



New South Wales

Criminal Procedure Regulation 2000

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*.

BOB DEBUS, M.P.,

Attorney General

Explanatory note

This Regulation replaces, without any changes in substance, the provisions of the *Criminal Procedure Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation deals with the following matters:

- (a) prescribing offences for which the District Court does not have jurisdiction,
- (b) prescribing procedural matters relating to the listing of criminal proceedings for hearing,
- (c) prescribing procedural matters relating to the summary disposal of indictable offences,
- (d) requiring notice of an accused person's intention to adduce evidence of substantial impairment at his or her trial to be given to the DPP at least 35 days before the date on which the trial is listed to commence,
- (e) other procedural matters.

This Regulation is made under the *Criminal Procedure Act 1986*, including section 5 (the general regulation-making power).

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

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Criminal Procedure Regulation 2000

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Criminal Procedure Regulation 2000

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Criminal Procedure Regulation 2000*.

2 Commencement

This Regulation commences on 1 September 2000.

Note. This Regulation replaces the *Criminal Procedure Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(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.
- (3) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

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Clause 4 Criminal Procedure Regulation 2000

Part 2 Jurisdiction of District Court

Part 2 Jurisdiction of District Court**4 Offences not within jurisdiction of District Court**

For the purposes of section 11 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

5 Information for Director

- (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.

6 Notice of appearance

- (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.

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Part 3 Listing

- (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.

7 Listing for mention following committal for trial

For the purposes of section 42 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.

8 Transcript

- (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 Part 5A 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 42 of the Act.

9 Notice of readiness

- (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.
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Clause 10 Criminal Procedure Regulation 2000

Part 3 Listing

10 Application to stay indictment

- (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) any 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.

11 Notice of listing

- (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

12 Prescribed form of words

For the purposes of section 25 (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 1.

13 Form and manner of election and withdrawal of election

- (1) For the purposes of section 26 (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 26 (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.

14 Notice of intention to adduce evidence of substantial mental impairment

For the purposes of section 49 (1) of the Act, notice of an accused person's intention to adduce evidence of substantial mental impairment at his or her trial for murder:

- (a) must be in Form 2, and
- (b) must be given to the DPP at least 35 days before the date on which the trial is listed to commence.

15 Compellability of spouses to give evidence in certain proceedings

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 3.

16 Depositions by persons dangerously ill

For the purposes of section 111 (2) of the Act, the prescribed form in which a deposition must be taken is Form 4.

17 Certificate by Attorney General or DPP that no further proceedings to be taken

For the purposes of section 127 (1) of the Act, the prescribed form of certificate is Form 5.

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Clause 18 Criminal Procedure Regulation 2000

Part 4 Miscellaneous

18 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Criminal Procedure Regulation 1995*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Forms

(Clause (3 (2)))

Form 1

(Clause 12)

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.

Form 2

(Clause 14)

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:

Form 3

(Clause 15)

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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Schedule 1 Forms

Form 4

(Clause 16)

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.]

Form 5

(Clause 17)

**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: