

1995—No. 463

**CRIMINAL PROCEDURE ACT 1986—REGULATION**

(Criminal Procedure Regulation 1995)

NEW SOUTH WALES



*[Published in Gazette No. 105 of 1 September 1995]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Criminal Procedure Act 1986, has been pleased to make the Regulation set forth hereunder.

J. W. Shaw  
Attorney General.

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**PART 1—PRELIMINARY**

**Citation**

1. This Regulation may be cited as the Criminal Procedure Regulation 1995.

**Commencement**

2. This Regulation commences on 1 September 1995.

**Definitions**

3. (1) In this Regulation:

“**Director**” means the Criminal Listing Director;

“**DPP**” means the Director of Public Prosecutions;

“**registrar**” means:

- (a) the registrar of the Criminal Division of the Supreme Court (in relation to a person committed for trial or sentence to the Supreme Court); and

- (b) the registrar of the District Court in its criminal jurisdiction for the relevant proclaimed place (in relation to a person committed for trial or sentence to the District Court sitting at that place);

“the Act” means the Criminal Procedure Act 1986.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

## **PART 2—JURISDICTION OF DISTRICT COURT**

### **Offences not within jurisdiction of District Court: sec. 5**

4. For the purposes of section 5 of the Act, the offences referred to in sections 12 and 19A of the Crimes Act 1900 are prescribed as being offences that are not within the jurisdiction of the District Court.

## **PART 3—LISTING**

### **Information for Director**

5. (1) The Director may direct any of the following persons to give to the Director such information as the Director reasonably requires to assist the Director in making arrangements for the listing of criminal proceedings:

- (a) a prosecuting authority;
- (b) an accused person or appellant;
- (c) a solicitor acting for an accused person or appellant;
- (d) a registrar.

(2) A person to whom such a direction is given must comply with the direction without delay.

(3) The Director must not give to a prosecuting authority any information furnished to the Director by an accused person or appellant (or by the solicitor of an accused person or appellant) in response to a direction under this clause except with the consent of the accused person, appellant or solicitor.

(4) The Director must not give to an accused person or appellant (or to any person acting in the interest of an accused person or appellant) any information furnished to the Director by a prosecuting authority in response to a direction under this clause except with the consent of the prosecuting authority.

**Notice of appearance****6. (1)** A solicitor:

- (a) who acts for an accused person or appellant in any criminal proceedings; and
- (b) who has not filed a notice of appearance in the proceedings in the Local Court which led to those criminal proceedings,

must file a notice of appearance, in the Court in which the criminal proceedings are to be heard, as soon as practicable after accepting instructions to so act.

**(2)** A notice of appearance must be in the form of a document signed by or on behalf of the solicitor filing it containing:

- (a) the full name of the accused person or appellant for whom the solicitor acts; and
- (b) the full name, address and telephone number of the solicitor.

**(3)** A solicitor who ceases to act for an accused person or appellant in any criminal proceedings must file a notice of ceasing to act, in the Court in which the proceedings are to be heard, as soon as practicable after ceasing to so act.

**(4)** Subclause (3) does not apply if a notice of appearance for the accused person or appellant has already been filed by another solicitor.

**(5)** As soon as practicable after a notice under this clause is filed, the registrar with whom the notice is filed must give a copy of the notice to the DPP and to the Director.

**Listing for mention following committal for trial: sec. 9**

**7.** For the purposes of section 9 of the Act, the period prescribed in relation to criminal proceedings in which an accused person was committed for trial for an offence is:

- (a) 2 months, in the case of an accused person (being a juvenile) who is in custody for the offence; and
- (b) 3 months, in the case of an accused person (not being a juvenile) who is in custody for the offence; and
- (c) 6 months, in any other case.

**Transcript**

**8. (1)** The DPP must notify the Director and the Clerk of the relevant Local Court:

- (a) if a written transcript of the proceedings in the Local Court that led to the committal for trial of an accused person is not received by the DPP within the prescribed time after the accused person was committed for trial; or
  - (b) if a written transcript of the proceedings in the Local Court that led to an appeal is not received by the DPP within the prescribed time after the appellant lodged notice of the appeal under section 122 of the Justices Act 1902.
- (2) For the purposes of this clause, the prescribed time is:
- (a) 2 weeks, in the case of an accused person (being a juvenile) who is in custody for the offence the subject of the proceedings; or
  - (b) 4 weeks, in any other case.
- (3) The Director:
- (a) must take information received under this clause into account in fixing any date for the hearing or mention of the matter before the Supreme Court or District Court; and
  - (b) must advise the Court of that information on any listing of the matter for mention under section 9 of the Act.

### **Notice of readiness**

**9. (1)** As soon as practicable after determining that criminal proceedings are ready to proceed on the part of the Crown, the DPP must give to the Director a notice of readiness for the proceedings.

**(2)** The notice must be in the form approved for the time being by the Director and must be accompanied by a draft of the indictment proposed to be presented in the proceedings.

**(3)** As soon as practicable after receiving the notice, the Director:

- (a) must give a copy of the notice, and of the draft indictment which accompanies the notice, to the registrar; and
- (b) must give a copy of the draft indictment to each accused person or the accused person's solicitor.

**(4)** As soon as practicable after determining that the indictment to be presented in any criminal proceedings is to depart in any material particular from the draft indictment that accompanied the notice of readiness for the proceedings, the DPP must give to the Director a draft of the indictment then proposed to be presented in the proceedings.

**(5)** The later draft must contain a notice, in the form approved for the time being by the Director, indicating the nature and extent of the departures from the earlier draft.

(6) As soon as practicable after receiving a draft indictment under subclause (4), the Director must give a copy of the draft indictment to the registrar and to each accused person or the accused person's solicitor.

#### **Application to stay indictment**

10. (1) This clause applies to:

- (a) any application to the Supreme Court or District Court for an order staying or quashing an indictment; and
- (b) my demurrer to an indictment.

(2) Unless the Court otherwise orders, an application or demurrer to which this clause applies must not be listed for hearing unless it has been filed within the prescribed time after a copy of the draft indictment was given to the accused person or the accused person's solicitor under clause 9 (3) or (6).

(3) For the purposes of this clause, the prescribed time is:

- (a) 1 month, in the case of an accused person who is in custody for the offence to which the indictment relates; or
- (b) 3 months, in any other case.

#### **Notice of listing**

11. (1) As soon as practicable after fixing a date for the hearing or mention of any criminal proceedings, the Director must give notice of the listing to the registrar.

(2) As soon as practicable after receiving notice of the listing, the registrar must cause written notice of the listing to be served, in accordance with the rules of Court, on the DPP and each accused person or appellant in the proceedings.

### **PART 4—MISCELLANEOUS**

#### **Prescribed form: sec. 21**

12. For the purposes of section 21 of the Act, the prescribed form for a list of outstanding charges is Form 1.

**Prescribed persons: sec. 21**

13. For the purposes of section 21 (1) (c) (iii) of the Act, police officers are a prescribed class of persons.

**Prescribed form of words: sec. 33H**

14. For the purposes of section 33H (1) (b) of the Act, the prescribed form of words in which a statement about a person's right to make an election must be is the form of words in Form 2.

**Form and manner of election and withdrawal of election: sec. 33I**

15. (1) For the purposes of section 33I (2) (a) of the Act, an election may be made orally to a Local Court or by filing a written notice with the court.

(2) For the purposes of section 33I (2) (b) of the Act, the withdrawal of an election may be made orally to a Local Court or by filing a written notice with the Court.

**Form and content of briefs of evidence: sec. 33I**

16. For the purposes of section 33I (2) (d) of the Act, a brief of evidence must contain at least the following:

- (a) a brief statement of the facts giving rise to the offence charged;
- (b) a charge sheet, which specifies the offence charged and the time of arrest;
- (c) copies of statements taken from persons who may be called to give evidence in proceedings for the offence charged, being statements that deal with all matters that would be necessary to be established in order to prove the commission of the offence.

**Repeal**

17. (1) The Criminal Procedure Regulation 1987 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Criminal Procedure Regulation 1987, had effect under that Regulation continues to have effect under this Regulation.

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**SCHEDULE 1—FORMS**

**Form 1**

(Cl. 12)

**LIST OF OTHER OFFENCES CHARGED**

To .....  
charged with the offence of .....  
.....  
before the ..... (name of Court).

**Information for Defendant**

1. The list on the back of this document gives particulars of ..... other offences with which you have been charged but not convicted.

2. If you are found guilty of the offence mentioned above, you may, before being dealt with by the Court (if the prosecutor consents and the Court thinks fit):

- (a) admit all or any of the offences listed on the back of this document; and
  - (b) ask that any of those admitted offences be taken into account by the Court in dealing with you for the offence of .....
- .....

3. If you are found guilty and the Court takes any of the offences that you have admitted into account, the maximum penalty that may be imposed on you for the offence of which you have been convicted will not exceed the maximum penalty that the Court would have been empowered to impose on you ~~or~~ the offence if no offence had been so taken into account.

4. If the Court takes an offence that you have admitted into account, the Court may make such orders or give such directions with respect to restitution, compensation, costs, forfeiture, disqualification and loss or suspension of a licence or privilege as it would have been empowered to make or give if you had been convicted before the Court of the offence, but will not otherwise impose any separate punishment for the offence.

5. No proceedings may be taken or continued against you in respect of an offence taken into account unless the decision of the Court in respect of which the offence has been taken into account has been quashed or set aside.

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6. Your admission cannot be used as evidence against you in any proceedings relating to the offence in respect of which the admission was made or in respect of any other offence specified in the list on the back of this document if

- (a) in the circumstances mentioned in paragraph 5, proceedings are taken or continued against you in respect of an offence that you have admitted; or
- (b) the court does not for any reason take any one or more of the offences that you have admitted into account.

Date: .....  
 .....  
*(Signature of person authorised to sign under section 21 (1) (c) of the Criminal Procedure Act 1986)*

Date: .....  
 .....  
*(Signature of defendant acknowledging receipt of copy of this document)*

**Certificate**

This is to certify that, in dealing with .....  
 ..... for the offence of .....  
 ..... of which the person has been  
 found guilty, the Court has taken into account the offences admitted by the person  
 numbered ..... in the list on the back of this document.

Dated this                      day of                      19 .

.....  
*(Designation of Judge or Magistrate signing Certificate)*



(BACK OF FORM)

Number	Place where alleged offence was committed	Date of alleged offence	Alleged Offence (Brief description)

Form 2

(Cl. 14)

**IMPORTANT INFORMATION ABOUT YOUR RIGHTS**

To .....  
charged with the offence of .....  
.....  
before the ..... (*name of Court*).

**You have a right to make an election**

The offence with which you have been charged is an indictable offence. That means that you may be dealt with by a jury.

If you want to be dealt with by a jury you must elect to have the offence dealt with that way.

If you are dealt with by a jury and are found guilty the maximum penalty/term is .....

If you do not elect to be dealt with by a jury, you will be dealt with summarily by a Magistrate of the Local Court sitting alone.

If the offence is dealt with by a Magistrate sitting alone and you are found guilty, the maximum penalty/term is .....

You will shortly be provided with a copy of the brief of evidence against you and with your criminal history.

You have to make your decision within ..... days of being served with a copy of the brief of evidence.

You may wish to seek legal advice before you make an election.

Regardless of what you do, the prosecuting authority can elect to have the offence dealt with on indictment.



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**SCHEDULE 1—FORMS**

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**EXPLANATORY NOTE**

The object of this Regulation is to repeal and remake, without any changes in substance, the provisions of the Criminal Procedure Regulation 1987. The new Regulation deals with the following matters:

- (a) prescribing offences for which the District Court does not have jurisdiction (Part 2);  
(b) prescribing procedural matters relating to the listing of criminal proceedings for hearing (part 3);  
(c) prescribing procedural matters relating to the summary disposal of indictable offences (clauses 14–16);  
(d) other formal matters (Part 1 and clauses 12, 113 and 17).

This Regulation is made under the Criminal Procedure Act 1986, including section 3B (the general regulation making power) and sections 5, 8, 9, 21, 33H and 33I.

This Regulation comprises or relates to matters of a machinery nature.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.

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