

# Local Court Rules 2009

[2009-589]



New South Wales

## Status Information

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### Provisions in force

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### Notes—

- **Does not include amendments by**

[Court Information Act 2010 No 24](#) (not commenced)

[Local Court Rules \(Amendment No 4\) 2013 \(226\)](#) (LW 24.5.2013) (not commenced — to commence on 11.10.2013)

### Authorisation

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New South Wales

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# Local Court Rules 2009



New South Wales

## Part 1 Preliminary

### 1.1 Name of rules

These rules are the *Local Court Rules 2009*.

### 1.2 Commencement

These rules commence on the day on which they are published on the NSW legislation website.

### 1.3 Definitions

(1) In these rules:

**accused person** includes:

- (a) in relation to proceedings for a summary offence, a defendant, and
- (b) in relation to application proceedings, a respondent.

**approved form**, in relation to a document, means:

- (a) in relation to civil proceedings, the form approved for that document under section 17 of the *Civil Procedure Act 2005*, and
- (b) in relation to application proceedings, the form approved for that document under section 72 of the *Local Court Act 2007*, and
- (c) in relation to criminal proceedings, the form approved for that document under rule 8.6.

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

**legal practitioner** means an Australian legal practitioner.

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

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

**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—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*.

- (2) Notes included in these rules do not form part of these rules.

#### **1.4 Seal of the Court**

- (1) The registrar is to cause the following 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 issued by the registrar),
  - (b) any other document issued by the registrar that rules of court require 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.

#### **1.5 Repeal of rules**

The *Local Courts (Civil Procedure) Rules 2005* and the *Local Courts (Criminal and Applications Procedure) Rule 2003* are repealed.

## **Part 2 Civil Proceedings (Small Claims Division)**

### **Division 1 Preliminary**

#### **2.1 Application of Part**

This Part applies to proceedings in the Court sitting in its Small Claims Division.

### **Division 2 Transfer of proceedings**

#### **2.2 Transfer of proceedings from Small Claims Division to General Division: jurisdictional limit exceeded**

Proceedings are to be transferred to the Court's General Division if a cross-claim is made in the proceedings for an amount exceeding the jurisdictional limit of the Court's Small Claims Division.

**Note—**

As at the commencement of these rules, the jurisdictional limit of the Court sitting in its Small Claims Division was \$10,000.

#### **2.3 Transfer of proceedings from Small Claims Division to General Division: complexity, difficulty or importance of matters in dispute**

- (1) The Court may, on the application of a party or of its own motion, transfer proceedings to the Court's General Division if, at any time before judgment is given, the Court is of the opinion that the matters in dispute are so complex or difficult, or are of such importance, that the proceedings ought more properly to be heard in the Court's General Division.
- (2) The Court may, on the application of a party or of its own motion, transfer proceedings that have been transferred to the Court's General Division under subrule (1) back to its Small Claims Division if the Court considers it appropriate to do so.
- (3) An application for proceedings to be transferred under subrule (1) or (2) may not be made by a party to the proceedings later than 28 days before the day fixed for the trial of the proceedings.

### **Division 3 Pre-trial review**

#### **2.4 Setting down for pre-trial review**

- (1) Unless the Court otherwise orders, proceedings in which a defence is filed are to be listed for pre-trial review.
- (2) The registrar must cause notice of the date, time and place of the pre-trial review to be sent to the plaintiff and to each defendant who has filed a defence.



## **2.5 Conduct of pre-trial reviews**

- (1) In any pre-trial review of proceedings, each of the parties to the proceedings:
  - (a) must be in attendance at the review, either in person or by a legal representative having authority to negotiate a settlement of the proceedings, and
  - (b) must disclose the names of the witnesses who may provide statements on which the party intends to rely at the trial and the nature of any other documents on which the party intends to rely at the trial (to the extent that such information is available at the time of the pre-trial review).
- (2) For the purposes of subrule (1) (a), a person who appears by telephone, audio-visual link or any other means of electronic communication, as referred to in rule 2.8, is taken to be in attendance.
- (3) In the pre-trial review, the parties to the proceedings may apply for any interlocutory orders necessary for the preparation of the matter for trial.
- (4) In the pre-trial review, the Court:
  - (a) must identify the matters in dispute between the parties and attempt to bring the parties to a settlement that is acceptable to them, and
  - (b) for that purpose, may require that the parties seek mediation and may make such orders as it thinks fit, including orders as to adjournment, so as to facilitate the mediation.
- (5) (Repealed)
- (6) If the Court is unable to bring the parties to a settlement that is acceptable to them, the Court is to list the proceedings for trial at an appropriate time and venue and make case management orders in accordance with any relevant practice note. However, the Court may refuse to list proceedings for trial if it is satisfied that the parties have not made reasonable attempts to settle the matters in dispute between them.
- (7) If a party fails to attend the pre-trial review after having been given notice in accordance with rule 2.4 (2), the Court may adjourn the review to another date and direct that, not less than 5 days before that date, a further notice be given to the party in default advising:
  - (a) if the party in default is the plaintiff, that the party's claim may be dismissed, either in whole or in part, or
  - (b) if the party in default is the defendant, that the party's defence may be struck out, either in whole or in part,

if the party fails to attend the adjourned review.

- (8) If a party fails to attend the adjourned review after having been given notice in accordance with subrule (7), the Court may order:
- (a) if the party in default is the plaintiff, that the party's claim be dismissed, either in whole or in part, or
  - (b) if the party in default is the defendant, that the party's defence be struck out, either in whole or in part,
- and may make such other orders as it thinks fit.

## **Division 4 Trial**

### **2.6 Procedure generally**

- (1) Subject to this Part, the procedure to be followed at a trial of any proceedings is to be determined by the Court.
- (2) Unless the Court orders otherwise, proceedings are to be heard and determined on the basis of:
  - (a) any written statements (whether sworn or unsworn) or other documents that have been filed and served in accordance with any case management orders, and
  - (b) any submissions made by the parties on the material filed and served in accordance with any case management orders.
- (3) Proceedings may be heard and determined by the Court even if one or more of the parties is absent.

### **2.7 Procedure regarding assessment of damages**

In the case of proceedings in which default judgment has been entered in favour of the plaintiff but damages are yet to be assessed, the Court may, when listing the proceedings for trial, give directions as to the manner in which evidence as to damages is to be given.

## **Division 5 General**

### **2.8 Use of telephones, audio-visual link and other electronic communication**

In any proceedings, the Court may allow a person to appear or give evidence by telephone, audio-visual link or any other means of electronic communication.

### **2.9 Costs**

- (1) In this rule, costs include fees, disbursements, expenses and remuneration.
- (2) The Court may make orders for the payment of costs only in the following

circumstances:

- (a) if proceedings are discontinued or dismissed, or a defence is struck out, at a pre-trial review or at a hearing,
  - (b) if proceedings are adjourned as a consequence of a party's default or neglect, including a party's failure to comply with a direction of the Court,
  - (c) if proceedings on a motion are heard by the Court,
  - (d) if judgment is given after a trial of proceedings.
- (3) The maximum amount of costs that may be awarded to a party under subrule (2) is the amount of costs that would be allowable on entry of default judgment in the proceedings.
- (4) Despite subrules (2) and (3), the Court may also allow costs for the following:
- (a) matters for which fixed costs are prescribed under Part 3.2 of the *Legal Profession Act 2004*,
  - (b) court and service fees,
  - (c) fees for expert opinion reports (limited to a maximum of \$100 for each report),
  - (d) search fees.

## **2.10 Applications**

- (1) Unless the Court orders otherwise, applications are to be made orally before the Court.
- (2) Despite subrule (1):
  - (a) any application for the transfer of proceedings to the Court's General Division, or
  - (b) any application for an order under Part 8 of the *Uniform Civil Procedure Rules 2005* that the venue at which the proceedings are to be heard be changed, or
  - (c) any application for the inspection of property, or
  - (d) any application in relation to proceedings made after the Court has given judgment in the proceedings (such as an application for a writ of execution), or
  - (e) any application to set aside a judgment or order of the Court,is to be made by motion in accordance with Part 18 of the *Uniform Civil Procedure Rules 2005*.

## **Part 3 Criminal proceedings**

### **Division 1 Preliminary**

#### **3.1 Definition**

In this Part, **the 1986 Act** means the *Criminal Procedure Act 1986*.

### **Division 2 Committal proceedings**

#### **3.2 Commencement of proceedings**

- (1) For the purposes of section 50 (1) of the 1986 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 1986 Act, the court attendance notice must include the following matters in addition to those required by section 50 (3) of the 1986 Act:
  - (a) the time and date of the alleged offence or, if the exact time and date are not known or the alleged offence occurred over a period of time, the period of time during which the offence is alleged to have occurred,
  - (b) the place where the offence is alleged to have occurred.

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

For the purposes of section 63 (1) of the 1986 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?”

#### **3.4 Application to waive committal hearing**

- (1) For the purposes of section 68 of the 1986 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.

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

- (1) For the purposes of section 75 (4) of the 1986 Act, the notice explaining the effect of Division 3 of Part 2 of Chapter 3 of the 1986 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.

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.

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 subrule (1) may be included in an approved form relating

to written statements.

### **3.6 Endorsement and certification of written statements**

- (1) Subject to subrule (2), an endorsement referred to in section 79 (3) of the 1986 Act is to be in or to the effect of the following form:

“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) In the case of a child, or an adult who is apparently of appreciably below average intelligence, it is sufficient if the endorsement includes:

- (a) words to the effect that the statement is true, or
- (b) words to the effect that the statement contains no lies.

- (3) A written statement that is in a language other than English and has a document purporting to contain an English translation of the statement or part annexed to it in accordance with section 79 (5) of the 1986 Act must also have annexed to it a certificate by the translator stating his or her qualifications and certifying that the translation is a correct translation of the document.

### **3.7 Addresses, dates of birth 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, date of birth or telephone number of the person who made the statement or of any other living person, unless:

- (a) the address, date of birth 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 rule 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, date of birth 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.
- (6) In this rule, **address** includes residential address, business address, email address and web-based address.

### **3.8 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 1986 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.

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

- (1) For the purposes of section 89 (2) of the 1986 Act, the prescribed form of words is as follows (omitting the words marked \* that do not apply):

“You have been served 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 subrule (2), the prescribed form of words is to include the following words:

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

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

For the purposes of section 111 (1) of the 1986 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 1986 Act in relation to any back up or related offences,
- (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 acknowledgment entered into or made pursuant to a bail condition,
- (g) a notice of waiver of a committal hearing under section 68 of the 1986 Act.

## **Division 3 Summary proceedings**

### **3.11 Commencement of proceedings**

- (1) For the purposes of section 175 (1) of the 1986 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 1986 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 or the alleged offence occurred over a period of time, the period of time during which the offence is alleged to have occurred,
  - (b) the place where the offence is alleged to have occurred.

### **3.12 Addresses, dates of birth and phone numbers not to be disclosed**

- (1) A copy of a brief of evidence served on an accused person under the 1986 Act must not include any written statement that discloses the address, date of birth or telephone number of the person who made the statement or of any other living person, unless:
  - (a) the address, date of birth 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 rule 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, date of birth 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.
- (6) In this rule, **address** includes residential address, business address, email address and web-based address.

### **3.13 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 name and age of the person who made the statement, and
  - (b) be endorsed in accordance with rule 3.6 (1) and (2) 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) 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, and
  - (b) a certificate by the translator stating his or her qualifications and certifying that the translation is a correct translation of the document.

## **Part 4 Application proceedings**

### **4.1 Application of Part**

This Part applies to application proceedings (other than proceedings commenced under the *Crimes (Domestic and Personal Violence) Act 2007*).

### **4.2 Particulars**

- (1) The Court may, 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 subrule (1), if a party alleges that a person had knowledge or notice of some fact, matter or thing, the Court may order that party to file and serve on the other party a statement of the grounds on which the party relies.
- (3) If the Court or a registrar makes an order under subrule (1), the Court may, if the Court 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:
- (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.

### **4.3 Management powers**

- (1) The Court may make any orders the Court thinks fit for the just, efficient, effective and timely management of proceedings before the Court.
- (2) Without limiting subrule (1), the Court 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 (with such list to be page numbered and indexed in appropriate order),
- (h) an order for the preparation of written submissions on any question of law raised in the proceedings.

#### **4.4 Summary stay or dismissal**

The Court may order that 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 the proceedings are frivolous, vexatious, without substance or have no reasonable prospect of success.

## **Part 5 Service of documents**

### **Division 1 Preliminary**

#### **5.1 Application of Part**

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

#### **5.2 Definition**

For the purposes of this Part, ***originating document*** means an application notice or a court attendance notice.

#### **5.3 How personal service effected generally**

- (1) Personal service of a document on a person is effected by leaving a copy of the document with the person or, if the person does not accept the copy, by putting the copy down in the person's presence and telling the person the nature of the document.
- (2) If, by violence or threat of violence, a person attempting service is prevented from approaching another person for the purpose of delivering a document to the other

person, the person attempting service may deliver the document to the other person by leaving it as near as practicable to that other person.

(3) Service in accordance with subrule (2) is taken to constitute personal service.

#### **5.4 Personal service on corporation**

Personal service of a document on a corporation is effected:

- (a) by personally serving the document on a principal officer of the corporation, or
- (b) by serving the document on the corporation in any other manner in which service of such a document may, by law, be served on the corporation.

#### **5.5 Personal service on inmate of correctional centre**

- (1) Personal service of a document on an inmate (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) is effected by leaving a copy of the document, at the correctional centre at which the inmate is held in custody, with the governor of the correctional centre.
- (2) Personal service of a document on a detainee (within the meaning of the *Children (Detention Centres) Act 1987*) is effected by leaving a copy of the document, at the detention centre at which the detainee is held in custody, with the centre manager of the detention centre.

### **Division 2 Service of originating documents**

#### **5.6 Service of originating documents**

Unless otherwise provided by this Part, an originating document is to be served personally.

##### **5.6A Originating documents may be served on legal practitioner**

If a person has engaged a legal practitioner in the proceedings and instructed that legal practitioner to accept service, service of the originating document on the person may be effected by serving the document on that legal practitioner:

- (a) in any manner agreed between the parties to the proceedings, or
- (b) in any manner permitted by these rules.

##### **5.6B Service of originating documents on inmate of correctional centre**

An originating document may be served personally on an inmate of a correctional centre or by either of the following methods:

- (a) by faxing a copy of the document, addressed to the inmate, to the correctional centre's facsimile number,

- (b) by transmitting an electronic copy of the document, addressed to the inmate, to the correctional centre's electronic service address.

### **5.7 Persons who can serve originating documents**

- (1) An originating document issued by a public officer may be served by a sheriff's officer, a licensed process server or a legal practitioner or an employee of such a legal practitioner.
- (2) An originating document issued by the registrar on behalf of another person may be served by the person on whose behalf the process was issued, a sheriff's officer, a licensed process server, a legal practitioner or an employee of such a legal practitioner.
- (2A) Despite subrule (2), an originating document in relation to proceedings under the *Crimes (Domestic and Personal Violence) Act 2007* may be served only by a police officer or a person nominated by the Court or a registrar.
- (3) In this rule, **licensed process server** means a person who is the holder of a master licence or operator licence under the *Commercial Agents and Private Inquiry Agents Act 2004* with respect to process serving.

### **5.8 Registrar may serve documents in certain application proceedings**

- (1) An application notice may be served by the registrar where the respondent is a public officer or police officer.
- (2) 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.
- (3) This rule does not apply in relation to an application notice commencing proceedings under the *Crimes (Domestic and Personal Violence) Act 2007*.

### **5.9 Service of court attendance notices in summary proceedings**

- (1) A court attendance notice commencing proceedings for a summary offence may be served:
  - (a) personally,
  - (b) by sending the notice by post, addressed to the person, to the person's residential address,
  - (c) by faxing a copy of the notice, addressed to the person, to the person's facsimile number (if that method of service has been consented to by the person),
  - (d) by transmitting an electronic copy of the notice, addressed to the person, to the

person's electronic service address (if that method of service has been consented to by the person).

- (2) If service of the notice is effected by post, facsimile or any other electronic means, the notice must be served on the person not less than 21 days before the first listing of the offence.

## **Division 3 Service of other documents**

### **5.10 Service of other documents**

- (1) Service of a document (other than an originating document) required or permitted by the Court to be served on a person in proceedings may be effected:

(a) by means of personal service, or

(b) by posting a copy of the document, addressed to the person, to the person's business or residential address, or

(c) by leaving a copy of the document, addressed to the person:

(i) at the person's address for service, or

(ii) if the person is not an active party, at the person's business or residential address,

with a person who is apparently of or above the age of 16 years and apparently employed or residing at that address, or

(c1) by faxing a copy of the document, addressed to the person, to the person's facsimile number (if that method of service has been consented to by the person), or

(c2) by transmitting an electronic copy of the document, addressed to the person, to the person's electronic service address (if that method of service has been consented to by the person), or

(d) in the case of service on a corporation, by serving the document on the corporation in any manner in which service of such a document may, by law, be served on the corporation.

- (2) In the case of a person who has engaged a legal practitioner in the proceedings (and the legal practitioner has agreed to accept service or the person has filed a notice of appearance which includes an address for service) service of a document on the person may also be effected:

(a) by serving the document personally on the legal practitioner, or

(a1) by posting a copy of the document, addressed to the legal practitioner, to the

legal practitioner's business address, or

- (b) by leaving a copy of the document, addressed to the legal practitioner, in the legal practitioner's DX box at that address or in another DX box for transmission to that DX box (unless the notice of appearance does not include a DX address), or
- (c) by faxing a copy of the document to the legal practitioner's facsimile number (unless the notice of appearance does not include a facsimile number), or
- (d) by transmitting an electronic copy of the document to the legal practitioner's electronic service address (unless the notice of appearance does not include an electronic service address).

(2A) Despite any other provision of this rule, a document may be served under this rule by facsimile or other electronic means without consent if the court so orders.

(3) (Repealed)

## **Division 4 General**

### **5.11 Substituted service of documents**

- (1) On the application of a party, the Court may, by order, direct that service of a document issued in proceedings be effected otherwise than in a manner specified by this Part.
- (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, unless the Court otherwise directs.

### **5.12 Proof of service**

- (1) A person who serves a document issued in proceedings must complete a statement as to service of the document served.
- (2) The statement 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:
  - (i) the information (and the source of such information) the person relied on in obtaining the address to which it was posted, and
  - (ii) the time and place of posting,
- (f) if the document was served by facsimile:
  - (i) the information (and the source of such information) the person relied on in obtaining the facsimile number to which it was sent, and
  - (ii) 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):
  - (i) the information (and the source of such information) the person relied on in obtaining the email address to which it was sent, and
  - (ii) the date on which the email was sent.
- (3) A copy of the document served must be attached to the statement or the statement must clearly identify that document.
- (4) The statement must be signed by the person serving the document and a witness to the signature.
- (5) In the case of a document served by a police officer or a public officer, the statement is not required to be signed.
- (6) 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.
- (7) 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.
- (8) 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 current 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 current 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.

### **5.13 Doubtful service**

If a document issued in proceedings is not served personally, the Court may, on the application of a party or on the motion of the Court:

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

if satisfied that there is a doubt as to whether the document came to the party's notice within a reasonable time

### **5.13A Time of service for a document sent by DX or transmitted by facsimile**

Unless the contrary is proved, the time at which a document is taken to have been served is:

- (a) in the case of a document a copy of which is left in a DX box in accordance with this Part, at the end of the second day following the day on which the copy is so left, or
- (b) in the case of a document a copy of which is faxed in accordance with this Part, at the end of the first day following the day on which the copy is so faxed.

## **Part 6 Subpoenas**

### **6.1 Application of Part**

This Part applies to summary proceedings and application proceedings.

**Note—**

Section 66 of the *Local Court Act 2007* and section 70 of the *Crimes (Domestic and Personal Violence) Act 2007* provide that the provisions of Part 3 of Chapter 4 of the *Criminal Procedure Act 1986* (being provisions relating to subpoenas) apply, with any necessary modifications, to application proceedings in the same way as they apply to proceedings for summary offences under that Act.

## **6.2 Issuing of subpoena**

- (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.

## **6.3 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 date that the subpoena is returnable.

## **6.4 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 for the person, 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 and telling the person the nature of the notice.

### **6.5 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 90 of 19 June 2009, at page 3406, 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.

### **6.6 Production by non-party**

- (1) This rule applies to a subpoena for production 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.

### **6.7 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 was 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.

### **6.8 Objections to inspection of subpoenaed documents**

For the purposes of section 228 (3) (b) 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.

### **6.9 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 7 Warrants**

### **7.1 Application of Part**

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

**Note—**

Section 67 of the *Local Court Act 2007* and section 71 of the *Crimes (Domestic and Personal Violence) Act 2007* provide that the provisions of Part 4 of Chapter 4 of the *Criminal Procedure Act 1986* (being provisions relating to warrants) apply, with any necessary modifications, to warrants of arrest, or warrants of commitment, issued under this Act in the same way as they apply to warrants of arrest or warrants of commitment issued under that Act.

## **7.2 Applications for the issue of arrest warrants**

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.

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

- (1) This clause applies to proceedings commenced by a court attendance notice.
- (2) For the purposes of determining whether to issue a warrant to arrest an accused person before the date the person is first required to attend at court for the hearing of proceedings, 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 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,
  - (c) whether the accused person is the subject of any other warrant to arrest in respect of any other offences,
  - (d) if the warrant is sought on the basis that a court attendance notice has not been served:
    - (i) whether reasonable attempts have been made to serve the court attendance notice, and
    - (ii) whether an order for substituted service should be made rather than the issue of the warrant.
- (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.

## **7.4 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.

## **7.5 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 or the Magistrate or authorised officer before whom the person is brought and is to be dealt with by that Court.

## **7.6 Warrants to commit**

A warrant to commit a person may be directed to any of the following persons for execution by that person:

- (a) a police officer,
- (b) the general manager of a correctional centre,
- (c) a correctional officer.

# **Part 8 Miscellaneous provisions**

## **Division 1 Provisions that apply generally**

### **8.1 Court dress**

In any proceedings in the Court or before a Magistrate, no legal practitioner may robe.

### **8.2 Registrar may exercise certain functions**

The following functions of the Court may be exercised by the registrar:

- (a) the functions of the Court under rules 2.5, 2.9, 4.2, 4.3 and 5.11,
- (b) the function of the Court to adjourn proceedings, without the consent of both parties,
- (c) the function of the Court to make orders by consent,
- (d) the function of the Court to set times within which documents (including witnesses' statements) must be served or notice given,
- (e) the function of the Court under Part 7 of the *Service and Execution of Process Act*

1992 of the Commonwealth,

- (f) the function of the Court to determine matters preliminary to the commencement of the hearing of criminal and application proceedings,
- (g) the functions of the Court with respect to subpoenas.

## **Division 2 Provisions relating to criminal and application proceedings**

### **8.3 Applications**

- (1) This rule 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, 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 (but not limited to) any of 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) The Court may make orders sought in an application.
- (7) The hearing of 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.

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

- (1) 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.

- (2) Subrule (1) does not apply to proceedings under the *Crimes (Domestic and Personal Violence) Act 2007*.

**Note—**

The *Crimes (Domestic and Personal Violence) Act 2007* makes provision for the circumstances in which a registrar may refuse to issue process under that Act.

### **8.5 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 method directed by the Court.

### **8.6 Forms**

- (1) The Chief Magistrate, for the purposes of these rules:
- (a) may approve forms for documents to be used in connection with committal proceedings or summary proceedings in the Court, and
  - (b) in the case of documents filed with the Court, or issued by the Court, by means of an ECM system within the meaning of the *Electronic Transactions Act 2000*, may approve the format in which such documents are to be filed or issued.
- (2) Copies of the approved forms are to be made available for public inspection at each registry of the Court and on the Court's internet website.
- (3) Subject to these rules, if a form is approved in relation to a document to be used in connection with proceedings in the Court, a document that is filed with or issued by the Court is to be in that form.

**Note—**

Section 72 of the *Local Court Act 2007* contains an equivalent provision in respect of forms to be used in connection with application proceedings.

See section 80 of the *Interpretation Act 1987* with respect to compliance with approved forms.

### **8.7 Filing of documents**

- (1) A document that is required by the *Criminal Procedure Act 1986* or the *Local Court Act 2007* or these rules to be filed in the registry 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,
  - (b) the document is sent by post to the registry,
  - (c) the document is sent by facsimile or other electronic communication to the registry and any other requirements of this rule are complied with.
- (2) A document that is required by the *Criminal Procedure Act 1986* or the *Local Court Act 2007* or these rules to be filed in the registry or with the registrar by a person other than a police officer or public officer may be filed by:
- (a) delivering the document by hand to the registry,
  - (b) sending the document by post to the registry,
  - (c) sending the document, with the consent of the registrar, by facsimile to the registry or by electronic communication to the email address of the registry, provided that the document is legible and any other requirements of this rule are complied with.
- (3) A document sent by facsimile or other electronic communication to the registry 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 Court Act 2007* or this rule to be filed in the registry is, except with the leave of the registrar, to be filed in the registry before which the relevant proceedings are, or are to be, listed.

### **8.8 Review of powers exercised by registrars**

If a registrar of the 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 a party to the proceedings:

- (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.

### **8.9 Filing of application notice**

A copy of an application notice must be filed with the registry before the first return date for the application notice.

### **8.10 Copies of court records**

- (1) This rule applies to committal proceedings, summary proceedings and application proceedings.

- (2) A party to the 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 Court Act 2007*, obtain a copy of the court record or transcript of evidence taken at the proceedings.
- (3) A person who is not a party to the 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.
- (4) The Magistrate or registrar may grant leave for the purposes of subrule (3) if of the opinion that it is appropriate to do so in the circumstances.
- (5) In determining whether it is appropriate to grant a person leave for the purposes of subrule (3), the Magistrate or registrar is to have regard to the following matters:
  - (a) the principle that proceedings are generally to be heard in open court,
  - (b) the impact of granting leave on the protected person or victim of crime,
  - (c) the connection that the person requesting access has to the proceedings,
  - (d) the reasons access is being sought,
  - (e) any other matter that the Magistrate or registrar considers relevant.