

# Local Courts (Criminal and Applications Procedure) Rule 2003

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New South Wales

## Status Information

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## Contents

<b>Part 1 Preliminary</b> .....	5
1 Name of Rule .....	5
2 Commencement .....	5
3 Definitions .....	5
<b>Part 2 Court dress</b> .....	6
4 Court dress .....	6
<b>Part 3 Committal proceedings</b> .....	6
5 Commencement of proceedings .....	6
6 Service of court attendance notices in committal proceedings .....	7
7 Persons who may serve court attendance notices in committal proceedings .....	8
8 Warning where prosecution evidence sufficient to satisfy jury .....	8
9 Application to waive committal hearing .....	8
10 Notice of rights relating to use of written statements as prosecution evidence .....	8
11 Endorsement of written statements .....	9
12 Addresses and phone numbers not to be disclosed on written statements .....	10
13 Service of written statements and copies of proposed exhibits .....	10
14 Manner of identifying inadmissible statements .....	11
15 Notice of rights to unrepresented persons .....	11
16 Papers to be sent to officer of higher court .....	12
<b>Part 4 Summary proceedings</b> .....	12

17 Commencement of proceedings.....	12
18 Service of court attendance notices in summary proceedings .....	13
19 Persons who may serve court attendance notices in summary proceedings.....	14
20 Addresses and phone numbers not to be disclosed .....	14
21 Service of briefs of evidence .....	15
22 Written statements in briefs of evidence.....	15
<b>Part 5 Application proceedings.....</b>	<b>16</b>
<b>Division 1 Commencement of proceedings.....</b>	<b>16</b>
23 Commencement of proceedings.....	16
24 Service of application notices.....	16
25 Persons who may serve application notices .....	17
26 Registrar may serve documents by facsimile or other electronic communication.....	18
<b>Division 2 Hearing of application proceedings.....</b>	<b>18</b>
27 Particulars.....	18
28 Management powers .....	18
29 Summary stay or dismissal.....	19
<b>Part 6 Service of documents .....</b>	<b>19</b>
30 Application of Part .....	19
31 Service of Court documents .....	19
32 Service by facsimile or other electronic communication only with consent .....	20
33 Service of documents on medical practitioners.....	20
34 Persons who may serve documents .....	20
35 Substituted service of documents .....	21
36 When service taken to be effected .....	21
37 Proof of service.....	21
38 Doubtful service .....	23
39 Service of summons in proceedings under Part 15A of the Crimes Act 1900 .....	23
<b>Part 7 Subpoenas.....</b>	<b>23</b>
40 Application of Part .....	23
41 Definitions .....	23
42 Issue of subpoenas .....	24

43 Filing of subpoenas by issuing parties .....	24
44 Service of subpoenas .....	24
45 Conduct money .....	25
46 Production by non-party .....	25
47 Subpoena may be set aside .....	26
48 Inspection of subpoenaed documents or things .....	26
49 Return of documents and things produced under subpoena .....	26
<b>Part 8 Warrants</b> .....	<b>27</b>
50 Application of Part .....	27
51 Definition of “Court” .....	27
52 Matters to be considered in determining whether to issue arrest warrant .....	27
53 Forms of warrants.....	28
54 Procedure after arrest.....	28
55 Warrants to commit.....	28
<b>Part 9 Miscellaneous</b> .....	<b>28</b>
56 Applications generally .....	28
57 Grounds of refusal of private prosecutions or application notices .....	29
58 Recording of evidence .....	29
59 Forms.....	29
60 Filing of documents .....	30
61 Review of powers exercised by registrars.....	30
62 Copies of court records.....	31

# Local Courts (Criminal and Applications Procedure) Rule 2003



New South Wales

## Part 1 Preliminary

### 1 Name of Rule

This Rule is the *Local Courts (Criminal and Applications Procedure) Rule 2003*.

### 2 Commencement

This Rule commences on the commencement of Schedule 1 [43] to the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*.

#### Editorial note—

Schedule 1 [43] to the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001* commenced on 7.7.2003.

### 3 Definitions

(1) In this Rule:

**accused person** includes, in relation to a summary offence, a defendant.

**approved form**, in relation to a document, means the form approved for that document by the Chief Magistrate under clause 59 from time to time.

**committal proceedings** has the same meaning as it has in the *Criminal Procedure Act 1986*.

**correctional centre** has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

**Court** (other than in Part 7 or 8) means a Local Court.

**information system** has the same meaning as it has in the *Electronic Transactions Act 2000*.

**person named**, in relation to a subpoena, means the person to whom the subpoena is addressed.

**principal officer** of a corporation means the chairperson, president, chief executive officer, general manager, clerk, secretary, treasurer or other similar officer of the corporation.

**prosecutor** has the same meaning as it has in the [Criminal Procedure Act 1986](#).

**registrar** of a Court (other than in Part 7) means the registrar of that Court appointed under the [Local Courts Act 1982](#).

**relevant legal practitioner** for a person means:

- (a) if the person is represented only by a solicitor—the solicitor, or
- (b) if the person is represented only by a barrister under a direct access arrangement—the barrister, or
- (c) if the person is represented by both a solicitor and a barrister—the solicitor.

**summary proceedings** means proceedings for summary offences, including proceedings for indictable offences that are being dealt with summarily.

**subpoena** has the same meaning as it has in Part 3 of Chapter 4 of the [Criminal Procedure Act 1986](#).

**the Act** means:

- (a) in Parts 3, 4, 7 and 8, the [Criminal Procedure Act 1986](#), and
- (b) in Part 5, the [Local Courts Act 1982](#), and
- (c) in Part 6, the [Criminal Procedure Act 1986](#) and the [Local Courts Act 1982](#).

(2) Notes in the text of this Rule do not form part of this Rule.

## Part 2 Court dress

### 4 Court dress

In summary proceedings, committal proceedings and application proceedings in a Court or before a Magistrate, no legal practitioner may robe.

**Note—**

Section 19A of the [Local Courts Act 1982](#) provides that no Magistrate may robe at any sitting of a Local Court.

## Part 3 Committal proceedings

### 5 Commencement of proceedings

(1) For the purposes of section 50 (1) of the Act, a court attendance notice commencing proceedings for an indictable offence is to be in the approved form.

- (2) For the purposes of section 50 (4) of the Act, the court attendance notice must include the following matters:
- (a) the time and date of the alleged offence or, if the exact time and date are not known, the period of time in which the offence is alleged to have occurred,
  - (b) the place where the offence is alleged to have occurred.

## **6 Service of court attendance notices in committal proceedings**

- (1) A court attendance notice commencing proceedings for an indictable offence is to be served on the accused person in accordance with this clause.
- (2) Service of a court attendance notice may be effected by:
- (a) handing it to the accused person, or
  - (b) handing it to a person at the accused person's usual place of residence or business who is apparently of or above the age of 16 years, or
  - (c) if the accused person is an inmate of a correctional centre, by handing it to the officer in charge of the correctional centre or by sending it by post or facsimile or other electronic communication to the officer in charge of the correctional centre.
- (2A) In the case of a court attendance notice concerning proceedings in relation to which the accused person is represented by a legal practitioner, service of the notice may also be effected:
- (a) by handing it to the legal practitioner, or
  - (b) by handing it to a person at the legal practitioner's usual place of business who is apparently of or above the age of 16 years, or
  - (c) by sending it by post or facsimile to the legal practitioner's business address, or
  - (d) by sending it by electronic mail to the legal practitioner's email address,
- but only if the legal practitioner has agreed to accept service of the notice and only in accordance with a mode of service agreed to by the legal practitioner.
- (3) Service of a court attendance notice on a corporation may be effected by serving the notice in accordance with subclause (2) on a principal officer of the corporation or, if provision is made by or under any other Act for service of a document on the corporation, by serving the notice in accordance with that provision.
- (4) If, on tender of a court attendance notice to a person, the person refuses to accept it, the notice may be served by putting it down in the person's presence after the person has been told of the nature of the notice.

## **7 Persons who may serve court attendance notices in committal proceedings**

- (1) A court attendance notice commencing proceedings for an indictable offence issued by a public officer may be served by a relevant legal practitioner or an employee of any such legal practitioner.
- (2) A court attendance notice commencing proceedings for an indictable offence commenced by a person other than a police officer or a public officer may be served by any of the following persons:
  - (a) the prosecutor,
  - (b) a relevant legal practitioner acting for the prosecutor or an employee of any such legal practitioner.

## **8 Warning where prosecution evidence sufficient to satisfy jury**

For the purposes of section 63 (1) of the Act, the warning given by a Magistrate is to be in the following form:

Before you say anything in answer to the charge, you should know that you do not have to say anything unless you want to. However, if you do say something, it may be recorded and used against you at your trial.

You should understand that, if a promise of favourable treatment has been made to you if you make admissions as to your guilt, that promise cannot be relied on. Similarly, you have nothing to fear from any threat that may have been made to you to persuade you to make any admission as to your guilt. However, even if you have received any such threat or promise, anything you say now may still be used against you at your trial.

Do you want to say anything in answer to the charge? Do you want to give any evidence in relation to the charge? Do you want to call any witnesses on your behalf?

## **9 Application to waive committal hearing**

- (1) For the purposes of section 68 of the Act, an application by the accused person to be committed for trial is to be in the approved form.
- (2) The application must be signed by the prosecutor as evidence of consent to the application.

## **10 Notice of rights relating to use of written statements as prosecution evidence**

- (1) For the purposes of section 75 (4) of the Act, the notice explaining the effect of Division 3 of Part 2 of Chapter 3 of the Act is to be in the following form:

This form has been given to you because you are facing criminal charges at a committal hearing. The purpose of the committal hearing is to allow a Magistrate to decide whether or not you should be committed for trial or sentence in a higher court



or whether you should be discharged. The Magistrate will make that decision after considering all the evidence at the committal hearing.

The written statements and other documents attached to this form contain material that the prosecution will try to put in evidence against you at the committal hearing.

You may apply to the Magistrate for a direction that one or more of the witnesses who have made written statements should attend court to give oral evidence at the hearing.

- (a) If you do not apply for such a direction regarding a particular witness, that witness's evidence will be given at the hearing by the tendering of the written statement of that witness which is attached to this form. The witness will not be present.
- (b) If you do apply to the Magistrate for such a direction, the Magistrate must consider your application. If the Magistrate directs a witness to attend to give oral evidence, you will be able to question that witness about what he or she says.

If the witness is the alleged victim of an offence involving violence, the Magistrate may give the direction only if he or she believes that there are special reasons why, in the interests of justice, the witness should attend. The term **offences involving violence** is defined in section 94 of the [Criminal Procedure Act 1986](#).

In the case of any other witness, the Magistrate may give the direction only if he or she believes that there are substantial reasons why, in the interests of justice, the witness should attend.

If the Magistrate refuses to give the direction, the Magistrate must give reasons for the refusal.

If you do decide to apply for a direction for a witness or witnesses to attend, you must first deliver a notice to that effect to the prosecution. You may deliver the notice either in person or by post. The Magistrate will tell you the date by which the notice must be delivered. After the notice has been delivered, the Magistrate will decide whether your application should be granted.

- (2) The form of words set out in subclause (1) may be included in an approved form relating to written statements.

## **11 Endorsement of written statements**

- (1) For the purposes of section 79 (3) of the Act, an endorsement is to be in or to the effect of the following form, if the statement is made by a person other than an adult who suffers from an appreciably below average general intelligence function or a child:

This statement made by me accurately sets out the evidence that I would be

prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.

- (2) For the purposes of section 79 (3) of the Act, an endorsement on a statement made by an adult who suffers from appreciably below average general intelligence, or on a statement made by a child, is to be in a form that includes:
  - (a) words to the effect that the statement is true, or
  - (b) words to the effect that the statement contains no lies.

## **12 Addresses and phone numbers not to be disclosed on written statements**

- (1) A copy of a written statement served on an accused person in committal proceedings must not disclose the address or telephone number of the person who made the statement or of any other living person, unless:
  - (a) the address or telephone number is a materially relevant part of the evidence, or
  - (b) a Magistrate makes an order permitting the disclosure in the statement.
- (2) An application for such an order may be made by the accused person or the prosecutor.
- (3) The Magistrate must not make any such order unless satisfied that the disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice (including the accused person's right to prepare properly for the hearing of the evidence for the prosecution) outweigh any such risk.
- (4) This clause does not prevent the disclosure of an address in a written statement if the statement does not identify it as a particular person's address, or it could not reasonably be inferred from the statement that it is a particular person's address.
- (5) An address or telephone number that must not be disclosed may, without reference to the person who made the written statement, be deleted from the statement, or rendered illegible, before the statement is served on the accused person.

## **13 Service of written statements and copies of proposed exhibits**

- (1) A written statement or a copy of a proposed exhibit in committal proceedings is to be served on the accused person in accordance with this clause.
- (2) Service of a written statement or a copy of a proposed exhibit may be effected:
  - (a) by handing it to the accused person, or
  - (b) if the accused person is an inmate of a correctional centre, by handing it to the

officer in charge of the correctional centre or by sending it by post or facsimile or other electronic communication to the officer in charge of the correctional centre, or

- (c) by sending it by post or facsimile to the accused person's residential address, or
- (d) by sending it by electronic communication to the accused person's email address, or
- (e) with the consent of the relevant legal practitioner, by leaving it at the relevant legal practitioner's address for service or by sending it to that address by post or facsimile or by sending it to the legal practitioner's email address for service by electronic communication.

- (3) Service of a written statement or a copy of a proposed exhibit on a corporation may be effected by serving it in accordance with subclause (2) on a principal officer of the corporation or, if provision is made by or under any other Act for service of a document on the corporation, by serving the document in accordance with that provision.
- (4) If, on tender of a written statement to a person, the person refuses to accept it, it may be served by putting it down in the person's presence after the person has been told of the nature of the document.

#### **14 Manner of identifying inadmissible statements**

- (1) In identifying or indicating any part of a written statement that has been rejected pursuant to section 87 of the Act, the Magistrate must not mark the original statement, but must indicate on a copy the particular part of the statement that has been rejected.
- (2) The copy of the statement containing the rejected material is to be annexed to the transcript of evidence.

#### **15 Notice of rights to unrepresented persons**

- (1) For the purposes of section 89 (2) of the Act, the prescribed form of words is as follows (omitting the words marked \* that do not apply):

The informant has served you with copies of one or more written statements of witnesses. You have also been given a notice outlining your rights regarding those statements.

You \*have/\*have not applied to me for a direction requiring \*one/\*some/\*all/\*any of the persons who made statements to appear in person to give evidence.

I have to decide whether to commit you for trial or sentence in a higher court or to discharge you. I will make that decision on the basis of all the evidence, whether

contained in written statements or given from the witness box in person.

I will now consider any application you may wish to make for an adjournment to obtain legal advice. Do you wish to apply for an adjournment?

- (2) If the proceedings are to continue, the prescribed form of words is to include also the following words:

Do you consent to the written statements of witnesses being tendered as evidence or do you wish to apply for a direction requiring one or more witnesses to be called to give evidence in person?

- (3) After the accused person has been given an opportunity to respond to the words in subclause (2), the prescribed form of words is to include the following words:

Do you wish to ask me any questions about this procedure?

#### **16 Papers to be sent to officer of higher court**

For the purposes of section 111 (1) of the Act, the following documents are required to be given to the appropriate officer of the court to which an accused person is committed for trial or sentence:

- (a) the court attendance notice,
- (b) the certificate referred to in section 166 of the Act,
- (c) any written statements tendered in evidence by the prosecution,
- (d) a transcript of any oral evidence of witnesses and the accused person taken at the committal hearing,
- (e) any written statement tendered in evidence by the accused person,
- (f) if the accused person is released on bail on committal, a copy of the grant of bail and any agreement or acknowledgement entered into or made pursuant to a bail condition.

### **Part 4 Summary proceedings**

#### **17 Commencement of proceedings**

- (1) For the purposes of section 175 (1) of the Act, a court attendance notice commencing proceedings for a summary offence is to be in the approved form.
- (2) For the purposes of section 175 (4) of the Act, the court attendance notice must include the following matters:
  - (a) the time and date of the alleged offence or, if the exact time and date are not known, the period of time in which the offence is alleged to have occurred,

(b) the place where the offence is alleged to have occurred.

**18 Service of court attendance notices in summary proceedings**

- (1) A court attendance notice commencing proceedings for a summary offence is to be served on a person (the **accused person**) against whom the proceedings are commenced in accordance with this clause.
- (2) Service of a court attendance notice may be effected:
  - (a) by handing it to the accused person, or
  - (b) by handing it to a person at the accused person's usual place of residence or business who is apparently of or above the age of 16 years, or
  - (c) if the accused person is an inmate of a correctional centre, by handing it to the officer in charge of the correctional centre or by sending it by post or facsimile or other electronic communication to the officer in charge of the correctional centre, or
  - (d) by sending it by post or facsimile to the person's residential address not less than 21 days before the first listing date for the offence, or
  - (e) by sending it by electronic communication to the person's email address.
- (2A) In the case of a court attendance notice concerning proceedings in relation to which the accused person is represented by a legal practitioner, service of the notice may also be effected:
  - (a) by handing it to the legal practitioner, or
  - (b) by handing it to a person at the legal practitioner's usual place of business who is apparently of or above the age of 16 years, or
  - (c) by sending it by post or facsimile to the legal practitioner's business address, or
  - (d) by sending it by electronic mail to the legal practitioner's email address,but only if the legal practitioner has agreed to accept service of the notice and only in accordance with a mode of service agreed to by the legal practitioner.
- (3) Service of a court attendance notice on a corporation may be effected by serving the notice in accordance with subclause (2) on a principal officer of the corporation or, if provision is made by or under any other Act for service of a document on the corporation, by serving the notice in accordance with that provision.
- (4) If, on tender of a court attendance notice to a person, the person refuses to accept it, the notice may be served by putting it down in the person's presence after the person has been told of the nature of the notice.

- (5) Subclause (2) (d) and (e) do not apply to service of a court attendance notice relating to an indictable offence that is dealt with summarily.

**19 Persons who may serve court attendance notices in summary proceedings**

- (1) A court attendance notice commencing proceedings for a summary offence issued by a public officer may be served by any of the following persons:
- (a) a licensed commercial agent engaged by the public officer,
  - (b) a sheriff's officer,
  - (c) a relevant legal practitioner acting for the public officer or an employee of any such legal practitioner.
- (2) A court attendance notice commencing proceedings for a summary offence issued by a person other than a police officer or a public officer may be served by any of the following persons:
- (a) the person who issued the notice,
  - (b) a licensed commercial agent engaged by the person,
  - (c) a sheriff's officer,
  - (d) a relevant legal practitioner acting for the person or an employee of any such legal practitioner.

**20 Addresses and phone numbers not to be disclosed**

- (1) A copy of a brief of evidence served on an accused person under the Act must not include any written statement that discloses the address or telephone number of the person who made the statement or of any other living person, unless:
- (a) the address or telephone number is a materially relevant part of the evidence, or
  - (b) a Magistrate makes an order permitting the disclosure in the statement.
- (2) An application for such an order may be made by the accused person or the prosecutor.
- (3) The Magistrate must not make any such order unless satisfied that the disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice (including the accused person's right to prepare properly for the hearing of the evidence for the prosecution) outweigh any such risk.
- (4) This clause does not prevent the disclosure of an address in a written statement if the statement does not identify it as a particular person's address, or it could not reasonably be inferred from the statement that it is a particular person's address.

- (5) An address or telephone number that must not be disclosed may, without reference to the person who made the written statement, be deleted from the statement, or rendered illegible, before the statement is served on the accused person.

## **21 Service of briefs of evidence**

- (1) A brief of evidence in summary proceedings is to be served on the accused person in accordance with this clause.
- (2) Service of a brief of evidence may be effected:
- (a) by handing it to the accused person, or
  - (b) if the accused person is an inmate of a correctional centre, by handing it to the officer in charge of the correctional centre or by sending it by post or facsimile or other electronic communication to the officer in charge of the correctional centre, or
  - (c) by sending it by post or facsimile to the accused person's residential address, or
  - (d) by sending it by electronic communication to the accused person's email address, or
  - (e) with the consent of the relevant legal practitioner, by leaving it at the relevant legal practitioner's address for service or by sending it to that address by post or facsimile or by sending it to the legal practitioner's email address for service by electronic communication.
- (3) Service of a brief of evidence on a corporation may be effected by serving it in accordance with subclause (2) on a principal officer of the corporation or, if provision is made by or under any other Act for service of a document on the corporation, by serving the notice in accordance with that provision.
- (4) If, on tender of a brief of evidence to a person, the person refuses to accept it, it may be served by putting it down in the person's presence after the person has been told of the nature of the document.

## **22 Written statements in briefs of evidence**

- (1) A written statement that is included in a copy of a brief of evidence may be in the form of questions and answers.
- (2) A written statement that is included in a copy of a brief of evidence must:
- (a) specify the age of the person who made the statement, and
  - (b) be endorsed in accordance with clause 11 by the maker of the statement, and
  - (c) be written in a language of which the person who made the statement has a

reasonable understanding, and

(d) be signed by the person who made the statement.

- (3) If the person is unable to sign the written statement, the statement may be signed by another person with the consent of and in the presence of the person who made the statement.
- (4) The other person must sign an endorsement on the statement to the effect that the person signed the statement on behalf of, with the consent of and in the presence of the person who made the statement.
- (5) A written statement must be signed by another person as a witness to the signing of the statement by the person who made it or as a witness to the signing by another person on the maker's behalf (if applicable).
- (6) If a copy of the brief of evidence includes any written statement that is, wholly or in part, in a language other than English, there must be annexed to it a document purporting to contain a translation of the statement, or so much of it as is not in the English language, into the English language.

## **Part 5 Application proceedings**

### **Division 1 Commencement of proceedings**

#### **23 Commencement of proceedings**

For the purposes of section 40 (1) of the Act, an application notice commencing application proceedings is to be in the approved form.

#### **24 Service of application notices**

- (1) An application notice commencing application proceedings is to be served on the respondent in accordance with this clause.
- (2) Service of an application notice may be effected:
  - (a) by handing it to the respondent, or
  - (b) by handing it to a person at the respondent's usual place of residence or business who is apparently of or above the age of 16 years, or
  - (c) if the respondent is an inmate of a correctional centre, by handing it to the officer in charge of the correctional centre or by sending it by post or facsimile or other electronic transmission to the officer in charge of the correctional centre.
- (2A) In the case of an application notice concerning proceedings in relation to which the respondent is represented by a legal practitioner, service of the notice may also be



effected:

- (a) by handing it to the legal practitioner, or
- (b) by handing it to a person at the legal practitioner's usual place of business who is apparently of or above the age of 16 years, or
- (c) by sending it by post or facsimile to the legal practitioner's business address, or
- (d) by sending it by electronic mail to the legal practitioner's email address,

but only if the legal practitioner has agreed to accept service of the notice and only in accordance with a mode of service agreed to by the legal practitioner.

- (3) Service of an application notice on a corporation may be effected by serving the notice in accordance with subclause (2) on a principal officer of the corporation or, if provision is made by or under any other Act for service of a document on the corporation, by serving the notice in accordance with that provision.
- (4) If, on tender of an application notice, the person refuses to accept it, the notice may be served by putting it down in the person's presence after the person has been told of the nature of the notice.
- (5) An application notice must be served not less than 21 days before the first listing date for the notice, unless the Court or registrar grants leave to serve the notice at a later time.

## **25 Persons who may serve application notices**

- (1) An application notice issued by a public officer may be served by any of the following persons:
  - (a) a licensed commercial agent engaged by the public officer,
  - (b) a sheriff's officer,
  - (c) a relevant legal practitioner acting for the public officer or an employee of any such legal practitioner.
- (2) An application notice issued by a person other than a police officer or a public officer may be served by any of the following persons:
  - (a) the person who issued the notice,
  - (b) a licensed commercial agent engaged by the person,
  - (c) a sheriff's officer,
  - (d) a relevant legal practitioner acting for the person or an employee of any such legal practitioner,

(e) if the respondent is a public officer or a police officer, the registrar.

## **26 Registrar may serve documents by facsimile or other electronic communication**

If application proceedings are commenced by a person other than a police officer or a public officer and the respondent is a police officer or a public officer, the registrar may serve the application notice by sending it by post or facsimile to the person's business address or by electronic communication to the person's email address.

## **Division 2 Hearing of application proceedings**

### **27 Particulars**

- (1) The Court or registrar may in application proceedings, on terms, order a party to file and serve on the other party any of the following:
  - (a) a statement of particulars of any claim or other matter relevant to the proceedings,
  - (b) a statement of the nature of the case on which the party relies.
- (2) Without limiting subclause (1), if a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, the Court or registrar may order that party to file and serve on the other party any of the following:
  - (a) if the party alleges knowledge, particulars of the facts on which the party relies,
  - (b) if the party alleges notice, particulars of the notice.
- (3) A Court or registrar that makes an order under subclause (1) may, if the Court or registrar thinks fit, at the same time or subsequently make an order that, if the order is not complied with within a period of time directed by the Court or registrar:
  - (a) any proceedings brought by the party in default may be dismissed, or any relevant document filed by the party in default may be struck out, or
  - (b) any proceedings brought by the party in default are to be stayed until the order is complied with.

### **28 Management powers**

- (1) In application proceedings, the Court or registrar may make any orders the Court or registrar thinks fit for the just, efficient, effective and timely management of proceedings before the Court.
- (2) Without limiting subclause (1), the Court or registrar may make any of the following orders:
  - (a) an order fixing a timetable for the taking of steps to prepare a matter for

hearing,

- (b) an order adjourning the proceedings to enable the matter of the application to be the subject of a mediation session under the *Community Justice Centres Act 1983*,
- (c) an order that a document may be filed with the Court in electronic form,
- (d) an order that there be an exchange of written statements of the intended evidence of each witness,
- (e) an order as to the use of statements referred to in paragraph (d),
- (f) an order for the preparation and filing of a statement of agreed facts and agreed issues,
- (g) an order for the preparation and filing of an agreed list of exhibits that are page numbered and indexed (in appropriate order),
- (h) an order for the preparation of a question of law raised in the proceedings.

## **29 Summary stay or dismissal**

The Court may order that an action commenced by application proceedings, or any application in any such proceedings, be stayed or dismissed generally or in relation to any claim for relief in the action if of the opinion that:

- (a) no reasonable cause of action is disclosed, or
- (b) the action is frivolous or vexatious, or
- (c) the action is an abuse of the process of the Court.

## **Part 6 Service of documents**

### **30 Application of Part**

This Part applies to committal proceedings, summary proceedings and application proceedings.

### **31 Service of Court documents**

- (1) This clause applies to the service of documents (other than court attendance notices, application notices, written statements, briefs of evidence and subpoenas) issued in proceedings on a person named in the document concerned.
- (2) A document must be served on the person named in accordance with this clause.
- (3) Service of a document may be effected:
  - (a) by handing it to the person, or

- (b) if the person is an inmate of a correctional centre, by handing it to the officer in charge of the correctional centre or by sending it by post or facsimile or other electronic communication to the officer in charge at the correctional centre, or
  - (c) if the person is a police officer or a public officer, by sending it by post or facsimile to the person's business address or by electronic communication to the person's business email address, or
  - (d) if the person is not a police officer or a public officer, by sending it by post or facsimile to the person's residential address, or
  - (e) if the person is not a public officer or a police officer, by sending it by electronic communication to the person's email address, or
  - (f) by leaving it at the relevant legal practitioner's address for service or by sending it to that address by post or facsimile or to the legal practitioner's email address for service by electronic communication.
- (4) If, on tender of a document to a person, the person refuses to accept it, it may be served by putting it down in the person's presence after the person has been told of the nature of the document.

### **32 Service by facsimile or other electronic communication only with consent**

- (1) This clause applies to the service of documents issued in proceedings.
- (2) Despite any other provision of this Rule, a document may be served on a person by facsimile or other electronic communication only if the person consents to service (either generally or in the particular case) by this means.

### **33 Service of documents on medical practitioners**

- (1) Service of a document issued in proceedings on a person who is a practising medical practitioner may be effected, at a place where the practice is carried on, by handing it to some person apparently engaged (whether as an employee or otherwise) in the practice and apparently of or above the age of 16 years.
- (2) If, on tender of a document to a person, the person refuses to accept it, it may be served by putting it down in the person's presence after the person has been told of the nature of the notice.
- (3) This clause is in addition to any other means by which service of a document may be effected under this Rule.

### **34 Persons who may serve documents**

Except as provided by the Act, this Rule or by or under any other Act, a document issued in proceedings may be served by any person who is aged 16 years or more.

### **35 Substituted service of documents**

- (1) On the application of a party, a Court or the registrar may, by order in or to the effect of the approved form, direct that service of a document issued in proceedings be effected otherwise than in a manner specified by this Rule.
- (2) An application for an order for substituted service may be made:
  - (a) orally, or
  - (b) in the approved form.
- (3) An application for an order for substituted service may be dealt with by the Court or the registrar, unless the Court or registrar otherwise directs.

### **36 When service taken to be effected**

- (1) If a document issued in proceedings is served by post, service is taken, in the absence of evidence to the contrary, to have been effected on the fourth working day after the document was posted.
- (2) If a document issued in proceedings is served by facsimile, service is taken, in the absence of evidence to the contrary, to have been effected on completion of the transmission of the document.
- (3) If a document issued in proceedings is served by electronic communication (other than facsimile), service is taken, in the absence of evidence to the contrary, to have been effected at the time of receipt of the electronic communication as determined under section 13 of the *Electronic Transactions Act 2000*.

### **37 Proof of service**

- (1) A person who serves a document issued in proceedings must complete an endorsement as to service on a copy of the document served.
- (2) The endorsement must include the following matters:
  - (a) the date service was effected,
  - (b) the method of service,
  - (c) the name, address and occupation of the person serving the document,
  - (d) if the document was served personally, the person to whom it was delivered,
  - (e) if the document was served by post, the manner in which the person was informed of the address to which it was posted and the time and place of posting,
  - (f) if the document was served by facsimile, the manner in which the person was informed of the address to which it was sent and the date on which advice

confirming successful transmission of the document was received,

- (g) if the document was served by electronic communication (other than facsimile), the manner in which the person was informed of the email address to which it was sent and the date it entered the information system addressed to the person's email address.
- (3) The endorsement must be signed by the person serving the document and a witness to the signature.
  - (4) In the case of a document served by a police officer, the endorsement:
    - (a) may be incorporated on an electronic copy of the document produced from the Police COPS system, and
    - (b) is not required to be signed by the police officer who serves the document.
  - (5) If service is effected by facsimile, the party relying on service must produce to the Court, if requested to do so by the Court, a copy of the advice confirming successful transmission of the document.
  - (6) If service is effected by electronic communication (other than facsimile), the party relying on service must produce to the Court, if requested to do so by the Court, evidence of the date that the document was dispatched.
  - (7) If service is effected by post by a person other than a registrar, the party relying on service is, in the absence of evidence to the contrary, taken to have effected service if the person produces evidence of any of the following:
    - (a) an acknowledgement of receipt of the document by the person to whom it was directed,
    - (b) that the address appearing on the document is the address provided by the person served for service of documents in the proceedings,
    - (c) that the address appearing on the document is the address of the person served on a driver licence within the meaning of the *Road Transport (Driver Licensing) Act 1998*, or within the meaning of any corresponding law of another State or a Territory of the Commonwealth,
    - (d) that the address appearing on the document is the address of the person served as shown on records kept by the Roads and Traffic Authority under the *Road Transport (Vehicle Registration) Act 1997* in respect of the registration of motor vehicles or trailers, or as shown under records kept by an authority under a corresponding law of another State or a Territory of the Commonwealth.

### 38 Doubtful service

If a document issued in proceedings is not served personally, the Court or registrar may, on the application of a party or on the motion of the Court or registrar, make any of the following orders if satisfied that the document did not come to the party's notice within a reasonable time or is in doubt:

- (a) stay the proceedings,
- (b) adjourn the proceedings,
- (c) set aside any order made in the proceedings.

### 39 Service of summons in proceedings under Part 15A of the [Crimes Act 1900](#)

- (1) A summons under Part 15A of the [Crimes Act 1900](#) may be served only by a police officer or another person nominated by the Court or a registrar.
- (2) Except as provided by subclause (1), this Rule applies, with any necessary modifications, to and in respect of the service of a summons under Part 15A of the [Crimes Act 1900](#) in the same way as it applies to and in respect of the service of a court attendance notice commencing proceedings for an indictable offence.

## Part 7 Subpoenas

### 40 Application of Part

This Part applies to:

- (a) summary proceedings before a Court, and
- (b) application proceedings before a Court, and
- (c) any other proceedings to which Part 3 (Attendance of witnesses and production of evidence in lower courts) of Chapter 4 of the Act applies.

#### Note—

Regulations may be made under section 220 of the Act prescribing additional proceedings to which that Part applies.

### 41 Definitions

In this Part:

**Court** means a court in which proceedings to which this Part applies are taken.

**registrar** means a registrar of a court in which proceedings to which this Part applies are taken.

#### **42 Issue of subpoenas**

- (1) A registrar who issues a subpoena in proceedings is to issue it by signing and dating it.
- (2) A registrar may refuse to issue a subpoena if satisfied that:
  - (a) the issue of the subpoena would be an abuse of process, or
  - (b) the issue of the subpoena would be oppressive on the person named, or
  - (c) if the subpoena is a subpoena to give evidence, the subpoena is returnable on a date on which the Court has not directed the hearing of oral evidence in the proceedings.
- (3) The registrar is not required to retain a copy of a subpoena issued by the registrar.

#### **43 Filing of subpoenas by issuing parties**

A party that issues a subpoena must, if required to do so by the Court, make a copy available for filing on the return date for the subpoena.

#### **44 Service of subpoenas**

- (1) This clause applies to the service of subpoenas in proceedings to which this Part applies.
- (2) A subpoena must be served on the person named in accordance with this clause.
- (3) Service of a subpoena may be effected:
  - (a) by handing it to the person, or
  - (b) if the person is an inmate of a correctional centre, by handing it to the officer in charge of the correctional centre or by sending it by post or facsimile or other electronic transmission to the officer in charge at the correctional centre, or
  - (c) if the person is a police officer or a public officer, by sending it by post or facsimile to the person's business address, or
  - (d) if the person is a police officer or a public officer, by sending it by electronic communication to the person's business email address, or
  - (e) if the person is not a police officer or a public officer, by sending it by post or facsimile to the person's residential address, or
  - (f) if the person is not a police officer or a public officer, by sending it by electronic communication to the person's email address, or
  - (g) with the consent of the relevant legal practitioner, by leaving it at the relevant



legal practitioner's address for service or by sending it to that address by post or facsimile or by sending it to the legal practitioner's email address for service by electronic communication.

- (4) If, on tender of a subpoena, the person refuses to accept it, it may be served by putting it down in the person's presence after the person has been told of the nature of the notice.

#### **45 Conduct money**

The amounts prescribed for the expenses of complying with a subpoena in relation to a day are:

- (a) an amount equivalent to the amount that would be payable for that day, in accordance with the Scale of Allowances Paid to Witnesses published in Government Gazette No 104 of 27 June 2003, at pages 6408 and 6409, in respect of the person named if the party issuing the subpoena were entitled to claim witnesses expenses in respect of that person as costs in the proceedings, and
- (b) in relation to the production of a document, the reasonable expenses of the person named of complying with the requirement to produce the document.

#### **46 Production by non-party**

- (1) This clause applies to a subpoena issued to a person who is not a party to the proceedings.
- (2) A document or thing that may be produced to a Court under section 226 (1) of the Act may be produced to the registrar of the Court.
- (3) If a subpoena for production requires the production of a document, but does not require the production of the original document, the person named may produce a copy of the original document.
- (4) The person who produces a document pursuant to a subpoena must advise the registrar as to whether the document is an original document or a copy and must elect whether the document is to be disposed of by the registrar or returned to the person.
- (5) If a document or thing is produced to a registrar, the registrar must:
  - (a) give a receipt to the person who produced the document or thing, and
  - (b) produce the document or thing as the nature of the case requires, or as directed by the Court.
- (6) If a subpoena requires production of a document or thing on a date other than the date for hearing the proceedings, the registrar may, at any time after the hearing

date, order that the subpoena has ceased to have effect and:

- (a) in the case of an original document, or a thing, return it to the person who produced it, or
- (b) in the case of a document that is a copy, return the document, or dispose of it, in accordance with the election of the person who produced the document.

#### **47 Subpoena may be set aside**

- (1) A notice of application to set aside a subpoena (either wholly or in part) is to be in the approved form.
- (2) A copy of the notice of application must be served by the applicant on the party on whose request the subpoena issued, either personally or by forwarding a copy by post to the address of the party as shown on the subpoena.
- (3) A copy of the notice of application must also be filed by the applicant with the Court before which the subpoena is returnable.
- (4) Unless leave is granted by the Court, the time for filing and serving the notice of application by the applicant in accordance with this clause is not less than 3 days before the date that the subpoena is returnable.
- (5) An applicant seeking to set aside a subpoena must appear before the Court on the date that the subpoena is returnable to allow the Court to deal with the application.

#### **48 Inspection of subpoenaed documents or things**

For the purposes of section 228 (3) of the Act, notification of an objection to the inspection of subpoenaed documents or things may be raised orally before the Court on the return date of the subpoena.

#### **49 Return of documents and things produced under subpoena**

If a subpoena requires production of a document or thing on the date for hearing the proceedings and the proceedings are adjourned, other than to a further date for hearing the proceedings, before the document or thing is produced to the Court, the registrar may, at any time after the hearing date, order that the subpoena has ceased to have effect and:

- (a) in the case of an original document, or a thing, return it to the person who produced it, or
- (b) in the case of a document that is a copy, return the document, or dispose of it, in accordance with the election of the person who produced the document.

## **Part 8 Warrants**

### **50 Application of Part**

This Part applies to:

- (a) summary proceedings, and
- (b) application proceedings, and
- (c) any other proceedings to which Part 4 (Warrants) of Chapter 4 of the Act applies.

#### **Note—**

Regulations may be made under section 233 of the Act prescribing additional proceedings to which that Part applies.

### **51 Definition of “Court”**

In this Part:

**Court** means a court in which proceedings to which this Part applies are taken.

### **52 Matters to be considered in determining whether to issue arrest warrant**

- (1) An application for the issue of a warrant to arrest an accused person before the date the person is first required to attend at court for the hearing of proceedings is to be made in the approved form.
- (2) For the purposes of determining whether to issue any such warrant to arrest, an authorised officer may take into account the following matters:
  - (a) whether the offence the subject of the proceedings is serious enough to justify the issue of a warrant, having regard to whether the offence is punishable by imprisonment and, in the case of proceedings taken by a person other than a police officer or a public officer, the nature of the case against the accused person,
  - (b) whether the prosecutor has made reasonable attempts to serve the court attendance notice,
  - (c) whether an order for substituted service should be made rather than the issue of the warrant,
  - (d) whether there is, and the nature of, any risk to the safety of an alleged victim, witness or other person if the accused person is not arrested and brought before the court,
  - (e) whether the accused person is the subject of any other warrant to arrest in respect of any other offences.
- (3) If an application for a warrant to arrest an accused person is refused by an authorised

officer, the court attendance notice must be listed before the Court.

### **53 Forms of warrants**

- (1) A warrant to arrest a person is to be in the approved form.
- (2) A warrant to commit a person is to be in the approved form.

### **54 Procedure after arrest**

- (1) A person who executes a warrant to arrest a person issued in proceedings to which this Part applies must, when the person is brought before a Magistrate or an authorised officer, produce the following:
  - (a) a copy of the warrant,
  - (b) a court cover sheet,
  - (c) a summary of the relevant facts,
  - (d) details of the antecedents of the accused person.
- (2) The court attendance notice on which a warrant is issued is to be filed with the Court of the Magistrate or authorised officer before whom the person is brought and is to be dealt with by that Court.

### **55 Warrants to commit**

The following persons may execute a warrant to commit a person:

- (a) a police officer,
- (b) a governor of a correctional centre,
- (c) a correctional officer.

## **Part 9 Miscellaneous**

### **56 Applications generally**

- (1) This clause applies to committal proceedings, summary proceedings and application proceedings.
- (2) An application in proceedings is to be made by filing an application, in the approved form for application hearings, except where a form relating to the particular application is separately approved.
- (3) An application must state the nature of the order sought.
- (4) An application must be served on the other party before the date on which it is listed, unless leave not to do so is granted by the Court or the registrar.

- (5) An application may be made for orders relating to the following matters:
  - (a) substituted service of documents,
  - (b) setting aside a subpoena,
  - (c) review of a decision by a registrar,
  - (d) issuing a warrant,
  - (e) any form of interlocutory application for which no other form is approved.
- (6) A Court may make orders sought in an application.
- (7) An application may be held in open court or in the absence of the public.
- (8) The registrar may list an application on the next day on which the proceedings are listed or on an earlier date by arrangement with the Court.

#### **57 Grounds of refusal of private prosecutions or application notices**

A registrar must not sign a court attendance notice, or an application notice, in proceedings commenced by a person other than a police officer or a public officer if of the opinion that the proceedings are frivolous, vexatious, without substance or have no reasonable prospect of success.

#### **58 Recording of evidence**

The evidence of a witness in committal proceedings, summary proceedings or application proceedings may be recorded by any of the following methods:

- (a) shorthand,
- (b) stenotype machine,
- (c) sound recording apparatus,
- (d) audio visual apparatus,
- (e) any other manner directed by the Court.

#### **59 Forms**

- (1) The Chief Magistrate may from time to time cause to be published in the Gazette approved forms for the purposes of this Rule.
- (2) If there is no approved form for a document required to be filed in any proceedings in a Court, the registrar of the Court may approve the form of the document.
- (3) Strict compliance with an approved form is not necessary but substantial compliance is sufficient.

## 60 Filing of documents

- (1) A document that is required by the *Criminal Procedure Act 1986* or the *Local Courts Act 1982* or this Rule to be filed in the registry of a Court or with the registrar by a police officer or public officer is taken to be filed if dealt with as follows:
  - (a) the document is delivered by hand to the registry of the Court,
  - (b) the document is sent by post to the registry of the Court,
  - (c) the document is sent by facsimile or other electronic communication to the registry of the Court and any other requirements of this clause are complied with.
- (2) A document that is required by the *Criminal Procedure Act 1986* or the *Local Courts Act 1982* or this Rule to be filed in the registry of a Court or with the registrar by a person other than a police officer or public officer is taken to be filed if it is dealt with as follows:
  - (a) the document is delivered by hand to the registry of the Court,
  - (b) the document is sent by post to the registry of the Court,
  - (c) the document is sent, with the consent of the registrar, by facsimile to the registry of the Court or by electronic communication to the email address of the registry of the Court, is legible and any other requirements of this clause are complied with.
- (3) A document sent by facsimile or other electronic communication to the registry of a Court must, if a fee is required to be paid on the filing of the document, be accompanied by an undertaking to pay the fee within 28 days of the filing or before the next date the proceedings are before the Court, whichever is the earlier.
- (4) A document that is required by the *Criminal Procedure Act 1986* or the *Local Courts Act 1982* or this Rule to be filed in the registry of a Court is, except with the leave of the registrar, to be filed in the registry of the Court before which the relevant proceedings are, or are to be, listed.
- (5) A document sent by facsimile is taken to have been filed on completion of the transmission of the document.
- (6) A document sent by electronic communication (other than facsimile) to the registry of a Court is taken to be filed on the date of receipt of the document as determined under section 13 of the *Electronic Transactions Act 2000*.

## 61 Review of powers exercised by registrars

If a registrar of a Court gives a direction, makes an order or does any other thing in committal proceedings, summary proceedings or application proceedings, the Court may, on application by the prosecutor or the accused person:

- (a) review the direction, order or action, and
- (b) by order confirm, vary or discharge the order or direction or take such other action as it thinks fit.

## **62 Copies of court records**

- (1) A party to committal proceedings, summary proceedings or application proceedings is entitled to:
  - (a) access to a copy of the court record or transcript of evidence taken at the proceedings, or
  - (b) on payment of any fee prescribed by regulations made under the *Criminal Procedure Act 1986* or the *Local Courts Act 1982*, obtain a copy of the court record or transcript of evidence taken at the proceedings.
- (2) A person who is not a party to committal proceedings, summary proceedings or application proceedings may, with the leave of the Magistrate or registrar:
  - (a) have access to a copy of the court record or transcript of evidence taken at the proceedings, or
  - (b) on payment of the prescribed fee, obtain a copy of the court record or transcript of evidence taken at the proceedings.
- (3) The Magistrate or registrar may grant leave for the purposes of subclause (2) if of the opinion that the person seeking leave to access or obtain a copy of the record or transcript has a proper interest for doing so.