



New South Wales

# **Criminal Procedure Amendment Regulation 1999**

under the

**Criminal Procedure Act 1986**

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Criminal Procedure Act 1986*.

J. W. SHAW, Q.C., M.L.C.,  
Attorney General

## **Explanatory note**

The object of this Regulation is to amend the *Criminal Procedure Regulation 1995* as a consequence of the transfer of certain provisions from the *Crimes Act 1900* to the *Criminal Procedure Act 1986* that has been effected by the enactment of the *Crimes Legislation Amendment (Sentencing) Act 1999*.

This Regulation is made under the *Criminal Procedure Act 1986*, including section 5 (the general power to make regulations) and sections 49, 104, 111 and 127.

**1999 No 688**

Clause 1                      Criminal Procedure Amendment Regulation 1999

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## **Criminal Procedure Amendment Regulation 1999**

**1    Name of Regulation**

This Regulation is the *Criminal Procedure Amendment Regulation 1999*.

**2    Commencement**

This Regulation commences on 1 January 2000.

**3    Amendment of Criminal Procedure Regulation 1995**

The *Criminal Procedure Regulation 1995* is amended as set out in Schedule 1.

**4    Notes**

The explanatory note does not form part of this Regulation.

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## Schedule 1 Amendments

(Clause 3)

- [1] Clause 4 Offences not within jurisdiction of District Court: sec 11**  
Omit “section 5”. Insert instead “section 11”.
- [2] Clause 7 Listing for mention following committal for trial: sec 42**  
Omit “section 9”. Insert instead “section 42”.
- [3] Clause 8 Transcript**  
Omit “section 122” from clause 8 (1) (b). Insert instead “Part 5A”.
- [4] Clause 8 (3) (b)**  
Omit “section 9”. Insert instead “section 42”.
- [5] Clause 11A Definitions—Part 3A**  
Omit “Part 6A” wherever occurring. Insert instead “Part 9”.
- [6] Clause 11A (1), definition of “victim’s representative”**  
Omit “section 23E”. Insert instead “section 169”.
- [7] Clause 11B Purpose of Part 3A**  
Omit “section 23E”. Insert instead “section 169”.
- [8] Clause 12 Prescribed form: sec 161**  
Omit “section 21”. Insert instead “section 161”.
- [9] Clause 13 Prescribed persons: sec 161**  
Omit “section 21”. Insert instead “section 161”.
- [10] Clause 14 Prescribed form of words: sec 25**  
Omit “section 33H”. Insert instead “section 25”.

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#### Schedule 1 Amendments

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**[11] Clause 15 Form and manner of election and withdrawal of election: sec 26**

Omit “section 33I” wherever occurring. Insert instead “section 26”.

**[12] Clauses 15A, 15B, 15C and 15D**

Insert after clause 15:

**15A Notice of intention to adduce evidence of substantial mental impairment: sec 49**

For the purposes of section 49 (1) of the Act, the prescribed form of notice is Form 5.

**15B Compellability of spouses to give evidence in certain proceedings: sec 104**

For the purposes of section 104 (5) (b) of the Act, the prescribed form in which a court’s reasons are to be recorded is Form 6.

**15C Depositions by persons dangerously ill: sec 111**

For the purposes of section 111 (2) of the Act, the prescribed form in which a deposition must be taken is Form 7.

**15D Certificate by AG or DPP that no further proceedings to be taken: sec 127**

For the purposes of section 127 (1) of the Act, the prescribed form of certificate is Form 8.

**[13] Schedule 1 Forms**

Omit “*section 2I*” from Form 1. Insert instead “section 161”.

**[14] Schedule 1, Form 3**

Omit “s. 23E” from item (4). Insert instead “s. 169”.

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**[15] Schedule 1, Forms 5–8**

Insert after Form 4:

**Form 5**

(Clause 15A)

**Notice of intention to adduce evidence of substantial  
impairment**

(Criminal Procedure Act 1986, section 49)

R v *(insert name of defendant)*

To the Director of Public Prosecutions:

The defendant . . . . . has been committed for  
trial on a charge of murder. The trial is listed for hearing on . . . . .  
. . . . . at . . . . .

In accordance with section 49 of the *Criminal Procedure Act 1986*,  
notice is given to the Director of Public Prosecutions that the defendant  
intends to adduce evidence tending to prove a contention by the  
defendant that the defendant is not liable to be convicted of murder by  
virtue of section 23A of the *Crimes Act 1900*.

The defendant intends to rely on the evidence of the following persons  
in support of that contention:

*[List the name, occupation and address of each person to be called by  
the defendant, and include (in relation to each such person) a short  
statement of the particulars of the evidence that the person proposes to  
give. If more space is needed, attach material to this form.]*

. . . . .  
Defendant/defendant's legal practitioner

Date: . . . . .

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**Form 6**

(Clause 15B)

**Reasons for excusing a spouse from giving evidence for  
the prosecution in a domestic violence or child assault  
case**

(Criminal Procedure Act 1986, section 104)

On this date, I, the undersigned, a Judge of the Supreme Court/Judge of  
the District Court/Magistrate, sitting at ..... in the State  
of New South Wales, dealt with an application under section 104 of the  
*Criminal Procedure Act 1986*, that .....  
..... be excused from giving evidence for the prosecution in  
proceedings against ..... charged with the following  
offence:

.....

I am satisfied, for the reasons stated below, that the application to be  
excused was made freely and independently of threat or any other  
improper influence by any person and that:

- (a) it is relatively unimportant to the case to establish the facts in  
relation to which it appears that the husband or wife is to be asked to  
give evidence or there is other evidence available to establish those  
facts; and
- (b) the offence with which the accused person is charged is of a minor  
nature.

Reasons: .....  
.....

.....

Judge/Magistrate

Date: .....

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**Form 7**

(Clause 15C)

**Form of deposition**

(Criminal Procedure Act 1986, section 111)

The deposition of . . . . ., a person now dangerously ill, taken before the undersigned Justice at . . . . . which said . . . . ., being duly sworn, states as follows:

. . . . .  
. . . . .

*[The witness's statement is to be in the first person, and should be reasonably full as to all material facts. The statement should be signed by the witness.]*

And I hereby certify that I have taken this deposition under section 111 of the *Criminal Procedure Act 1986* because it has been made to appear to me that the deponent is dangerously ill and that his or her evidence, if not immediately taken, will probably be lost.

. . . . .  
Justice

Date: . . . . .

*[If the deposition is by affirmation or declaration, the form is to be varied accordingly.]*

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Schedule 1      Amendments

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**Form 8**

(Clause 15D)

**Certificate of Attorney General or Director of Public  
Prosecutions**

(Criminal Procedure Act 1986, section 127)

This is to certify that no further proceedings are to be taken with respect  
to . . . . . , a person who is in custody  
on remand in the correctional centre at . . . . . ,  
under the order of . . . . . , a Judge of the Supreme Court,  
*or* . . . . . , Justice, on the following charge:

. . . . .

To their Honours the Judges      }  
of the Supreme Court.                }

. . . . .

Attorney General or Director of Public Prosecutions

Date: . . . . .

BY AUTHORITY