

(1) The Principal Registrar or a Registrar may return to the addressee any document or thing produced in response to the subpoena.

(2) The Principal Registrar or a Registrar may return any document or thing under subrule (1) only if they have given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.

(3) The addressee of a subpoena to produce or a subpoena to attend to give evidence and to produce must complete the declaration by the addressee contained at the end of the subpoena.

(4) The completed declaration must be included in the subpoena or copy of the subpoena which accompanies the documents produced under the subpoena.

(5) Subject to subrule (6), the Principal Registrar or a Registrar may, on the expiry of 4 months from the conclusion of the proceeding, cause to be destroyed all the documents produced in the proceeding in compliance with a subpoena that were not declared by the addressee to be original documents whose return is sought.

(6) The Principal Registrar or a Registrar may cause to be destroyed those documents not declared by the addressee to be original documents whose return is sought which have become exhibits in the proceeding when they are no longer required in connection with the proceeding, including on any appeal.

## Division 5—Costs of compliance

### 126.1—Costs and expenses of compliance

(1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

(2) If an order is made under subrule (1), the Court will fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.

(3) An amount fixed under this rule is separate from and in addition to—

(a) any conduct money paid to the addressee; and

(b) any witness expenses payable to the addressee.

**Note—**

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

## Division 6—Failure to comply

### 127.1—Failure to comply with subpoena—contempt of court

(1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

(2) Despite subrule (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.

### 127.2—Issue of warrant of apprehension to addressee

(1) The Court may order the issue of a warrant of apprehension to—

(a) an addressee who fails to comply with a subpoena;

(b) a person in respect of whom there are grounds for belief that, if such a subpoena were issued, the person would not comply with it.

**Note—**

Section 35(3) the *Supreme Court Act 1935*, section 25(3) of the *District Court Act 1991*, section 18(3) of the *Youth Court Act 1993*, section 22(3) of the *Environment Resources and Development Court Act 1993* and section 20(3) of the *Magistrates Court Act 1991* empower the Court to issue a warrant to have the person arrested and brought before the Court.

(2) If the Court makes an order under subrule (1), the Principal Registrar must cause a warrant in the prescribed form to be issued.

**Prescribed form—**

Form 117 Warrant of Apprehension of Witness

## Division 7—Documents in court custody

### 128.1—Documents and things in custody of Court

(1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the Principal Registrar or a Registrar in writing identifying the document or thing that they seek to be produced.

(2) If the document or thing is in the custody of the Court, the Principal Registrar or Registrar must produce the document or thing—

(a) in court or to any person authorised to take evidence in the proceeding, as required by the party; or

(b) as the Court directs.

(3) If the document or thing is in the custody of another court, the Principal Registrar or Registrar must, unless the Court has otherwise ordered—

(a) ask the other court to send the document or thing to the Principal Registrar or Registrar; and

(b) after receiving it, produce the document or thing—

(i) in court or to any person authorised to take evidence in the proceeding as required by the party; or

(ii) as the Court directs.

## Division 8—Service interstate or in New Zealand

### 129.1—Service of subpoena interstate

(1) A subpoena served in another State under sections 29 and 31 of the Service and Execution of Process Act must be accompanied by a notice in the prescribed form.

**Prescribed form—**

Form 113A Notice to Accompany Subpoena Served Interstate

(2) A subpoena served in another State on a prisoner under sections 39 to 41 of the Service and Execution of Process Act must be accompanied by a notice in the prescribed form.

**Prescribed form—**

Form 113B Notice to Accompany Subpoena Served on Interstate Prisoner

### 129.2—Service of subpoena in New Zealand

(1) An application under section 31 of the *Trans-Tasman Proceedings Act 2010* (Cth) for leave to serve a subpoena in New Zealand under that Act must be made by an interlocutory application in accordance with rule 39.1 and supporting affidavit.

(2) The supporting affidavit must—

(a) exhibit a copy of the subpoena in respect of which leave to serve is sought;

(b) identify the name, occupation and address of the proposed addressee;

(c) identify whether the addressee is over 18 years old;

(d) identify the nature and significance of the evidence to be given, or the document or thing to be produced, by the addressee;

(e) identify the steps taken (if any) to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the addressee;

(f) identify the date by which it is intended to serve the subpoena in New Zealand;

(g) identify the amount to be provided to the addressee to meet the addressee's reasonable expenses of complying with the subpoena;

(h) identify, if the subpoena requires the addressee to attend to give evidence, an estimate of the length of time during which the addressee will be required to attend; and

(i) identify any facts or matters known to the applicant that may constitute grounds for an application by the addressee to have the subpoena set aside under section 36(2) or (3) of the *Trans-Tasman Proceedings Act 2010* (Cth).

(3) A subpoena served in New Zealand under sections 30 and 32 of the *Trans-Tasman Proceedings Act 2010* (Cth) must be accompanied by a notice in the prescribed form.

**Prescribed form—**

Form 113C Notice to Accompany Subpoena Served in New Zealand

### 129.3—Application to set aside service

(1) An application under section 35 of the *Trans-Tasman Proceedings Act 2010* (Cth) to set aside a subpoena served in New Zealand must be made by an interlocutory application in accordance with rule 39.1 and supporting affidavit.

(2) A request under section 36(5) of the *Trans-Tasman Proceedings Act 2010* (Cth) for a hearing of an application to set aside a subpoena served in New Zealand must be made by filing an application to Registrar in the prescribed form.

**Prescribed form—**

Form 91B Application to Registrar – Request Hearing of Subpoena Set Aside Application

(3) A request under section 36(6) of the *Trans-Tasman Proceedings Act 2010* (Cth) to appear remotely on the hearing of an application to set aside a subpoena served in New Zealand must be made by filing an application to Registrar in the prescribed form.

**Prescribed form—**

Form 91C Application to Registrar – Request for Remote Appearance

# Part 3—Arrangements for evidence to be given at trial

## Division 1—Pre-trial evidence

### 130.1—Pre-trial special hearing

(1) An application for a pre-trial special hearing under section 12AB(1) of the Evidence Act must—

(a) be in the prescribed form;

**Prescribed form—**

Form 92B Interlocutory Application for Pre-trial Special Hearing

(b) identify the age of the witness;

(c) identify why the witness is a witness to whom section 12AB applies;

(d) if the application is made on the ground that the witness has a disability that adversely affects the witness' capacity to give a coherent account of their experiences or to respond rationally to questions—identify that disability and why it has that adverse effect;

(e) identify any physical disability or cognitive impairment of the witness that might make it desirable that the evidence be taken in a particular way under section 12AB(2)(a)(ii) of the Evidence Act;

(f) identify any measures sought to prevent the witness and the defendant from directly seeing or hearing each other before, during or after the hearing;

(g) identify whether any communication assistance or accompaniment by a person for the purpose of providing emotional support is sought by the witness;

(h) be accompanied by a draft order addressing the matters referred to in section 12AB(2) of the Evidence Act; and

(j) be served on the other parties as soon as reasonably practicable after being filed.

**Note—**

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

*Higher Courts*

(2) An application for a pre-trial special hearing must be filed—

(a) in the case of an application by the Director—by the time fixed for filing a prosecution case statement;

(b) in all other cases—at least 7 days before the first directions hearing.

*Lower Courts*

(3) An application for a pre-trial special hearing must be filed and served by the pre-trial conference date.

*All Courts*

(4) An objection to an application for a pre-trial special hearing under section 12AB(8) of the Evidence Act must be—

(a) in the prescribed form;

(b) served on the applicant and any other parties as soon as reasonably practicable after being filed.

**Prescribed form—**

Form 95 Notice of Objection

**Notes—**

Section 12AB(8) requires an objection to be filed by a respondent within 14 days of service of the application on the respondent.

Section 12AB(10) prescribes the consequences of no objection being filed within that period.

## 130.2—Admission of audio visual record of evidence

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

(a) be in the prescribed form;

**Prescribed form—**

Form 92A Interlocutory Application for Admission of Audiovisual Record

(b) be served on the other parties as soon as reasonably practicable after being filed.

**Note—**

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

(c) if the admission is sought of an audio visual recording taken under section 12AB of the Evidence Act—identify that fact and provide details of the evidence given under that section;

(d) if the admission is sought of an audio visual recording taken under or governed by section 74EB and subsection 74EC(1) or by subsection 74EC(1a) of the *Summary Offences Act 1953*—

(i) identify that fact;

(ii) identify whether there was compliance or non-compliance with the requirements under section 74EB or subsection 74EC(1a) (as applicable) and to the extent of any identified non-compliance the facts by reason of which the interests of justice require the admission of the evidence despite the non-compliance; and

(iii) be accompanied by an electronic copy of the audio visual record on a portable electronic storage device such as a USB storage device.

*Higher Courts*

(2) An application for admission of evidence of a witness in the form of an audio visual record must be filed—

(a) in the case of an application by the Director—by the time fixed for filing a prosecution case statement;

(b) in all other cases—at least 7 days before the first directions hearing.

*Lower Courts*

(3) An application for admission of evidence of a witness in the form of an audio visual record must be filed and served by the pre-trial conference date.

*All Courts*

(4) If an application is made for admission of an audio visual record under section 13BA(3)(b) of the Evidence Act, the applicant must file and serve an electronic copy of a transcript of the audio visual record at least 7 days before the date on which the application is to be heard.

**Note—**

If an audio visual record governed by this rule is a record of an interview of a child of or under the age of 14 years or a person with a disability that adversely affects the witness' capacity to give a coherent account of the witness' experiences or to respond rationally to questions, who

is the alleged victim of a sexual offence as defined by section 4 of the Evidence Act, it comprises "sensitive material" and is governed by sections 67HA, 67I and 67J of the Evidence Act.

## 130.3—Admission of recorded evidence

(1) An application for admission of an official record of evidence given in an earlier proceeding under section 13D of the Evidence Act must be—

(a) by an interlocutory application in accordance with rule 39.1; and

(b) accompanied by an electronic copy of the official record.

*Higher Courts*

(2) An application for admission of an official record of evidence given in an earlier proceeding must be filed—

(a) in the case of an application by the Director—by the time fixed for filing a prosecution case statement;

(b) in all other cases—at least 7 days before the first directions hearing.

*Lower Courts*

(3) An application for admission of an official record of evidence given in an earlier proceeding must be filed and served by the pre-trial conference date.

*All Courts*

(4) If an order is made for admission of an official record and the official record is not already in the form of a transcript, the applicant must file and serve an electronic copy of a transcript of the official record at least 14 days before the trial date.

## 130.4—Evidence to be taken interstate or overseas

(1) A request under section 59E(1)(c) of the Evidence Act to a foreign court to take evidence must be in the prescribed form.

**Prescribed form—**

Form 114 Letter of Request

(2) The applicant for the order is responsible for all expenses incurred by the Court, or by any person at the request of the Court, in respect of the letter of request to the foreign court.

## 130.5—Audio link or audio visual link evidence or submissions

(1) This rule applies when the Court makes an order for taking evidence or submissions by audio visual link or audio link under section 59IE of the Evidence Act.

(2) If the applicant for the order no longer requires the evidence or submissions to be taken by audio visual link or audio link, the applicant must notify the Principal Registrar immediately.

(3) Unless the Court otherwise orders, the amount fixed by the Court under section 59IF of the Evidence Act must be paid by the applicant for the order.

## 130.6—Evidence by audio link or audio visual link from remote location

(1) This rule applies when a witness is to give evidence by audio visual link or audio link from a location remote from the courtroom.

(2) A party who calls a witness to which this rule applies when the remote location is in a court building must make arrangements with the Sheriff's office for the witness to be brought into the building and to the witness room.

(3) When counsel wishes to ask questions of a witness to which this rule applies relating to a document or thing, counsel must give sufficient notice to court staff to allow appropriate arrangements to be made for the document or thing to be displayed electronically to the witness or taken to the remote location by court staff.

### 130.7—Special arrangements for giving evidence

(1) An application for special arrangements for a witness to give evidence under section 13 or section 13A of the Evidence Act must be made—

(a) in the prosecution case statement or defence case statement;

(b) by an application for special arrangements in the prescribed form; or

**Prescribed form—**

Form 92C Interlocutory Application for Special Arrangements

(c) with the leave of the Court, by an application made orally at a hearing.

(2) A notice of objection to an application for special arrangements under section 13A(6) of the Evidence Act must be in the prescribed form.

**Prescribed form—**

Form 95 Notice of Objection

### 130.8—Medical reports under Part 8A

The written record of an order for the examination by a medical expert of a defendant or youth and provision of a medical report under Part 8A of the Consolidation Act must be in the prescribed form.

**Prescribed form—**

Form 99 Record of Outcome – Order

## Division 2—Documentary evidence

### 131.1—Tender documents and aids

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

(2) The Court may order that a list of documents be numbered or marked to correspond with the marking of the documents to be tendered at trial and include such other details as the Court thinks fit.

(3) The Court may order that a list of documents and copies of the documents referred to in the list be filed and served in hard copy form, electronic form or both.

(4) The Court may make orders for the production and use at trial of summaries, diagrams, charts, illustrations, graphs, photographs, films, documents, models or other audio, video, or visual media as an aid to illustrating or assisting to explain the evidence.

# Part 4—Juries: Higher Courts

## 132.1—Interpretation

In this Part—

***jury card*** means the jury card referred to in section 42(b) of the Juries Act;

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

## 132.2—Juror's oath or affirmation

(1) Before first directing a juror to attend for a criminal trial, the Sheriff must cause the juror to take an oath or affirmation in the form of Schedule 6 to the Juries Act.

(2) The Sheriff must cause a record to be made of the taking by each juror of the oath or affirmation.

(3) The record must not be shown or communicated to any person other than a Judge except by leave of a Judge.

## 132.3—Jury panel

(1) When a trial of a defendant is to commence, the Sheriff must ensure that a jury panel of at least 20 jurors attend for the trial.

(2) When a trial of more than one defendant is to commence, the Sheriff must ensure that a jury panel of at least 20 jurors plus at least 3 extra jurors in respect of each additional defendant attend for the trial.

(3) Subject to subrule (4), a copy of the jury panel list giving the number, name, suburb and occupation of the jurors selected by the Sheriff under subrule (1) or (2) will be made available to counsel for the parties or an unrepresented defendant by the sheriff's officer in court sufficiently early before the jury is empanelled to enable decisions to be made on challenge.

(4) The Judge may direct the Sheriff to have information included or removed from the jury panel list for a particular trial.

## 132.4—Selection of jurors by ballot

(1) The Associate will conduct the juror ballot by drawing a jury card from the ballot box and reading aloud to the Court the jury number only of the juror selected as shown on the jury card.

(2) This procedure will continue, allowing for challenges, until 12 jurors, or 12 jurors and any additional jurors, are seated in the jury box.

(3) After selection of the jury, the sheriff's officer will collect the jury panel list from counsel and from any unrepresented defendant.

(4) The jury panel list is not a public document and is supplied to the parties for the purpose of jury selection only.

(5) Unless the Judge orders otherwise, the jury panel list ceases to be available to counsel or the defendant after the jury has been selected.

(6) The cards of the jurors empanelled for a criminal trial must be kept apart from the cards of all other jurors until 24 hours after a verdict has been given or the jurors have been discharged (whichever is later).

(7) A ballot required to be held in accordance with section 6A(2) of the Juries Act will be conducted by drawing at random the number of cards necessary to reduce the number of jurors to 12 from those cards kept apart in accordance with subrule (6).

### 132.5—Jurors in charge of Sheriff or sheriff's officer

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

### 132.6—Non attendance

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

## Part 5—Conduct of trial

### 133.1—List of witnesses

Unless the Court otherwise orders, the prosecution must file and serve a list of the witnesses intended to be called at trial by 8.30 am on the morning of commencement of the trial.

### 133.2—Witness identification

(1) A witness is required to submit their address in writing for inclusion in court records.

(2) A witness will not be asked when taking the oath or affirmation to state their address or occupation.

(3) This rule does not restrict the right of counsel for a party to ask a witness their address or occupation if it is relevant to an issue or to credit.

### 133.3—Audio visual record of evidence

(1) This rule applies to an audio visual record of the evidence of a vulnerable witness given in a proceeding before the Court.

(2) An application to take custody of an audio visual record of the evidence of a vulnerable witness given in a proceeding before the Court for the purpose of a related proceeding under section 13C(3) of the Evidence Act must be made—

(a) by an interlocutory application in accordance with rule 39.1; or

(b) by an application made orally at a hearing or trial.

(3) Unless the Court otherwise orders, a party who is authorised by the Court under section 13C(3) of the Evidence Act to take custody of an audio visual record of evidence—

(a) will be provided with a duplicate copy of the record;

(b) must only use the duplicate record for the sole purpose of the related proceeding;

(c) must not copy or disseminate the duplicate record to any third party; and

(d) must ensure the safekeeping of the duplicate record and return it to the Court at the conclusion of the related proceeding.

(4) If editing of an official record of evidence is required under section 13D(3) of the Evidence Act, the party tendering the evidence—

(a) will be provided with a duplicate copy of the official record and the editing must be carried out on the duplicate record;

(b) must ensure that the edited version is prepared in a form that, if tendered, can be displayed on the Court's audio or audio visual equipment;

(c) must keep all edited versions of the official record in safekeeping; and

(d) must return to the Court all edited versions not already in the custody of the Court immediately upon the conclusion of the proceeding.

## 133.4—Exhibits

(1) The Court may make such order as it thinks fit for the custody, disposal or production at the conclusion of the trial of any exhibit.

(2) Subject to any order under subrule (1) and subject to a notice of appeal not having been received, the Principal Registrar may, after the expiration of 28 days after the verdict or other conclusion of the trial, cause any exhibit to be returned to the custody of the person who produced it or to the law firm or office for the party who tendered it, as appropriate, and the person to whom any exhibit is returned is liable for any costs incurred in returning the exhibit.

(3) Unless the Court otherwise orders, if a notice of appeal is received before returning the exhibits, the Principal Registrar must cause the exhibits to be retained in custody until required to transmit them to the appellate court.

(4) Upon request by the appellate court, the Principal Registrar must cause the exhibits together with a list of exhibits to be transmitted to the Registrar of the appellate court.

(5) Upon the exhibits being returned by the appellate court or the appeal being finally determined, the exhibits may be dealt with in accordance with subrule (2).

(6) If an exhibit is returned while an appeal is pending, the person to whom it is returned must, so far as is practicable having regard to the nature of the exhibit, keep it marked and labelled as before so that the person will be able to produce it so marked and labelled at the hearing of the appeal if required to do so.

## 133.5—Views

(1) This rule applies subject to any contrary order by the trial Judge or Magistrate.

(2) A view is part of the trial and is under the control of the trial Judge or Magistrate.

(3) When a view takes place in a confined space, the trial Judge or Magistrate may limit the persons to enter that space.

(4) No sound recording may be made at a view other than by the court reporter or the judicial officer's staff.

(5) A witness must not be filmed or photographed.

(6) A member of the media or the public must not be in such proximity to the trial Judge or Magistrate or counsel as to be able to overhear private conversations.

*All Courts except Youth Court*

(7) Any person may attend on a view, but this rule does not authorise any such person to trespass on private property.

(8) If there is no suppression order relating to the identity of a defendant, they may be filmed, photographed or sketched from a distance, but not so as to show that they are in custody or under restraint or in any way that might suggest guilt.

*Higher Courts*

(9) A member of the media or the public must not be in such proximity to jurors as to be able to overhear what is said between them.

(10) Jurors must not be filmed, photographed or sketched.

# Part 6—Verdicts

## 134.1—Alternative verdicts: Lower Courts

(1) Sections 19B(3), 19B(4A), 19B(5), 20AC, 25 and 180 of the Consolidation Act and sections 133 and 140 of the Procedure Act apply, with any necessary modifications, to the trial by the Court of a defendant charged with a minor indictable offence.

**Notes—**

Section 117(2) of the Procedure Act provides that the rules may provide that specified provisions of the Procedure Act or any other Act or law apply with necessary adaptations and modifications to the trial by the Magistrates Court of a person charged with an indictable offence.

Section 7(3a) of the *Environment Resources and Development Court Act 1993* provides that the Court will deal with a charge of a minor indictable offence in the same way as the Magistrates Court deals with such a charge (and in accordance with the procedures that would apply if the Magistrates Court were dealing with such a charge) and the *Summary Procedure Act 1921* applies to the Court subject to any additions, exclusions or modifications prescribed by the regulations as if references to the Magistrates Court extended to the Court.

Sections 17(1) and 18 of the Young Offenders Act provide that the Court will deal with a charge laid before the Court in the same way as the Magistrates Court deals with a charge of a summary offence and, in doing so, has the powers of the Magistrates Court and the procedure to be followed by and the powers of the Court on the trial of an offence are, subject to this Act, to be the same as for the trial of a summary offence in the Magistrates Court.

In the Supreme and District Courts, the provisions of the Consolidation Act and Procedure Act relating to alternative verdicts apply of their own force.

The common law also provides for alternative verdicts in certain circumstances.

## 134.2—Inquiry to Chief Judicial Officer

(1) A party may, by letter addressed to the Chief Judicial Officer (or the most senior puisne judicial officer who does not comprise and is not part of the Coram if the Chief Judicial Officer comprises or is part of the Coram), inquire about progress of delivery of reasons for judgment.

(2) The party making the inquiry must at the same time send a copy of the letter to each other party to the proceeding.

(3) The identity of a party making such an inquiry will not be disclosed to—

(a) any other judicial officer; or

(b) any other person except each other party to, or a person having an interest in, the outcome of the proceeding.

# Part 7—Orders and certificates

## 135.1—Record of outcome

If the Court makes orders in respect of the outcome of trial independently of sentencing, the written record of the orders must be in the prescribed form.

**Prescribed form—**

Form 141 Record of Outcome

**Note—**

If the Court makes orders in respect of the outcome of trial at the same time as sentencing, see Chapter 7 Part 4.

## 135.2—Case stated

(1) Unless the Court otherwise orders, an application to state a case or reserve a question of law to the Supreme Court or Court of Appeal (a ***stated case***) must be made by an interlocutory application in the prescribed form attaching a draft case stated in the prescribed form.

**Prescribed form—**

Form 156 Interlocutory Application for Stating a Case

Form 159 Case Stated

(2) If the Court makes an order for a stated case, the written record of the orders must be in the prescribed form.

**Prescribed form—**

Form 141 Record of Outcome

(3) If the Court makes an order for a stated case, a formal order must be issued in the prescribed form.

**Prescribed form—**

Form 158 Order – Stating a Case

(4) A stated case is to be in the prescribed form.

**Prescribed form—**

Form 159 Case Stated

## 135.3—Certificate of trial judge: Supreme Court and District Court

(1) A certificate of the trial Judge under section 157(1)(a)(ii) of the Procedure Act must be in the prescribed form.

**Prescribed form—**

Form 155 Certificate of Trial Judge

(2) A certificate may be given—

(a) without any application being made by the defendant; or

(b) on an interlocutory application in accordance with rule 39.1 by the defendant within 14 days after the date of conviction.

# Chapter 7—Sentencing

## Part 1—Scope of Chapter

### 141.1—Scope

This Chapter applies to the process leading up to and the imposition of sentence and making of other orders after—

(a) a conviction or finding of guilt;

(b) a determination that the objective elements of the offence charged are established and the defendant or youth is unfit to stand trial or was mentally incompetent to commit an offence charged; or

(c) an acquittal, finding of not guilty or other final determination in favour of a defendant or youth.

## Part 2—Sentencing process

### Division 1—Offences committed during currency of bonds etc:

### 142.1—Definitions

In this Division—

***Director*** means—

(a) in respect of a relevant obligation imposed under State law—the Director of Public Prosecutions for the State;

(b) in respect of a relevant obligation imposed under Commonwealth law—the Director of Public Prosecutions for the Commonwealth;

***relevant obligation*** means an obligation to be of good behaviour under—

(a) a home detention order made by a South Australian Court;

(b) an intensive correction order made by a South Australian Court;

(c) a suspended sentence bond entered into with a South Australian Court (other than the Youth Court);

(d) a good behaviour bond entered into with a South Australian Court (other than the Youth Court);

(e) a recognizance release order made by a South Australian Court (other than the Youth Court);

(f) an order and recognizance or recognizance release order made by a South Australian Court (other than the Youth Court);

(g) a suspended sentence obligation imposed by the Youth Court;

(h) an obligation imposed by the Youth Court;

(i) an undertaking by a youth and their guardian given to the Youth Court;

(j) a licence release order under Part 8A of the Consolidation Act made by a South Australian Court; or

(k) an order under Part 1B Division 6, 7, 8 or 9 of the Crimes Act made by a South Australian Court.

### 142.2—Prosecution to inform the Court

At a hearing at which a defendant or youth pleads or is found guilty of an offence, or at the next hearing after a defendant or youth files a written guilty plea to an offence under rule 70.2, the prosecution must inform the Court whether the offence was committed during the currency of a relevant obligation and if so identify the relevant obligation.

### 142.3—Informant to inform Director

(1) This rule applies if—

(a) a defendant or youth pleads or is found guilty of an offence in a Lower Court or the informant receives a written guilty plea to an offence under rule 70.2; and

(b) the offence was committed during the currency of a relevant obligation imposed by a Higher Court.

(2) If this rule applies, the prosecution in the Lower Court must inform the Director of the matters referred to in subrule (1), identifying the case number of the case in the Lower Court in which the defendant has pleaded or been found guilty and identifying the relevant obligation.

(3) Upon receipt of notification under subrule (2), the Director must determine as soon as practicable whether to institute a proceeding in the Higher Court for breach of the relevant obligation and inform the prosecution in the Lower Court who provided the notification under subrule (2).

## Division 2—Summonses and notices

### 143.1—Summons to person potentially affected by disqualification

(1) A summons to a person who may be affected by a disqualification order under section 168(1) of the *Road Traffic Act 1961* issued by the Court under section 168(2) must be in the prescribed form.

**Prescribed form—**

Form 132 Summons to Third Party to Attend Penalty Hearing

(2) It is the responsibility of the prosecution to serve the summons.

### 143.2—Notices to defendant or youth: Lower Court

(1) A notice to a defendant or youth issued under section 27C(3)(a), (b), (c) or (d) and section 27C(3)(f) of the Procedure Act must be in the prescribed form.

**Prescribed form—**

Form 131 Notice to Defendant of Penalty Hearing

**Note—**

The content of the form will depend on whether paragraph (a), (b), (c) or (d) (or more than one) is applicable.

(2) A notice to a defendant or youth issued under section 62D of the Procedure Act must be in the prescribed form.

**Prescribed form—**

Form 133 Notice of Intention to Allege Previous Convictions

(3) It is the responsibility of the prosecution to serve a notice referred to in this rule on the defendant or youth in accordance with the relevant statutory provision.

**Notes—**

Section 27C of the Procedure Act requires personal service of the notice at least 14 days before the hearing.

Section 62D of the Procedure Act requires personal or post service of the notice at least 3 days before the hearing.

## Division 3—Applications for specific orders

### 144.1—Application for vehicle forfeiture or impounding

An application for an order that a motor vehicle be forfeited to the Crown or impounded under section 12 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* must be in the prescribed form.

**Prescribed form—**

Form 134 Interlocutory Application for Vehicle Forfeiture or Impounding

### 144.2—Application for intervention order

(1) If the prosecution seeks, or the Court is considering whether to make an intervention order under section 28 of the Intervention Orders Act, the prosecution must file on a court access basis a Protected Person Details for Intervention Order in the prescribed form.

**Prescribed form—**

Form104e Protected Person Details for Intervention Order

Form 104h Protected Person Details for Intervention Order

## Division 4—Taking into account other federal offences

### 145.1—Request to take into account other federal offences

(1) If a defendant or youth has been convicted of a federal offence and wishes to admit guilt to other federal offences and have them taken into account by the Court in passing sentence under section 16BA of the Crimes Act, a list of additional charges in the prescribed form in compliance with this rule must be filed.

**Prescribed form—**

Form 55 List of Additional Charges (Commonwealth)

(2) A list of additional charges must be signed by—

(a) the Commonwealth Director of Public Prosecutions, a person authorised in writing by the Director to sign documents under section 16BA(1)(c) of the Crimes Act or a person appointed under section 69 of the *Judiciary Act 1903* (Cth); and

(b) the defendant or youth.

(3) The signed list of additional charges must be given to the defendant or youth.

### 145.2—Taking into account other federal offences

If a list of additional charges has been filed and given to the defendant or youth in compliance with rule 145.1 and the Court takes into account the additional offences in passing sentence for the offence of which defendant or youth has been convicted, the Court will certify, upon

the document filed in the Court, the offences taken into account and the conviction in respect of which the offences were taken into account.

**Prescribed form—**

Form 55 List of Additional Charges (Commonwealth)

## Division 5—Reports requested by the Court

### 146.1—Requests for reports

A request by the Court for a report for the purpose of sentencing must be in the prescribed form.

**Prescribed form—**

Form 23 Report Request Form – Generic Report

[Form 23A Report Request Form - Bail Enquiry Report]

[Form 23B Report Request Form - Bail Enquiry (Home Detention) Report]

[Form 23C Report Request Form - Bail Remand Information Report (Youth)]

[Form 23D Report Request Form - Bail Enquiry (Home Detention Youth) Report (Youth)]

[Form 135 Report Request Form – Generic Report]

[Form 135A Report Request Form – Anthropologist Report (Youth)]

[Form 135AA Report Request Form – Supervision Suitability Report (Youth)]

[Form 135AB Report Request Form – Supervision Suitability Report (Adult Defendant)]

[Form 135B Report Request Form – Adolescent Sexual Offender Report]

[Form 135C Report Request Form – Community Service Assessment Report (Youth)]

[Form 135D Report Request Form – Community Service Assessment Report (Adult Defendant)]

[Form 135E Report Request Form – Drug and Alcohol Assessment Report (Youth)]

[Form 135F Report Request Form – Drug and Alcohol Assessment Report (Adult Defendant)]

[Form 135G Report Request Form – Education Department Report]

[Form 135H Report Request Form – Home Detention Order Report (Youth)]

[Form 135I Report Request Form – Home Detention Order Report (Adult Defendant)]

[Form 135J Report Request Form – Intensive Correction Order Report (Youth)]

[Form 135K Report Request Form – Intensive Correction Order Report (Adult Defendant)]

[Form 135L Report Request Form – Management Assessment Panel Report]

[Form 135M Report Request Form – Medical Report]

[Form 135N Report Request Form – Parole Board Report]

[Form 135O Report Request Form – Progress Report (Youth)]

[Form 135P Report Request Form – Pre-Sentence Report (Youth)]

[Form 135Q Report Request Form – Pre-Sentence Report (Adult Defendant)]

[Form 135R Report Request Form – Prison Health Report]

[Form 135S Report Request Form – Psychiatric Report (Youth)]

[Form 135T Report Request Form – Psychiatric Report (Adult Defendant)]

[Form 135U Report Request Form – Psychological Report (Youth)]

[Form 135V Report Request Form – Psychological Report]

[Form 135W Report Request Form – Review Board Report (Youth)]

[Form 135X Report Request Form – Section 32 (Young Offenders Act) Report (Youth)]

[Form 135Y Report Request Form – Report on Sexual Offenders]

[Form 135Z Report Request Form – Special Needs Report (Youth)]

# Division 6—Victim and community impact statements

## 147.1—Victim impact statements

(1) A person wishing to furnish to the Court a victim impact statement under section 14 of the Sentencing Act or section 269R(3) of the Consolidation Act must provide the statement in writing to the prosecution.

(2) The prosecution must provide a copy of the statement to the Court and to the defendant or youth as soon as practicable after—

(a) the defendant or youth pleads or is found guilty;

(b) the Court declares that the defendant or youth is liable to supervision under Part 8A of the Consolidation Act; or

(c) the defendant —

(i) is found to be unfit to be tried under section 20BC of the Crimes Act;

(ii) is acquitted because of mental illness under section 20BJ of the Crimes Act; or

(iii) is to be dealt with under section 20BQ or section 20BS of the Crimes Act.

(3) The Court may, on the application of the prosecution—

(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 power that the Court has with regard to a vulnerable witness; or

(c) order that the defendant or youth, or if the defendant is a body corporate, a director or other representative of the body corporate satisfactory to the Court, be present when the statement is read or played to the Court.

(4) The Court may appoint a time when the victim impact statement is to be read or played to the Court and may refuse to postpone reading or playing it if the resulting delay would be unreasonable in the circumstances.

(5) If the person providing the statement is not in court when the Court makes an order under subrule (4), the prosecution must inform the person of the time fixed for reading or playing the statement.

(6) The person making the statement may amend it at any time before it is read or played to the Court.

(7) The Court may order that irrelevant material in the statement not be read or played to or taken into account by the Court.

(8) A person may at any time withdraw a statement, in which event it will not be read or played to or taken into account by the Court.

### 147.2—Community impact statements

(1) A person wishing to contribute to a neighbourhood impact statement or social impact statement under section 15 of the Sentencing Act or section 269R(5) of the Consolidation Act must make a submission to the Commissioner for Victims' Rights as soon as practicable after—

(a) the defendant or youth pleads or is found guilty;

(b) the Court declares that the defendant or youth is liable to supervision under Part 8A of the Consolidation Act; or

(c) the defendant is found to be unfit to be tried under section 20BC or acquitted because of mental illness under section 20BJ or is to be dealt with under section 20BQ or 20BS of the Crimes Act.

(2) If the prosecution or the Commissioner for Victims' Rights wishes to furnish to the Court a neighbourhood impact statement or social impact statement in a proceeding to determine sentence, they must provide the statement to the Court and to the defendant or youth as soon as practicable after—

(a) the defendant or youth pleads or is found guilty;

(b) the Court declares that the defendant or youth is liable to supervision under Part 8A of the Consolidation Act; or

(c) the defendant is found to be unfit to be tried under section 20BC or acquitted because of mental illness under section 20BJ or is to be dealt with under section 20BQ or 20BS of the Crimes Act.

(3) The Court may appoint a time when the statement will be read to the Court and may refuse to postpone its reading if the resulting delay would be unreasonable in the circumstances.

(4) 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.

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

## Division 7—Sentencing conferences

**Note—**

Conferences convened as part of a diversion process are addressed by Part 3.

### 148.1—Sentencing conference

(1) This rule applies if—

(a) the defendant or youth is an Aboriginal or Torres Strait Islander person within the meaning of section 22(6) of the Sentencing Act;

(b) the defendant or youth consents to the convening of a sentencing conference; and

(c) an Aboriginal and Torres Strait Islander Justice Officer is available to provide assistance.

(2) If this rule applies, the Court may on application by a party or on its own initiative convene a sentencing conference pursuant to section 22 of the Sentencing Act.

(3) A sentencing conference will be conducted in accordance with directions given by the presiding judicial officer.

## Division 8—Sentencing material

### 148.1A—Sentencing material filed

When material is filed for the purposes of sentencing (including without limitation reports, victim or community impact statements or references), it must be filed by accompanying a sentencing material form in the prescribed form.

**Prescribed form—**

Form 136 Sentencing material."

# Part 3—Diversion: Magistrates and Youth Courts

## Division 1—Finalising diversion

### 149.1—Diversion to family conference or police officer: Youth Court

(1) If a youth has pleaded or been found guilty and the Court considers that the subject matter of the charge should be dealt with instead by a family conference convened under Part 2 Division 3 of the Young Offenders Act, the Court may order that the matter be finalised by referral to a family conference.

**Note—**

Section 17(2) of the Young Offenders Act provides that the Court may, even though a charge has been laid, refer the subject matter of the charge (after the youth's guilt has been established either by admission or by the Court's findings) to be dealt with by a police officer or by a family conference.

(2) If a youth has pleaded or been found guilty and the Court considers that the subject matter of the charge should be dealt with instead by a police officer under Part 2 Division 2 of the Young Offenders Act, the Court may order that the matter be finalised by referral to a police officer.

## Division 2—Sentencing diversion

### 150.1—General

(1) If an order referred to in this Division is made, the defendant or youth will be released on bail subject to conditions appropriate to their participation in the intervention program and will appear in court from time to time to review their progress.

(2) The Court may take into account the defendant's or youth's rehabilitation as a result of the program when determining sentence at the end of the program.

(3) If the defendant or youth does not satisfactorily participate in the program, the Court may order that their participation cease and proceed to sentence them.

### 150.2—Treatment Intervention Court

(1) This rule applies if—

(a) a defendant or youth has pleaded guilty;

(b) drug addiction or mental impairment is a criminogenic factor in the offending;

(c) the defendant or youth has a suitable bail address in a suitable location; and

(d) the defendant or youth is willing to engage in an intervention program with a view to their rehabilitation before determination of sentence and follow the program's requirements.

(2) If this rule applies, the Court may order that the defendant or youth participate in a 6 month or 12 month intervention program of supervised treatment and rehabilitation.

## 150.3—Family Violence Court: Magistrates Court

(1) This rule applies if—

(a) a defendant is charged with an offence involving domestic violence;

(b) there are criminogenic factors in the offending suitable to be addressed by the program;

(c) the defendant has a suitable bail address in a suitable location; and

(d) the defendant is willing to engage in an intervention program with a view to the defendant's rehabilitation before determination of sentence and follow the program's requirements.

(2) If this rule applies, the Court may order that the defendant participate in a family violence intervention program of supervised treatment and rehabilitation.

## 150.4—Aboriginal Community Court: Magistrates Court

(1) This rule applies if—

(a) an Aboriginal defendant has pleaded guilty;

(b) there are criminogenic factors in the offending suitable to be addressed by the program;

(c) the defendant has a suitable bail address in a suitable location; and

(d) the defendant is willing to engage in an intervention program with a view to the defendant's rehabilitation before determination of sentence and follow the program's requirements.

(2) If this rule applies, the Court may order that the defendant participate in a 6 month intervention program of supervised treatment and rehabilitation.

## 150.5—Aboriginal Youth Sentencing Court: Youth Court

(1) This rule applies if—

(a) an Aboriginal or Torres Strait Islander youth has pleaded guilty;

(b) the offending may attract a custodial sentence;

(c) there are criminogenic factors in the offending suitable to be addressed by the program;

(d) the youth has a suitable bail address in a suitable location; and

(e) the youth is willing to engage in an intervention program with a view to their rehabilitation before determination of sentence and follow the program's requirements.

(2) If this rule applies, the Court may order that the youth participate in an intervention program of supervised treatment and rehabilitation.

### 150.6—Nunga Court

(1) This rule applies if—

(a) the defendant is an Aboriginal or Torres Strait Islander person within the meaning of section 9AA(a)(c) of the *Magistrates Court Act 1991*;

(b) the defendant has pleaded guilty to an offence; and

(c) the defendant has applied to be sentenced for the offending in the Nunga Court.

(2) If this rule applies, the Court may grant an application that the defendant be sentenced in the Nunga Court Division of the Court.

# Part 4—Sentencing orders

## Division 1—Orders

### 151.1—Record of Outcome

The written record of sentencing orders must be in the prescribed form.

**Prescribed forms—**

Form 141 Record of Outcome

## Division 2—Community based custodial sentences, obligations, recognizances and licences

### 152.1—Community based custodial sentences

(1) If the Court makes a home detention order under section 71 of the Sentencing Act, a formal home detention order and acknowledgement in the prescribed form must be issued and given to the defendant or youth.

**Prescribed form—**

Form 142A Home Detention Order and Acknowledgement

(2) If the Court makes an intensive correction order under section 81 of the Sentencing Act, a formal intensive correction order and acknowledgement in the prescribed form must be issued and given to the defendant or youth.

**Prescribed form—**

Form 142B Intensive Correction Order and Acknowledgement

(3) A formal home detention order and acknowledgement or intensive correction order and acknowledgement may be acknowledged by the defendant or youth before a witness who is a judicial officer, a Registrar of the Court, or a Justice of the Peace.

### 152.2—Obligations: Youth Court

(1) If the Court imposes a suspended sentence obligation under section 26 of the Young Offenders Act and section 96 of the Sentencing Act, a formal suspended sentence obligation in the prescribed form must be issued and given to the youth.

**Prescribed form—**

Form 142C Suspended Sentence Obligation Order and Acknowledgement

(2) If the Court imposes an obligation under section 26 of the Young Offenders Act, a formal obligation in the prescribed form must be issued and given to the youth.

**Prescribed form—**

Form 142D Obligation Order and Acknowledgement

(3) A suspended sentence obligation or obligation may be acknowledged by the youth before a witness who is a judicial officer, a Registrar of the Court, or a Justice of the Peace.

## 152.3—Recognizances: All Courts except Youth Court

(1) If the Court makes a recognizance release order under section 20(1)(b) of the Crimes Act, a formal recognizance release order in the prescribed form must be issued and given to the defendant.

**Prescribed form—**

Form 142E Release Order and Recognizance

(2) If the Court makes an order and recognizance under section 19B or 20(1)(a) of the Crimes Act, a formal order and recognizance in the prescribed form must be issued and given to the defendant.

**Prescribed form—**

Form 142F Order and Recognizance

(3) A recognizance release order or order and recognizance may be acknowledged by the defendant before a witness who is a judicial officer, a Registrar of the Court, or a Justice of the Peace.

## 152.4—Licences

(1) If the Court makes an order under Part 8A of the Consolidation Act that includes a release of a defendant or youth on licence, a formal order in the prescribed form must be issued and given to the defendant or youth.

**Prescribed form—**

Form 142M Order – Part 8A Criminal Law Consolidation Act

(2) If the Court makes an order under Part 1B Division 6, 7, 8 or 9 of the Crimes Act that includes a release of a defendant on licence, a formal order in the prescribed form must be issued and given to the defendant.

**Prescribed form—**

Form 142N Order – Part 1B Div 6 to 9 Crimes Act (Cth)

(3) An order governed by this rule may be acknowledged by the defendant or youth before a witness who is a judicial officer, a Registrar of the Court, or a Justice of the Peace.

## 152.5—Probation orders: All Courts except Youth Court

(1) If the Court makes a psychiatric probation order or program probation order under section 20BV or 20BY of the Crimes Act, a formal order in the prescribed form must be issued and given to the defendant.

**Prescribed form—**

Form 142P Psychiatric Probation Order and Acknowledgement (Cth)

Form 142Q Program Probation Order and Acknowledgement (Cth)

(2) An order governed by this rule may be acknowledged by the defendant before a witness who is a judicial officer, a Registrar of the Court, or a Justice of the Peace.

## Division 3—Bonds, undertakings and guarantees

### 153.1—Bonds and guarantees: All Courts except Youth Court

(1) If the Court suspends a sentence under section 96 of the Sentencing Act, a suspended sentence bond must be in the prescribed form.

**Prescribed form—**

Form 143A Suspended Sentence Bond

(2) If the Court discharges a defendant on condition that the defendant enter into a good behaviour bond under section 97 of the Sentencing Act, a good behaviour bond must be in the prescribed form.

**Prescribed form—**

Form 143B Good Behaviour Bond

(3) A guarantee of a bond under section 100 of the Sentencing Act must be in the prescribed form.

**Prescribed form—**

Form 144 Guarantee of Bond

(4) A bond or guarantee governed by this rule may be acknowledged by the defendant before a witness who is a judicial officer, a Registrar of the Court, or a Justice of the Peace.

### 153.2—Undertakings

(1) If the Court releases a defendant or youth on an undertaking to complete an intervention program under section 30(3) of the Sentencing Act, an undertaking must be in the prescribed form.

**Prescribed form—**

Form 143C Undertaking to Complete an Intervention Program

*Youth Court*

(2) If the Court releases a youth on an undertaking on condition that the guardians of the youth enter into a supplementary undertaking under section 27 of the Young Offenders Act, the undertaking by the youth and guardians must be in the prescribed form.

**Prescribed form—**

Form 143D Undertakings by Youth and Guardian

## Division 4—Specific sentencing orders

### 154.1—Community service order

(1) If the Court imposes a sentence of community service under section 25 of the Sentencing Act, a formal community service order and acknowledgement in the prescribed form must be issued and given to the defendant or youth.

**Prescribed form—**

Form 142G Community Service Order and Acknowledgement

(2) A community service order and acknowledgement may be acknowledged by the defendant or youth before a witness who is a judicial officer, a Registrar of the Court, or a Justice of the Peace.

## 154.2—Firearms prohibition order

(1) This rule applies if the Court makes an order after a finding of guilt that a defendant or youth be subject to a firearms prohibition order until further order under section 66(1) of the *Firearms Act 2015*.

(2) The written record of an order that a defendant or youth be subject to a firearms prohibition order must be in the prescribed form.

**Prescribed form—**

Form 141 Record of Outcome

(3) The Principal Registrar must cause a formal order in the prescribed form to be issued and served on the defendant or youth.

**Prescribed form—**

Form 142H Firearms Order and Acknowledgement

(4) A firearms prohibition order may be acknowledged by the defendant or youth before a witness who is a judicial officer, a Registrar of the Court, or a Justice of the Peace.

(5) The Principal Registrar must cause the Registrar of Firearms to be notified of the order by service of the order electronically on the Registrar of Firearms as soon as practicable.

**Note—**

Section 66(4) of the *Firearms Act 2015* requires the Registrar to notify the Registrar of Firearms of the details of the order.

## 154.3—Protection orders

(1) If the Court makes an intervention order under section 28 of the Sentencing Act, a formal intervention order in the prescribed form must be issued and given to the defendant or youth.

**Prescribed form—**

Form 142I Intervention Order

(2) If the Court makes a place restriction order or non-association order under section 27 of the Sentencing Act, a formal place restriction order or non-association order in the prescribed form must be issued and given to the defendant or youth.

**Prescribed form—**

Form 142L Order – Place Restriction and/or Non-Association and Acknowledgment

(3) If the Court makes a paedophile restraining order under section 28 of the Sentencing Act, a formal paedophile restraining order in the prescribed form must be issued and given to the defendant or youth.

**Prescribed form—**

Form 142K Paedophile Restraining Order and Acknowledgement

*All Courts except Youth Court*

(4) If the Court makes a child protection restraining order under section 28 of the Sentencing Act, a formal child protection restraining order in the prescribed form must be issued and given to the defendant or youth.

**Prescribed form—**

Form 142J Child Protection Restraining Order and Acknowledgement

### 154.4—Vehicle forfeiture and impounding

If the Court makes an order relating to the forfeiture or impounding of a vehicle under section 12 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*, a formal order in the prescribed form must be issued.

**Prescribed form—**

Form 142R Order – Forfeiture or Impounding of Motor Vehicle

### 154.5—Recidivist young offender orders: Youth Court

If the Court makes an order declaring a youth to be a recidivist young offender under section 55 of the Sentencing Act, a formal order in the prescribed form must be issued.

**Prescribed form—**

Form 142O Order – Declaring a Youth to be a Recidivist Young Offender

## Part 5—Warrants

### 155.1—Warrant of commitment or detention

If the Court imposes a custodial sentence of imprisonment or detention, the warrant of commitment or mandate to be issued by the Court must be in the prescribed form.

**Prescribed form—**

Form 145 Warrant of Commitment or Mandate for Detention

### 155.2—Mental impairment detention

(1) If the Court commits a defendant or youth to detention under Part 8A of the Consolidation Act, the warrant of detention to be issued by the Court must be in the prescribed form.

**Prescribed form—**

Form 146 Warrant of Detention

(2) If the Court commits a defendant to detention under Part 1B Divisions 6 to 9 of the Crimes Act, the warrant of detention to be issued by the Court must be in the prescribed form.

**Prescribed forms—**

Form 146A Warrant of Detention – (Cth - Mental Illness)

Form 146B Warrant of Detention – (Cth - Unfit to be Tried)

Form 146C Warrant of Detention – (Cth - Hospital Order)

# Part 6—Notice of orders and certificates

## Division 1—Notices to defendants and youths

### 156.1—Notice of penalty: Lower Courts

A notice of penalty to a defendant or youth issued under section 27C(4), 27C(5) or 62C(2) of the Procedure Act must be in the prescribed form.

**Prescribed form—**

Form 148 Notice of Penalty Imposed

### 156.2—Notice for the payment of money: Youth Court

A notice for the payment of money to a youth issued under section 30(3) of the Young Offenders Act must be in the prescribed form.

**Prescribed form—**

Form 149 Notice for the Payment of Money (Youth Court)

## Division 2—Notices to public sector agencies

### 157.3—Notice of notifiable offences

(1) If the Court finds a defendant or youth guilty of a qualifying offence within the meaning of sections 44 and 48 of the *Children and Young People Safety Act 2017*, the Principal Registrar must cause the information contained in the prescribed form relating to the finding of guilt to be provided to the Chief Executive for the Department for Child Protection as soon as practicable after the defendant or youth is found guilty as required by section 48 of the *Children and Young People Safety Act 2017*.

**Prescribed form—**

Form 151 Notice of Qualifying Offence

(2) If the Court finds a defendant or youth guilty of a notifiable offence other than a qualifying offence within the meaning of sections 44 and 48 of the *Children and Young People Safety Act 2017*, the Principal Registrar must cause the information contained in the prescribed form relating to the finding of guilt to be provided to the Central Assessment Unit as soon as practicable after the defendant or youth is found guilty as required by section 38 of the *Child Safety (Prohibited Persons) Act 2016* or section 18U of the *Disability Inclusion Act 2018*.

**Prescribed form—**

Form 152 Notice of Prescribed, Disqualification and/or Presumptive Disqualification Offence

### 157.4—Notice of intervention order

If the Court makes a final intervention order or revokes an interim intervention order within the meaning of the Intervention Orders Act, the Principal Registrar must cause a notice in the prescribed form, or by alternative means cause the information required by the applicable statutory provisions, to be sent to the relevant public sector agencies as soon as practicable after the intervention order is made or revoked as required by section 23(8) of the Intervention Orders Act.

**Prescribed form—**

Form 153 Notice of Intervention Order

### 157.5—Notice of order declaring liable to supervision

If the Court declares a defendant or youth liable to supervision under Part 8A of the Consolidation Act, the Principal Registrar must cause the information contained in the prescribed form to be provided to the relevant public sector agencies as soon as practicable after the order is made.

**Prescribed form—**

Form 154 Notice that Person has been Declared Liable to Supervision

### 157.6—Form of notice

(1) The information contained in a prescribed form referred to in this Division may be provided in a form other than the prescribed form.

(2) The information contained in a prescribed form referred to in this Division may be provided by electronic data.

## Division 3— Certificates

### 158.7—Certificate for identity theft

(1) An application for a certificate for identity theft under section 125 of the Sentencing Act must be in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed form—**

Form 92 Interlocutory Application

Form 93 Affidavit

(2) The supporting affidavit must:

(a) identify the relevant offence or offences of which the defendant or youth has been found guilty;

(b) if applicable, identify the manner in which the person's identity was assumed;

(c) if applicable, identify the relevant personal identification information and the manner in which it was used;

(d) identify how the assumption of the person's identity or use of the person's personal identification information was assumed or used in connection with the commission of the offence or offences;

(e) address the assumption of the person's identity or use of the person's personal identification information being without the person's consent.

(3) The Court may, if it thinks fit, determine the application without hearing the parties.

(4) A certificate for identity theft must be in the prescribed form.

**Prescribed form—**

Form 150 Certificate for Victim of Identity Theft

# Part 7—Costs: Lower Courts

### 159.1—Exercise of costs discretion

(1) This rule applies when the Court has power to order the payment of costs.

(2) An order for costs is in the discretion of the Court.

(3) Ordinarily, costs will be ordered in favour of a successful party against an unsuccessful party

(4) For the purpose of subrule (3)—

(a) an informant who institutes a proceeding in which a plea of guilty is entered will be regarded as a successful party; and

(b) a defendant who defends a proceeding that is withdrawn or dismissed as a result of no evidence being tendered will be regarded as a successful party.

## 159.2—Scale of costs

(1) The Court may order that costs be awarded—

(a) in a lump sum fixed by the Court;

(b) in accordance with the Lower Court costs scale;

(c) on an indemnity basis or another basis specified by the Court; or

(d) on a combination of different bases or scales for different components of costs.

(2) Unless the Court otherwise orders, a costs order will be taken to be on the Lower Court costs scale.

## 159.3—Lower Court costs scale

(1) The Lower Court costs scale in respect of work done from the commencement date is fixed by Schedule 1.

(2) The Lower Court costs scale in respect of work done before the commencement date is the scale contained in Schedule 1 of the *Magistrates Court Rules 1992*.

(3) The Chief Magistrate may make adjustments to the Lower Court costs scale by reference to movements in the consumer price index or average weekly earnings.

(4) The Principal Registrar must cause to be published all cumulative adjustments made under subrule (3) on the CAA website.

# Chapter 8—Variation and enforcement

## Part 1—Variation

### Division 1—Conviction or order

#### 161.1—Application to set aside conviction or order

An application to set aside a conviction or order under section 76A of the Procedure Act must be made by an interlocutory application in the prescribed form.

**Prescribed form—**

Form 172A Interlocutory Application for Set Aside and Rehearing

#### 161.2—Order setting aside conviction or order

The written record of an order setting aside a conviction or order under section 76A of the Procedure Act must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

### Division 2—Non-parole period

#### 162.1—Application to fix non-parole period

(1) An application to fix a non-parole period of a person (the ***subject***) under section 47(3) of the Sentencing Act must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171B Originating Application to Fix a Non-Parole Period

(2) The applicant—

(a) if the applicant is the subject—must join the prosecution and the Presiding Member of the Parole Board as respondents;

(b) if the applicant is the Presiding Member of the Parole Board—must join the subject and the prosecution as respondents.

#### 162.2—Application to extend non-parole period

(1) An application to extend a non-parole period of a person (the ***subject***) under section 47(7) of the Sentencing Act must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171C Originating Application to Extend a Non-Parole Period

(2) The applicant—

(a) if the applicant is the Director—must join the subject and the Presiding Member of the Parole Board or Training Centre Review Board (as applicable) as respondents;

(b) if the applicant is the Presiding Member of the Parole Board or Training Centre Review Board—must join the subject and the Director as respondents.

### 162.3—Order on application to fix or extend non-parole period

The written record of an order on an application to fix or extend a non-parole period must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

## Division 3—Bond, obligation or recognizance

### 163.1—Application to vary or revoke condition or discharge bond or obligation

(1) An application to vary or revoke a condition of a bond or obligation of a person (the ***subject***) under section 103(1) of the Sentencing Act or to discharge a bond or obligation under section 103(8) of the Sentencing Act must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171E Originating Application to Vary or Revoke Condition of or Discharge Bond or Obligation

(2) The applicant—

(a) if the applicant is the subject—must join the prosecution and the Minister as respondents;

(b) if the applicant is the Minister—must join the subject and the prosecution as respondents.

(3) In this rule—

the ***Minister*** means—

(a) in respect of an application in the Youth Court— the Minister responsible for the administration of the *Youth Justice Administration Act 2016* (presently the Minister for Human Services); or

(b) in respect of an application in a Court other than the Youth Court—the Minister responsible for the administration of the *Correctional Services Act 1982* (presently the Minister for Police, Emergency Services and Correctional Services).

### 163.2—Application to vary or revoke recognizance: All Courts except Youth Court

(1) An application to vary a term of a recognizance or discharge a recognizance of a person (the ***subject***) under section 20AA(1) of the Crimes Act must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171F Originating Application to Discharge or Vary Condition of Recognizance Order

(2) The applicant—

(a) if the applicant is the Attorney-General—must join the subject, the Director, any surety and any probation officer of the subject as respondents;

(b) if the applicant is the Director or a person appointed under section 69 of the *Judiciary Act 1903* (Cth) to prosecute indictable offences against the laws of the Commonwealth—must join the subject, any surety and any probation officer of the subject as respondents

(c) if the applicant is the subject—must join the Director, any surety and any probation officer of the subject as respondents;

(d) if the applicant is a surety of the subject—must join the subject, the Director, any other surety and any probation officer of the subject as respondents;

(e) if the applicant is the probation officer of the subject—must join the subject, the Director and any surety as respondents.

### 163.3—Order on application to vary or revoke bond, obligation or recognizance

(1) The written record of an order on an application to vary or revoke a term or a bond, obligation or recognizance must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

(2) If the Court varies a good behaviour bond, suspended sentence bond or suspended sentence obligation under section 103 of the Sentencing Act, a varied good behaviour bond, suspended sentence bond or suspended sentence obligation must be in the prescribed form.

**Prescribed form—**

Form 175A Good Behaviour Bond varied

Form 175B Suspended Sentence Bond varied

Form 175C Suspended Sentence Obligation varied

(3) If the Court varies a term of a recognizance under section 20AA(1) of the Crimes Act, a varied order and recognizance or varied recognizance release order must be in the prescribed form.

**Prescribed form—**

Form 175D Recognizance Release Order varied

Form 175E Order and Recognizance varied

(4) If the Court varies a term of an Obligation, a varied Obligation order must be in the prescribed form.

**Prescribed form—**

Form 174A Order – Variation or Obligation and Acknowledgement

## Division 4—Community service order

### 164.1—Application to vary community service order

(1) An application under section 110(2) of the Sentencing Act to vary a community service order or ancillary order made against a person (the ***subject***) must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171D Originating Application to Vary a Community Service Order and Ancillary Order

(2) The applicant must join the subject and the prosecution as respondents.

### 164.2—Order on application to vary community service order

The written record of an order on an application to vary a community service order or ancillary order must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

## Division 5—Disqualification order

### 165.1—Application to remove or vary or revoke disqualification

(1) An application to vary or revoke a driver's licence disqualification under section 28(2) of the Young Offenders Act must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171K Originating Application to Vary or Revoke Licence Disqualification

(2) The applicant must join the Commissioner of Police and the prosecution (if not the Commissioner of Police) as respondents.

### 165.2—Order on application to remove or vary or revoke disqualification

The written record of an order on an application to remove or vary or revoke a disqualification must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

## Division 6—Youth detention order: Youth Court

### 166.1—Discharge from detention order

(1) An application for a youth (the ***subject***) to be discharged from a detention order under section 42 of the Young Offenders Act must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171L Originating Application for Youth to be Discharged Absolutely from a Detention Order

(2) The applicant—

(a) if the applicant is the Chief Executive—must join the subject, the subject's guardian and the prosecution as respondents;

(b) if the applicant is the subject—must join the Chief Executive, the prosecution and the subject's guardian as respondents;

(c) if the applicant is the subject's guardian—must join the Chief Executive, the prosecution and the subject as respondents.

## 166.2—Transfer between training centre and prison

(1) An application for transfer of a youth (the ***subject***) from a training centre or another place to a prison under section 63(2) or (4) of the Young Offenders Act must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171M Originating Application for a Person Held in a Training Centre to be Transferred to a Prison

(2) The applicant—

(a) if the applicant is the Chief Executive—must join the subject as the respondent;

(b) if the applicant is the subject—must join the Chief Executive as the respondent.

(3) An application to revoke an order for transfer of a youth (the ***subject***) from a training centre or another place to a prison under section 63(7) of the Young Offenders Act must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171N Originating Application to Revoke an Order that a Youth be Transferred to a Prison

(4) The applicant—

(a) if the applicant is the Chief Executive—must join the subject and the subject's guardian as respondents;

(b) if the applicant is the subject—must join the Chief Executive and the subject's guardian as respondents;

(c) if the applicant is the subject's guardian—must join the Chief Executive and the subject as respondents.

## 166.3—Order on application for discharge from detention order or transfer between training centre and prison

The written record of an order on an application for discharge from a detention order or transfer between a training centre and a prison must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

# Division 7—Intervention order made under Sentencing Act

## 167.1—Application of Division

This Division applies to applications to vary or revoke intervention orders or problem gambling orders made under section 28 of the Sentencing Act.

**Note—**

An application to vary or revoke an interim intervention order made under section 23A of the Bail Act is to be made under the Uniform Special Statutory Rules and not under these Rules.

## 167.2—Application to revoke or vary

(1) An application under section 26 or 26A of the Intervention Orders Act to revoke or vary an intervention order must be—

(a) in the prescribed form; and

(b) supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form 172C Interlocutory Application to Vary or Revoke Order - Intervention Order

Form 7 Affidavit

(2) Subject to rule 167.4(2), the applicant must serve the interlocutory application and supporting affidavit on the other party as soon as practicable.

## 167.3—Application when leave required

(1) If leave is required under section 26(1)(b), (2)(a) or (b)(iii) of the Intervention Orders Act—

(a) the application must be made in the ordinary way in accordance with rule 167.2;

(b) the interlocutory application must seek the necessary leave; and

(c) the application for leave must be supported by an affidavit deposing to the grounds on which leave is sought.

**Notes—**

Section 26(1)(b) of the Intervention Orders Act provides that an application may be made on behalf of a person against whom it is alleged an act of abuse may be committed by a suitable representative given permission to apply by the Court.

Section 26(2)(a) provides that an application may be made by a child with the permission of the Court if the child has attained the age of 14 years.

Section 26(2)(b)(iii) provides that an application may be made on behalf of a child by a suitable representative of the child given permission to apply by the Court.

Under rule 2.4, a statutory reference to permission is equivalent to a reference in these Rules to leave.

(2) The Court may determine the application for leave in chambers on the basis of the supporting affidavit or make orders for its determination.

(3) If an application seeking leave is filed under this rule—

(a) the interlocutory application is conditional on leave being granted; and

(b) if leave is refused, the interlocutory application lapses.

## 167.4—Application for interim variation

(1) This rule applies if an application is made under section 26A of the Intervention Orders Act for an interim variation of an intervention order.

(2) If this rule applies, the interlocutory application and supporting affidavit must not be served on the defendant.

(3) A record of outcome of an application for an interim variation of an intervention order must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

(4) If the Court makes an interim variation order, the Court will issue a formal interim variation order and summons in the prescribed form.

**Prescribed form—**

Form 174H Order for Interim Variation of Intervention Order

(5) The Commissioner must serve the interim variation of intervention order and summons, the supporting affidavit, and any recorded evidence on an electronic storage device on the defendant as soon as practicable

**Note—**

If the applicant is a person other than the Commissioner of Police, the documents must not be served by the applicant but will be served by SAPOL.

(6) Upon an interim variation order being made, the Principal Registrar must cause a notice in the prescribed form, or by alternative means cause the information required by the applicable statutory provisions, to be sent to the relevant public sector agencies in accordance with subsection 26A(10) of the Intervention Orders Act.

**Prescribed form—**

Form 177 Notice to Relevant Public Sector Agencies about Intervention Order

(7) Upon an interim variation order being made, the Principal Registrar must cause a notice in the prescribed form, or by alternative means cause the information required by the applicable statutory provisions, together with a copy of the order in accordance with section 26A(9) of the Intervention Orders Act to be sent to—

(a) each protected person; and

(b) the Commissioner of Police.

**Prescribed form—**

Form 176 Notice of Order – Intervention Orders Act Order

## 167.5—Order

(1) A record of outcome of the hearing of a variation or revocation application must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

(2) If the Court makes a variation or revocation order, the Court will issue a formal order in the prescribed form.

**Prescribed form—**

Form 174I Order for Final Variation or Revocation of Intervention or Problem Gambling Order

## 167.6—Service of order

(1) If the Court varies an intervention order and the defendant was not present in court when the order was made, the Commissioner must serve the variation order on the defendant as soon as practicable.

**Notes—**

Section 26(7) of the Intervention Orders Act provides that, if an intervention order is varied, it comes into force when served on the defendant in accordance with section 26 (and until the order is so served the intervention order in its unamended form continues in force).

If the applicant for the variation is a person other than the Commissioner of Police, the order must not be served by the applicant but will be served by SAPOL.

(2) If the Court revokes an intervention order, the Principal Registrar must cause to be served on the defendant the revocation order.

**Note—**

Section 26(8) requires the Registrar to serve written notice of the revocation on the defendant personally or by post at the address for service provided by the defendant under the Act or in some other manner authorised by the Court.

### 167.7—Notice of order

(1) Upon an intervention order being varied or revoked, the Principal Registrar must cause a notice in the prescribed form, or by alternative means cause the information required by the applicable statutory provisions, to be sent to the relevant public sector agencies in accordance with section 26(10) of the Intervention Orders Act.

**Prescribed form—**

Form 177 Notice to Relevant Public Sector Agencies about Intervention Order

(2) Upon an intervention order being varied or revoked, the Principal Registrar must cause a notice in the prescribed form, or by alternative means cause the information required by the applicable statutory provisions, together with a copy of the order to be sent in accordance with section 26(9) of the Act to—

(a) each protected person;

(b) the Commissioner of Police; and

(c) the applicant (if not a protected person or police officer).

**Prescribed form—**

Form 176 Notice of Order – Intervention Orders Act Order

## Division 8—Other variations or revocations

### 168.1—Protection orders

(1) An application to vary or revoke one of the following orders made in a criminal proceeding must be made by an originating application under the Uniform Special Statutory Rules—

(a) a child protection restraining order under section 28 of the Sentencing Act;

(b) a paedophile restraining order under section 28 of the Sentencing Act;

(c) a place restriction order under section 27 of the Sentencing Act; or

(d) a non-association order under section 27 of the Sentencing Act.

(2) An application to vary or revoke an interim intervention order made under section 23A of the Bail Act in a criminal proceeding must be made by an interlocutory application under the Uniform Special Statutory Rules.

### 168.2—Other orders

An application to vary or revoke an order not governed by a preceding Division or by rule 168.1 must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171A Originating Application to Vary or Revoke an Order

# Part 2—Mental impairment variation and enforcement

## Division 1—General

### 169.1—Definitions

In this Part—

***former section 293A order*** means an order made under section 293A of the Consolidation Act in force before 2 March 1996;

the ***Minister for Health*** means the Minister responsible for the administration of the *Mental Health Act 2016* (presently the Minister for Health and Wellbeing);

***Part 8A order*** means an order made under Part 8A of the Consolidation Act.

### 169.2—Order to bring detainee/licensee from institution

If the Court makes an order that a detainee or licensee be brought to Court from an institution for the purpose of an application under this Division, a formal order in the prescribed form must be issued and given to the institution.

**Prescribed form—**

Form 174F Order – Bring Detainee or Licensee from an Institution

## Division 2—Review order

### 170.1—Application to review mental impairment order

(1) An application by the Crown under section 269NDA or 269U of the Consolidation Act to review a Part 8A order made against a person (the ***subject***) must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171G Originating Application for Review, Variation or Revocation of Part 8A Criminal Law Consolidation Act Order

(2) The applicant must join the subject as the respondent.

(3) An application by the Minister for Health under former section 293A(17) of the Consolidation Act to review a former section 293A order made against a person (the ***subject***) must be made by an application in the prescribed form.

**Prescribed form—**

Form 171H Application for Variation, Cancellation or Review of Release on Licence pursuant to former section 293A Criminal Law Consolidation Act

(4) The applicant must join the subject and the Director as respondents.

### 170.2—Order on application to review mental impairment

(1) The written record of an order on an application to review a Part 8A order or former section 293A order must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

(2) If the Court makes a substantive order on the review, a formal order in the prescribed form must be issued.

**Prescribed forms—**

Form 174D Order – Confirmation, Variation or Revocation of Part 8A Criminal Law Consolidation Act Order

Form 174C Order – Confirmation, Variation or Cancellation of former section 293A Order

# Division 3— Vary or revoke order

## 171.1—Application to vary or revoke order

(1) An application under section 269ND or 269P of the Consolidation Act to vary or revoke a Part 8A order made against a person (the ***subject***) must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171G Originating Application for Review, Variation or Revocation of a Part 8A Criminal Law Consolidation Act Order

(2) The applicant—

(a) if the applicant is the subject—must join the Director, the Public Advocate, the Commissioner for Victims' Rights and the Parole Board in respect of a defendant or the Training Centre Review Board in respect of a youth;

(b) if the applicant is the Director—must join the subject, the Public Advocate, the Commissioner for Victims' Rights and the Parole Board in respect of a defendant or the Training Centre Review Board in respect of a youth;

(c) if the applicant is the Public Advocate—must join the subject, the Director, the Commissioner for Victims' Rights and the Parole Board in respect of a defendant or the Training Centre Review Board in respect of a youth;

(d) if the applicant is the Commissioner for Victims' Rights—must join the subject, the Director, the Public Advocate and the Parole Board in respect of a defendant or the Training Centre Review Board in respect of a youth;

(e) if the applicant is anyone else—must join the subject, the Director, the Public Advocate, the Commissioner for Victims' Rights and the Parole Board in respect of a defendant or the Training Centre Review Board in respect of a youth.

(3) An application under former section 293A(7)(b) of the Consolidation Act to vary or cancel a former section 293A order for release of a person (the ***subject***) on conditions must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171H Originating Application for Variation, Cancellation or Review of Release on Licence pursuant to former section 293A Criminal Law Consolidation Act

(4) The applicant—

(a) if the applicant is the Director—must join the subject as the respondent;

(b) if the applicant is the subject—must join the Director as the respondent.

### 171.2—Order on application to vary or revoke order

(1) The written record of an order on an application to vary or revoke a Part 8A order or former section 293A order must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

(2) If the Court makes a substantive order, a formal order in the prescribed form must be issued.

**Prescribed forms—**

Form 174D Order – Confirmation, Variation or Revocation of Part 8A Criminal Law Consolidation Act Order

Form 174C Order – Confirmation, Variation or Cancellation of former section 293A Order

## Division 4—Release on licence

### 172.1—Application for release under licence under former section 293A

(1) An application under former section 293A(7)(a) of the Consolidation Act for release of a person (the ***subject***) on licence must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171I Originating Application for Release on Licence pursuant to former section 293A Criminal Law Consolidation Act

(2) The applicant—

(a) if the applicant is the Director—must join the subject as the respondent;

(b) if the applicant is the subject—must join the Director as the respondent.

### 172.2—Order on application for release on licence

(1) The written record of an order on an application for release on licence under former section 293A(7)(a) must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

(2) If the Court makes a substantive order, a formal order in the prescribed form must be issued.

**Prescribed form—**

Form 174C Order – Confirmation, Variation or Cancellation of former section 293A Order

## Division 5—Crimes Act order: All Courts except Youth Court

### 173.1—Application to vary or discharge order

(1) An application—

(a) under section 20BC(7) of the Crimes Act to vary the terms of a Division 6 order;

(b) under section 20BJ(5) of the Crimes Act to vary the terms of a Division 7 order;

(c) under section 20BV(4) of the Crimes Act to vary treatment under a Division 9 psychiatric order; or

(d) under section 20BU of the Crimes Act to discharge a Division 9 hospital order,

made against a person (the ***subject***) must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 171J Originating Application for Variation or Discharge of Division 6, 7 or 9 Crimes Act 1914 (Cth) Order

(2) The applicant—

(a) if the applicant is the Director—must join the subject as the respondent;

(b) if the applicant is the subject—must join the Director as the respondent.

### 173.2—Order on application to vary or discharge order

(1) The written record of an order on an application to vary or discharge a Division 6, 7 or 9 order must be in the prescribed form.

**Prescribed form—**

Form 173 Record of Outcome

(2) If the Court makes a substantive order, a formal order in the prescribed form must be issued.

**Prescribed form—**

Form 174E Order – Variation of Division 6, 7 or 9 Crimes Act Order

# Part 3—Enforcement

## Division 1—Application for enforcement

### 174.1—Application to enforce sentencing order

(1) An application—

(a) under section 113 of the Sentencing Act to enforce a good behaviour bond;

(b) under section 113 of the Sentencing Act to enforce a suspended sentence bond;

(c) under section 73(5)(a) of the Sentencing Act to enforce a home detention order;

(d) under section 83(5)(a) of the Sentencing Act to enforce an intensive correction order;

(e) under section 115(3)(a) of the Sentencing Act to enforce a community service order;

(f) under section 116(1)(a) of the Sentencing Act to enforce a non-pecuniary order; or

(g) to enforce another sentencing order,

made against a person (the ***subject***) must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 211 Originating Application for Enforcement Order

(2) The applicant must join the subject as the respondent.

## 174.2—Application to enforce federal sentencing order: All Courts except Youth Court

(1) An application—

(a) under section 20A(1) of the Crimes Act to enforce a Recognizance Release Order or Recognizance Order;

(b) under section 20BW(1) of the Crimes Act to enforce a Psychiatric Probation Order; or

(c) under sections 20BW(1) and 20BY(2) of the Crimes Act to enforce a Program Probation Order,

made against a person (the ***subject***) must be made by an originating application in the prescribed form.

**Prescribed form—**

Form 213A Information to Enforce Order (Cth)

(2) The applicant must join the subject as the respondent.

## 174.3—Summons to respondent

(1) A summons to a respondent—

(a) in respect of an enforcement application referred to in rule 174.1 issued by the Court under section 113(1)(a)(i), 113(1)(a)(ii), 73(5)(a), 83(5)(a), 115(3)(a) or 116(1)(a) of the Sentencing Act; or

(b) issued after filing of an enforcement application referred to in rule 174.2 under section 20A(1)(a) or 20BW(1)(a) of the Crimes Act,

must be in the prescribed form.

**Prescribed form—**

Form 212 Summons to Defendant

(2) A summons to a respondent issued as part of an enforcement application referred to in rule 174.2 under section 20A(1)(a) or 20BW(1)(a) of the Crimes Act must be in the prescribed form.

**Prescribed form—**

Form 213B Information and Summons to Enforce Order (Cth)

(3) The prosecution is responsible for serving a summons governed by this rule.

## 174.4—Warrant of apprehension of defendant or youth

A warrant of apprehension of a respondent in respect of an enforcement application—

(a) referred to in rule 174.1 issued by the Court under the Sentencing Act at—

(i) section 113(1)(a)(ii);

(ii) section 73(5)(a);

(iii) section 83(5)(a);

(iii) section 115(3)(a);

(iv) section 116(1)(a); or

(b) referred to in rule 174.2 under section 20A(1)(a) or 20BW(1)(a) of the Crimes Act,

must be in the prescribed form.

**Prescribed form—**

Form 214 Warrant of Apprehension

## Division 2—Orders for enforcement

### 175.1—Order on application for enforcement

(1) The written record of an order on an application for enforcement of a bond must be in the prescribed form.

**Prescribed form—**

Form 215 Record of Outcome

(2) The written record of an order on an application for enforcement of a community service order or non-pecuniary order must be in the prescribed form.

**Prescribed form—**

Form 215 Record of Outcome

(3) The written record of an order on an application for enforcement of a recognizance release order or recognizance order must be in the prescribed form.

**Prescribed form—**

Form 215 Record of Outcome

(4) The written record of an order on an application to enforce a psychiatric probation order or program probation order under section 20BX of the Crimes Act must be in the prescribed form.

**Prescribed form—**

Form 215 Record of Outcome

(5) The written record of an order on an application for enforcement of another sentencing order must be in the prescribed form.

**Prescribed form—**

Form 215 Record of Outcome

(6) If the Court varies a condition of a Home Detention Order or Intensive Correction Order under section 73 or 83 of the Sentencing Act, a varied Home Detention Order or Intensive Correction Order must be in the prescribed form.

**Prescribed form—**

Form 216A Order Varying Home Detention Order and Acknowledgement

Form 216B Order Varying Intensive Correction Order and Acknowledgement

### 175.2—Warrant of commitment or mandate for detention

If the Court makes an order on an enforcement application that a defendant or youth be imprisoned or detained, the Principal Registrar must cause a warrant of commitment or mandate for detention in the prescribed form to be issued.

**Prescribed form—**

Form 217 Warrant of Commitment or Mandate for Detention – Enforcement of Community Service Order or Non-Pecuniary Order

# Chapter 9—Appellate Proceedings

## Part 1—General

### 181.1—Definitions

In this Chapter—

***ancillary order*** means an ancillary order within the meaning of section 151 of the Procedure Act or a decision not to make such an ancillary order;

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

(a) a bail review;

(b) an application for leave to appeal (or cross appeal);

(c) an application for an extension of time to appeal (or cross appeal);

(d) a cross appeal;

(e) a second appeal;

(f) a petition referral; and

(g) a retrial application;

***appellant*** means—

(a) in an appeal—the person appealing against or seeking review in the nature of an appeal against a judgment, order or decision or making the subject application and, unless the context indicates otherwise, includes that person in the capacity of a respondent to a cross appeal;

(b) in a case stated—the person who files the notice of case stated or otherwise has the carriage of the case stated;

(c) in a petition referral—the petitioner; or

(d) in a retrial application—the Director;

***appellate document*** means—

(a) a notice of appeal or review;

(b) an application for leave to appeal or cross appeal;

(c) a notice of cross appeal;

(d) a notice of alternative contention;

(e) a notice of case stated;

(f) a notice of referral of petition of mercy; or

(g) a notice of application for retrial;

***appellate hearing*** means an interlocutory or final hearing of an appellate proceeding;

***appellate proceeding*** means—

(a) an appeal;

(b) a case stated;

(c) a petition referral; or

(d) a retrial application;

***bail review*** means a review of a bail decision by the Supreme Court under Part 4 of the Bail Act or under Part 5 of the Service and Execution of Process Act;

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

***conviction appeal*** means an appeal against or involving—

(a) a verdict of guilty or conviction;

(b) a verdict of not guilty or acquittal;

(c) a verdict of fitness or unfitness to stand trial;

(d) a verdict of mental competence or mental incompetence to commit an offence charged;

(e) a verdict that the objective elements of the offence charged are established or not established; or

(f) the grant or refusal of an application for a permanent stay;

***cross appeal*** means a cross appeal referred to in rule 186.2 or rule 194.2;

***filing page*** means a front sheet to a document to be filed which—

(a) contains provision for a filed document number and the date of filing;

(b) shows the court, jurisdiction, case number, parties and name of the document to be filed;

(c) contains the party title and name of the party filing the document; and

(d) if filed by a party represented by a law firm or office—contains the name of the law firm or office and, subject to rule 25.3, the responsible solicitor;

***listed hearing date*** means—

(a) in Part 3—the earlier of the listed hearing date referred to in rule 189.1(2) and any varied hearing date referred to in rule 189.1(3);

(b) in Part 4—the listed hearing date referred to in rule 202.1;

***miscellaneous appeal*** means an appeal other than a conviction appeal or sentence appeal;

***petition referral*** means a referral by the Attorney-General on a petition of mercy under section 173 of the Procedure Act;

***respondent*** to an appellate proceeding means a party who was a party in the proceeding at first instance, unless the party has no interest in the appellate proceeding;

***retrial application*** means an application to the Court of Appeal—

(a) for a retrial of a relevant offence or Category A offence under section 146 or 147 of the Procedure Act; or

(b) for a trial of an administration of justice offence under section 148 of the Procedure Act;

***second appeal*** means a second or subsequent appeal under—

(a) section 159 of the Procedure Act; or

(b) section 43A of the *Magistrates Court Act 1991*;

***sentence appeal*** means an appeal against or involving—

(a) a sentence;

(b) an ancillary order;

(c) other orders made after a conviction or finding of guilt or a determination that the objective elements of the offence charged are established and the defendant or youth is either unfit to stand trial or was mentally incompetent to commit an offence charged; or

(d) a decision to defer sentencing within the meaning of section 157(1)(a)(ii) of the Consolidation Act.

### 181.2—Service of documents

Unless the Court otherwise orders, any document that is to be served on a person in an appellate proceeding must be served—

(a) if the person has an address for service in the appellate proceeding—by service at that address for service;

(b) if the person has an address for service in the underlying proceeding but not in the appellate proceeding—by service at that address for service; or

(c) in any other case—by original service.

### 181.3—Records of Outcome

(1) The record of outcome of an appellate hearing must be in the prescribed form.

**Prescribed form—**

Form 198 Record of Outcome

(2) A formal order in respect of an appellate hearing must be in the prescribed form.

**Prescribed form—**

Form 199 Order

Form 199Y Order – Youth Court Interlocutory Appeal

## Part 2—Bail reviews: Supreme Court

### 183.1—Application of Part

This Part applies to the review of bail decisions by the Supreme Court under Part 4 of the Bail Act or under Part 5 of the Service and Execution of Process Act.

### 183.2—Notice of review

(1) An application for review of a decision of a bail authority under section 14(2)(a) of the Bail Act must be made by a notice of review in the prescribed form.

**Prescribed form—**

Form 181 Notice of Review – Bail Review

(2) An application for review of a decision of a Magistrate under section 86 of the Service and Execution of Process Act must be made by a notice of review in the prescribed form.

**Prescribed form—**

Form 181 Notice of Review – Bail Review

**Note—**

Section 86(2) of the Service and Execution of Process Act requires that an application for review is to be made within 7 days after the making of the order.

(3) The notice of review must be supported by an affidavit—

(a) setting out or exhibiting the decision subject to the review;

(b) setting out or exhibiting the reasons given by the bail authority;

(c) setting out the grounds for the review;

(d) stating that the substance of the material on which the applicant relies was put before the bail authority whose decision is sought to be reviewed; and

(e) stating that there has been no material change of circumstances that would warrant making a fresh application for bail to the bail authority whose decision is sought to be reviewed.

(4) In cases of urgency, the notice of review may be filed without a supporting affidavit, but in that event the applicant must file and serve a supporting affidavit as soon as practicable after filing the notice of review.

(5) Subject to section 16 of the Bail Act, a notice of review does not operate as a stay of the orders made under the decision subject to review unless the Court so orders.

**Note—**

Section 16 of the Bail Act provides that, if a person it to be released on bail and a police officer or counsel on behalf of the Crown immediately indicates that an application for review of the decision will be made, the release must be deferred pending the review for 72 hours or a longer period fixed by the Court.

## 183.3—Ancillary applications

(1) Unless the Court otherwise orders, an application for extension of the period of deferral under section 16(2)(a) of the Bail Act must be made by an interlocutory application in accordance with rule 39.1.

(2) Unless the Court otherwise orders, an application for a suppression order under section 96 of the Service and Execution of Process Act must be made by an interlocutory application in accordance with rule 39.1.

**Note—**

Subject to the *Judiciary Act 1903* (Cth), an appeal against a decision in relation to a suppression order under the Service and Execution of Process Act lies as of right under section 101 of that Act.

## 183.4—Service of notice of review

(1) The notice of review and supporting affidavit must be served as soon as practicable on—

(a) the other parties to the proceeding in which the bail decision was made;

(b) the Registrar of the court or other bail authority that made the original bail decision; and

(c) any other person who has an interest in the bail decision or bail review.

(2) If the respondent decides to take an attitude on review which is different from that taken before the bail authority whose decision is sought to be reviewed, the respondent must inform the Court in writing as soon as practicable.

## 183.5—Transmission of bail authority file

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

## 183.6—Notice of acting

Unless the respondent is the Commissioner of Police or the Director, a respondent to a bail review must file a notice of acting in the prescribed form within 7 days of service of the notice of appeal.

**Note—**

Rule 24.2 and Chapter 2 Part 6 Division 4, Subdivision 1_Subdivision_1—Obligation_to in relation to legal representation and address for service apply to appellate proceedings.

## 183.7—Notice of intention not to proceed with review

(1) If an applicant wishes to notify that they do not intend to proceed with a bail review, the applicant must file and serve a notice of intention not to proceed in the prescribed form.

**Prescribed form—**

Form 182 Notice of Intention Not to Proceed with Bail Review

(2) The applicant must also serve the notice of intention not to proceed on the bail authority that made the bail decision the subject of the application for review as soon as practicable.

## 183.8—Hearing of application for review

(1) Unless the Court otherwise orders—

(a) the application will be heard in open court;

(b) a person in custody will appear by audio visual link; and

(c) all evidence must be given by affidavit.

(2) If the applicant is in custody and wishes to appear in person at the hearing, the Notice of Review must so indicate and set out the grounds for seeking to appear in person.

(3) A respondent who is in custody may object to the use of an audio visual link in respect of a hearing by filing a notice of objection in the prescribed form as soon as practicable after being served with the Notice of Review.

**Prescribed form—**

Form 95 Notice of Objection

(4) Rule 38.3 applies to the hearing and determination of a notice of objection.

### 183.9—Determination of application for review

(1) If upon review the Court releases a person on bail, the Court may order a court officer to take the bail agreement in the terms ordered and thereupon release the person on bail.

(2) Upon completion of a review, the Registrar may cause the file and any documents received under rule 183.5 to be returned to the person who transmitted them, except documents required as court records.

# Part 3—Appeals and cases stated to Judge: Supreme Court and Youth Court

## Division 1—General

### 184.1—Application of Part

(1) This Part applies to—

(a) appellate proceedings to be heard by a Judge of the Supreme Court; and

(b) appeals to the Judge of the Youth Court against an interlocutory judgment given by a Magistrate of the Youth Court under section 22(2)(b)(i) of the *Youth Court Act 1993*.

*Supreme Court*

(2) If a Judge refers an appeal to the Court of Appeal, it is governed instead by Part 4.

### 184.2—Jurisdiction of Judge: Supreme Court

(1) Subject to subrule (2), the appellate jurisdiction of the Supreme Court is to be exercised by a Judge if—

(a) a statutory provision so provides;

(b) a question of law is reserved by a Magistrate of the Youth Court; or

(c) the Court of Appeal remits an appellate proceeding that is the subject of an order made under subrule (2) to a single Judge for hearing and determination.

**Notes—**

Section 42(2)(b) of the *Magistrates Court Act 1991* provides that an appeal against a judgment by the Magistrates Court, except in the case of a sentence passed on the conviction of a person of an offence that is, or offences that include, a major indictable offence, lies to a single Judge of the Supreme Court.

Section 43 of the *Magistrates Court Act 1991* provides that the Court may reserve any question of law arising in a criminal action for determination by the Supreme Court constituted of a single Judge (but the Judge may, if he or she thinks fit, refer the matter for determination by the Court of Appeal).

Section 30(4) of the *Environment, Resources and Development Court Act 1993* provides that a party to any criminal proceedings before the Environment, Resources and Development Court may appeal against any judgment given in those proceedings in the same way, and to the same extent, as an appeal may be instituted against a judgment given in a criminal action under the *Magistrates Court Act 1991*.

Section 22(2) of the *Youth Court Act 1993* provides that an appeal against an interlocutory order by a Judge of the Youth Court or against a judgment by a magistrate lies to a single Judge of the Supreme Court.

Section 23 of the *Youth Court Act 1993* provides that the Youth Court may reserve any question of law arising in proceedings for determination by the Supreme Court.

(2) Subject to a statutory provision conferring jurisdiction on a Judge in absolute terms, a Judge may order that the appellate jurisdiction of the Supreme Court that would otherwise be exercised by a Judge be exercised by the Court of Appeal.

## Division 2—Institution of appeal

### 185.1—Time to appeal

(1) An appeal must be instituted within 21 days after the date of the judgment, decision or order the subject of the appeal.

(2) If an extension of time to appeal is required—

(a) the appeal must be instituted in the ordinary way in accordance with rule 185.3;

(b) the notice of appeal must seek the necessary extension of time; and

(c) the application for an extension of time must be supported by an affidavit explaining why the appeal was not instituted earlier and within time.

(3) The Court may order that the question of an extension of time to appeal be heard before the hearing of the appeal.

(4) Unless an order is made under subrule (3), the application for an extension of time to appeal and the appeal will be heard at the same time.

### 185.2—Leave to appeal: Supreme Court

(1) Leave to appeal is required if a statutory provision so provides.

**Notes—**

Section 42(1a) of the *Magistrates Court Act 1991* provides that an appeal does not lie against an interlocutory judgment (other than a judgment staying the proceeding or destroying or substantially weakening the basis of the prosecution case likely to lead to abandonment of the prosecution) unless the Court or the appellate court is satisfied that there are special reasons why it would be in the interests of the administration of justice to have the appeal determined before commencement or completion of the trial and grants its permission for an appeal.

Section 30(4) of the *Environment, Resources and Development Court Act 1993* provides that a party to any criminal proceedings may appeal against any judgment given in those proceedings in the same way, and to the same extent, as an appeal may be instituted against a judgment given in a criminal action under the *Magistrates Court Act 1991*.

(2) If leave to appeal is required, the appeal must be instituted in the ordinary way in accordance with rule 185.3 and the notice of appeal must seek the necessary leave.

(3) The Court may order that the question of leave to appeal be heard before the hearing of the appeal.

(4) Unless an order is made under subrule (3), the application for leave to appeal and the appeal will be heard at the same time.

(5) If leave to appeal is granted, but it later becomes evident that it ought not to have been granted, the Court may revoke the grant of leave.

## 185.3—Institution of appeal

(1) An appeal must be instituted by filing a notice of appeal in the prescribed form setting out (in accordance with the prescribed form)—

(a) the forum of the appellate Court;

(b) the statutory provision under which the appeal is brought;

(c) details of the judgment or order the subject of the appeal;

(d) the grounds of appeal;

(e) the orders sought on appeal;

(f) if leave to appeal is sought—the grounds on which it is sought;

(g) if an extension of time is sought—the grounds on which it is sought; and

(h) whether the appellant requests that a transcript of the evidence of any witness be produced and if so, identifying the passages of evidence that are requested.

**Prescribed forms—**

**Conviction appeal**

Form 183A Notice of Appeal against Conviction, Acquittal, Antecedent Decision or Mental Impairment Judgment

Form 183S Appeal Grounds (part of Notice of Appeal)

**Sentence appeal**

Form 183C Notice of Appeal against Sentence or Mental Impairment Disposition

Form 183S Appeal Grounds (part of Notice of Appeal)

**Miscellaneous appeal**

Form 183D Notice of Appeal against Other Decision

Form 183Y Notice of Appeal from Interlocutory Judgment of Magistrate

Form 183S Appeal Grounds (part of Notice of Appeal)

(2) The appellant must join as a respondent in the appellate proceeding any party to the first instance proceeding unless that party has no interest in the appellate proceeding.

(3) The Court may order the addition or removal of a person as a party to an appellate proceeding.

(4) Unless the Court otherwise orders, an appellant may not rely on grounds that are not stated in the notice of appeal.

(5) If a notice of appeal seeking leave to appeal or an extension of time to appeal is filed under this Part—

(a) the institution of the appeal is conditional on leave to appeal or an extension of time to appeal being granted; and

(b) the appeal will lapse if leave to appeal or an extension of time to appeal is refused.

## 185.4—Service of notice of appeal

(1) The appellant must serve the notice of appeal on each other party to the appellate proceeding as soon as practicable.

(2) The appellant must serve a copy of the notice of appeal on the registrar or other proper officer of the court of first instance as soon as practicable.

### 185.5—Documents and information from court of first instance: Supreme Court

(1) The Principal Registrar may, and when directed by the Court must, request the court of first instance to transmit to the Court any documents relevant to the appeal by physical or electronic means (as specified).

(2) Unless the Principal Registrar otherwise specifies, documents relevant to the appeal the subject of a request comprise—

(a) all documents filed with the court of first instance;

(b) any transcript of evidence or a hearing;

(c) any other evidentiary material; and

(d) the judgment, order or decision subject of the appeal and any reasons given for it.

(3) The registrar or other proper officer of the court of first instance must comply with the request as soon as practicable.

## Division 3—Response to appeal: Supreme Court

### 186.1—Notice of acting

Unless the respondent is the Commissioner of Police or the Director, a respondent to an appeal must file a notice of acting in the prescribed form within 7 days of service of the notice of appeal.

**Note—**

Rule 24.2 and Chapter 2 Part 6 Division 4, Subdivision 1 in relation to legal representation and address for service apply to appellate proceedings.

### 186.2—Institution of cross appeal

(1) Another party to the appeal may institute an appeal against the same judgment or order by filing a notice of cross appeal in the prescribed form, within 14 days after being served with the notice of appeal.

**Prescribed forms—**

**Conviction cross appeal**

Form 184A Notice of Cross Appeal against Conviction, Acquittal, Antecedent Decision or Mental Impairment Judgment

Form 184S Cross Appeal Grounds (Part of Notice of Cross Appeal)

**Sentence cross appeal**

Form 184B Notice of Cross Appeal against Sentence or Mental Impairment Disposition

Form 184S Cross Appeal Grounds (Part of Notice of Cross Appeal)

**Miscellaneous cross appeal**

Form 184C Notice of Cross Appeal against Other Decision

Form 184S Cross Appeal Grounds (Part of Notice of Cross Appeal)

(2) Rule 185.3(3) to (5) and rule 185.4 apply, with any necessary changes, in respect of a cross appeal.

(3) If leave to appeal is required, rule 185.2 applies, with any necessary changes, in respect of a cross appeal.

(4) If an extension of time to appeal is required, rule 185.1(2) to (4) applies, with any necessary changes, in respect of a cross appeal.

### 186.3—Notice of alternative contention

(1) If a party wishes to contend that a decision subject to appeal or cross appeal should be upheld for reasons other than those given by the court of first instance, that party must file a notice of alternative contention in the prescribed form setting out the grounds on which the party asserts that the decision should be upheld, within 14 days after service of the notice of appeal or notice of cross appeal (as the case may be) on that party.

**Prescribed form—**

Form 185 Notice of Alternative Contention

(2) Unless the Court otherwise orders, a party may not rely on grounds on which the party asserts that a decision should be upheld for reasons other than those given by the court of first instance that are not stated in a notice of alternative contention.

(3) If an extension of time to file a notice of alternative contention is required, rule 185.1(2) to (4) applies, with any necessary changes, in respect of a notice of alternative contention.

(4) A party who files a notice of alternative contention must serve it on each other party to the appellate proceeding as soon as practicable.

## Division 4—Institution of case stated: Supreme Court

### 187.1—Case stated by court

(1) A court of first instance which reserves a question of law for the consideration of the Court must—

(a) prepare a document in the prescribed form containing a statement of the background and relevant facts on the basis of which the question of law is to be determined and a statement of the question to be determined;

**Prescribed form—**

Form 159 Case Stated

(b) designate a party to the proceeding who is to be regarded as the appellant on the case stated and have carriage of the proceeding; and

(c) designate which parties are to be the respondents to the appellate proceeding.

(2) The Court may request the court of first instance to forward to the Court the whole or part of the file for the proceeding including any transcript of hearings and evidence in the custody of that court.

### 187.2—Institution of case stated

(1) The party designated as the appellant under rule 187.1 must file with the Court a notice of case stated in the prescribed form.

**Prescribed form—**

Form 192 Notice of Case Stated

(2) The Court may order the addition or removal of a person as a party to a case stated.

## Division 5—Interlocutory steps

### 188.1—Interlocutory orders

(1) The Court may, at a directions hearing in court or in chambers, make orders on its own initiative or on the application of any person in relation to an appellate proceeding.

(2) For example, the Court may make orders—

(a) concerning the constitution of the appellate proceeding;

(b) relating to the filing, service or amendment of an appellate document;

(c) for the identification of issues in the appellate proceeding;

(d) for a report to be prepared by the judicial officer who made the judgment, order or decision the subject of the appellate proceeding concerning any matter relevant to the appellate proceeding;

(e) relating to bail;

(f) relating to the mode of appearance of a defendant at hearings;

(g) relating to evidence that may be adduced on the appellate proceeding;

(h) for the conduct of and preparation for the hearing of the appellate proceeding;

(i) fixing or modifying the time for parties to take steps in the appellate proceeding;

(j) modifying or enforcing compliance with these Rules; or

(k) concerning costs.

### 188.2—Amendment of appellate document

(1) A party may, without leave of the Court, amend an appellate document (except to introduce an additional party to an appellate proceeding) at any time up to the date on which the Court lists the appellate proceeding for hearing.

(2) If a party makes an amendment under this rule, another party may apply for an order disallowing the amendment in whole or part, on the ground that, if leave had been sought to make the amendment it would have been refused.

(3) A party may amend an appellate document (including to introduce an additional party into an appellate proceeding)—

(a) with the written consent of each other party to the appellate proceeding; or

(b) with leave of the Court.

### 188.3—Transcript

(1) This rule applies to appeals when a transcript of evidence was not produced for the proceeding in the court of first instance.

(2) The appellant must, in the notice of appeal, identify whether the appellant requests that a transcript of the evidence of any witness be produced and if so, identify the passages of evidence that are requested.

(3) Each other party to the appeal must, within 7 days after service of the notice of appeal on the party, file and serve a document identifying whether they request that a transcript of the evidence of any witness be produced and if so, identifying the passages of evidence are requested.

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

### 188.4—Report of Judge or Magistrate

(1) When a notice of appeal is filed, the Principal Registrar will cause an enquiry to be made of the Judge or Magistrate at first instance as to whether they wish to provide a written report concerning any matter relevant to the appellate proceeding.

(2) The Principal Registrar will, for the purpose of providing a written report, cause the Judge or Magistrate at first instance to be provided with a copy of or link or reference to the notice of appeal together with such documents and information as they may require.

(3) The Judge or Magistrate at first instance may, and if requested by the Court shall, provide a report to the Court.

(4) Upon receipt of a report from the Judge or Magistrate at first instance, the Principal Registrar will cause a copy of the report to be provided to the parties to the appeal.

### 188.5—Discontinuance of appeal

(1) An appellant may discontinue an appeal by filing a notice of discontinuance in the prescribed form.

**Prescribed form—**

Form 191 Notice of Discontinuance of Appeal

(2) Upon a notice of discontinuance being filed, the appeal will be deemed to have been dismissed by the Court.

(3) A notice of discontinuance may be withdrawn with leave of the Court.

## Division 6—Listing for hearing

### 189.1—Listing for hearing

(1) An appellate proceeding will be listed for hearing before a Judge on a fixed date in a given month.

(2) The Court will give notice of the listed hearing date in the prescribed form to the parties.

**Prescribed form—**

Form 196 Notice of Appeal Hearing

Form 196Y Notice of Appeal Hearing (Youth Court)

(3) If a party seeks a change from the listed hearing date, the party must, within 7 days of being notified of the listed hearing date, contact the Judge's chambers to make the request and provide details of alternative hearing dates.

## Division 7—Preparation for hearing

### 190.1—Appeal book: Supreme Court

(1) The appellant must prepare an appeal book in accordance with this rule.

(2) The appellant must file a physical copy of the appeal book 7 days before the listed hearing date.

(3) The appellant must serve an electronic or physical copy of the appeal book on the other parties 7 days before the listed hearing date.

(4) An appeal book must be paginated and must contain—

(a) a filing page;

(b) a table of contents showing each document and its page number;

(c) the current version of the Information (or other initiating document) in the court of first instance;

(d) the judgment or order the subject of the appeal;

(e) the reasons for judgment or sentencing remarks given in respect of that judgment or order; and

(f) the notice of appeal or notice of case stated, any notice of cross appeal and any notice of alternative contention.

(5) An appeal book may, but is not required to, contain one or more exhibits and one or more pages of transcript.

### 190.2—Written submissions, chronologies and lists of authorities

(1) Each party who intends to make submissions at the hearing of an appellate proceeding —

(a) must prepare written submissions in the prescribed form;

(b) must prepare a list of authorities in the prescribed form; and

(c) may prepare a chronology.

**Prescribed forms—**

Form 187 Written submissions

Form 188 List of Authorities

(2) Unless the Court otherwise orders, the appellant must file and serve on each other party to the appellate proceeding written submissions, a list of authorities and any chronology at least 14 days before the listed hearing date.

(3) Unless the Court otherwise orders, each other party must file and serve on each other party to the appellate proceeding written submissions, a list of authorities and any chronology at least 7 days before the listed hearing date.

(4) The appellant may file and serve on each other party to the appellate proceeding written submissions in reply at least 3 days before the listed hearing date.

(5) Written submissions must not, without the leave of the Principal Registrar or the Court, exceed 20 pages for submissions in chief, or 10 pages for submissions in reply, and must comply with the Principal Registrar's prescribed format requirements.

(6) The Principal Registrar may, on application by a party in accordance with rule 16.2(5), vary the page limit for written submissions.

## Division 8—Hearing and determination

### 191.1—Hearing

(1) Subject to any statutory provision to the contrary—

(a) an appeal is to be by way of rehearing;

(b) the Court may draw inferences from evidence adduced in the proceeding at first instance; and

(c) the Court may hear further evidence in its discretion.

(2) The Court may, if it considers that it is in the interests of justice to do so, determine an appellate proceeding on the merits notwithstanding a failure of a party to raise or properly state a contention in an appellate document or written submissions.

(3) The Court may, if it thinks fit and subject to any statutory provision to the contrary, reformulate the question reserved on a case stated to better reflect the question of law arising on the case stated.

## 191.2—Determination

(1) Subject to any statutory provision to the contrary, on an appeal the Court may—

(a) set aside or amend the judgment or order the subject of an appeal;

(b) substitute the Court's own judgment or order;

(c) remit the matter for rehearing or reconsideration;

(d) dismiss the appeal;

(e) make orders for the costs of the appellate proceeding or costs at first instance; or

(f) make such other or further order for the disposition of the appellate proceeding as it thinks fit.

(2) Subject to any statutory provision to the contrary, the Court may, in addition to answering the question of law reserved on a case stated—

(a) make orders for the costs of the appellate proceeding or costs at first instance; or

(b) make such other or further order for the disposition of the appellate proceeding as it thinks fit.

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(3) When the Court determines an appellate proceeding (including refusing leave to appeal), the Principal Registrar must—

(a) cause the registrar or other proper officer of the court of first instance to be given written notice of the Court's decision together with any written reasons given by the Court; and

(b) cause any documents or materials transmitted to the Court by the registrar or proper officer of the court of first instance (other than documents and materials forwarded in electronic form) for the purpose of the appellate proceeding, to be returned.

## 191.3—Costs of appeals: Supreme Court

(1) Costs in an appellate proceeding governed by this Part are in the discretion of the Court.

(2) The general rule is that costs follow the event and in the ordinary case—

(a) costs fixed at $750 plus the appeal filing fee will be awarded in favour of a successful appellant; and

(b) costs fixed at $750 will be awarded in favour of a successful respondent.

(3) The general rule that costs follow the event is subject to the discretion of the Court.

**Examples—**

1. When the appellant succeeds on part of, or an issue on, the appellate proceeding but fails on another.
2. When a party is guilty of misconduct in relation to the proceeding at first instance or the appellate proceeding.
3. When a party adopts an unreasonable position on the appellate proceeding.

(4) If a party intends to apply for costs in an amount other than that set out in subrule (2), that party must make an application by the commencement of the hearing of the appeal.

(5) On an application under subrule (4), the Court may fix a different amount, or order that the costs will be payable on a scale specified by the Court, that will generally apply instead of subrule (2) and regardless of which party is successful or may make any other order that the Court thinks fit.

**Examples—**

1. An application might be based on the complexity of the appellate proceeding requiring especially extensive preparation for the hearing.
2. An application might be based on the appellate proceeding being listed for an especially lengthy hearing.
3. An application might be based on the reasonable retention of senior counsel to argue the appellate proceeding.

(6) The Court may, if it thinks fit, dispense with the requirement in subrule (4) that an application for costs in an amount other than that reflected in subrule (2) must be made by the commencement of the hearing of the appeal.

# Part 4—Appeals and cases stated to the Court of Appeal: Supreme Court

## Division 1—General

### 192.1—Application of Part

(1) This Part applies to appellate proceedings to be heard by the Court of Appeal.

(2) If the Court of Appeal remits an appeal to a Judge, it is governed instead by Part 3.

### 192.2—Jurisdiction of Court of Appeal

(1) Subject to subrule (2), the appellate jurisdiction of the Supreme Court is to be exercised by the Court of Appeal if—

(a) a statutory provision so provides; or

(b) a Judge so orders.

**Notes—**

Section 42(2)(ab) of the *Magistrates Court Act 1991* provides that an appeal against a judgment by the Magistrates Court in the case of a sentence passed on the conviction of a person of an offence that is, or offences that include, a major indictable offence, lies to the Court of Appeal with the permission of the Court of Appeal.

Section 30(4) of the *Environment, Resources and Development Court Act 1993* provides that a party to any criminal proceeding before the Environment, Resources and Development Court may appeal against any judgment given in the proceeding in the

same way, and to the same extent, as an appeal may be instituted against a judgment given in a criminal action under the *Magistrates Court Act 1991*.

Section 31 of the *Environment, Resources and Development Court Act 1993* provides that a Judge may reserve any question of law arising in a proceeding for determination by the Court of Appeal.

Section 22(2)(a)(ii) and (b)(ii) of the *Youth Court Act 1993* provide that an appeal against a judgment by the Judge, other than an interlocutory judgment, and a judgment by a Magistrate in the case of an action relating to a major indictable offence of the Youth Court lies to the Court of Appeal.

Section 157 of the Procedure Act provides that an appeal against judgments identified therein lies to the Court of Appeal.

Section 153 of the Procedure Act provides that a court by which a person has been, is being or is to be tried or sentenced for an indictable offence may reserve for consideration and determination by the Court of Appeal a relevant question.

Section 173 of the Procedure Act provides that the Attorney-General, on receipt of a petition of mercy, may refer the whole case or a point arising to Court of Appeal.

Section 68 of *South Australian Employment Tribunal Act 2014* provides that an appeal against a decision of the Full Bench of the South Australian Employment Court lies to the Court of Appeal.

Section 70 of *South Australian Employment Tribunal Act 2014* provides that the Full Bench of the South Australian Employment Court may reserve any question of law arising in a proceeding for determination by the Court of Appeal.

Section 19B of the *Supreme Court Act 1935* provides that the Court of Appeal has jurisdiction to hear and determine amongst other things all appeals from a single Judge and causes and matters which are required by the rules of court, or by the express provision of any other Act, to be heard or determined by the Court of Appeal.

(2) If a Judge orders that the appellate jurisdiction of the Supreme Court is to be exercised by the Court of Appeal pursuant to subrule (1)(b), the Court of Appeal may, if it thinks fit, remit the whole or part of the appellate proceeding to a Judge for hearing and determination.

## 192.3—Constitution of Court of Appeal

Subject to rule 192.4, when the jurisdiction to hear and determine an appellate proceeding is vested in or to be exercised by the Court of Appeal, the Court of Appeal—

(a) will ordinarily be comprised of 3 Judges;

(b) may, if the Chief Justice or President of the Court of Appeal so determines, be comprised of 5 Judges; or

(c) may, if the Chief Justice or President of the Court of Appeal so determines, be comprised of 2 Judges.

## 192.4—Interlocutory and ancillary orders

(1) Subject to any statutory provision to the contrary and subrule (2), when the jurisdiction to hear and determine an appellate proceeding is vested in, or to be exercised by, the Court of Appeal, a single Judge may make interlocutory orders and other orders ancillary to the hearing and determination of the appellate proceeding under Division 10.

(2) This rule does not derogate from the power of the Court of Appeal constituted under rule 192.3 to make interlocutory orders and other orders ancillary to the hearing and determination of the appellate proceeding.

### 192.5—Variation of times

The Principal Registrar on an application to Registrar in accordance with rule 16.2(5), or the Court on an interlocutory application in accordance with rule 39.1, may vary a time limit prescribed in this Part.

## Division 2—Institution of appeal

### 193.1—Time to appeal

(1) Subject to subrule (2), an appeal must be instituted within 21 days after the date of the judgment, decision or order the subject of the appeal.

**Note—**

Under rule 40.2, unless the Court orders otherwise, an order or judgment takes effect, when the Court pronounces it orally in court, at the end of the hearing when the pronouncement is made or, if the Court pronounces it other than at a hearing, when the Court communicates its terms to the parties. Time to appeal begins to run when the order or judgment takes effect under those rules. Time does not begin to run if the Court merely delivers reasons for judgment but does not yet make orders.

(2) If leave to appeal is sought under rule 196.3, an appeal must be instituted within the later of the following—

(a) 21 days after the making of the judgment, order or decision the subject of the appeal; or

(b) 7 days after the grant or refusal (as the case may be) of leave by the Judge whose decision is subject to the application for leave to appeal.

(3) If an extension of time to appeal is required—

(a) the appeal must be instituted in the ordinary way in accordance with rule 193.2;

(b) the notice of appeal must seek the necessary extension of time; and

(c) the application for an extension of time must be supported by an affidavit explaining why the appeal was not instituted earlier and within time.

(4) The Court may order that the question of an extension of time to appeal be heard before the hearing of the appeal.

(5) Unless an order is made under subrule (4), an application for an extension of time to appeal and the appeal will be heard at the same time.

### 193.2—Institution of appeal

(1) An appeal must be instituted by filing a notice of appeal in the prescribed form setting out (in accordance with the prescribed form)—

(a) the forum of the appellate Court;

(b) the statutory provision under which the appeal is brought;

(c) details of the judgment or order the subject of the appeal;

(d) the grounds of appeal;

(e) the orders sought on appeal;

(f) if leave to appeal is sought—the grounds on which it is sought; and

(g) if an extension of time is sought—the grounds on which it is sought.

**Prescribed forms—**

**Conviction appeal**

Form 183A Notice of Appeal against Conviction, Acquittal, Antecedent Decision or Mental Impairment Judgment

Form 183B Notice of Second or Subsequent Appeal against Conviction

Form 183S Appeal Grounds (part of Notice of Appeal)

**Sentence appeal**

Form 183C Notice of Appeal against Sentence or Mental Impairment Disposition

Form 183S Appeal Grounds (part of Notice of Appeal)

**Miscellaneous appeal**

Form 183D Notice of Appeal against Other Decision

Form 183S Appeal Grounds (part of Notice of Appeal)

(2) The appellant must join as a respondent in the appellate proceeding any party to the proceeding in which the judgment the subject of the appeal was made, unless that party has no interest in the appellate proceeding.

(3) The Court may order the addition or removal of a person as a party to an appellate proceeding.

(4) Unless the Court otherwise orders, an appellant may not rely on grounds that are not stated in the notice of appeal.

(5) If leave to appeal is required, subject to rule 196.3, the appeal must be instituted in the ordinary way in accordance with this rule and the notice of appeal must seek the necessary leave.

(6) If a notice of appeal seeking leave to appeal is filed—

(a) the institution of the appeal is conditional on leave to appeal being granted; and

(b) if leave to appeal is refused, the appeal lapses.

## 193.2A—Information Sheet

(1) The appellant must serve on each other party a draft information sheet in the prescribed form at the same time as filing a notice of appeal under rule 193.2.

**Prescribed forms—**

Form 182A Information Sheet

(2) The respondent must serve on the appellant any changes or additions it seeks to be added to the information sheet not more than 7 days after the draft information sheet has been served under subrule (1).

(3) The appellant must file and serve on each party a completed information sheet not more than 14 days after the draft information sheet has been served under subrule (1).

## 193.3—Service of notice of appeal

(1) The appellant must serve the notice of appeal on each other party to the appellate proceeding as soon as practicable.

(2) The appellant must serve a copy of the notice of appeal on the registrar or other proper officer of the court whose judgment is subject to the appeal as soon as practicable.

### 193.4—Documents and information from court below

(1) The Principal Registrar may, and when directed by the Court must, request the court whose judgment is subject to the appeal to transmit to the Court any documents relevant to the appeal by physical or electronic means (as specified).

(2) Unless the Principal Registrar otherwise specifies, documents relevant to the appeal the subject of a request comprise—

(a) all documents filed with the court below;

(b) any transcript of evidence or hearing;

(c) any other evidentiary material; and

(d) the judgment, order or decision subject of the appeal and any reasons given for it.

(3) The registrar or proper officer of the court below must comply with the request as soon as practicable.

## Division 3—Response to appeal

### 194.1—Notice of acting

Unless the respondent is the Commissioner of Police or the Director, a respondent to an appeal must file a notice of acting in the prescribed form within 7 days of service of the notice of appeal.

**Note—**

Rule 24.2 and Chapter 2 Part 6 Division 4, Subdivision 1 Subdivision 1—Obligation to in relation to legal representation and address for service apply to appellate proceedings.

### 194.2—Institution of cross appeal

(1) Another party to the appeal may institute an appeal against the same judgment, order or decision by filing a notice of cross appeal in the prescribed form, within 14 days after service of the notice of appeal on that party.

**Prescribed forms—**

**Conviction cross appeal**

Form 184A Notice of Cross Appeal against Conviction, Acquittal, Antecedent Decision or Mental Impairment Judgment

Form 184S Cross Appeal Grounds (part of Notice of Cross Appeal)

**Sentence cross appeal**

Form 184B Notice of Cross Appeal against Sentence or Mental Impairment Disposition

Form 184S Cross Appeal Grounds (part of Notice of Cross Appeal)

**Miscellaneous cross appeal**

Form 184C Notice of Cross Appeal against Other Decision

Form 184S Cross Appeal Grounds (part of Notice of Cross Appeal)

(2) If leave to appeal against sentence or a decision to defer sentencing is granted on an appeal by a defendant or youth and the Director wishes to appeal as of right against the sentence or decision under section 157(2) of the Procedure Act, the Director must file a notice of cross appeal in the prescribed form within 7 days after the grant of leave.

(3) Rule 193.2(3) to (6) and rule 193.3 apply, with any necessary changes, in respect of a cross appeal.

(4) If leave to appeal is required, Division 4 or Division 5 (as the case may be) applies, with any necessary changes, in respect of a cross appeal.

(5) If an extension of time to appeal is required, rule 193.1(3) to (5) applies, with any necessary changes, in respect of a cross appeal.

### 194.3—Notice of alternative contention

(1) If a party wishes to contend that a decision subject to appeal or cross appeal should be upheld for reasons other than those given by the court below, that party must file a notice of alternative contention in the prescribed form setting out the grounds on which the party asserts that the decision should be upheld, within 14 days after service of the notice of appeal or notice of cross appeal (as the case may be) on that party.

**Prescribed form—**

Form 185 Notice of Alternative Contention

(2) Unless the Court otherwise orders, a party may not rely on grounds on which the party asserts that a decision should be upheld for reasons other than those given by the court below that are not stated in a notice of alternative contention.

(3) If an extension of time to file a notice of alternative contention is required, rule 193.1(3) to (5) applies, with any necessary changes, in respect of a notice of alternative contention.

(4) A party who files a notice of alternative contention must serve the notice of alternative contention on each other party to the appellate proceeding as soon as practicable.

## Division 4—Leave to appeal from judgment at first instance
## Subdivision 1—General

### 195.1—Application of Division

This Division applies to appeals against a judgment, order or decision at first instance.

### 195.2—When required

(1) Subject to any statutory provision to the contrary, leave to appeal is required—

(a) if a statutory provision so provides; or

(b) against an ancillary order.

**Notes—**

Section 157 of the Procedure Act provides that permission is required to appeal—

(a) against a conviction on a ground other than a ground of law (unless a certificate of the trial Judge is obtained);

(b) against sentence or a decision to defer sentencing;

(c) against an acquittal by a Judge alone or by direction of the Judge;

(d) by the Director against an antecedent decision on a ground other than a ground of law; or

(e) by a defendant against an antecedent decision.

Section 161(1) and (2) of the Procedure Act provide that a person against whom an ancillary order has been made may, in accordance with rules of court, appeal to the Court of Appeal against that order and the Attorney-General may, in accordance with rules of

court, appeal to the Court of Appeal against an ancillary order or a decision not to make an ancillary order.

Section 42(2)(ab) of the *Magistrates Court Act 1991* provides that an appeal against a judgment by the Magistrates Court in the case of a sentence passed on the conviction of a person of an offence that is, or offences that include, a major indictable offence, lies to the Court of Appeal with the permission of the Court of Appeal.

Section 68 of *South Australian Employment Tribunal Act 2014* provides that an appeal against a decision of the Full Bench of the South Australian Employment Court lies to the Court of Appeal with the permission of the Court of Appeal.

(2) If leave to appeal is granted, but it later becomes evident that it ought not to have been granted, the Court may revoke the grant of leave.

## Subdivision 2—Defence appeals

### 195.3—Certificate of trial judge

A certificate of the trial Judge under section 157(1)(a)(ii) of the Procedure Act must be in the prescribed form and be filed with the notice of appeal.

**Prescribed form—**

Form 155 Certificate of Trial Judge

**Note—**

If a certificate is issued in respect of all grounds of appeal, the proceeding will generally be listed for the next available callover under rule 200.1.

### 195.4—Response to leave application

(1) Unless the Court otherwise orders, the respondent must, within 14 days of filing of the notice of appeal, file and serve on the other parties to the appeal a response to the application for leave to appeal in the prescribed form.

**Prescribed form—**

Form 186 Prosecution Response to Application for Leave to Appeal

(2) A response to an application for leave to appeal must—

(a) identify in respect of each ground, other than a ground the subject of a certificate under rule 195.3, whether the Director—

(i) concedes that the ground is reasonably arguable so as to justify a grant of leave;

(ii) concedes that the ground does not require leave;

(iii) accepts that the leave to appeal on that ground should be referred to the Court of Appeal given a concession made as to leave to appeal in respect of another ground; or

(iv) contends that the ground is not reasonably arguable and leave should be refused;

(b) provide (after consultation with the lawyer for the appellant) a joint estimate of the time required for the hearing of the appeal;

(c) provide (after consultation with the lawyer for the appellant) dates jointly preferred by counsel for the hearing of the appeal; and

(d) identify any documents sought to be added to the standard documents contained in the appeal book.

**Notes—**

If the respondent concedes that all grounds of appeal are reasonably arguable or leave is not required, the proceeding will generally be listed for the next available callover under rule 200.1, but the Court retains a discretion to make an order in chambers that rule 195.5 still applies.

An example of an additional document would be an exhibit of which a physical copy is required.

(3) After the filing of the response to the application for leave to appeal, the Court may—

(a) list the matter for the next available callover under rule 200.1;

(b) order written submissions on leave to appeal under rule 195.5;

(c) order that the application for leave to appeal on one or more grounds be listed for separate hearing and determination;

(d) order that the application for leave to appeal on one or more grounds be heard at the same time as the appeal; or

(e) make other orders in relation to the hearing or determination of leave to appeal.

## 195.5—Written submissions on leave to appeal

(1) This rule apples if the Court orders that written submissions on leave to appeal be filed.

(2) The appellant must, within 7 days of an order that written submissions be filed, file written submissions in the prescribed form identifying why the grounds of appeal are reasonably arguable and why leave to appeal should be granted.

**Prescribed form—**

Form 187 Written submissions

(3) The respondent must, within 7 days of the filing of the appellant's written submissions, file written submissions in the prescribed form in response to the appellant's written submissions.

**Prescribed form—**

Form 187 Written submissions

(4) Written submissions should not exceed 5 pages unless the issues relevant to leave to appeal are particularly lengthy or complex.

(5) After filing of the written submissions, the Court may—

(a) list the matter for the next available callover under rule 200.1;

(b) order that the application for leave to appeal on one or more grounds be listed for separate hearing and determination;

(c) order that the application for leave to appeal on one or more grounds be heard at the same time as the appeal;

(d) grant or refuse leave to appeal on some or all grounds; or

(e) make other orders in relation to the hearing or determination of leave to appeal.

## Subdivision 3—Prosecution appeals

### 195.6—Hearing and determination of leave to appeal

After the filing of a notice of appeal, unless the Court otherwise orders, the Court will list the matter for the next available callover under rule 200.1.

## Subdivision 4—Second or subsequent appeals

### 195.7—Hearing and determination of leave to appeal

(1) After the filing of a notice of appeal, unless the Court otherwise orders, the Court will list the matter for the next available callover under rule 200.1.

(2) The application for leave to appeal will be heard and determined by the Court of Appeal constituted under rule 192.3.

## Division 5—Leave to appeal from judgment on appeal

### 196.1—Application of Division

This Division applies to all appeals against a judgment, order or direction of a Judge of the Supreme Court except those governed by Division 4.

### 196.2—When required

Subject to any statutory provision to the contrary, leave to appeal is required—

(a) if a statutory provision so provides;

(b) against a judgment on appeal against a judgment of a court of first instance; or

(c) against an interlocutory order or direction.

**Notes—**

Section 50(4)(a)(ii) of the *Supreme Court Act 1935* provides that an appeal lies only with the permission of the court from a judgment given by a single Judge on appeal from a judgment of the Magistrates Court.

Section 50(4)(b) of the *Supreme Court Act 1935* provides that an appeal lies only with the permission of the court if the rules provide that the appeal lies by permission of the court.

### 196.3—Leave sought from Judge at first instance

(1) An application for leave to appeal against a judgment, order or direction of a Judge to which this Division applies may be made in the first instance to that Judge by oral application—

(a) if the judgment, order or direction is made in the presence of the parties—when the order is made; or

(b) in any other case—at the next hearing of the proceeding.

(2) If leave to appeal is—

(a) refused—a party may institute an appeal by filing a notice of appeal in accordance with rule 193.2, seeking leave to appeal and setting out the grounds on which leave should be granted; or

(b) granted—the party may institute an appeal by filing a notice of appeal in accordance with rule 193.2.

(3) To avoid doubt, a party may elect not to seek leave to appeal under this rule and instead proceed directly under rule 193.2 and seek leave from the Court of Appeal.

## 196.4—Notice of appeal seeking leave to appeal

Subject to rule 196.3, when leave to appeal is required, the appeal must be instituted in the ordinary way in accordance with rule 193.2 and the notice of appeal must seek the necessary leave.

**Prescribed forms—**

Form 183D Notice of Appeal against Other Decision

Form 183S Appeal Grounds (part of Notice of Appeal)

## 196.5—Written submissions on leave to appeal

(1) This rule applies when the question of leave to appeal to the Court of Appeal is to be determined by the Court of Appeal.

(2) A party who seeks leave to appeal to the Court of Appeal must, within 14 days of the filing of the notice of appeal—

(a) file written submissions in the prescribed form identifying why the grounds of appeal are reasonably arguable and why leave to appeal should be granted;

**Prescribed form—**

Form 102 Written Submissions

(b) attach to the written submissions—

(i) the judgment, order or decision in the court of first instance the subject of the appeal;

(ii) the reasons for judgment given in respect of that judgment, order or decision;

(iii) the judgment of the Judge of the Supreme Court the subject of the appeal; and

(iv) the reasons for judgment given in respect of that judgment.

(3) Unless the Court otherwise orders, the party must not file an affidavit or any other evidence on the application for leave to appeal.

(4) A party who files written submissions under subrule (2) must serve the written submissions and attachments on each other party to the appeal as soon as practicable.

(5) Unless the Court otherwise orders, the other parties must not file any evidence or submissions on the application for leave to appeal.

## 196.6—Determination of leave to appeal

(1) This rule applies when written submissions have been filed under rule 196.5.

(2) The Court may obtain or refer to the file for the proceeding in the court of first instance or the appellate proceeding before the Judge.

(3) The Court will generally determine the application for leave to appeal without hearing further from the parties and will not make an order as to costs of the application for leave to appeal.

(4) The Court may—

(a) order that the application for leave to appeal be listed for separate hearing and determination;

(b) order that the application for leave to appeal be heard at the same time as the appeal;

(c) invite a party to produce specific documents or make submissions on a specific matter; or

(d) make any other or further order.

(5) Unless the Court refuses leave to appeal under subrule (3), the Court will generally list the matter for the next available callover under rule 200.1.

## Division 6—Institution of case stated

### 197.1—Case stated by court

(1) A court which reserves a question of law for the consideration of the Court of Appeal must—

(a) prepare a document in the prescribed form containing a statement of the background and relevant facts on the basis of which the question of law is to be determined and a statement of the question to be determined;

**Prescribed form—**

Form 159 Case Stated

(b) designate a party to the proceeding who is to be regarded as the appellant on the case stated and have the carriage of it; and

(c) designate which parties are to be the respondents to the appellate proceeding.

(2) The Court may request the court of first instance to forward to the Court the whole or part of the file for the proceeding including any transcript of hearings and evidence in the custody of that court.

### 197.2—Application for reservation of question

(1) An application—

(a) by the Attorney General or the Director for an order that a court refer a relevant question to the Court of Appeal for consideration and determination under section 153(6)(a) of the Procedure Act;

(b) by a person who has obtained permission under section 153(6)(b)(ii) of the Procedure Act from the court of first instance to apply for an order that the court of first instance refer a relevant question to the Court of Appeal for consideration and determination under section 153(6)(b) of the Procedure Act; or

(c) by any other person for leave to make an application to the Court of Appeal for an order that a court refer a relevant question to the Court of Appeal for consideration and determination under section 153(6)(b)(ii) of the Procedure Act,

must be made by originating application in the prescribed form.

**Prescribed form—**

Form 193 Originating Application for Reservation of Question to Court of Appeal

(2) The appellant must file with the originating application a draft case stated in the prescribed form.

**Prescribed form—**

Form 159 Case Stated

(3) The appellant must serve the originating application and draft case stated on each other party to the appellate proceeding as soon as practicable.

(4) After filing of the originating application, the Court will generally list the matter for the next available callover under rule 200.1.

### 197.3—Institution of case

(1) The party designated as the appellant under rule 197.1 must file in the Court a notice of case stated in the prescribed form.

**Prescribed form—**

Form 192 Notice of Case Stated

(2) The Court may order the addition or removal of a person as a party to a case stated.

(3) The appellant must serve the notice of case stated on each other party to the appellate proceeding as soon as practicable.

(4) After filing of the notice of case stated, the Court will generally list the matter for the next available callover under rule 200.1.

## Division 7—Institution of case on petition referral

### 198.1—Case on referral of petition of mercy

(1) If the Attorney-General refers the whole case or a point arising on a petition of mercy to the Court of Appeal, the petitioner must file and serve on the Director a notice of referral of petition of mercy in the prescribed form within 21 days of the referral.

**Prescribed form—**

Form 194 Notice of Reference on Petition of Mercy

(2) On a petition referral, the petitioner is designated as the appellant and the Director is designated as the respondent.

(3) The Court may order the addition or removal of a person as a party to a petition referral.

(4) The appellant must serve the notice of referral of petition of mercy on each other party to the appellate proceeding as soon as practicable.

(5) The Court may request the court of first instance to forward to the Court the whole or part of the file for the proceeding in which the conviction the subject of the petition was recorded, including any transcript of hearings and evidence in the custody of that court.

(6) The provisions of these Rules that apply to an appeal, except in relation to leave to appeal, apply also with any necessary modifications to the petition referral.

(7) After filing of the notice of referral of petition of mercy, the Court will generally list the matter for the next available callover under rule 200.1.

## Division 8—Institution of retrial application

### 199.1—Application

(1) A retrial application must be instituted by filing a notice of application for retrial in the prescribed form.

**Prescribed form—**

Form 195 Notice of Application for Retrial

(2) The appellant must join as a respondent in the appellate proceeding the person who is sought to be retried.

(3) The Court may order the addition or removal of a person as a party to a retrial application.

(4) The appellant must serve the notice of application for retrial on each other party to the appellate proceeding as soon as practicable.

(5) The Court may request the court of first instance to forward to the Court the whole or part of the file for the proceeding in which the acquittal the subject of the application was recorded, including any transcript of hearings and evidence in the custody of that court.

(6) The provisions of these Rules that apply to an appeal, except in relation to leave to appeal, apply also with any necessary modifications to a retrial application.

(7) After filing of the notice of application for retrial, the Court will generally list the matter for the next available callover under rule 200.1.

## Division 9—Callover

### 200.1—Convening callover

(1) The Court will conduct regular general callovers of extant appellate proceedings in the Court of Appeal for the purpose of—

(a) listing appellate proceedings or applications for leave to appeal for hearing before the Court of Appeal;

(b) hearing and determining, or making orders for hearing and determining applications for leave to appeal, applications for an extension of time to appeal, bail applications or applications to attend an appellate hearing; or

(c) making interlocutory orders under rule 201.1 (including for pre-hearing steps).

(2) The Court may, if it thinks fit, convene a special callover of one or more extant appellate proceeding for a purpose referred to in subrule (1).

(3) A callover will generally be conducted by a Judge but may, if the Court thinks fit, be conducted by 2 or 3 Judges.

### 200.2—Conduct of callover

(1) At a callover—

(a) if an appellate proceeding is an appeal and an issue of leave to appeal has not already been determined, the Court may—

(i) order that the application for leave to appeal on one or more grounds be listed for separate hearing and determination;

(ii) order that the application for leave to appeal on one or more grounds be heard at the same time as the appeal;

(iii) grant leave to appeal on some or all grounds; or

(iv) refuse leave to appeal on some or all grounds; and

(b) subject to any orders previously made, the Court will generally—

(i) list the appellate proceeding for hearing; and

(ii) if leave to appeal is to be heard and determined at the same time as the appellate proceeding—list the application for leave to appeal for hearing.

(2) Counsel briefed to appear at the hearing of the appellate proceeding (or, if the attendance of a party's counsel is not practicable, that party's solicitor) must attend at the callover.

## Division 10—Interlocutory steps

### 201.1—Interlocutory orders

(1) A Judge may, at a hearing in court or in chambers, make interlocutory or ancillary orders—

(a) on their own initiative; or

(b) on the application of any person in relation to an appellate proceeding.

(2) For example, a Judge may make orders—

(a) concerning the constitution of an appellate proceeding;

(b) relating to the filing, service or amendment of an appellate document;

(c) granting or refusing leave to appeal or an extension of time to appeal;

(d) determining how an application for leave to appeal or an extension of time to appeal is to be determined by the Court of Appeal;

(e) striking out an appellate document or summarily dismissing an appellate proceeding if—

(i) the appellate proceeding is incompetent or has not been validly commenced;

(ii) none of the grounds has a reasonable prospect of succeeding; or

(iii) the appellant has not obeyed these Rules or any order made under them;

(f) striking out any ground that does not have a reasonable prospect of succeeding or does not comply with these Rules or any order made under them;

(g) barring a respondent from taking part in an appellate proceeding if they have not obeyed these Rules or any order made under them;

(h) for the identification of issues in an appellate proceeding;

(i) for a report to be prepared by the judicial officer who made a judgment, order or decision the subject of the appellate proceeding concerning any matter relevant to the appellate proceeding;

(j) relating to bail;

(k) relating to the mode of appearance of a person in custody or on bail at an appellate hearing;

(l) relating to evidence that may be adduced in an appellate proceeding;

(m) for the conduct of and preparation for hearing of an appellate proceeding;

(n) listing an appellate proceeding, application for leave to appeal, application for an extension of time to appeal or any other application or issue for hearing before the Court of Appeal;

(o) fixing or modifying the time for parties to take a step in an appellate proceeding; or

(p) modifying or enforcing compliance with these Rules.

(3) A Judge hearing an application under this rule may receive and hear evidence for the purpose of determining the application.

(4) The powers referred to in this rule may, if the Court of Appeal (constituted under rule 192.3) thinks fit, be exercised by the Court of Appeal.

## 201.2—Rehearing if Judge refuses application for leave or extension of time to appeal

(1) This rule applies if a Judge refuses an application for leave to appeal or an extension of time to appeal under rule 201.1.

(2) The Registrar must cause the applicant to be notified of a refusal by a Judge of an application to which this rule applies in the prescribed form.

**Prescribed form—**

Form 189 Notice of Judge's Decision to Refuse Application

(3) The applicant may, within 14 days after the date of the notice referred to in subrule (2), request that the application be referred to the Court of Appeal constituted of two or three members by filing an application in the prescribed form.

**Prescribed form—**

Form 190 Application for Determination by Court of Appeal

(4) The Court may make orders under rule 201.1 relating to the hearing and determination of an application the subject of a request under subrule (3) for—

(a) leave to appeal; or

(b) an extension of time to appeal.

## 201.3—Amendment of appellate document

A party may amend an appellate document (including to introduce an additional party into an appellate proceeding) with leave of the Court.

## 201.4—Report of trial Judge

(1) When a notice of appeal, notice of referral of a petition of mercy or notice of retrial application is filed, the Principal Registrar will cause an enquiry to be made of the trial or sentencing Judge or Magistrate at first instance as to whether they wish to provide a written report concerning any matter relevant to the appellate proceeding.

(2) When the grounds of appeal have been settled, the Principal Registrar will cause an enquiry to be made of the trial or sentencing Judge or Magistrate at first instance as to whether they wish to provide a written report concerning any matter relevant to the appellate proceeding.

(3) The Principal Registrar will, for the purpose of providing a written report, cause the trial or sentencing Judge or Magistrate at first instance to be provided with a copy of or link or reference to the notice of appeal or notice of referral of petition of mercy together with such documents and information as they may require.

(4) The trial or sentencing Judge or Magistrate may, and if requested by the Court of Appeal or a Judge shall, provide a report to the Court of Appeal.

(5) Upon receipt of a report from the trial or sentencing Judge or Magistrate, the Principal Registrar will cause a copy of the report to be provided to the parties to the appeal.

### 201.5—Witnesses before Court of Appeal

(1) An application under section 166(b) of the Procedure Act for an order requiring a witness to be examined for the purpose of an appellate proceeding must be made by an interlocutory application in accordance with rule 39.1.

(2) The application must identify—

(a) the name and address of the witness;

(b) the grounds on which it is sought to have the witness examined; and

(c) on what matters it is proposed to examine the witness.

(3) Unless the Court otherwise orders, the application must be filed at the same time as the notice initiating the appellate proceeding.

(4) The Court may, at any time, make such orders as it thinks fit with regard to—

(a) the sealing and service upon any person of a subpoena or order made under section 166(b) of the Procedure Act; and

(b) the procedure to be followed for the examination of a witness pursuant to section 166(b) of the Procedure Act.

### 201.6—Discontinuance of appellate proceeding

(1) An appellant may discontinue an appellate proceeding (other than a case stated) by filing a notice of discontinuance in the prescribed form.

**Prescribed form—**

Form 191 Notice of Discontinuance of Appeal

(2) Upon a notice of discontinuance being filed, the appellate proceeding will be deemed to have been dismissed by the Court.

(3) A notice of discontinuance may be withdrawn with leave of the Court.

## Division 11—Listing for hearing

### 202.1—Listing for hearing

(1) An appellate proceeding will generally be listed for hearing at a callover but may be listed at another hearing or administratively.

(2) If a party is not present when an appellate proceeding is listed for hearing, the Court will give notice of the listed hearing date in the prescribed form.

**Prescribed form—**

Form 196 Notice of Appeal Hearing

Form 197 Notice of Hearing of Application for Leave to Appeal

## Division 12—Preparation for hearing

### 203.1—Appeal book

(1) The Court will prepare an appeal book in consultation with the parties.

(2) An appeal book on a conviction appeal will contain—

(a) the current version of the Information;

(b) a list of witnesses;

(c) a list of exhibits;

(d) if trial transcript is not available electronically, the trial transcript;

(e) any exhibits of which a physical copy is required;

(f) the summing up for a jury trial or the reasons for verdict for a Judge alone or magistrate trial;

(g) the formal order or record of outcome for the judgment, order or decision at first instance the subject of the appeal;

(h) if the appeal is against a judgment on appeal—

(i) the reasons for judgment on appeal; and

(ii) the formal order or record of outcome for the judgment on appeal;

(i) the current version of the notice of appeal;

(j) the current version of any notice of cross appeal;

(k) the current version of any notice of alternative contention;

(l) the record of outcome for any orders made in the appeal that are required (for example, an order granting leave to appeal);

(m) any new evidence sought to be adduced on appeal; and

(n) any other material determined by the Court.

(3) An appeal book on a sentence appeal will contain—

(a) the current version of the Information;

(b) an antecedent report;

(c) any other material before the sentencing Judge or Magistrate;

(d) any transcript of sentencing hearings;

(e) the sentencing remarks;

(f) the formal order or record of outcome for the order at first instance the subject of the appeal;

(g) if the appeal is against a judgment on appeal—

(i) the reasons for judgment on appeal; and

(ii) the formal order or record of outcome for the judgment on appeal;

(h) the current version of the notice of appeal;

(i) the current version of any notice of cross appeal;

(j) the current version of any notice of alternative contention;

(k) the record of outcome for any orders made in the appeal that are required (for example, an order granting leave to appeal); and

(l) any other material determined by the Court.

(4) An appeal book for a case stated will contain—

(a) the current version of the Information;

(b) the case stated; and

(c) any other material determined by the Court.

(5) An appeal book must be paginated and must contain a filing page and a table of contents showing each document and its page number .

## 203.2—Written submissions, summaries of evidence, chronologies and lists of authorities

(1) Each party who intends to make submissions at the hearing of an appellate proceeding—

(a) must prepare written submissions in the prescribed form;

(b) must prepare a list of authorities in the prescribed form; and

(c) may prepare a summary of evidence or chronology or both.

**Prescribed forms—**

Form 187 Written Submissions

Form 187A Written Submissions of Appellant (sentence)

Form 187B Written Submissions of Appellant DPP (sentence)

Form 187C Written Submissions of Respondent (sentence)

Form 188 List of Authorities

(2) Written submissions must—

(a) in respect of each ground of appeal or issue—set out succinctly each proposition advanced by the party together with supporting references to the reasons for judgment or sentencing remarks, evidence, legislation or authorities;

(b) to the extent that a party challenges a factual finding—identify the finding that was or was not made, why it is erroneous, the finding that should have been made and the evidence relied on in support of the challenge;

(c) to the extent that a party challenges a statement of law—identify the statement of law, why it is erroneous, the correct statement of law and any authorities relied on in support of the challenge;

(d) to the extent that a party challenges the reasoning of a judicial officer—identify the reasoning, why it is erroneous and the correct reasoning.

(3) Written submissions should not, other than in exceptional circumstances, set out passages from the reasons for judgment or sentencing remarks, evidence, legislation or authorities, but should merely identify them.

(4) If a notice of appeal includes a ground of appeal that the verdict is unreasonable or cannot be supported having regard to the evidence, the appellant must file and serve a written summary of the relevant evidence and a chronology (including references to transcript pages and exhibits) at the same time as filing the written submissions.

(5) Unless the Court otherwise orders, the appellant must file and serve on each other party to the appellate proceeding written submissions, a list of authorities and any summary of evidence or chronology at least 6 business days before the listed hearing date.

(6) Unless the Court otherwise orders, each other party must file and serve on each other party to the appellate proceeding written submissions, a list of authorities and any summary of evidence or chronology at least 4 business days before the listed hearing date.

(7) The appellant may file and serve on each other party to the appellate proceeding written submissions in reply at least 2 business days before the listed hearing date.

(8) Written submissions must not, without the leave of the Registrar or the Court, exceed 20 pages for submissions in chief, or 10 pages for submissions in reply, and must comply with the Principal Registrar's prescribed format requirements.

(9) The Principal Registrar may, on application by a party in accordance with rule 16.2(5), vary the page limit for written submissions.

## Division 13—Hearing and determination of appellate proceedings

### 204.1—Skeleton of oral argument

(1) A party may, and if the Court orders must, lodge with the Court a skeleton outline of the propositions that the party intends to advance in oral argument.

(2) A skeleton outline must—

(a) be filed or given to the Court no later than the commencement of the hearing of the appellate proceeding;

(b) be given to each other party at the same time as it is given to the Court;

(c) be no longer than 3 pages;

(d) state propositions sequentially in the order to be addressed in oral argument; and

(e) cross-reference the party's written submissions where applicable.

### 204.2—Hearing

(1) Subject to any statutory provision to the contrary—

(a) an appeal is to be by way of rehearing;

(b) the Court may draw inferences from evidence adduced in the proceeding at first instance; and

(c) the Court may hear further evidence in its discretion.

(2) The Court may, if it considers that it is in the interests of justice to do so, determine an appellate proceeding on the merits notwithstanding a failure of a party to raise or properly state a contention in an appellate document or written submissions.

(3) The Court may, if it thinks fit and subject to any statutory provision to the contrary, reformulate the question reserved on a case stated to better reflect the question of law arising on the case stated.

## 204.3—Determination

(1) Subject to any statutory provision to the contrary, on an appeal the Court may—

(a) set aside or amend the judgment or order the subject of the appellate proceeding;

(b) substitute the Court's own judgment or order;

(c) remit the matter for rehearing or reconsideration;

(d) dismiss the appeal;

(e) make orders for the costs of the appeal or costs at first instance; or

(f) make such other or further order for the disposition of the appeal as it thinks fit.

(2) Subject to any statutory provision to the contrary, the Court may, in addition to answering the question of law reserved on a case stated—

(a) make orders for the costs of the appellate proceeding or costs at first instance; or

(b) make such other or further order for the disposition of the appellate proceeding as it thinks fit.

(3) When the Court determines an appellate proceeding (including refusing leave to appeal), the Principal Registrar must—

(a) cause the registrar or other proper officer of the court of first instance to be given written notice of the Court's decision together with any written reasons given by the Court; and

(b) cause any documents or materials transmitted to the Court by the registrar or proper officer of the court of first instance (other than documents and materials forwarded in electronic form) for the purpose of the appellate proceeding, to be returned.

# Schedule 1—Lower Courts Criminal Scale of Costs

(1) The Lower Courts Criminal costs scale in respect of work done from the commencement date to 31 December 2022 is set out in the following tables.

| **Table 1 – Professional Fees** | | | |
|---|---|---|---|
| **Item** | **Description** | **Amount if represented by solicitor** | **Amount if represented by non-legally qualified person** |
| 1 | Instructions, including all preparation for trial and attendances up to, but not including attendance at a Pre-Trial Conference | $1,160 | $290 |
| 2 | All aspects not otherwise specified from Pre-Trial Conference to Trial, including proofing witnesses, advice or evidence and law (solicitor and counsel) and delivering brief to counsel. | $1,160 | $210 |
| 3 | Attendance at pre-trial conference | $320 | $80 |
| 4 | Attendance at hearing (see note 2 below) | $120 | $35 |
| 5 | Attendance where detailed argument is necessary | $210 | $45 |
| 6 | Arranging attendance of witnesses (including issue and service of summons if necessary) - per witness | $110 | Nil |
| | **Counsel fees** | | |
| 7 | Fee on brief, to include attendance for plea or withdrawal (if separate counsel briefed) | $1,050 | $260 |
| 8 | Each day | $1,580 | $390 |

Notes to Table 1:

1 The fees set out in items 1 and 2 of Table 1 cover all necessary attendances and preparatory work for a trial (other than attendance at a pre-trial conference). Where an attendance is wasted because of default by one or other party, an order should be sought and made at that hearing.

2 The fee set out in item 4 of Table 1 should be used in case of default by one or other party.

| Table 2 - Witness fees and disbursements | | |
|---|---|---|
| **Item** | **Description** | **Amount** |
| | **Witness Fees** | |
| 1 | Professional scientific or other expert witnesses per day | $1,050 or such amount ordered by the Court |
| 2 | Other adult person per day | $380 |
| 3 | Persons under 18 years of age per day | $160 |
| 4 | Travel expenses | Where the witness is normally resident more than 50 km from the trial Court:<br>(a) at the rate of 90 cents per km; or<br>(b) the least expensive return air fare; or<br>(c) whichever is the lesser or the cheapest combination of both (a) and (b). |
| 5 | Accommodation expenses | In the discretion of the taxing officer where the witness is required to be absent from the witness's normal place of residence overnight for accommodation and:<br>(a) sustenance per night $300; or<br>(b) such larger amounts allowed by the Court at the time of, or before, judgment |
| | **Disbursements** | |
| 6 | Photocopying | 68 cents per page |
| 7 | ISD calls | The actual cost. |
| 8 | Expert Reports | $1,050 or such other amount ordered by the Court |
| 9 | Other | All Court fees, search fees, and other fees and payments to the extent to which they have been properly and reasonably incurred and paid; but excluding the usual and incidental expenses and overheads of a legal practice and in particular excluding postage, telephone charges (non STD) and courier expenses. |

Notes to Table 2:

1 If a witness is released before or is required to first attend after the luncheon break on any day, half a day will be allowed.

2 Fees for non-legally qualified people are for attendances only.

3 This scale is for use in making orders about costs as between party and party.

4 The costs allowed in this scale do not include Goods and Services Tax (GST) which is to be added except in the following circumstances:

The GST should not be included in a claim for costs in a party/party Bill of Costs if the receiving party is able to obtain an input tax credit. If the receiving party is able to obtain an input tax credit for a proportion of GST only, only the portion which is not eligible for credit should be claimed in the party/party bill.

(2) The Lower Courts Criminal costs scale in respect of work done on or after 1 January 2023 is set out in the following tables.

**Table 1 – Scale of Costs – General**

| Item | Description | Amount if represented by solicitor | Amount if represented by non-legally qualified person |
|---|---|---|---|
| 1 | Instructions, including all preparation for trial and attendances up to, but not including attendance at a Pre-Trial Conference | $1,210 | $310 |
| 2 | All aspects not otherwise specified from Pre-Trial Conference to Trial, including proofing witnesses, advice or evidence and law (solicitor and counsel) and delivering brief to counsel. | $1,210 | $220 |
| 3 | Attendance at pre-trial conference | $330 | $80 |
| 4 | Attendance at hearing (see note 2 below) | $120 | $40 |
| 5 | Attendance where detailed argument is necessary | $220 | $50 |
| 6 | Arranging attendance of witnesses (including issue and service of summons if necessary) - per witness | $110 | |
| | **Counsel fees** | | |
| 7 | Fee on brief, to include attendance for plea or withdrawal (if separate counsel briefed) | $1,100 | $280 |
| 8 | Each day | $1,650 | $410 |

Notes to Table 1:

1 The fees set out in items 1 and 2 of Table 1 cover all necessary attendances and preparatory work for a trial (other than attendance at a pre-trial conference).

Where an attendance is unnecessary because of default by one or other party, an order should be sought and made at that hearing.

2 The fee set out in item 4 of Table 1 should be used in case of default by one or other party.

| **Table 2 – Witness Fees and disbursements** | | |
|---|---|---|
| **Item** | **Description** | **Amount** |
| | **Witness Fees** | |
| 1 | Professional scientific or other expert witnesses per day | $1,100 or such amount ordered by the Court |
| 2 | Other adult person per day | $400 |
| 3 | Persons under 18 years of age per day | $170 |
| 4 | Travel expenses | Where the witness is normally resident more than 50 km from the trial Court:<br><br>(a) at the rate of 95 cents per km; or<br>(b) the least expensive return air fare; or<br>(c) whichever is the lesser, or the cheapest, combination of both (a) and (b). |
| 5 | Accommodation expenses | In the discretion of the taxing officer where the witness is required to be absent from the witness's normal place of residence overnight for accommodation and:<br><br>(a) sustenance per night $320; or<br>(b) such larger amounts allowed by the Court at the time of, or before, judgment. |
| | **Disbursements** | |
| 6 | Photocopying | 72 cents per page |
| 7 | ISD calls | The actual cost. |
| 8 | Expert Reports | $1,100 or such other amount ordered by the Court |
| 9 | Other | All Court fees, search fees, and other fees and payments to the extent to which they have been properly and reasonably incurred and paid; but excluding the usual and incidental expenses and overheads of a legal practice and in particular excluding postage, telephone charges (non STD) and courier expenses. |

Notes to Table 2:

1 If a witness is released before or is required to first attend after the luncheon break on any day, half a day will be allowed.

2 Fees for non-legally qualified people are for attendances only.

3 This scale is for use in making orders about costs as between party and party.

4 The costs allowed in this scale do not include Goods and Services Tax (GST) which is to be added except in the following circumstances:

The GST should not be included in a claim for costs in a party/party Bill of Costs if the receiving party is able to obtain an input tax credit. If the receiving party is able to obtain an input tax credit for a proportion of GST only, only the portion which is not eligible for credit should be claimed in the party/party bill.

# Schedule 2—Forms

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