

District Court Rules 1973

[1973-1]



New South Wales

Status Information

Currency of version

Historical version for 21 May 2010 to 31 December 2011 (accessed 10 December 2023 at 12:35)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
District Court Amendment (Summary Criminal Proceedings) Rule 2011 (608) (LW 2.12.2011) (not commenced — to commence on the commencement of the *Work Health and Safety Act 2011* (to commence on 1.1.2012))

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 2 December 2011

District Court Rules 1973



New South Wales

Contents

Part 1 Preliminary	6
1 Name of rules	6
2 Commencement	6
3 (Repealed)	6
4 Interpretation	6
5, 5A (Repealed)	6
6 Seal of the Court	6
7, 7A (Repealed)	7
Part 2 Administration	7
1 Sittings of the Court	7
2 Vacation	7
3 (Repealed)	7
4 Registries	7
Parts 2A-43 (Repealed)	8
Part 43A Judicial Registrar	8
Division 1 General	8
1 Powers of the Judicial Registrar	8
2-4 (Repealed)	8
Division 2 (Repealed)	8

Parts 44-46 (Repealed)	8
Part 47 Documents	8
1 (Repealed)	8
2 Forms.....	8
3-10 (Repealed)	9
Parts 48-51C (Repealed)	9
Part 51D Family Provision Act 1982 and Testator’s Family Maintenance and Guardianship of Infants Act 1916	9
1 (Repealed)	9
2 Family Provision Act 1982.....	9
3 Testator’s Family Maintenance and Guardianship of Infants Act 1916.....	9
4 Documents	10
5 Modifications	10
Part 52 Miscellaneous	10
1, 2 (Repealed)	10
3 Searches.....	10
3A “TFM” proceedings	10
4 Waiver of appeal.....	11
5 (Repealed)	11
6 Removal of proceedings	11
7 Affidavit of service of certain process.....	11
8 (Repealed)	11
9 Publication	12
10, 11 (Repealed)	12
12 Temporary injunctions	12
13-17 (Repealed)	12
Part 53 Criminal procedure rules	12
Division 1 General	12

1 Interpretation	12
2 Record of committal or appeal	12
2A Appeals under section 23 (1) of the Crimes (Local Courts Appeal and Review) Act 2001	13
2B Notification of lodging of appeal.....	14
2C Registrar of Local Court to order transcript	15
3 Service of documents	15
4 Party in custody.....	16
5 Representation	16
6 Listing.....	17
7 Venue	17
8 (Repealed)	18
8A Tendering bundles of documents.....	18
9 Return of exhibits	18
10 Pre-trial applications.....	18
10A Application to reopen proceedings.....	20
10B Elections under Criminal Procedure Act.....	20
10C Notice under section 67 or 99 of the Evidence Act 1995.....	20
10D Manner of presenting indictments	21
10E (Repealed)	21
10F Applications for orders under section 129 (3) (b) of Criminal Procedure Act 1986	21
11 Evidence.....	21
11A View of real property	21
12 Entry and recording of judgments, orders, sentences, directions or recommendations	22
12A Notice of result of appeal	22
13 Recognizances.....	22
14 Interpreters	23
15 Functions of assistant registrars.....	23
16 Relevant factors for appearance by audio visual link: section 5BBA of Evidence (Audio and Audio Visual Links) Act 1998	23
17 Elections under section 11A of Mental Health (Criminal Procedure) Act 1990.....	25
Division 2 Subpoenas.....	25
18 Issue of subpoenas	25
19 Filing of subpoenas by issuing parties	25

20 Service of subpoenas	25
21 Conduct money	26
22 Production by non-party	26
23 Subpoena may be set aside	27
24 Inspection of subpoenaed documents or things	27
25 Return of documents and things produced under subpoena	27
Schedules 1, 2 (Repealed)	28

District Court Rules 1973



New South Wales

Part 1 Preliminary

1 Name of rules

These rules may be cited as the *District Court Rules 1973*.

2 Commencement

These rules shall commence on the commencement of the Act.

3 (Repealed)

4 Interpretation

(1) In these rules, unless the context or subject matter otherwise indicates or requires:

the Act means the *District Court Act 1973*.

(2) In these rules, words and expressions that are defined in the *Civil Procedure Act 2005* or the *Uniform Civil Procedure Rules 2005* have the same meanings as they have in that Act and those rules.

(2A), (3) (Repealed)

(4) Notes in the text of these rules do not form part of these rules.

5, 5A (Repealed)

6 Seal of the Court

(1) The registrar is to seal or stamp the following documents (or cause the documents to be sealed or stamped) with the seal of the Court:

(a) any order, notice, warrant, certificate, judgment or process made, given or issued by the registrar (or any copy of such a document),

(b) any other document issued by the registrar that is required by the rules to be sealed.

(2) Without limiting subrule (1), a document may be stamped with the seal of the Court

by any of the following means:

- (a) affixing the seal on the document by means of a rubber stamp,
- (b) affixing an adhesive label on the document with a representation of the seal printed on it,
- (c) printing a representation of the seal on the document by electronic or mechanical means.

7, 7A (Repealed)

Part 2 Administration

1 Sittings of the Court DCR r 2.

The registrar for a proclaimed place shall, one month before the day appointed for the commencement of a sitting of the Court at that proclaimed place, or such lesser time before that day as the circumstances permit, affix in some conspicuous place in his office a notice of the day and hour so appointed, and whenever any such day or hour is altered shall immediately affix notice of the alteration in the same place.

2 Vacation cf SCR Pt 2, r 5 (2).

- (1) The Chief Judge shall appoint in each year periods to be called vacation, and one of those periods shall be called summer vacation.
- (2) During vacation the Court shall sit on such days only, and for the hearing of proceedings of such types only, as the Chief Judge shall direct.

3 (Repealed)

4 Registries DCR r 4.

- (1) The registry for each proclaimed place shall be under the control and direction of the registrar for the place, subject to any direction by the Chief Judge or a Judge.
- (2), (3) (Repealed)
- (4) Except on Saturdays, Sundays and other holidays, and whether in vacation or not:
 - (a) the registry for Sydney shall be open to the public for business between 9.30 in the morning and 4.00 in the afternoon, and
 - (b) the registry for any other proclaimed place shall be open to the public for business between 9.30 in the morning and 1.00 in the afternoon, and between 2.00 and 4.00 in the afternoon.

cf DCR r 3.

- (5) A registry shall, notwithstanding subrule (4), be kept open to the public for business, or closed for business, at such times on such days as the Chief Judge or a Judge shall direct.

Parts 2A-43

(Repealed)

Part 43A Judicial Registrar

Division 1 General

1 Powers of the Judicial Registrar

- (1) For the purposes of section 18FB (1) of the Act, all of the powers of the Court are conferred on the Judicial Registrar other than:
- (a) the powers of the Court in its criminal jurisdiction (except for the Court's powers under rule 6, 7 or 10F of Part 53 or under the *Bail Act 1978*), or
 - (b) the power of the Court to deal with contempt of Court.
- (2) Subrule (1) (b) does not prevent the Judicial Registrar from reporting to the Court constituted by a Judge any allegation of contempt of the Court.

2-4 (Repealed)

Division 2

5-12 (Repealed)

Parts 44-46

(Repealed)

Part 47 Documents

1 (Repealed)

2 Forms

- (1) (Repealed)
- (2) The Chief Judge may from time to time cause to be published forms approved for use in the Court, and all documents filed in any proceedings shall be in forms similar to the forms so approved where those forms are applicable, and where no approved form is applicable to any document the document shall be framed to the satisfaction of the registrar.

cf DCR r 442.

- (3) A reference in any such form to a provision of these rules includes a reference to the corresponding provision (if any) of the *Uniform Civil Procedure Rules 2005*.
- (4) If a form is approved under section 17 of the *Civil Procedure Act 2005* in relation to the same matter as that for which a form is approved under subrule (2), the form to be used is the form approved under that section.

3-10 (Repealed)

Parts 48-51C

(Repealed)

Part 51D Family Provision Act 1982 and Testator's Family Maintenance and Guardianship of Infants Act 1916

1 (Repealed)

2 Family Provision Act 1982

The provisions of Schedule J to the *Supreme Court Rules 1970* referable to the *Family Provision Act 1982* and the following provisions of Part 78 of the *Supreme Court Rules 1970* apply to proceedings before the District Court under the *Family Provision Act 1982* in the same way as they apply to proceedings before the Supreme Court:

- (a) Part 78, rule 5 (1) (n) (Powers of the registrar),
- (b) Part 78, rule 10 (Publication of notice of intended application),
- (c) Part 78, rule 11 (Delay),
- (d) Part 78, rule 25 (Evidence in support of application for administration),
- (e) Part 78, rule 25A (Evidence in support of application for administration by de facto wife or de facto husband),
- (f) Part 78, rule 26 (Evidence in support of application for administration with will annexed),
- (g) Part 78, rule 26A (Evidence in support of application for administration for the purposes only of the *Family Provision Act 1982*).

3 Testator's Family Maintenance and Guardianship of Infants Act 1916

The provisions of Schedule J to the *Supreme Court Rules 1970* referable to the *Testator's Family Maintenance and Guardianship of Infants Act 1916* apply to proceedings before the District Court under the *Testator's Family Maintenance and Guardianship of Infants Act 1916* in the same way as they apply to proceedings before the Supreme Court.

4 Documents

If a provision of Schedule J to the *Supreme Court Rules 1970* or of Part 78 of the *Supreme Court Rules 1970* that is referred to in rules 1, 2 or 3 requires a document to be in a form specified in Schedule F to the *Supreme Court Rules 1970* the document is to be in that form in proceedings in the District Court.

5 Modifications

The forms contained in Schedule F to the *Supreme Court Rules 1970* apply with necessary modifications and to the extent that they are not inconsistent with the *District Court Act 1973*.

Part 52 Miscellaneous

1, 2 (Repealed)

3 Searches

(1) A party to any proceedings may search the file kept by the registrar in respect of the proceedings.

cf DCR r 17 (1).

(2) A person other than a party to any proceedings, or the solicitor for the party, shall not search the file kept by the registrar in respect of the proceedings except by leave of the Court or registrar.

cf DCR r 451.

(3) (Repealed)

(4) No person shall search any book of record kept by the registrar except by leave of the Court or registrar.

(5) Subrules (2) and (4) do not apply in respect of proceedings under section 134 (1) (c) of the Act.

3A "TFM" proceedings

(1) When proceedings are commenced by a party under section 134 (1) (c) of the Act at a proclaimed place other than Sydney, such party shall as soon as practicable after filing the originating process lodge a copy with the registrar for Sydney.

(2) The registrar for Sydney shall keep a register of originating process filed in proceedings under section 134 (1) (c) of the Act in respect of all registries. Such register and any file recorded in such register may be searched by any person.

4 Waiver of appeal cf DCR r 119.

An agreement shall come into effect for the purposes of section 129 of the Act:

- (a) if a form of agreement is drawn up by either party, signed by both parties, and filed by either party, or
- (b) if a party endorses on a pleading filed by him, or separately files and serves on the opposite party, a statement that he is willing to accept as final the ruling, order, direction or decision of the Court, and the opposite party endorses on a pleading filed by him in reply to the firstmentioned pleading, or separately files and serves on the firstmentioned party, a statement that he agrees to accept the ruling, order, direction or decision as final.

5 (Repealed)

6 Removal of proceedings DCR r 385.

- (1) Where an application for an order of removal or prohibition relating to an action is granted or refused by the Supreme Court, the plaintiff shall as soon as practicable serve the registrar with a copy of the order granting or refusing the application.
- (2) Where an order of removal or prohibition relating to any proceedings is made by the Supreme Court, the registrar shall, as soon as practicable after being served with a copy of the order, send by post or otherwise to the prothonotary the file kept by the registrar in respect of the proceedings.

7 Affidavit of service of certain process DCR r 422.

- (1) In this rule, **process** means any summons or order (but not a subpoena), whereby a person is called upon to attend before the Court or a registrar on a day named in the process, and **return-day** means the day so named.
- (2) Except where otherwise provided in the rules, where at noon on the day on which the registry is open for business most nearly preceding the return-day of any process:
 - (a) a person served with the process has filed no document in reply to the process, and
 - (b) no affidavit of service of the process on the person has been filed,the party at whose instance the process was served shall be deemed to have discontinued, as against that person, the proceedings initiated by the process.
- (3) The Court may if it thinks fit order on terms that any proceedings deemed to have been discontinued under subrule (2) may be continued.

8 (Repealed)

9 Publication

- (1) Except where otherwise provided, where notice of any matter is required by the Act or rules, or by any order of the Court, to be published, the notice shall be published in such newspaper or periodical as the Court or registrar shall direct.

cf DCR r 427.

- (2) The Court or registrar may also direct that the notice be published by email or facsimile, on the internet or by any other electronic means.

10, 11 (Repealed)

12 Temporary injunctions

The proclaimed places prescribed for the purposes of section 140 (5) and (6) of the Act are Campbelltown, Gosford, Liverpool, Penrith.

13-17 (Repealed)

Part 53 Criminal procedure rules

Division 1 General

1 Interpretation

- (1) This Part applies only to proceedings in the criminal jurisdiction of the Court.
- (2) In this Part, **registrar** means registrar of the Court in its criminal jurisdiction, and, in relation to any proceedings, means the registrar for the proclaimed place at which the proceedings are heard or to be heard.

2 Record of committal or appeal

- (1) Where an accused person is committed for trial to the District Court sitting at a proclaimed place, the registrar of the Local Court at which the accused person was committed for trial shall as soon as practicable forward to the registrar for the proclaimed place a record containing the following information relating to the committal:
 - (a) the full name of the accused person and any other names recorded in the proceedings in the Local Court as names by which that person is also known,
 - (b) the date of birth and last known address of the accused person,
 - (c) whether the accused person is in custody or on bail,
 - (d) where known to the registrar, the full name, address and telephone number of any solicitor who acted for the accused person in the proceedings resulting in the committal,

- (e) the full name and rank of the member of the police force responsible for the proceedings resulting in the committal, and his location,
 - (f) the short title of the offence for which the accused person was committed, and
 - (g) the location of the transcription centre to which the tapes of the proceedings resulting in the committal were sent for transcription.
- (2) Where an appellant lodges under section 14 (1) or (3) of the *Crimes (Local Courts Appeal and Review) Act 2001* a notice of appeal, or an application for leave to appeal, which is to be heard in the District Court sitting at a proclaimed place, the registrar of the Local Court at which was made the conviction or order, or was imposed the sentence, appealed against shall as soon as practicable forward to the registrar for the proclaimed place a record containing the following information relating to the appeal:
- (a) the full name of the appellant and any other names recorded in the proceedings in the Local Court as names by which the appellant is also known,
 - (b) the date of birth and last known address of the appellant,
 - (c) whether the appellant is in custody or on bail,
 - (d) where known to the registrar, the full name, address and telephone number of any solicitor who acted for the appellant in the proceedings resulting in the conviction or, order or sentence,
 - (e) where the informant in the proceedings resulting in the conviction or order was:
 - (i) a member of the police force—the full name and rank of the member of the police force responsible for those proceedings and his location, or
 - (ii) not a member of the police force—the full name and address of the informant, and, where he laid the information as the holder of an office, the title of that office,
 - (f) the short title of the offence of which the appellant was convicted, and
 - (g) the location of the transcription centre to which the tapes of the proceedings resulting in the conviction or, order or sentence were sent for transcription.

2A Appeals under section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001*

- (1) In this rule:

appeal means an appeal under section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001*.

respondent in respect of an appeal means the person on whom the sentence appealed against was imposed.

- (2) An appeal shall be lodged by giving notice of the appeal in the approved form to the Registrar of the Local Court at the Downing Centre, Sydney.
- (3), (4) (Repealed)
- (5) The registrar of the Local Court at which was imposed the sentence appealed against shall, as soon as practicable after receiving notice of the appeal, forward to the registrar for the proclaimed place nearest to that Local Court a record containing the following information relating to the appeal:
 - (a) the full name of the respondent and any other names recorded in the proceedings in the Local Court as names by which the respondent is also known,
 - (b) the date of birth and last known address of the respondent,
 - (c) whether the respondent is in custody or on bail,
 - (d) where known to the registrar, the full name, address and telephone number of any solicitor who acted for the respondent in the proceedings resulting in the sentence,
 - (e) where the informant in the proceedings resulting in the sentence was:
 - (i) a member of the police force—the full name and rank of the member of the police force responsible for those proceedings and his location, or
 - (ii) not a member of the police force—the full name and address of the informant, and, where he laid the information as the holder of an office, the title of that office,
 - (f) the short title of the offence in respect of which the respondent was sentenced, and
 - (g) the location of the transcription centre to which the tapes of the proceedings resulting in the sentence were sent for transcription.

2B Notification of lodging of appeal

- (1) The registrar of the Local Court who receives notice of an appeal, or an application for leave to appeal, lodged under section 14 (1) or (3) of the *Crimes (Local Courts Appeal and Review) Act 2001* shall immediately thereafter send notification of the lodging of the appeal or application to the Director of Public Prosecutions and the registrar for the proclaimed place at which the appeal or application is to be heard.
- (2) The registrar of the Local Court at the Downing Centre, Sydney shall, immediately after notice of an appeal under section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001* is given to him, send notification of the lodging of the appeal to the registrar for the proclaimed place at which the appeal is to be heard.

2C Registrar of Local Court to order transcript

Where, consequent on any proceedings in a Local Court:

- (a) a person is committed for trial to the District Court,
- (b) an appellant lodges under section 14 (1) or (3) of the *Crimes (Local Courts Appeal and Review) Act 2001* a notice of appeal or an application for leave to appeal, or
- (c) the Director of Public Prosecutions lodges an appeal under section 23 (1) of that Act,

the registrar of the Local Court shall as soon as practicable request preparation of a transcript of the proceedings.

3 Service of documents

(1) In this rule:

copy means a true copy of a document (including a notice of listing) to be served.

party means the person to be served with a document.

service means service of a document required or permitted by or under any Act or these rules or by any order of the Court to be served in the conduct of any proceedings.

- (2) Except where otherwise provided by or under any Act or these rules, service may be effected:
 - (a) on an accused person, appellant, or respondent to an appeal under section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001*—by a member of the police force or a Sheriff's Officer, or
 - (b) on any other person, by any person over the age of 16 years.
- (3) Service may be personal, but need not be personal unless required by the rules or any order.
- (4) Personal service may be effected by delivering a copy to the party personally.
- (5) A copy may be delivered to a person by handing it to him or by leaving it in his presence and informing him of its nature.
- (6) Except where personal service is required, service may be effected by delivering a copy at the residence or place of business of the party, to a person apparently not less than 16 years old and apparently residing at that residence or employed at that place of business.
- (7) It shall not be necessary to the regular service of any document that the original thereof be produced to any person.

- (8) Where a solicitor acts for a party, service on the party may be effected by:
- (a) delivering a copy to the solicitor,
 - (b) leaving a copy, addressed to the solicitor, at his office,
 - (c) sending a copy by post addressed to the solicitor at his office, or
 - (d) where the solicitor has an exchange box in a document exchange, in the State, of Australian Document Exchange Pty Limited—leaving a copy, addressed to the solicitor, in that exchange box or at another exchange box for transmission to that exchange box.
- (9) Service on a party who is in custody at an institution may be effected by delivery of a copy at the institution to the officer in charge thereof.
- (10) Service:
- (a) (Repealed)
 - (b) by leaving a copy at an exchange box shall be deemed to be effected on a day 2 days after the copy is so left.

4 Party in custody

Where for the purposes of any proceedings:

- (a) a document is handed, or information or a request is conveyed, to the officer in charge of an institution for delivery to a party who is in custody at that institution, or
- (b) a party who is in custody at an institution hands a document, or conveys information or a request, to the officer in charge of that institution for delivery to the registrar,

the officer shall ensure that the document, information or request is so delivered as soon as practicable.

5 Representation

- (1) A legal practitioner whose authority to act for a party in any proceedings has not been terminated by the party shall not, without the leave of the Court, cease to act for the party unless he has given reasonable notice of his intention to so cease to act to all parties to the proceedings, the registrar and the Criminal Listing Director.
- (2) An application for the leave of the Court as mentioned in subrule (1) shall be made on notice to all parties to the proceedings, the registrar and the Criminal Listing Director of the day and the place where, and the grounds on which, the leave is to be sought.
- (3) Non-payment of professional costs or counsel's fees shall not of itself constitute adequate grounds on which the Court may grant leave as mentioned in subrule (1).

- (4) A statement by a legal practitioner that he desires for ethical reasons to cease to act shall, without any explanation being required by the Court, constitute adequate grounds for the granting of leave as mentioned in subrule (1), and the fact that such a statement has been made by the legal practitioner shall be recorded on the Court file.
- (5) A solicitor or, where a barrister acts uninstructed by any solicitor, a barrister who acts for a party in any proceedings and has reason at any time to believe that he has lost contact with the party shall as soon as practicable, in writing, so inform every other party, the registrar and the Criminal Listing Director.
- (6) Without limiting the generality of subrule (5), a solicitor or, where a barrister acts uninstructed by any solicitor, a barrister who acts for a party in any proceedings shall, not less than 1 month nor more than 2 months before the date fixed for the hearing of the proceedings, ascertain whether he remains in contact with the party.
- (7) (Repealed)

6 Listing

- (1) At the listing of any proceedings the Court may hear the proceedings or may give directions for the proper, speedy and convenient hearing of the proceedings as it may determine, and may adjourn the listing of the proceedings to another date.
- (2) In adjourning the listing of any proceedings to another date the Court shall so far as practicable liaise with the Criminal Listing Director.

7 Venue

- (1) This rule applies subject to any order made by the Supreme Court under Section 577 of the *Crimes Act 1900*, or by the Attorney General, in respect of the venue of any proceedings.
- (2) Subject to this rule, the venue for the hearing of any proceedings shall be:
 - (a) in the case of a person committed for trial or sentence to the Court sitting at a proclaimed place—that proclaimed place, or
 - (b) in the case of an appeal under section 11, or an application for leave to appeal under section 12 or 13, of the *Crimes (Local Courts Appeal and Review) Act 2001*, the proclaimed place nearest to the Local Court at which was made the conviction or order or was imposed the sentence, appealed, or sought to be appealed, against, or
 - (c) in the case of an appeal under section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001*—the nearest proclaimed place to the Local Court at which was imposed the sentence appealed against.
- (3) Whether or not the hearing of any proceedings has commenced, the Court may, on

the application of a party or of its own motion, on terms order that the venue of the proceedings be changed to another proclaimed place.

- (4) Notwithstanding anything in subrule (2), and without limiting subrule (3), the Court may, on the application of a party or of its own motion, direct that any proceedings for hearing at a specified proclaimed place comprised within a District are to be heard at another proclaimed place that is comprised within the same District.
- (5) The powers of the Court under subrule (4) may, in respect of a District, be exercised by the Court, or by the registrar in the criminal jurisdiction for that District.

8 (Repealed)

8A Tendering bundles of documents

If a party to proceedings seeks to tender more than one document to the Court at the same time (a **bundle of documents**), the party must:

- (a) number each document in the bundle of documents with a consecutive whole number commencing with "1", and
- (b) prepare a schedule for the bundle of documents that provides a brief description of each document in the bundle next to the number for the document allocated as provided by paragraph (a), and
- (c) provide a copy of the schedule and the bundle of documents both to the Court and to each other party to the proceedings.

9 Return of exhibits

- (1) Exhibits in any proceedings, whether produced on subpoena or otherwise, may be returned to the person who produced them to the Court or registrar:
 - (a) where the Court makes an order for the return of the exhibits, forthwith, and
 - (b) where, within a period of 90 days after sentence is passed or deferred or a final order is made, the Court makes no order for the return or retention of the exhibits, and no notice is given to the registrar of any appeal in the proceedings, forthwith after the expiration of that period.
- (2) A person to whom exhibits may be returned under subrule (1) shall obtain the return of, and give to the registrar a receipt for, the exhibits as soon as practicable, and the registrar shall be responsible for the safe custody of any exhibits in his keeping for a period only of 14 days after the first day on which the exhibits may be so returned.

10 Pre-trial applications

- (1) Any application to the Court in relation to any proceedings which may practicably be made before the day appointed for the hearing of the proceedings shall be made

before that day.

- (2) An application may be made, and the Court may make orders with regard to the application, before the day appointed for the hearing, where the application is:
 - (a) for adjournment,
 - (ai) to seek or to give any admission or consent,
 - (b) to quash or stay an indictment,
 - (c) to demur to an indictment,
 - (d) for separate trials,
 - (e) for severance of counts,
 - (f) for change of venue,
 - (g) to set aside a subpoena,
 - (gi) for leave to withdraw an appeal under section 67 of the *Crimes (Local Courts Appeal and Review) Act 2001*,
 - (h) for directions generally,
 - (i) for an order under the *Bail Act 1978*, or
 - (j) for an order under rule 11 (1).
- (3) Subject to subrule (4), an application referred to in subrule (1) shall be made by filing notice of motion supported, unless the Court otherwise orders, by an affidavit or affidavits as to the facts and grounds upon which the application is made.
- (4) A party may make an application referred to in subrule (1) without previously filing or serving notice of the motion:
 - (a) where the preparation of the notice, or the filing or service of the notice (as the case may be), would cause undue delay or other mischief to the applicant,
 - (b) where no date has been fixed for the hearing of the proceedings, or of any proceedings ancillary to the proceedings, and all parties to the proceedings consent to the order applied for, or
 - (c) where the Court gives leave to the party so to do.
- (5) Notice of a motion shall:
 - (a) state the date and time when, and the place where, the motion is to be made, that date, time and place having been obtained by the applicant from the

registrar,

(b) where the Court has made an order under subrule (6), bear a note of the order made,

(c) state concisely the nature of the order sought, and

(d) state concisely the grounds on which the order is sought, or refer to the affidavit in which those grounds are contained.

(6) Unless the Court otherwise orders, a party filing a notice of motion shall serve the notice, and every affidavit in support of the motion, on each other party to the proceedings not less than 3 days before the date fixed for the motion.

(7) An application referred to in subrule (1) in relation to any proceedings which are expected to be heard at a place where the Court does not usually sit on every Court day may be made in Sydney.

10A Application to reopen proceedings

(1) An application of a party as referred to in section 43 (2) of the *Crimes (Sentencing Procedure) Act 1999* shall, unless the Court otherwise orders, be made on notice of motion.

(2) Rule 10 (5), (6) and (7) shall apply to a notice of motion referred to in subrule (1) as if the notice were filed under rule 10.

10B Elections under Criminal Procedure Act

(1) An election referred to in section 132 (1) or (5) of the *Criminal Procedure Act 1986* in respect of any proceedings:

(a) shall be in writing in or to the effect of the approved Form,

(b) in the case of an election referred to in section 132 (1) shall be endorsed with the consent of the Director of Public Prosecutions given for the purposes of section 132 (3) of that Act, and

(c) shall be lodged with the registrar before the day appointed for the hearing of the proceedings.

(2) Consent of the Director of Public Prosecutions may be endorsed under subrule (1) (b) by the Director or a person authorised by the Director to give such consents on the Director's behalf.

10C Notice under section 67 or 99 of the Evidence Act 1995

Rule 31.5 of the *Uniform Civil Procedure Rules 2005* applies in respect of proceedings in the criminal jurisdiction of the Court.

10D Manner of presenting indictments

- (1) An indictment may be presented by filing a copy of the indictment with the registrar.
- (2) If an indictment is filed with the registrar, a copy of the indictment must be served on each accused person or the accused person's legal representative within 14 days after the filing of the indictment.
- (3) Without limiting the generality of rule 3, an indictment may be filed or served by letter or facsimile.
- (4) In this rule, ***accused person's legal representative*** means:
 - (a) a solicitor who acts for the accused, or
 - (b) if a barrister acts for the accused person uninstructed by a solicitor, the barrister.

10E (Repealed)

10F Applications for orders under section 129 (3) (b) of [Criminal Procedure Act 1986](#)

An application for an order under section 129 (3) (b) of the [Criminal Procedure Act 1986](#) to extend the time for filing an indictment:

- (a) must be made before the time for filing the indictment has expired, and
- (b) may be made in Court or by written application to the Court.

11 Evidence

- (1) The Court may order that an enquiry by way of a voir dire into the admissibility of any evidence or as to the capacity of a witness to give evidence be had, before the trial Judge, at any stage of any proceedings whether before or after the jury is empanelled.
- (2) Before commencing any enquiry ordered under subrule (1) the Court shall require the accused person, if he has not already pleaded to the charge against him, to so plead.
- (3) Unless the Court otherwise orders, a party shall make any statement he intends to make, and give any evidence he intends to give, before he adduces any other evidence.
- (4) The Court may in any proceedings order, on terms, that evidence or submissions may be received by telephone, video link or other form of communication.

11A View of real property

The Court has the same powers as the Supreme Court has to make an order for a view of real property for the purposes of any proceedings.

12 Entry and recording of judgments, orders, sentences, directions or recommendations

Any judgment, order, sentence, direction or recommendation given or made by a Judge in any proceedings shall be entered on:

- (a) the indictment in the proceedings,
- (b) the appropriate court file, or
- (c) the appropriate computer record,

and that entry shall, when signed by the Judge or entered on the appropriate computer record, be the record of the judgment, order, sentence, direction or recommendation.

12A Notice of result of appeal

As soon as practicable after the Court gives judgment in respect of, or makes an order or gives any leave which has the effect of disposing of, an appeal under section 11 or section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001*, the registrar shall send notice of the judgment, order or leave to the Magistrate who recorded the conviction, made the order, or imposed the sentence, appealed against.

13 Recognizances

(1) The registrar shall:

- (a) maintain a record of every recognizance entered into by order of the Court, and
- (b) where money is paid to the registrar as required by a condition of a recognizance, maintain a record of the payment and disburse the money to the person entitled to it.

(2) Where a recognizance entered into by order of the Court is conditioned to require a party to do or refrain from doing any thing or to suffer the doing of any thing by any person, and it is alleged that the party is in breach of that condition, the person so alleging shall without delay so advise the registrar.

(3) Unless the Court otherwise orders, the registrar shall, in respect of a recognizance:

- (a) on receiving any advice given under subrule (2), or
- (b) on becoming aware of a breach of a condition requiring payment of money to the registrar,

without delay submit a report on the advice or breach to the Judge who required the recognizance to be entered into, or, if that Judge be not available, to the Chief Judge or another Judge.

(4) After considering any report submitted to him under subrule (3), a Judge may if he thinks fit direct that the party the subject of the report be brought before him or

another Judge or that no action be taken in respect of the report, or may make such other directions as to him seem appropriate.

- (5) Where a Judge directs under subrule (4) that a party be brought before a Judge, the registrar shall without delay give notice to the party to that effect, and shall include in that notice the place and time at which the party is so required to appear.
- (6) At a place and time notified under subrule (5), or at any other place and time to which the matter is adjourned, a Judge may deal according to law with a party who is in breach of a condition of a recognizance whether or not the Judge is the Judge who directed that the party be brought before a Judge.
- (7) The certificate of the registrar as to the amount of any money paid to him as required by a condition of a recognizance, the date of any such payment, and any amount remaining due to be paid under the condition, shall be evidence of the facts stated in the certificate.

14 Interpreters

- (1) This rule applies to an interpreter whose services are provided by arrangement with the registrar for the assistance of the Court in the translation of evidence given in any proceedings.
- (2) This rule does not apply to an interpreter who is engaged to assist a party.
- (3) An interpreter to whom this rule applies shall, when attending at the Court for the purpose of the proceedings, report to the Sheriff's Officer in charge at the Court or to the Associate to the presiding Judge.
- (4) An interpreter to whom this rule applies shall not, without the direction or permission of the presiding Judge, make his services available to, or communicate with, a party to the proceedings or the representative of such a party.

15 Functions of assistant registrars

- (1) An assistant registrar at a place that is a proclaimed place shall have the functions of the registrar for that proclaimed place.
- (2) An assistant registrar at a place that is not a proclaimed place shall have the function only of issuing subpoenas.

16 Relevant factors for appearance by audio visual link: section 5BBA of Evidence (Audio and Audio Visual Links) Act 1998

- (1) The following are specified as factors that the Court is to take into account in determining whether it is in the interests of the administration of justice to make a direction under section 5BBA (1) of the [Evidence \(Audio and Audio Visual Links\) Act 1998](#) that an accused child detainee is to appear before the Court by audio visual link:

- (a) the nature of the proceedings concerned,
- (b) the right of the accused child detainee to be given the fullest opportunity to be heard and to participate in the proceedings,
- (c) whether the accused child detainee would be significantly advantaged or disadvantaged if directed to appear by audio visual link,
- (d) the availability of Judges of the Court to hear the proceedings by audio visual link,
- (e) the need for the accused child detainee's lawyer to obtain initial or detailed instructions from the accused child detainee,
- (f) the need for the accused child detainee's lawyer to discuss a brief of evidence with the accused child detainee,
- (g) the distance the accused child detainee would need to travel and the expense and inconvenience involved in appearing physically before the Court,
- (h) the maturity of the accused child detainee,
- (i) the accused child detainee's need for the support of a parent, carer or other support person during the proceedings,
- (j) the wishes of the accused child detainee,
- (k) the involvement of the accused child detainee in any educative or rehabilitative program at the detention centre at which the accused child detainee is in custody,
- (l) any special needs of the accused child detainee, including the impact of any intellectual or physical disability or mental illness that the accused child detainee may have,
- (m) whether the accused child detainee requires the assistance of an interpreter and the availability of an appropriate interpreter,
- (n) the risk that the personal security of a particular person or persons (including the accused child detainee) may be endangered if the accused child detainee appears in the courtroom or place where the Court is sitting,
- (o) the risk of the accused child detainee escaping, or attempting to escape, from custody when attending the courtroom or place where the Court is sitting,
- (p) the behaviour of the accused child detainee when appearing before a court in the past,
- (q) the conduct of the accused child detainee while in custody, including the accused child detainee's conduct during any period in the past during which the accused child detainee was being held in custody in a detention centre.

- (2) Expressions used in this rule that are defined in section 3 of the *Evidence (Audio and Audio Visual Links) Act 1998* have the meanings set out in that section.

17 Elections under section 11A of Mental Health (Criminal Procedure) Act 1990

An election made by a person under section 11A of the *Mental Health (Criminal Procedure) Act 1990* must be made in writing in or to the effect of the approved form.

Division 2 Subpoenas

18 Issue of subpoenas

- (1) A registrar or prosecutor 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.

19 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.

20 Service of subpoenas

- (1) A subpoena must be served on the person named in accordance with this rule.
- (2) 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.
- (3) 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 subpoena.

21 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 or thing, the reasonable expenses of the person named of complying with the requirement to produce the document or thing.

22 Production by non-party

- (1) This rule 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 the Court under section 226 (1) of the [Criminal Procedure Act 1986](#) 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.

23 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 rule 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.

24 Inspection of subpoenaed documents or things

For the purposes of section 228 (3) of the *Criminal Procedure Act 1986*, 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.

25 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.

Schedules 1, 2 (Repealed)