



Federal Court (Criminal Proceedings) Rules 2016

We, Judges of the Federal Court of Australia, make the following Rules of Court.

Dated 7 November 2016

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**Judges of the
Federal Court of Australia**

WG SODEN
Chief Executive Officer and Principal Registrar

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Part 1—Preliminary

Division 1.1—Introduction

1.01 Name

These Rules are the *Federal Court (Criminal Proceedings) Rules 2016*.

1.02 Commencement

- (1) Each provision of these Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of these Rules	The day after these Rules are registered.	10 November 2016

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

- (2) Any information in column 3 of the table is not part of these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

1.03 Authority

These Rules are made under the *Federal Court of Australia Act 1976*.

1.04 Purpose

- (1) The overarching purpose of these Rules is to facilitate the fair, efficient and timely determination of criminal proceedings in the Court.

Note: The Court may dispense with compliance with these Rules, or make orders inconsistent with these Rules—see rules 1.06 and 1.07.

- (2) Without limiting subrule (1), the overarching purpose includes the following objectives:
- (a) the efficient use of the judicial and administrative resources available for the purposes of the Court;
 - (b) the efficient use of legal and other resources available to the parties to criminal proceedings;
 - (c) the fair, efficient and timely disposal of the Court’s overall criminal caseload;
 - (d) as far as possible, all preliminary issues (such as admissibility of evidence, or other evidentiary, privilege or interpretation issues) are heard and adjudicated before the start of a trial;

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- (e) maximising the use of electronic or digital evidence to advance these objectives.

Note: The *Evidence Act 1995* applies to proceedings in the Court. In particular, the following provisions of that Act may be relevant to criminal proceedings:

- (a) section 50 (proof of voluminous or complex documents);
- (b) section 144 (proof of matters of common knowledge or matters capable of verification by reference to a document the authority of which cannot reasonably be questioned);
- (c) Part 4.3 (facilitation of proof);
- (d) section 177 (certificates of expert evidence);
- (e) section 182 (Commonwealth records, postal articles sent by Commonwealth agencies and certain Commonwealth documents);
- (f) section 184 (accused may admit matters and give consents);
- (g) section 191 (agreements as to facts).

1.05 Application of these Rules and other Rules of the Court

- (1) Unless the Court orders otherwise, these Rules apply to criminal proceedings started in the Court on or after the commencement of these Rules.
- (2) The other Rules of the Court apply, to the extent that they are relevant and not inconsistent with these Rules, to criminal proceedings started in the Court on or after the commencement of these Rules.

Division 1.2—General powers of the Court etc.

1.06 Dispensing with compliance with Rules

The Court may dispense with compliance with these Rules, either before or after the occasion for compliance arises.

1.07 Orders inconsistent with Rules

The Court may make an order that is inconsistent with these Rules and in that event the order will prevail.

1.08 Exercise of Court’s power

The Court may, at any stage in criminal proceedings, exercise a power mentioned in these Rules:

- (a) on its own initiative; or
- (b) on the application of a party to the proceedings.

1.09 Management of criminal proceedings

- (1) The Court may, at any stage in criminal proceedings, order the parties to attend a hearing for the purpose of managing the proceedings.

Note: The power to order attendance at a hearing may be exercised on the Court’s own initiative or on application by a party to the proceedings—see rule 1.08.

- (2) Each party to the proceedings, or each party’s lawyer, must attend the hearing, unless excused by the Court.

Note: For directions in criminal appeal proceedings, see also rule 4.23.

1.10 Powers of the Court that may be exercised by a Registrar

- (1) The powers of the Court under the provisions of these Rules referred to in the following table are prescribed for the purposes of paragraph 35A(1)(h) of the Act:

Powers of the Court under provisions of these Rules that may be exercised by a Registrar		
Item	Provision	Power
1	Paragraph 1.19(2)(b)	Power to give leave for the removal of documents from a Registry
2	Paragraph 1.20(1)(f)	Power to make an order that a document in proceedings is confidential
3	Subrule 1.20(4)	Power to give leave to a person to inspect a document in a proceeding
4	Rule 7.06	Power to order that a document be taken to have been served on a person on a specified date
5	Paragraph 7.07(b)	Power to order the taking of steps to bring a

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Division 1.2 General powers of the Court etc.

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Powers of the Court under provisions of these Rules that may be exercised by a Registrar		
Item	Provision	Power
		document to a person's attention or substitute another method of service
6	Paragraph 7.07(c)	Power to order that a document is taken to have been served on the happening of a specified event or at the end of a specified period
7	Rule 8.01	Power to give leave to issue a subpoena
8	Subrule 8.03(1)	Power to order an addressee, by subpoena: (a) to attend to give evidence as directed by the subpoena; or (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or (c) to do both of those things
9	Subrule 8.06(1)	Power to set aside a subpoena in whole or part, or grant other relief
10	Subrule 8.06(3)	Power to order than an applicant give notice of an application to set aside a subpoena
11	Rule 8.10	Power to give a direction about the removal, return, inspection, copying or disposal of a document or thing
12	Subrule 8.11(3)	Power to give leave to inspect a document or thing
13	Rule 8.13	Power to make an order dealing with payment of reasonable loss or expense incurred in complying with a subpoena

(2) For the purposes of paragraph 35A(1)(h) of the Act, the power of the Court under subsection 58EA(3) of the Act to vary a bail order is prescribed.

- Note: For other powers of the Court that may, if the Court or a Judge so directs, be exercised by a Registrar, see also the following:
- (a) paragraphs 35A(1)(a) to (g) of the Act;
 - (b) rule 3.01 of the *Federal Court Rules 2011*;
 - (c) rule 16.1 of the *Federal Court (Corporations) Rules 2000*;
 - (d) rule 2.02 of the *Federal Court (Bankruptcy) Rules 2016*.

Division 1.3—Interpretation

1.11 Definitions

In these Rules, a word or expression defined in Schedule 1 (the *Dictionary*) has the meaning given in the Dictionary.

Note 1: Each Schedule to these Rules forms part of the Rules—see section 13 of the *Acts Interpretation Act 1901*.

Note 2: A number of expressions used in these Rules are defined in the Act, including the following:

- (a) criminal appeal proceedings;
- (b) indictable primary proceedings;
- (c) Judge;
- (d) judgment;
- (e) lawyer;
- (f) proceeding.

Note 3: An example of the operation of a provision of these Rules is not exhaustive and may extend the operation of the provision—see section 15AD of the *Acts Interpretation Act 1901*.

1.12 References to forms

- (1) In these Rules, a reference consisting of the word “Form” followed by the letters “CP” and a number is a reference to the form so numbered approved under subrule (2).
- (2) The Chief Justice may approve a form for the purpose of a provision of these Rules.

Note: Approved forms are available on the Court’s website at <http://www.fedcourt.gov.au>.

Division 1.4—Time

1.13 Calculation of time

- (1) A period of time for doing an act or thing fixed by these Rules or by an order of the Court is to be calculated in accordance with this rule.
- (2) If the time fixed is to be calculated by reference to a particular day or event, and the time fixed is 1 day or more, the particular day, or the day of the particular event, is not to be counted.
- (3) If the time fixed includes a day that is not a business day in the place where the act or thing is to be done, and the time fixed is 5 days or less, the day is not to be counted.

Example: The Court orders that a document is to be filed and served no later than 3 days after Wednesday. Under subrule (3), the document must be served on or before the following Monday (since Saturday and Sunday are not business days).

- (4) An act or thing may be done on the next business day in a place if:
 - (a) the last day for doing the act or thing is not a business day in the place where the act or thing is to be done; and
 - (b) the act or thing may only be done on a day that is a business day in the place.
- (5) If the time fixed includes a day in the period starting on 24 December in a year and ending on 14 January in the next year, the day is not to be counted.

Division 1.5—Documents

1.14 General provisions about documents

A document that is to be filed in criminal proceedings must be in accordance with any approved form and the Court's requirements.

Note: The Court's requirements in relation to preparing and lodging documents are set out in practice notes issued by the Chief Justice.

1.15 Compliance with approved forms

A requirement in these Rules that a document be in accordance with an approved form is complied with if the document:

- (a) is substantially in accordance with the approved form and any practice notes issued by the Chief Justice; or
- (b) has only those variations that the nature of the case requires.

1.16 Titles of documents

- (1) A document in indictable primary proceedings must include a title and details, in accordance with Form CP1.
- (2) A document in summary criminal proceedings must include a title and details, in accordance with Form CP2.
- (3) A document in criminal appeal proceedings must include a title and details, in accordance with Form CP3.

1.17 Subsequent documents to be endorsed with Court number

Each subsequent document filed in criminal proceedings must be endorsed, by the party filing the document, with the same number as that assigned by a Registrar to the document that commenced the proceedings.

Note: When a document that commences proceedings is filed, a Registrar will assign a distinctive number to the document and endorse the document with that number. The number will include a reference to the Registry in which the document is filed and the calendar year in which the document is filed. A new series of numbers will be started at the beginning of each calendar year.

1.18 Signature

- (1) A document (other than an affidavit, or an annexure or exhibit attached to another document) filed by a party to criminal proceedings must be signed by:
 - (a) the party's lawyer; or
 - (b) the party, if the party does not have a lawyer.
- (2) Subrule (1) does not apply in relation to the Commonwealth Director of Public Prosecutions.

Note: See subsection 9(2) of the *Director of Public Prosecutions Act 1983* in relation to the signing of indictments in prosecutions instituted by the Commonwealth Director of Public Prosecutions.

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- (3) A signature affixed to a document by electronic means at the direction of the person required to sign the document complies with subrule (1).

1.19 Custody of documents

- (1) The District Registrar of a District Registry is to have custody of, and control over:
- (a) each document filed in the Registry in criminal proceedings; and
 - (b) the records of the Registry relating to criminal proceedings.
- (2) A person may remove a document filed in, or relating to, criminal proceedings from a Registry if:
- (a) a Registrar has given written permission for the removal because it is necessary to transfer the document to another Registry; or
 - (b) the Court has given the person leave for the removal.
- (3) If a person removes a document from the Registry in accordance with subrule (2), the person must comply with any conditions on the removal imposed by the Court or a Registrar.

1.20 Inspection of documents

- (1) A party to criminal proceedings may inspect any document in the proceedings except:
- (a) a document for which a claim of privilege has been made but not decided by the Court; or
 - (b) a document that the Court has decided is privileged; or
 - (c) a document for which a claim of public interest immunity has been made but not decided by the Court; or
 - (d) a document that the Court has decided is immune on the grounds of public interest; or
 - (e) a document affected by the operation of the *National Security Information (Criminal and Civil Proceedings) Act 2004*; or
 - (f) a document that the Court has ordered be confidential.
- (2) A person who is not a party to criminal proceedings may inspect any of the following documents in the proceedings in the proper Registry:
- (a) an indictment or information;
 - (b) a notice of address for service;
 - (c) a notice of change of address for service;
 - (d) an interlocutory application;
 - (e) an order of the Court;
 - (f) a notice of appeal;
 - (g) a notice of change of lawyer;
 - (h) a notice of ceasing to act;
 - (i) reasons for judgment;
 - (j) a transcript of a hearing heard in open Court.

- (3) However, a person who is not a party to criminal proceedings is not entitled to inspect a document that the Court has ordered:
- (a) be confidential; or
 - (b) is forbidden from, or restricted from publication to, the person or a class of persons of which the person is a member.

Note: For the prohibition of the publication of evidence or of the name of a party or witness, see sections 37AF and 37AI of the Act.

- (4) A person may apply to the Court for leave to inspect a document, or class of documents, that the person is not otherwise entitled to inspect.
- (5) A person may be given a copy of a document, except a copy of the transcript in criminal proceedings, if the person:
- (a) is entitled to inspect the document; and
 - (b) has paid the fee (if any) payable in accordance with the *Federal Court and Federal Circuit Court Regulation 2012*.

Note: If there is no order that a transcript be confidential, a person may, on payment of the applicable charge, obtain a copy of the transcript of criminal proceedings from the Court's transcript provider.

Division 1.6—Lodging and filing documents

1.21 How documents may be lodged with the Court

- (1) A document may be lodged with the Court by:
 - (a) being presented to a Registry when the Registry is open for business; or
 - (b) being posted to a Registry with a written request for the action required in relation to the document; or
 - (c) being faxed to a Registry in accordance with rule 1.22; or
 - (d) being sent by electronic communication to a Registry, in accordance with rule 1.23.
- (2) A document in existing criminal proceedings that is to be lodged with the Court in accordance with paragraph (1)(b), (c) or (d) must be sent to the proper Registry.
- (3) If a document in existing criminal proceedings that is to be lodged with the Court by being presented to a Registry is presented to a Registry other than the proper Registry, the document must be accompanied by a letter:
 - (a) identifying the proper place for the proceedings; and
 - (b) requesting that the document be sent to the proper Registry.

Note: See also rule 1.25.

- (4) Subject to rules 1.22 and 1.23, a document that is required to be sealed, stamped or signed by the Court must be accompanied by the required number of copies for sealing, stamping or signing.

Note: See also rule 1.14.

1.22 Faxing a document

- (1) A document that is faxed to a Registry for filing must:
 - (a) be sent to a fax number approved by a Registrar; and
 - (b) be accompanied by a cover sheet clearly stating:
 - (i) the sender's name, postal address, telephone number, fax number (if any) and email address (if any); and
 - (ii) the number of pages sent; and
 - (iii) the action required in relation to the document.
- (2) A document must not be faxed to a Registry if it is more than 20 pages.
- (3) The sender of the document must:
 - (a) keep the original document and the transmission report showing that the document was faxed successfully; and
 - (b) produce the original document or transmission report if ordered to do so by the Court.

Note 1: If the document is accepted in the Registry, a Registrar will return a copy of the document by fax to the fax number stated on the cover sheet.

Note 2: Details of the opening times for each District Registry are on the Court's website at <http://www.fedcourt.gov.au>.

1.23 Sending a document by electronic communication

- (1) A document that is sent by electronic communication to a Registry for filing must:
 - (a) be sent by using the Court’s website at <http://www.fedcourt.gov.au>; and
 - (b) be in an electronic format approved by a Registrar for the Registry; and
 - (c) if the document is required to be in accordance with an approved form—so far as is practicable, be in an approved form that complies with rules 1.15 and 1.16; and
 - (d) be capable of being printed in the form in which it was created without any loss of content.

Note: The electronic format approved by a Registrar for a Registry is available on the Court’s website at <http://www.fedcourt.gov.au>.

- (2) An affidavit must be sent as an image.
- (3) The person who sends the document must:
 - (a) keep a paper or electronic copy of the document prepared in accordance with this rule; and
 - (b) if ordered to do so by the Court, produce a hard copy of the document.

1.24 Documents sent by electronic communication

- (1) If a document sent to a Registry by electronic communication in accordance with rule 1.23 is accepted at the Registry, and is a document that must be signed or stamped, a Registrar will:
 - (a) for a document that these Rules require to be endorsed with a day for hearing or appearance—insert a notice of filing and hearing or appearance as the first page of the document; or
 - (b) for any other document—insert a notice of filing as the first page of the document.
- (2) If a notice has been inserted as the first page of the document in accordance with subrule (1), the notice is taken to be part of the document for the purposes of the Act, these Rules and the *Federal Court Rules 2011*.

1.25 When a document is filed

- (1) A document is filed if:
 - (a) it is lodged with the Court in accordance with subrule 1.21(1); and
 - (b) either:
 - (i) for a document in existing criminal proceedings—it is accepted in the proper Registry by being stamped as “filed”; or
 - (ii) in any other case—it is accepted in a Registry by being stamped as “filed”.
- (2) If a document in existing criminal proceedings:
 - (a) is presented to a Registry (the *other Registry*) other than the proper Registry in accordance with subrule 1.21(3); and
 - (b) is sent by the other Registry to the proper Registry; and

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Division 1.6 Lodging and filing documents

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(c) is accepted in the proper Registry in accordance with subparagraph (1)(b)(i);

the document is taken to have been filed on the day it was presented to the other Registry.

(3) If a document is faxed or sent by electronic communication to a Registry, the document is, if accepted by the Registry under subrule (1), taken to have been filed:

(a) if the whole document is received by 4.30 pm on a business day for the Registry—on that day; or

(b) in any other case—on the next business day for the Registry.

Note: Because of the Court's computer security firewall, there may be a delay between the time a document is sent by electronic communication and the time the document is received by the Court.

Division 1.7—Lawyers

1.26 Commonwealth Director of Public Prosecutions

This Division does not apply in relation to the Commonwealth Director of Public Prosecutions.

Note: See sections 15 and 15A of the *Director of Public Prosecutions Act 1983*.

1.27 Proceeding by lawyer or in person

- (1) A party to criminal proceedings may be represented in the Court by a lawyer.
- (2) A corporation must not appear in criminal proceedings other than by a lawyer.

Note 1: The effect of subrule (2) and rule 1.28 is that, if an accused is a corporation and the accused is required by these Rules to appear in person, a lawyer must appear.

Note 2: The Court may dispense with compliance with these Rules—see rule 1.06.

1.28 Power to act by lawyer

A lawyer who is acting for a party to criminal proceedings may do an act, or thing, that the party is required or permitted to do unless the context or subject matter indicates otherwise.

Note: A corporation may enter a plea by writing signed by a representative—see rule 1.41.

1.29 Appointment of lawyer—notice of acting

- (1) If a party to criminal proceedings is unrepresented when the proceedings start, and later appoints a lawyer to represent the party in the proceedings, the lawyer must file a notice of acting in accordance with Form CP4.
- (2) As soon as practicable after filing the notice, the lawyer must serve a stamped copy of the notice on each other party to the proceedings.

1.30 Termination of retainer by party

- (1) If a party to criminal proceedings terminates a lawyer's retainer, and a new lawyer is not appointed to represent the party, the party must file:
 - (a) a notice of termination of the lawyer's retainer in accordance with Form CP5; and
 - (b) a notice of address for service for the party.

Note: For the form of the notice of address for service, see rule 1.38.

- (2) If the party does not file the documents referred to in subrule (1), the lawyer whose retainer has been terminated may file a notice of ceasing to act in accordance with Form CP6.
- (3) If a new lawyer is appointed to represent the party, the new lawyer must file a notice of acting in accordance with Form CP7.

Rule 1.31

- (4) If a notice is filed in accordance with this rule, the person who files it must, as soon as practicable, serve a stamped copy of the notice on each party, or each other party, to the proceedings.

1.31 Termination of retainer by lawyer

- (1) If a lawyer who is acting for a party to criminal proceedings terminates the retainer, the lawyer must:
- (a) serve on the party a notice of intention of ceasing to act, in accordance with Form CP8; and
 - (b) at least 7 days after serving the notice—file a notice of ceasing to act in accordance with Form CP6.
- (2) A party whose lawyer has filed a notice of ceasing to act must file a notice of address for service for the party no later than 5 days after the day the lawyer filed the notice of ceasing to act.

Note: For the form of the notice of address for service, see rule 1.38.

- (3) If a notice of ceasing to act or a notice of address for service is filed in accordance with this rule, the person who files it must, as soon as practicable, serve a stamped copy of the notice on each party, or each other party, to the proceedings.

Division 1.8—Affidavits

Note: Testimony in criminal proceedings is, subject to certain exceptions, required to be given orally rather than by affidavit—see subsection 47(8) of the Act. The Rules in this Division apply if the Act or these Rules allow evidence to be given by affidavit.

1.32 Form of affidavit

- (1) An affidavit must be in accordance with Form CP9 and be made in the first person.
- (2) The first visible page (being the first page, the cover page or the front cover page) must state:
 - (a) the deponent’s description; and
 - (b) the date on which the affidavit was sworn or affirmed.
- (3) An affidavit must be divided into numbered paragraphs and, to the extent practicable, each paragraph must deal with a separate subject.
- (4) A document that accompanies an affidavit must be annexed to the affidavit unless the document is:
 - (a) an original; or
 - (b) of such dimensions that it cannot be annexed.
- (5) If paragraph (4)(a) or (b) applies, the document must be exhibited.
- (6) Each page, including any annexure but not any exhibit, must be clearly and consecutively numbered starting with page “1”.
- (7) Each page of the affidavit (but not any annexure or exhibit) must be signed by the deponent (other than a deponent who is unable to sign the affidavit because of a physical disability) and by the person before whom it is sworn or affirmed.
- (8) Each annexure and exhibit must be identified on its first page by a certificate entitled in the same manner as the affidavit and by the deponent’s initials followed by a number (starting with “1” for the first annexure or exhibit).
- (9) The annexures and exhibits must be numbered sequentially.
- (10) No subsequent annexure or exhibit in any later affidavit sworn or affirmed by the same deponent may duplicate the number of a previous annexure or exhibit.
- (11) Each exhibit to an affidavit must be signed on the first page of the exhibit by the person before whom the affidavit is sworn or affirmed.

1.33 Swearing or affirming affidavit by person who has disability etc.

- (1) If the deponent for an affidavit is illiterate, the person before whom the affidavit is sworn or affirmed must certify in or below the jurat that the affidavit was read to the deponent in the person’s presence.
- (2) If the deponent for an affidavit is blind, the person before whom the affidavit is sworn or affirmed must certify in or below the jurat that the affidavit was read to the deponent in the person’s presence.

Rule 1.34

- (3) However, subrule (2) does not apply if:
- (a) the deponent has read the affidavit by means of a computer with a screen reader, text-to-speech software or a Braille display; and
 - (b) the affidavit includes a statement that:
 - (i) the deponent is blind; and
 - (ii) the deponent has read the affidavit; and
 - (iii) specifies the means by which it was read.
- (4) If the deponent for an affidavit is, because of a physical disability, incapable of signing the affidavit, the person before whom the affidavit is sworn or affirmed must certify in or below the jurat that the deponent signified that the deponent swore or affirmed the affidavit.
- (5) If an affidavit:
- (a) is made by an illiterate deponent and does not include a certificate in accordance with subrule (1); or
 - (b) is made by a blind deponent and does not include:
 - (i) a certificate in accordance with subrule (2); or
 - (ii) a statement in accordance with subrule (3);
- the affidavit may be used only if the party seeking to use the affidavit satisfies the Court that the affidavit was read to the deponent.
- (6) If:
- (a) an affidavit is made by a deponent who is, because of a physical disability, incapable of signing the affidavit; and
 - (b) the affidavit does not include a certificate in accordance with subrule (4);
- the affidavit may be used only if the party seeking to use the affidavit satisfies the Court that the deponent signified that the deponent swore or affirmed the affidavit.

1.34 Service of exhibits and annexures

Copies of any documents exhibited or annexed to an affidavit must be served with the affidavit.

1.35 Irregularity in form

An affidavit may be accepted for filing despite an irregularity in form.

1.36 Serving of affidavits

A party to criminal proceedings who is intending to use an affidavit must serve a copy of it on each other party to the proceedings:

- (a) at least 3 days before the occasion for using it arises; or
- (b) if it is not practicable to comply with paragraph (a)—as soon as practicable before the occasion for using it arises.

Note: The copy of the affidavit need not be stamped.

1.37 Cross-examination of deponent

- (1) A party to criminal proceedings may give notice requiring a person who has made an affidavit to attend for cross-examination.
- (2) The notice under subrule (1) must be given to the party who filed the affidavit or proposes to use it.
- (3) If a person required to attend under subrule (1) fails to do so, the person's affidavit may not be used.

Note: The Court may dispense with compliance with these Rules—see rule 1.06.

- (4) If a person who has made an affidavit is cross-examined, the party using the affidavit may re-examine the person.

Note: Whether a party is entitled to cross-examine an accused will be decided by the Court.

Division 1.9—Address for service

1.38 Address for service—general

- (1) A notice of address for service must be in accordance with Form CP10.
- (2) An address for service for a party to criminal proceedings must include the address of a place within Australia:
 - (a) at which a document in the proceedings may, during ordinary business hours, be left for the party; and
 - (b) to which a document in the proceedings may be posted to the party.
- (3) If a party to criminal proceedings is represented by a lawyer:
 - (a) the address for service for the party must be the address of the lawyer; and
 - (b) the party is taken to have agreed to the lawyer receiving documents at the lawyer's email address.
- (4) If a party to criminal proceedings is not represented by a lawyer and has provided an email address to the Court, the party is taken to have agreed to receive documents at that email address.
- (5) Subrules (3) and (4) do not apply in relation to the Commonwealth Director of Public Prosecutions.
- (6) A notice of address for service for a corporation must be filed by a lawyer.

Note 1: A corporation must not proceed in the Court other than by a lawyer—see subrule 1.27(2).

Note 2: The Court may dispense with compliance with these Rules—see rule 1.06.

1.39 Service of notice of address for service

As soon as practicable after a party files a notice of address for service in criminal proceedings, the party must serve a stamped copy of the notice on each other party to the proceedings.

Note: The stamp of the District Registry will be affixed to the notice of address for service—see paragraph 2.01(2)(a) of the *Federal Court Rules 2011*.

1.40 Change of address for service

A party may change the party's address for service in criminal proceedings by:

- (a) filing a notice of the change showing the new address for service, in accordance with Form CP11; and
- (b) as soon as reasonably practicable, serving a stamped copy of the notice on each other party to the proceedings.

Division 1.10—Pleas by corporations

1.41 Pleas by corporations

- (1) A corporation may enter a plea of guilty or not guilty by writing signed by a representative of the corporation.
- (2) If the representative of the corporation is not appointed under the corporation's seal, the plea must be accompanied by a written statement that:
 - (a) is signed by a person who is responsible for managing the affairs of the corporation; and
 - (b) contains a statement to the effect that the representative is a representative of the corporation.

Note: A representative of a corporation may be a lawyer.

Part 2—Summary criminal proceedings

2.01 Starting proceedings

- (1) An applicant who wants to start summary criminal proceedings against an accused must:
 - (a) file a draft summons in accordance with Form CP12; and
 - (b) attach to the draft summons an information in accordance with Form CP13.

Note: When the draft summons is filed, a Registrar will fix a return date and place for appearance and endorse those details on the summons.

- (2) An information must state the offence that the accused, or each accused, is alleged to have committed.
- (3) A statement of an offence is sufficient if the statement:
 - (a) identifies the provision creating the offence; and
 - (b) describes the offence in the words of the provision creating the offence or in similar words; and
 - (c) describes, concisely and with reasonable particularity, the nature of the alleged offence.
- (4) An information need not deal with any exception, exemption, excuse, qualification or justification provided by the law creating the offence.
- (5) If an information describes any person or thing, the description is sufficient if it describes the person or thing in a manner that indicates with reasonable clarity the person or thing.
- (6) At least 5 days before the return date for a summons to which an information is attached, the applicant must serve the accused personally with a stamped copy of the summons and information.

Note: If the accused does not appear before the Court on a day the accused is required to appear in accordance with the summons, the Court may issue a warrant for the arrest of the accused—see rule 9.02.

2.02 Accused to file notice of address for service

An accused who has been served with a summons and information in accordance with rule 2.01 must, as soon as practicable, file a notice of address for service.

Note: The filing of a notice of address for service does not amount to a submission to the jurisdiction of the Court.

2.03 What happens if accused does not appear or enter guilty plea

- (1) If:
 - (a) the accused in summary criminal proceedings does not appear before the Court on the return date for the summons; and
 - (b) the Court is satisfied that the summons and information have been served in accordance with rule 2.01;

Rule 2.03

the Court may proceed to hear the matter in the absence of the accused.

Note: The Court may instead issue a warrant for the arrest of the accused—see rule 9.02.

- (2) If the accused in summary criminal proceedings appears before the Court and does not enter a plea of guilty when directed by the Court to enter a plea, the Court may:
 - (a) give any necessary orders for the conduct of the prosecution and defence;
and
 - (b) fix a day for hearing or for the Court to give further orders.
- (3) Without limiting paragraph (2)(a), the Court may make orders relating to pre-trial or ongoing disclosure.

Part 3—Indictable primary proceedings

Division 3.1—Indictments and applications

3.01 Filing and form of indictment

Indictment must be filed by electronic communication

- (1) Despite paragraph 1.25(1)(a), an indictment that is to be filed in indictable primary proceedings must be filed by being lodged by electronic communication in accordance with paragraph 1.21(1)(d).

Note 1: For the time within which indictments must be filed, see section 23BF of the Act.

Note 2: Paragraph 1.25(1)(a) provides that a document is filed if it is lodged in accordance with any of the methods in subrule 1.21(1). Subrule (1) of this rule limits the method by which an indictment may be lodged for filing.

Note 3: The prosecutor must retain the signed indictment so that it can be produced to the Court at arraignment—see rule 3.13.

Form of indictment

- (2) An indictment must be in accordance with Form CP14.
- (3) An indictment must state the offence that the accused, or each accused, is alleged to have committed.
- (4) A statement of an offence is sufficient if the statement:
- (a) identifies the provision creating the offence; and
 - (b) describes the offence in the words of the provision creating the offence or in similar words; and
 - (c) describes, concisely and with reasonable particularity, the nature of the alleged offence.
- (5) An indictment need not deal with any exception, exemption, excuse, qualification or justification provided by the law creating the offence.
- (6) If an indictment describes any person or thing, the description is sufficient if it describes the person or thing in a manner that indicates with reasonable clarity the person or thing.

Indictment information notice

- (7) An indictment must be accompanied by an indictment information notice in accordance with Form CP15.

3.02 Service of indictment and other documents

As soon as practicable after filing an indictment, the prosecutor must personally serve the accused with a stamped copy of each of the following:

- (a) the indictment;
- (b) the indictment information notice referred to in subrule 3.01(7);

- (c) any order made under subsection 23BF(6) of the Act extending the time to file the indictment.

3.03 Extension of time to file indictment

- (1) An application, under subsection 23BF(6) of the Act, for an extension of time to file an indictment must be made by filing an application in accordance with Form CP16.

Note: For the time within which the application may be made, see subsection 23BF(7) of the Act.

- (2) The application must be accompanied by an affidavit stating:
- (a) briefly, but specifically, the facts that support the application; and
 - (b) why the indictment cannot be filed within the time required by section 23BF of the Act.
- (3) A copy of the committal order must be attached to the affidavit.
- (4) An application for an order under subrule (1) may be made without notice.
- (5) If:
- (a) an extension of time is granted without notice to the accused; and
 - (b) an indictment is subsequently filed;
- the accused may, within 28 days after the day the accused is served with a copy of the indictment, apply to the Court for an order setting aside the extension of time.

3.04 Committal papers

- (1) If committal proceedings have occurred in relation to an indictment, and committal papers for the proceedings are available to the prosecutor, the Court may order the prosecutor to provide any or all of the committal papers to the Court.

Note: If a court makes an order committing an accused for sentencing before the Court for an indictable offence, the court is taken to have made an order committing the accused for trial before the Court and the accused is taken to have entered a plea of guilty—see section 23GB of the Act.

- (2) If the Court makes an order under subrule (1) in relation to committal papers, the Court may make orders relating to service of the committal papers.

3.05 Accused to file notice of address for service

An accused who has been served with an indictment must, as soon as practicable, file a notice of address for service.

Note: The filing of a notice of address for service does not amount to a submission to the jurisdiction of the Court.

Rule 3.06

3.06 Form of application for order discharging accused

- (1) An accused who wants an order discharging the accused under subsection 23BG(1) of the Act must file an application in accordance with Form CP17.
- (2) The application must be accompanied by an affidavit stating that no indictment has been filed within the time required by section 23BF of the Act.
- (3) A copy of the committal order must be attached to the affidavit.
- (4) The accused must serve a stamped copy of the application and the accompanying affidavit on the prosecutor at the address nominated by the prosecutor in the court in which the committal order was made.

3.07 Amending or replacing indictments

Amendments before the start of the trial

- (1) If the prosecutor wants to amend an indictment in relation to an accused before the start of the trial, the prosecutor must:
 - (a) make the amendment on the indictment; and
 - (b) write the date of the amendment on the indictment; and
 - (c) file the amended indictment by lodging it by electronic communication in accordance with paragraph 1.21(1)(d); and
 - (d) serve a stamped copy of the amended indictment on the accused as soon as practicable after it is filed.

Note: An indictment may be amended under section 23BH, or to comply with an order under paragraph 23CP(2)(b), of the Act. Leave of the Court is required to amend an indictment under section 23BH of the Act if the 90 day period ending on the date set for the start of the trial has started.

- (2) Paragraph (1)(c) has effect despite paragraph 1.25(1)(a).

Note: Paragraph 1.25(1)(a) provides that a document is filed if it is lodged in accordance with any of the methods in subrule 1.21(1). Paragraph (1)(c) of this rule limits the method by which an amended indictment may be lodged for filing.

Replacements before the start of the trial

- (3) If the prosecutor wants to replace an indictment in relation to an accused before the start of the trial, the prosecutor must file a new indictment in accordance with rule 3.01.

Note 1: An indictment may be replaced under section 23BH of the Act. Leave of the Court is required to replace an indictment under section 23BH of the Act if the 90 day period ending on the date set for the start of the trial has started.

Note 2: Rule 3.01 requires an indictment to be filed by electronic communication.

- (4) The new indictment:
 - (a) must not:
 - (i) be described as a replacement indictment; or
 - (ii) include any reference to the replaced indictment; and
 - (b) must be accompanied by a document stating:

- (i) that the new indictment replaces the replaced indictment; and
- (ii) the date on which the replaced indictment was filed.

- (5) The prosecutor must serve a stamped copy of the document referred to in paragraph (4)(b) on the accused with the stamped copy of the new indictment.

Note: Rule 3.02 requires the prosecutor to personally serve a stamped copy of the indictment (and related documents) on the accused.

Amendments or replacements after the start of the trial

- (6) If the prosecutor amends or replaces an indictment in relation to an accused after the start of the trial, the Court may give directions about filing and service of the amended or replaced indictment.

Note: Leave of the Court is required to amend or replace an indictment after the start of a trial—see subsection 23BH(2) of the Act.

Court may direct replacement indictment to be filed

- (7) The Court may direct the prosecutor to file a new indictment instead of amending an indictment.

Rule 3.08

Division 3.2—Pre-trial matters—hearings and disclosure

3.08 Notice of pre-trial hearing

After an indictment is filed, the Court may fix a day for a first pre-trial hearing in relation to the indictment.

Note: If the Court notifies the prosecutor and the accused in writing of a pre-trial hearing in relation to an indictment, the prosecutor and the accused must attend the hearing—see paragraph 23CA(a) of the Act.

3.09 Filing requirements for pre-trial and ongoing disclosure

If the Court makes an order relating to disclosure by a party (the *disclosing party*) under subsection 23CD(1) of the Act, the Court may direct the disclosing party to file a copy of any or all documents the disclosing party gives another party in order to comply with the order.

Note: Documents may be filed electronically—see rules 1.23 and 1.21.

3.10 Notice of particulars in support of alibi

If an accused wants to give the prosecutor a notice of particulars of an alibi under paragraph 23CD(2)(a) of the Act, the accused must:

- (a) file a notice in accordance with Form CP18; and
- (b) serve a stamped copy of the notice on the prosecutor.

Note: The notice must be given to the prosecutor as soon as practicable after the accused's first pre-trial hearing—see subsection 23CD(2) of the Act.

3.11 Notice of particulars in support of mental impairment

If an accused wants to give the prosecutor a notice of particulars of a mental impairment under paragraph 23CD(2)(b) of the Act, the accused must:

- (a) file a notice in accordance with Form CP19; and
- (b) serve a stamped copy of the notice on the prosecutor.

Note: The notice must be given to the prosecutor as soon as practicable after the accused's first pre-trial hearing—see subsection 23CD(2) of the Act.

Division 3.3—Juries and arraignment

3.12 Form and service of summons for jury service

- (1) A summons to a person under section 23DP of the Act to attend for jury service may be in accordance with Form CP20.
- (2) The summons must, unless the Court directs otherwise, be served on the person at least 21 days before the day the person is required to attend the Court.

3.13 Procedure for arraignment of accused

- (1) If the prosecution of an accused is to proceed to trial, the following must occur after a jury is empanelled unless the Court directs otherwise:
 - (a) the prosecutor must produce the signed indictment to the Court;
 - (b) a copy of the signed indictment must be given to the jury;
 - (c) each count in the indictment must be read to the accused in the presence of the jury;
 - (d) the accused must be directed to enter a plea to each count that relates to the accused.

Note: A corporation may enter a plea by writing signed by a representative—see rule 1.41.

- (2) The reading of a count for the purposes of paragraph (1)(c) must not, unless the Court directs otherwise, include reading the information referred to in paragraph 3.01(4)(c) relating to the offence covered by the count.
- (3) If the indictment replaces an earlier indictment in accordance with section 23BH of the Act, that fact must not be disclosed to the jury.
- (4) The accused must be placed in the charge of the jury for trial in relation to a count in the indictment if, when directed by the Court, the accused:
 - (a) pleads not guilty to the count; or
 - (b) fails to enter a plea to the count; or
 - (c) is given leave to change a plea of guilty to a plea of not guilty on the count.
- (5) If the accused is a corporation, and the accused does not appear for arraignment, the Court may:
 - (a) enter a plea of not guilty to each count in the indictment on behalf of the corporation; and
 - (b) give any necessary orders for the further conduct of the proceedings.

Note: A corporation must appear by a lawyer—see rule 1.27.

3.14 Form of oath or affirmation—juror, jury officer and assistant jury officer

- (1) The form of an oath for a potential juror is:

“I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by his or her religion*) that I shall give a true verdict according to the evidence.”

Part 3 Indictable primary proceedings

Division 3.3 Juries and arraignment

Rule 3.14

- (2) The form of an affirmation for a potential juror is:

“I solemnly and sincerely declare and affirm that I shall give a true verdict according to the evidence.”.

- (3) The form of an oath for a person appointed as a jury officer or assistant jury officer is:

“I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by his or her religion*) that I shall not allow anyone to speak to any juror concerning issues before the Court and that I shall not speak to any juror concerning issues in the trial before the Court.”.

- (4) The form of an affirmation for a person appointed as a jury officer or assistant jury officer is:

“I solemnly and sincerely declare and affirm that I shall not allow anyone to speak to any juror concerning issues before the Court and that I shall not speak to any juror concerning issues in the trial before the Court.”.

Division 3.4—Order of addresses

3.15 Right of accused to outline issues in contention

- (1) At the conclusion of the prosecutor's opening address in indictable primary proceedings, the Court may, in the absence of the jury, invite the accused to outline the issues in contention between the prosecution and accused.
- (2) If the invitation is made and the accused declines the invitation, the prosecutor must not comment to the jury about the accused's decision.
- (3) If the invitation is made and the accused accepts the invitation, the accused may outline the issues in the trial:
 - (a) in the presence of the jury; and
 - (b) before the prosecutor adduces the prosecutor's evidence.

3.16 Right of accused to adduce evidence

- (1) If, at the conclusion of the prosecutor's evidence, the accused decides to adduce evidence, the accused may address the Court, outlining the case for the defence, before giving or calling that evidence.
- (2) If 2 or more accused decide to adduce evidence as referred to in subrule (1), the Court may give directions about the order in which the evidence is to be adduced.

3.17 Right to address

- (1) At the conclusion of the evidence, the prosecutor and the accused may address the Court on the evidence.
- (2) The address for the prosecution must be made before the address for the accused.
- (3) If 2 or more accused want to address the Court on the evidence, the Court may give directions about the order in which the accused may address the Court.

Part 3 Indictable primary proceedings

Division 3.5 Fitness for trial

Rule 3.18

Division 3.5—Fitness for trial

3.18 Judge to determine issue of fitness

In indictable primary proceedings a Judge may determine whether a person is fit to be tried.

Part 4—Criminal appeal proceedings etc.

Division 4.1—Leave to appeal

4.01 Applications for leave to appeal

Leave to appeal about indictable offences or against summary judgments

- (1) An application for leave to appeal under subsection 30AA(1) or (2) of the Act must be made by filing a notice in accordance with Form CP21.

Leave to appeal against interim judgments and decisions

- (2) An application for leave to appeal under subsection 30AA(4) of the Act from a judgment or decision must be made:
 - (a) orally at the time the judgment or decision is made; or
 - (a) by filing a notice in accordance with Form CP21.

Documents that must accompany notice

- (3) A notice referred to in subrule (1) or (2) must be accompanied by an affidavit stating briefly, but specifically, the facts that support the application.
- (4) The following must be attached to the affidavit:
 - (a) the judgment or decision to which the application relates;
 - (b) the reasons, if published, for the judgment or decision;
 - (c) a draft notice of appeal that complies with rule 4.10.

Note 1: See section 30AB of the Act for whether leave to appeal is needed. If leave is not needed for any of the grounds of the appeal, see Division 4.2 of these Rules.

Note 2: See section 30AF of the Act for the time for filing a notice referred to in subrule (1) or (2).

4.02 Extension of time to seek leave to appeal

- (1) An application for an extension of time within which to file a notice referred to in subrule 4.01(1) or (2) must be filed in accordance with Form CP22.
- (2) The application may be filed during, or after the end of, the period within which the notice was required by subsection 30AF(2) of the Act to be filed.
- (3) The application must be accompanied by an affidavit stating:
 - (a) briefly, but specifically, the facts that support the application; and
 - (b) why the notice cannot be, or was not, filed in time.
- (4) The following must be attached to the affidavit:
 - (a) the judgment or decision to which the application relates;
 - (b) the reasons, if published, for the judgment or decision;
 - (c) a draft notice of appeal that complies with rule 4.10.

Note 1: An application filed in accordance with Form CP22 will include an application for leave to appeal.

Part 4 Criminal appeal proceedings etc.

Division 4.1 Leave to appeal

Rule 4.03

Note 2: The Court may grant an extension of time, and hear and determine the application for leave to appeal, at the same time.

Note 3: Section 30AE of the Act requires an application under rule 4.01 or 4.02 to be heard and determined by a single Judge, unless:

- (a) a Judge directs that the application be heard and determined by a Full Court; or
- (b) the application is made in a proceeding that has already been assigned to a Full Court, and the Full Court considers it appropriate to hear and determine the application.

4.03 Place of filing notice of application for leave to appeal etc.

A notice referred to in subrule 4.01(1) or (2), or an application referred to in subrule 4.02(1), must be filed:

- (a) if the proposed appeal is from a judgment or decision in proceedings in the Court constituted by a single Judge—in the District Registry in the State or Territory where the proceedings were, or are being, heard; or
- (b) if the proposed appeal is from a judgment of a court of a State or Territory—in the District Registry in that State or Territory.

Note: When the notice or application is filed a Registrar will fix a day and place for a callover or hearing for directions, and the day and place will be endorsed on the notice or application.

4.04 Service of documents

- (1) A party who files a notice referred to in subrule 4.01(1) or (2) or an application referred to in subrule 4.02(1) must, within 2 days, serve a stamped copy of each of the following on each party to the proceedings in which the relevant judgment or decision was made:
 - (a) the notice or application;
 - (b) the accompanying affidavit.
- (2) A document to be served on a party under subrule (1) must be served personally on the party.

4.05 Address for service

If:

- (a) a party is served with a notice referred to in subrule 4.01(1) or (2), or an application referred to in subrule 4.02(1); and
- (b) the party has not filed a notice of address for service;

the party must file a notice of address for service within 14 days after being served.

Note: For requirements relating to service of the notice of address for service, see rule 1.39.

4.06 Ending applications early

- (1) A party may withdraw an application for leave to appeal, or an application referred to in subrule 4.02(1), by filing a notice in accordance with Form CP23.
- (2) As soon as practicable after filing a notice under subrule (1), the party must serve a stamped copy of the notice on each party to the proceedings in which the relevant judgment or decision was made.

- (3) A notice filed under subrule (1) has the effect of an order of the Court dismissing the application.
- (4) A notice filed under subrule (1) does not affect any other party who has filed a notice referred to in subrule 4.01(1) or (2), or an application referred to in subrule 4.02(1), in relation to the same judgment or decision as that mentioned in the withdrawn application.

4.07 Dismissing application for want of prosecution etc.

A respondent to an application for leave to appeal or an application referred to in subrule 4.02(1) may apply to the Court for an order that the application be dismissed:

- (a) for a failure by the applicant to comply with a direction of the Court; or
- (b) for a failure by the applicant to comply with the Act, these Rules or the *Federal Court Rules 2011*; or
- (c) for a failure by the applicant to attend a hearing relating to the application; or
- (d) for want of prosecution.

Note: For the form of an application under this rule and requirements relating to service, see rule 9.01.

4.08 Absence of party

- (1) If a party is absent when an application for leave to appeal or an application referred to in subrule 4.02(1) is called on for hearing, any other party may apply to the Court for an order that:
 - (a) if the absent party is the applicant:
 - (i) the application be dismissed; or
 - (ii) the application be adjourned; or
 - (iii) the hearing proceed only if specified steps are taken; or
 - (b) if the absent party is the respondent:
 - (i) the hearing proceed generally or in relation to a particular aspect of the application; or
 - (ii) the hearing be adjourned; or
 - (iii) the hearing proceed only if specified steps are taken.
- (2) If a hearing proceeds in a party's absence and during or at the conclusion of the hearing an order is made, the party who was absent may apply to the Court for an order:
 - (a) setting aside or varying the order; and
 - (b) for the further conduct of the proceedings.

Note: For the form of an application under this rule and requirements relating to service, see rule 9.01.

4.09 Revocation or variation of grant of leave

If the Court or a Judge gives leave to appeal under section 30AA of the Act, the respondent may apply to the Full Court for an order:

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Division 4.1 Leave to appeal

Rule 4.09

- (a) revoking the leave to appeal, wholly or in part; or
- (b) imposing conditions on the leave to appeal; or
- (c) varying any conditions of the leave to appeal.

Note: For the form of an application under this rule and requirements relating to service, see rule 9.01.

Division 4.2—Institution of appeals

4.10 Notice of appeal

Appeals under section 30AA

- (1) A party who wants to appeal to the Court under section 30AA of the Act in relation to a judgment or decision must file a notice of appeal in accordance with Form CP24.

Appeals under section 30AD

- (2) An appeal under section 30AD of the Act in relation to a judgment must be made by filing a notice of appeal in accordance with Form CP24.

Notice of appeal

- (3) A notice of appeal must state:
 - (a) whether the whole judgment or decision, or only part of the judgment or decision, is appealed from (and if only part, which part); and
 - (b) briefly, but specifically, the grounds relied on in support of the appeal; and
 - (c) the judgment or decision the appellant seeks instead of the judgment or decision appealed from; and
 - (d) if the appellant wants the appeal dealt with urgently—the reasons for the urgency; and
 - (e) for an appeal under section 30AD of the Act—the date the Attorney-General consented under subsection 30AD(1) of the Act to the appeal.
- (4) A notice of appeal must be accompanied by:
 - (a) the judgment or decision to which the appeal relates; and
 - (b) the reasons, if published, for the judgment or decision.

Note 1: If under section 30AB of the Act leave is needed for any of the grounds of the appeal, a notice of application for leave to appeal must be filed—see Division 4.1 of these Rules.

Note 2: See section 30AF of the Act for the time for filing a notice referred to in subrule (1). There are no time limits for an appeal under section 30AD of the Act.

4.11 Extension of time to file notice of appeal

- (1) An application for an extension of time within which to file a notice of appeal must be filed in accordance with Form CP25.
- (2) The application may be filed during, or after the end of, the period within which the notice was required by subsection 30AF(2) of the Act to be filed.
- (3) The application must be accompanied by an affidavit stating:
 - (a) briefly, but specifically, the facts that support the application; and
 - (b) why a notice of appeal cannot be, or was not, filed in time.
- (4) The following must be attached to the affidavit:

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Division 4.2 Institution of appeals

Rule 4.12

- (a) the judgment or decision to which the application relates;
- (b) the reasons, if published, for the judgment or decision;
- (c) a draft notice of appeal that complies with rule 4.10.

Note: Section 30AE of the Act requires the application to be heard and determined by a single Judge, unless:

- (a) a Judge directs that the application be heard and determined by a Full Court; or
- (b) the application is made in a proceeding that has already been assigned to a Full Court, and the Full Court considers it appropriate to hear and determine the application.

4.12 Place of filing notice of appeal

A notice of appeal or an application referred to in subrule 4.11(1) must be filed:

- (a) if the appeal or proposed appeal is from a judgment or decision in proceedings in the Court constituted by a single Judge—in the District Registry in the State or Territory where the proceedings were, or are being, heard; or
- (b) if the appeal or proposed appeal is from a judgment of a court of a State or Territory—in the District Registry in that State or Territory.

4.13 Service of documents

- (1) A party who files a notice of appeal must, within 2 days, serve a stamped copy of the notice on each party to the proceedings in which the relevant judgment or decision was made.
- (2) A party who files an application referred to in subrule 4.11(1) must, within 2 days, serve a stamped copy of the application and the accompanying affidavit on each party to the proceedings in which the relevant judgment or decision was made.
- (3) A document to be served on a party under subrule (1) or (2) must be served personally on the party.

4.14 Address for service

If:

- (a) a party is served with a notice of appeal, or an application referred to in subrule 4.11(1); and
- (b) the party has not filed a notice of address for service;

the party must file a notice of address for service within 14 days after being served.

Note: For requirements relating to service of the notice, see rule 1.39.

4.15 Stay of execution or proceedings under judgment or decision appealed from

- (1) Subject to subrule (2), criminal appeal proceedings do not:
 - (a) operate as a stay of execution or a stay of any proceedings under the judgment or decision appealed from; or
 - (b) invalidate any proceedings already taken.

- (2) An appellant in criminal appeal proceedings may apply to the Court for a stay referred to in paragraph (1)(a) to operate until the criminal appeal proceedings are heard and determined.
- (3) An application may be made under subrule (2) even if the court from which the appeal is brought has previously refused an application of a similar kind.

Note: For the form of an application under subrule (2) and requirements relating to service, see rule 9.01.

4.16 Parties

If criminal appeal proceedings are started, each party to the proceedings out of which the criminal appeal proceedings arose who may be affected by the relief sought in the criminal appeal proceedings must be joined as a respondent to the criminal appeal proceedings.

Division 4.3—Preparation and conduct of appeals

4.17 Application of rules 4.18 to 4.20

Rules 4.18 to 4.20 apply to the preparation of an appeal under Division 2A of Part III of the Act, unless the Court decides that the appeal should be dealt with urgently.

Note: The Court could decide that an appeal should be dealt with urgently if, for example, a person has been refused bail or a trial cannot proceed while the appeal is pending. If the Court decides that the appeal should be dealt with urgently, the Court will give directions to the parties about the material each party must file and any other steps the parties must take to prepare the appeal for hearing.

4.18 Appeal books

- (1) The appellant must:
 - (a) prepare an appeal book; and
 - (b) file a draft of the index to the appeal book within 21 days after the day the appellant filed the notice of appeal.
- (2) A Registrar must settle the draft of the index to the appeal book and notify the appellant that the draft has been approved.
- (3) Within 14 days after being notified of the approval, the appellant must file 4 copies of the appeal book that comply with the settled draft index.
- (4) As soon as practicable after the appellant files the copies of the appeal book, the appellant must serve a copy of the appeal book on the respondent.

Note: The copy of the appeal book need not be stamped.

- (5) Unless the Court orders otherwise, the copies of the appeal book filed or served in accordance with this rule must be hard copies.

4.19 Title page of appeal books

The title page of each Part of the appeal book must include the following:

- (a) the title of the proceedings;
- (b) the court from which the appeal was made;
- (c) the names and addresses for service of the lawyers for each party to the appeal;
- (d) if a party is not represented by a lawyer—the address for service of the party.

4.20 Written submissions and lists of authorities

- (1) Each party to an appeal must file the following documents:
 - (a) an outline of the party's submissions on the appeal;
 - (b) a list of authorities to which the party intends to refer;
 - (c) a list of any legislation to which the party intends to refer.

-
- (2) The document referred to in paragraph (1)(a) must be filed as follows:
- (a) for an appellant—not later than 20 business days before the hearing of the appeal;
 - (b) for a respondent—not later than 15 business days before the hearing of the appeal;
 - (c) for an appellant making submissions in reply—not later than 10 business days before the hearing of the appeal.
- (3) The documents referred to in paragraphs (1)(b) and (c) must be filed as follows:
- (a) for an appellant—not later than 5 business days before the hearing of the appeal;
 - (b) for a respondent—not later than 4 business days before the hearing of the appeal.

Note: The Court has issued a practice note for the assistance of parties to an appeal and their lawyers. The Court expects the parties and their lawyers to comply with the practice note.

- (4) As soon as practicable after a party files a document referred to in subrule (1), the party must serve a stamped copy of the document on each other party to the appeal.

4.21 Further evidence on appeal

- (1) If a party to an appeal wants to apply for the Court to receive further evidence under paragraph 30AI(1)(c) of the Act, the application must be filed at least 21 days before the hearing of the appeal and be accompanied by an affidavit stating the following:
- (a) briefly, but specifically, the facts that support the application;
 - (b) the grounds of appeal to which the application relates;
 - (c) the evidence that the applicant wants the Court to receive;
 - (d) why the evidence was not adduced in the court from which the appeal was made.
- (2) A party who wants to adduce evidence in reply must file an application to do so at least 14 days before the hearing of the appeal.

Note 1: Section 30AI of the Act allows the Court to receive further evidence on appeal.

Note 2: For the form of an application under subrule (1) or (2) and requirements relating to service, see rule 9.01.

4.22 Court may request report

- (1) On the hearing of criminal appeal proceedings in relation to a judgment or decision, the Court may request the Judge or court that made the judgment or decision to provide a report to the Court, for the information of the Court, on any aspect arising in the case.
- (2) A party to the proceedings may apply to the Court for an order that the appellant or the respondent, or both, be allowed to inspect the report by filing an application in accordance with Form CP26.

Rule 4.23

- (3) As soon as practicable after filing an application under subrule (2), the party must serve a stamped copy of the application on each other party to the proceedings.

4.23 Directions

- (1) A party may apply to the Court, constituted by a single Judge, for directions in relation to the management, conduct and hearing of criminal appeal proceedings.
- (2) Without limiting subrule (1), a party may apply to the Court for a direction relating to any of the following:
- (a) granting an extension of time within which to appeal;
 - (b) giving leave to amend the grounds of appeal;
 - (c) joining or removing a party to the appeal;
 - (d) making an interlocutory order pending, or after, the determination of an appeal to the Court;
 - (e) making an order by consent disposing of an appeal;
 - (f) dismissing an appeal for want of prosecution;
 - (g) vacating a hearing date;
 - (h) making an order that an appeal to the Court be dismissed for:
 - (i) failure to comply with a direction of the Court; or
 - (ii) failure of the appellant to attend a hearing relating to the appeal;
 - (i) the conduct of the appeal including:
 - (i) the contents of the appeal book; and
 - (ii) the use of written submissions; and
 - (iii) limiting the time for oral argument.

Note: The Court may, at any stage in criminal proceedings, order the parties to attend a hearing for directions—see rule 1.09.

Division 4.4—Ending appeals early

4.24 Ending appeals early

- (1) A party who has filed a notice of appeal or an application referred to in subrule 4.11(1) may withdraw the appeal or application, by filing a notice in accordance with Form CP23.
- (2) As soon as practicable after filing a notice under subrule (1), the party must serve a stamped copy of the notice on each other party to the proceedings.
- (3) A notice filed under subrule (1) has the effect of an order of the Court dismissing the appeal or application.
- (4) A notice filed under subrule (1) does not affect any other party who has filed a notice of appeal or an application referred to in subrule 4.11(1) in relation to the same judgment or decision as that mentioned in the withdrawn appeal or application.

4.25 Dismissing appeal for want of prosecution etc.

A respondent to an appeal or an application referred to in subrule 4.11(1) may apply to the Court for an order that the appeal or application be dismissed:

- (a) for a failure by the applicant to comply with a direction of the Court; or
- (b) for a failure by the applicant to comply with the Act, these Rules or the *Federal Court Rules 2011*; or
- (c) for a failure by the applicant to attend a hearing relating to the appeal or application; or
- (d) for want of prosecution.

Note: For the form of an application under this rule and requirements relating to service, see rule 9.01.

4.26 Absence of party

- (1) If a party is absent when an appeal or an application referred to in subrule 4.11(1) is called on for hearing, any other party may apply to the Court for an order that:
 - (a) if the absent party is the applicant:
 - (i) the appeal or application be dismissed; or
 - (ii) the appeal or application be adjourned; or
 - (iii) the hearing proceed only if specified steps are taken; or
 - (b) if the absent party is the respondent:
 - (i) the hearing proceed generally or in relation to a particular aspect of the appeal or application; or
 - (ii) the hearing be adjourned; or
 - (iii) the hearing proceed only if specified steps are taken.

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Division 4.4 Ending appeals early

Rule 4.26

(2) If a hearing proceeds in a party's absence and during or at the conclusion of the hearing an order is made, the party who was absent may apply to the Court for an order:

- (a) setting aside or varying the order; and
- (b) for the further conduct of the proceedings.

Note: For the form of an application under this rule and requirements relating to service, see rule 9.01.

Division 4.5—Questions of law referred after trial

4.27 Application for leave to refer question of law

- (1) An application for leave to refer a question of law under subsection 30CB(1) of the Act must be in accordance with Form CP27.

Note: Subsection 30CB(1) of the Act allows the prosecutor to apply for leave to refer a question of law to a Full Court to provide guidance for future cases if a person has been acquitted following a trial on indictment.

- (2) The application must:
 - (a) identify precisely the question of law; and
 - (b) be accompanied by an affidavit stating briefly, but specifically, the facts that support the application, including the reason why the Court should consider the question of law; and
 - (c) set out the arrangements the prosecutor proposes to ensure the acquitted person will be properly represented if the acquitted person wants to make submissions in relation to the application for leave or in relation to the Court's determination of the question of law; and
 - (d) set out the arrangements the prosecutor proposes to ensure that both sides of the issue will be argued if the acquitted person does not want to make submissions in relation to the Court's determination of the question of law.

4.28 Filing and service of application for leave to refer question of law

- (1) An application for leave to refer a question of law under subsection 30CB(1) of the Act must be filed no later than 28 days after the acquitted person is discharged.
- (2) A stamped copy of the application and accompanying affidavit must be served personally on the acquitted person at least 5 days before the day fixed by the Court for hearing the application.

4.29 Hearing of application for leave to refer question of law

An application for leave to refer a question of law under subsection 30CB(1) of the Act is to be heard by a single Judge unless the Court otherwise directs.

4.30 Form of referral of question of law

- (1) If the Court grants leave under subsection 30CB(1) of the Act to a prosecutor to refer a question of law, the prosecutor must:
 - (a) file a notice of referral of a question of law in accordance with Form CP28; and
 - (b) include in the notice:
 - (i) a statement of the question of law that has been referred; and
 - (ii) a concise statement of the facts of the case; and
 - (c) attach to the notice:

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- (i) any documents necessary to enable the Court to decide the question of law; and
 - (ii) a copy of the order granting leave to refer the question of law.
- (2) The notice must be filed within 28 days after the day on which leave was granted.
- (3) A stamped copy of the notice must be served personally on the acquitted person within 5 days after the day the notice is filed.

4.31 Appearance of acquitted person at hearing relating to referral of question of law

An acquitted person who wants to appear at a hearing of proceedings under section 30CB of the Act must:

- (a) file a notice of intended appearance in accordance with Form CP29 or CP30, as required; and
- (b) file a notice of address for service for the acquitted person; and
- (c) serve a stamped copy of each notice on the prosecutor at least 3 days before the day fixed for the hearing.

Note 1: Under section 30CB of the Act, if leave is granted to refer a question of law to the Full Court, both the prosecutor and the acquitted person may make submissions in relation to the determination of the question of law.

Note 2: For the form of the notice of address for service, see rule 1.38.

Division 4.6—Cases stated and questions reserved

4.32 Cases stated and questions reserved

- (1) A case stated or a question reserved in accordance with subsection 30AE(6) or section 30CA of the Act must be in the form of a special case.
- (2) A special case must:
 - (a) be divided into consecutively numbered paragraphs; and
 - (b) state the facts, briefly but specifically; and
 - (c) be accompanied by all documents necessary to enable the Court to decide the questions raised by the special case.
- (3) The Court may draw from the facts stated and the accompanying documents any inference, whether of fact or law, that might have been drawn from them if proved at trial.

4.33 Special case to be prepared

Unless the court stating the case or reserving the question otherwise directs, a special case referred to in rule 4.32 must:

- (a) be prepared in draft by the prosecutor after consultation with the accused;
and
- (b) include an address for service of each of the parties; and
- (c) be settled by the court; and
- (d) be sent by the court to the proper Registry.

4.34 Directions

A party may apply to the Court for directions in relation to the management, conduct and hearing of a case stated or a question reserved in accordance with subsection 30AE(6) or section 30CA of the Act.

Note: For the form of an application under this rule and requirements relating to service, see rule 9.01.

Part 5—Bail

5.01 Bail application

- (1) An application for bail under section 58DA of the Act may be made:
 - (a) in writing; or
 - (b) if leave is given—orally at a hearing of the Court.
- (2) A written application must be made by filing an application in accordance with Form CP31.
- (3) A written application must be accompanied by an affidavit that complies with any practice note dealing with applications for bail.

Note: A copy of any practice notes may be obtained from the District Registry or downloaded from the Court's website at <http://www.fedcourt.gov.au>.

- (4) Any additional material the accused relies on in support of the application must be attached to the affidavit.
- (5) If an application is made in writing, a stamped copy of the written application and the accompanying affidavit must be served on the prosecutor at least 2 days before the hearing of the application.

5.02 Application to vary or revoke bail order

- (1) An application under paragraph 58EA(1)(b) of the Act for a bail order to be varied or revoked on the basis that the accused has failed to comply with the accused's bail undertaking must be made by filing an application in accordance with Form CP32.

Note: If such an application is made, the Court must cause the accused to be brought before the Court—see subsection 58EA(2) of the Act and rule 9.02.

- (2) The application must be accompanied by an affidavit stating briefly, but specifically, the facts that support the application.
- (3) As soon as practicable after the application is filed, the prosecutor must serve a stamped copy of the application and the accompanying affidavit on the accused.

5.03 Requirements for dealing with money or other property deposited as security for bail

- (1) If money is deposited with the Court as security in accordance with a condition of bail, the money must, subject to subrule (2), be paid into the Litigants Fund.
- (2) The Court may, on application by an accused, order that money deposited with the Court as security in accordance with a condition of bail be paid, credited or applied in a manner other than by payment into the Litigants Fund.
- (3) If property other than money is deposited with the Court as security in accordance with a condition of bail, the property must be dealt with in accordance with a direction of the Court or a Registrar.

Note 1: Subsection 58DC(3) of the Act provides that money or other property deposited with the Court, or otherwise provided, as security in accordance with a condition of bail must be dealt with by the Court in accordance with the Rules of Court.

Note 2: Section 58GD of the Act deals with the return of security provided for an accused's bail when bail ends.

5.04 Requirements for bail undertaking

- (1) For the purposes of paragraph 58DE(1)(a) of the Act, a bail undertaking:
 - (a) must be in accordance with Form CP33; and
 - (b) must be signed by the accused before:
 - (i) the Judge who granted the bail; or
 - (ii) a Registrar; or
 - (iii) if the accused has been committed to a prison by the Court—a person appointed or employed to assist in the management of the prison.
- (2) The person before whom the accused signs the bail undertaking must take reasonable steps to ensure that the accused is aware of:
 - (a) the obligations of the accused under the bail undertaking; and
 - (b) if the bail order has been granted subject to conditions—the consequences that may follow if the accused does not comply with the conditions.
- (3) For the purposes of subrule (2), a person takes reasonable steps in relation to a bail undertaking if the person:
 - (a) reads the bail undertaking to the accused, and asks the accused if he or she understands the undertaking; or
 - (b) arranges for the bail undertaking to be read to the accused in a language the accused understands, and arranges for the accused to be asked if he or she understands the effect of the undertaking; or
 - (c) asks the accused if he or she has read the bail undertaking and, if so, if he or she understands the undertaking.

5.05 Requirements for third party security undertaking

- (1) For the purposes of paragraph 58DE(1)(b) of the Act, a third party security undertaking in relation to an accused's bail:
 - (a) must be in accordance with Form CP34; and
 - (b) must be signed by the third party before:
 - (i) the Judge who granted the bail; or
 - (ii) a Registrar.
- (2) The person before whom the third party signs the undertaking must take reasonable steps to ensure that the third party is aware of:
 - (a) the obligations of the third party under the undertaking; and
 - (b) if the bail order has been granted subject to conditions—the consequences to the third party that may follow if the accused does not comply with the conditions.
- (3) For the purposes of subrule (2), a person takes reasonable steps in relation to a third party security undertaking if the person:

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- (a) reads the undertaking to the third party, and asks the third party if he or she understands the undertaking; or
- (b) arranges for the undertaking to be read to the third party in a language the third party understands, and arranges for the third party to be asked if he or she understands the effect of the undertaking; or
- (c) asks the third party if he or she has read the undertaking and, if so, if he or she understands the undertaking.

5.06 Notice of proposed forfeiture—form of application

- (1) An application under subsection 58FB(1) of the Act for a direction under subsection 58FB(2) of the Act in relation to an accused's bail undertaking must be made by filing an application in accordance with Form CP35.
- (2) The application must:
 - (a) be accompanied by the following:
 - (i) a copy of the bail undertaking;
 - (ii) a draft direction in accordance with Form CP36;
 - (iii) a draft notice under subsection 58FB(2) of the Act;
 - (iv) a copy of any third party security undertaking made in relation to the accused's bail;
 - (v) an affidavit stating briefly, but specifically, the facts that support the application; and
 - (b) state the particulars (including name and address) of any person who the prosecutor considers may have an interest in security provided for the accused's bail.
- (3) The application may be made without notice.

5.07 Form of notice of proposed forfeiture

A notice under subsection 58FB(2) of the Act in relation to an accused's bail undertaking must:

- (a) be in accordance with Form CP37; and
- (b) be accompanied by:
 - (i) a copy of the bail undertaking; and
 - (ii) a copy of any third party security undertaking made in relation to the accused's bail.

5.08 Objection to forfeiture

- (1) An objection filed in accordance with subsection 58FC(3) of the Act must be in accordance with Form CP38.
- (2) An objection filed in accordance with subsection 58FC(3) of the Act must contain the following particulars:
 - (a) the name and address of the person filing the objection;
 - (b) details of the interest, if any, the person has in security provided for the accused's bail;

- (c) if the person considers that the Court should not make the relevant forfeiture order—the reason or reasons why the person thinks the Court should not make the order;
 - (d) if the person considers that the Court should reduce the amount of security that will be forfeited—the reason or reasons why the person thinks the amount should be reduced.
- (3) If a person files an objection (the ***first objection***) to the forfeiture of security provided for an accused's bail in accordance with subsection 58FC(3) of the Act, the Court may:
- (a) give a copy of the first objection to the prosecutor and any other person (the ***other objector***) who has also filed, in accordance with that subsection, an objection to the forfeiture of the security; and
 - (b) invite the prosecutor and the other objector to respond to the first objection within the time specified in the invitation.
- (4) If a person (the ***first person***) makes written submissions in response to an invitation of the Court under subsection 58FC(3) of the Act, the Court may:
- (a) give a copy of the submissions to the prosecutor and any other person who has made written submissions in response to an invitation under that subsection; and
 - (b) invite the prosecutor and the other person to respond to the first person's submissions within the time specified in the invitation.

Part 6—Expert evidence requirements

6.01 Provision of guidelines to expert

If a party to criminal proceedings:

- (a) retains an expert to give an expert report; or
- (b) proposes to call an expert to give expert evidence at the trial or a hearing of the proceedings;

the party must, when retaining the expert, give the expert a copy of any practice note dealing with guidelines for expert witnesses.

Note: A copy of any practice notes may be obtained from the District Registry or downloaded from the Court's website at <http://www.fedcourt.gov.au>.

6.02 Contents of expert report

- (1) If an expert prepares an expert's report, the report must:
 - (a) comply with any practice note dealing with guidelines for expert witnesses; and
 - (b) contain an acknowledgement at the beginning of the report that the expert has read, understood and complied with any practice note dealing with guidelines for expert witnesses; and
 - (c) contain particulars of the training, study or experience by which the expert has acquired specialised knowledge; and
 - (d) identify the questions that the expert was asked to address; and
 - (e) set out separately each of the factual findings or assumptions on which the expert's opinion is based; and
 - (f) set out separately from the factual findings or assumptions each of the expert's opinions; and
 - (g) contain an acknowledgement that the expert's opinion is based wholly or substantially on the expert's specialised knowledge referred to in paragraph (c); and
 - (h) set out the reasons for each of the expert's opinions; and
 - (i) be signed by the expert.
- (2) Any subsequent expert report of the same expert on the same question need not contain the information in paragraphs (1)(b) and (c).

6.03 Adducing expert evidence

A party may call an expert to give evidence at a trial or hearing of criminal proceedings only if the party:

- (a) has, at least 21 days before the day fixed for the start of the trial or the hearing, given all other parties a copy of an expert report by the expert that complies with rule 6.02; and
- (b) has otherwise complied with this Part.

Part 7—Service

Division 7.1—Personal service

7.01 Service on individual

- (1) A document in criminal proceedings that is required to be served personally on an individual may be served:
 - (a) by leaving the document with the individual; or
 - (b) in accordance with a provision of Division 7.3.
- (2) If an individual refuses to accept a document that is required to be served personally on the individual, the document is taken to have been served personally if the person serving the document:
 - (a) puts it down in the individual's presence; and
 - (b) tells the individual what the document is.

7.02 Service on corporation

A document in criminal proceedings that is required to be served personally on a corporation, or on the liquidator or administrator of a corporation, may be served:

- (a) in accordance with subsection 109X(1) of the *Corporations Act 2001*; or
- (b) in accordance with a provision of Division 7.3.

Note: Subsection 109X(1) of the *Corporations Act 2001* provides that, for the purposes of any law, a document may be served on a company by:

- (a) leaving it at, or posting it to, the company's registered office; or
- (b) delivering a copy of the document personally to a director of the company who resides in Australia or in an external Territory; or
- (c) if a liquidator of the company has been appointed—leaving it at, or posting it to, the address of the liquidator's office in the most recent notice of that address lodged with ASIC; or
- (d) if an administrator of the company has been appointed—leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with ASIC.

Division 7.2—Ordinary service

7.03 Ordinary service

A document in criminal proceedings that is not required to be served personally may be served:

- (a) in accordance with a provision of Division 7.1 or 7.3; or
- (b) by sending the document by pre-paid post addressed to the person at the person's proper address.

Division 7.3—Other methods of service

7.04 Service at address for service

A document in criminal proceedings may be served on a person in any of the following ways:

- (a) if the person has filed an address for service—at that address;
- (b) if the person has filed a notice authorising service by email—by sending the document to the email address specified in the notice;
- (c) if the person has filed a notice authorising service by fax—by sending the document to the fax number specified in the notice.

7.05 Acceptance of service by lawyer

- (1) A lawyer may accept service of a document for a person in criminal proceedings if:
 - (a) the lawyer has authority to accept service of the document, or documents of that kind, for the person; and
 - (b) the lawyer endorses a note on a copy of the document that the lawyer accepts service of the document for the person.
- (2) A document that is endorsed by a lawyer under paragraph (1)(b) is taken to have been served personally:
 - (a) on the date that the endorsement is made; or
 - (b) if personal service on the person is proved on an earlier date—on the earlier date.

7.06 Deemed service

A party to criminal proceedings may apply to the Court, without notice, for an order that a document is taken to have been served on a person on a date mentioned in the order if:

- (a) it is not practicable to serve a document on the person in a way required by these Rules; and
- (b) the party provides evidence that the document has been brought to the attention of the person to be served.

7.07 Substituted service

If it is not practicable to serve a document in criminal proceedings on a person in a way required by these Rules, a party may apply to the Court without notice for an order:

- (a) substituting another method of service; or
- (b) specifying that, instead of being served, certain steps be taken to bring the document to the attention of the person; or
- (c) specifying that the document is taken to have been served:
 - (i) on the happening of a specified event; or
 - (ii) at the end of a specified period.

Rule 7.08

7.08 Service under agreement

If a person has agreed that a document in criminal proceedings may be served on the person in a way or at a place mentioned in the agreement, the document may be served in accordance with the agreement.

7.09 Service on an accused in indictable primary proceedings

If:

- (a) an accused in indictable primary proceedings has not filed an address for service in the indictable primary proceedings; and
- (b) committal proceedings have occurred in relation to the indictment; and
- (c) the accused:
 - (i) provided an address for service in the committal proceedings; or
 - (ii) agreed to receive documents at an email address for the purposes of the committal proceedings; and
- (d) the accused has not filed an appropriate notice, in the committal proceedings or the indictable primary proceedings, withdrawing the address for service or email address referred to in paragraph (c);

a document in the indictable primary proceedings may be served on the accused at the address for service or email address referred to in paragraph (c).

7.10 Service on a respondent in criminal appeal proceedings

If a respondent in criminal appeal proceedings:

- (a) has not filed an address for service in the criminal appeal proceedings; and
- (b) either:
 - (i) provided an address for service in the proceedings (the *earlier proceedings*) in which the judgment or decision appealed from was made; or
 - (ii) agreed to receive documents at an email address for the purposes of the earlier proceedings; and
- (c) has not filed an appropriate notice, in the earlier proceedings or the criminal appeal proceedings, withdrawing the address for service or email address referred to in paragraph (b);

a document in the criminal appeal proceedings may be served at the address for service or email address referred to in paragraph (b).

7.11 Service on acquitted person in proceedings under section 30CB of the Act

If the acquitted person in relation to proceedings under section 30CB of the Act:

- (a) has not filed an address for service in the section 30CB proceedings; and
- (b) either:
 - (i) provided an address for service in the indictable primary proceedings; or
 - (ii) agreed to receive documents at an email address for the purposes of the indictable primary proceedings; and

Rule 7.11

(c) has not filed an appropriate notice, in the indictable primary proceedings or the section 30CB proceedings, withdrawing the address for service or email address referred to in paragraph (b);
a document in the section 30CB proceedings may be served at the address for service or email address referred to in paragraph (b).

Division 7.4—Other rules about service

7.12 Service of documents by Court

An order, notice or other document in criminal proceedings that is to be given to, or served on, a person by the Court or an officer of the Court may, unless these Rules provide otherwise, be given or served in any way permitted for service of documents under rule 7.03.

7.13 Identity of person served

For the purpose of proving service, a statement by a person of the person's identity, or that the person holds a particular office or position, is evidence of the person's identity or that the person holds the office or position.

7.14 Proof of service

Unless the Court otherwise orders:

- (a) a party to criminal proceedings may give evidence that a document has been served by filing an affidavit of service; and
- (b) such an affidavit need not be served on any other party to the proceedings.

7.15 Time of service

A document that is served on a person in accordance with these Rules is taken to be served on the person:

- (a) if the document was sent by pre-paid post—on the fourth business day after the document was sent; or
- (b) if the document was sent by fax—on the next business day after the document was sent; or
- (c) if the document was sent by email—on the next business day after the document was sent.

Division 7.5—Service outside Australia

7.16 Serving a document outside Australia

- (1) A party to criminal proceedings does not, for the purposes of these Rules, require leave of the Court to serve a document on a person in a foreign country for the purposes of the proceedings.

Note: If a party requires leave to serve a document in order to meet the requirements of a convention or a provision of a foreign law, the party may apply for leave under rule 9.01.

- (2) A document in criminal proceedings may be served on a person in a foreign country in accordance with:
 - (a) if a convention applies—the convention; or
 - (b) the law of the foreign country; or
 - (c) an order under this Division.

7.17 Application of other rules

The other provisions of this Part apply to service of a document on a person in a foreign country in the same way as they apply to service on a person in Australia, to the extent that they are:

- (a) relevant and not inconsistent with this Division; and
- (b) consistent with:
 - (i) if a convention applies—the convention; or
 - (ii) in any other case—the law of the foreign country.

7.18 Method of service

A document in criminal proceedings that is to be served on a person in a foreign country need not be served personally on the person if it is served according to the law of the foreign country.

7.19 Proof of service

- (1) An official certificate or declaration (whether made on oath or otherwise) stating that a document in criminal proceedings has been personally served on a person in a foreign country, or served on the person in another way in accordance with the law of the foreign country, is sufficient proof of the service of the document.
- (2) If filed, a certificate or declaration mentioned in subrule (1):
 - (a) is taken to be a record of the service of the document; and
 - (b) has effect as if it were an affidavit of service.

7.20 Deemed service

A party to criminal proceedings may apply to the Court, without notice, for an order that a document is taken to have been served on a person on the date mentioned in the order if:

Rule 7.21

- (a) it is not practicable to serve the document on the person in a foreign country in accordance with a convention or the law of a foreign country; and
- (b) the party provides evidence that the document has been brought to the attention of the person to be served.

7.21 Substituted service

If service was not successful on a person in a foreign country, in accordance with a convention or the law of a foreign country, a party may apply to the Court without notice for an order:

- (a) substituting another method of service; or
- (b) specifying that, instead of being served, certain steps be taken to bring the document to the attention of the person; or
- (c) specifying that the document is taken to have been served:
 - (i) on the happening of a specified event; or
 - (ii) at the end of a specified period.

Division 7.6—Service through diplomatic channel or by transmission to foreign government

7.22 Documents to be lodged with the Court

If a party wants to serve a document in criminal proceedings on a person in a foreign country:

- (a) through the diplomatic channel; or
- (b) by transmission to a foreign government in accordance with a convention (the *relevant convention*);

the party must lodge in the District Registry:

- (c) a request for service, in accordance with Form CP39; and
- (d) a request for transmission, in accordance with Form CP40; and
- (e) the party's, or the party's lawyer's, written undertaking to pay to the Chief Executive Officer the amount of the expenses incurred by the Court in giving effect to the party's request; and
- (f) the number of copies of each document that are required by the relevant conventions to be served; and
- (g) if necessary, a translation into the foreign country's official language (including a statement by the translator attesting to the accuracy of the translation) of the following:
 - (i) the request for transmission referred to in paragraph (d);
 - (ii) each document to be served.

7.23 Order for payment of expenses

If a party, or a party's lawyer, gives an undertaking under paragraph 7.22(e) and does not, within 14 days after being sent an account for expenses incurred in relation to the request, pay to the Chief Executive Officer the amount of the expenses, the Court may without notice make an order that:

- (a) the amount of the expenses be paid to the Chief Executive Officer within a specified period of time; and
- (b) the proceedings be stayed, to the extent that it concerns the whole or any part of a claim for relief by the party, until the amount of the expenses is paid.

Part 8 Subpoenas

Division 8.1 Leave to issue subpoena

Rule 8.01

Part 8—Subpoenas

Note: A party or other person who wants to make an application under this Part should have regard to any practice note relating to subpoenas. A copy of any practice notes may be obtained from the District Registry or downloaded from the Court's website at <http://www.fedcourt.gov.au>.

Division 8.1—Leave to issue subpoena

8.01 Leave to issue subpoena

- (1) A subpoena may be issued only with the leave of the Court.
- (2) A party to criminal proceedings may apply to the Court without notice for leave to issue a subpoena.

Note 1: The Court may give leave to issue a subpoena:

- (a) generally or in relation to a particular subpoena or subpoenas; and
- (b) subject to conditions.

Note 2: A Registrar will, in accordance with the leave given under subrule (2) and on the request of a party, issue:

- (a) a subpoena to attend to give evidence; or
- (b) a subpoena to produce the subpoena or a copy of it and a document or thing; or
- (c) a subpoena to do both of those things.

Division 8.2—Subpoenas to give evidence and to produce documents

Note: This Division contains rules that have been harmonised in accordance with the advice of the Council of Chief Justices' Rules Harmonisation Committee.

8.02 Definitions for this Division

(1) In this Division:

addressee means the person who is the subject of the order expressed in a subpoena.

issuing officer means an officer empowered to issue a subpoena for the Court.

issuing party means the party at whose request a subpoena is issued.

subpoena means an order in writing requiring the addressee:

- (a) to attend to give evidence; or
- (b) to produce the subpoena or a copy of it and a document or thing; or
- (c) to do both of those things.

(2) To the extent that a subpoena requires the addressee to attend to give evidence, it is called a *subpoena to attend to give evidence*.

(3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is called a *subpoena to produce*.

8.03 Issuing of subpoena

(1) The Court may, in criminal proceedings, by subpoena, order the addressee:

- (a) to attend to give evidence as directed by the subpoena; or
- (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or
- (c) to do both of those things.

(2) An issuing officer must not issue a subpoena:

- (a) if the Court has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena:
 - (i) not be issued; or
 - (ii) be issued only with the leave of the Court and that leave has not been given; or
- (b) requiring the production of a document or thing in the custody of the Court or another court.

(3) The issuing officer must seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

(4) The subpoena is taken to have been issued when it is sealed or otherwise authenticated under subrule (3).

Part 8 Subpoenas

Division 8.2 Subpoenas to give evidence and to produce documents

Rule 8.04

8.04 Form of subpoena

- (1) A subpoena must be in accordance with:
 - (a) for a subpoena to attend to give evidence—Form CP41; or
 - (b) for a subpoena to produce a document or thing—Form CP42; or
 - (c) for a subpoena to attend to give evidence and to produce a document or thing—Form CP43.
- (2) A subpoena must not be addressed to more than one person.
- (3) A subpoena must identify the addressee by name or by description of office or position.
- (4) A subpoena to produce issued under this Part must:
 - (a) identify the document or thing to be produced; and
 - (b) specify the date, time and place for production.
- (5) A subpoena to attend to give evidence issued under this Part must specify the date, time and place for attendance.
- (6) The date specified in a subpoena must be the date fixed for the start of the trial or any other date as permitted by the Court.
- (7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceedings as permitted by the Court.
- (8) The last date for service of a subpoena:
 - (a) is:
 - (i) the date 5 days before the earliest date the addressee is required to comply with the subpoena; or
 - (ii) an earlier or later date fixed by the Court; and
 - (b) must be specified in the subpoena.
- (9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

8.05 Change of date for attendance or production

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena issued under this Part as the date or time for attendance or for production or for both.
- (2) If notice is given under subrule (1), the subpoena has effect as if the later date or time were specified in the subpoena instead of the date or time specified in the subpoena in accordance with subrule 8.04(4) or (6).

8.06 Setting aside or other relief

- (1) The Court may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or in part, or grant other relief in relation to it.
- (2) An application under subrule (1) must be made on notice to the issuing party.

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- (3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

8.07 Service

- (1) A subpoena must be served personally on the addressee.
- (2) The issuing party must serve a stamped copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee.

8.08 Compliance with subpoena

- (1) An addressee need not comply with a subpoena to attend to give evidence if conduct money has not been handed or tendered to the addressee a reasonable time before the date attendance is required.
- (2) The addressee need not comply with the requirements of a subpoena if it is not served on or before the date specified in the subpoena as the last date for service of the subpoena.
- (3) Despite subrule 8.07(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on the addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.
- (4) The addressee must comply with a subpoena to produce by:
- (a) attending on the date, and at the time and place, specified for production and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceedings as permitted by the Court; or
 - (b) delivering or sending the subpoena or a copy of it and the document or thing to a Registrar at the address specified for the purpose in the subpoena, or, if more than one address is specified, at any of those addresses, so that they are received not less than 2 clear business days before the date specified in the subpoena for production.
- (5) For a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by subrule (4) does not discharge the addressee from the obligation to attend to give evidence.
- (6) Unless a subpoena specifically requires the production of the original document, the addressee may produce a copy of any document required to be produced by the subpoena.
- (7) The copy of a document may be:
- (a) a photocopy; or
 - (b) in an electronic form that the issuing officer has indicated will be acceptable.
- (8) The issuing party must, at that party's expense:

Part 8 Subpoenas

Division 8.2 Subpoenas to give evidence and to produce documents

Rule 8.09

- (a) make an electronic image of any photocopy of a document produced under subrule (7); and
- (b) lodge the electronic image with a Registrar within the time specified by a Registrar.

8.09 Production otherwise than on attendance

- (1) This rule applies if an addressee produces a document or thing in accordance with paragraph 8.08(4)(b).
- (2) A Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.
- (3) If the addressee produces more than one document or thing, the addressee must, if requested by a Registrar, provide a list of the documents or things produced.
- (4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.
- (5) The addressee may at the time of production tell the Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

8.10 Removal, return, inspection, copying and disposal of documents and things

The Court may give directions about the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

8.11 Inspection of, and dealing with, documents and things produced otherwise than on attendance

- (1) This rule applies if an addressee produces a document or thing in accordance with rule 8.08.
- (2) On the request in writing of a party to criminal proceedings, the Registrar must tell the party whether production in response to a subpoena has occurred and, if so, include a description, in general terms, of the documents and things produced.
- (3) Subject to this rule, a person may inspect a document or thing produced only if the Court has granted leave and the inspection is in accordance with the leave.
- (4) A Registrar may permit the parties to inspect at the Registry any document or thing produced unless the addressee, a party or any person having sufficient interest objects to the inspection under this rule.
- (5) If the addressee objects to a document or thing being inspected by any party to the criminal proceedings, the addressee must, at the time of production, notify a Registrar in writing of the objection and of the grounds of the objection.
- (6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the criminal proceedings, the objector may notify a Registrar in writing of the objection and of the grounds of the objection.

- (7) On receiving notice of an objection under this rule, a Registrar:
 - (a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and
 - (b) must refer the objection to the Court for hearing and determination.
- (8) The Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard.
- (9) After being notified by the Registrar under subrule (8), the issuing party must notify the addressee, the objector and each other party of the date, time and place at which the objection will be heard.
- (10) A Registrar may permit any document or thing produced to be removed from the Registry only on application in writing signed by the lawyer for a party.
- (11) A lawyer who signs an application under subrule (10) and removes a document or thing from the Registry is taken to undertake to the Court that:
 - (a) the document or thing will be kept in the personal custody of the lawyer or a barrister briefed by the lawyer in the proceeding; and
 - (b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by a Registrar.
- (12) A Registrar may grant an application under subrule (10) subject to conditions or refuse to grant the application.

8.12 Return of documents and things produced

- (1) A Registrar may return to the addressee any document or thing produced in response to the subpoena.
- (2) A Registrar may return any document or thing under subrule (1) only if a Registrar has given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.
- (3) The issuing party must attach, to the front of a subpoena to produce to be served on the addressee, a notice and declaration, in accordance with Form CP44.
- (4) The addressee must complete the notice and declaration and attach it to the subpoena or copy of the subpoena that accompanies the documents produced to the Court under the subpoena.
- (5) Subject to subrule (6), a Registrar may, on the expiry of 4 months from the conclusion of the criminal proceedings, cause to be destroyed all the documents produced in the proceedings in compliance with a subpoena, that were declared by the addressee to be copies.
- (6) The Registrar may cause to be destroyed those documents, declared by the addressee to be copies, that have become exhibits in the proceedings when they are no longer required in connection with the proceeding, including on any appeal.

Part 8 Subpoenas

Division 8.2 Subpoenas to give evidence and to produce documents

Rule 8.13

8.13 Costs and expenses of compliance

- (1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.
- (2) If an order is made under subrule (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.
- (3) An amount fixed under this rule is separate from and in addition to:
 - (a) any conduct money paid to the addressee; and
 - (b) any witness expenses payable to the addressee.

8.14 Failure to comply with subpoena—contempt of court

- (1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

Note: For the rules of the Court relating to contempt, see Part 42 of the *Federal Court Rules 2011*.
- (2) Despite subrule 8.07(1), if a subpoena has not been served on the addressee in accordance with that subrule, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.
- (3) Subrules (1) and (2) are without prejudice to any power of the Court, under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

8.15 Documents and things in custody of a court

- (1) A party to criminal proceedings who seeks production of a document or thing in the custody of the Court or of another court may inform a Registrar in writing, identifying the document or thing.
- (2) If the document or thing is in the custody of the Court, a Registrar must produce the document or thing:
 - (a) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or
 - (b) as the Court directs.
- (3) If the document or thing is in the custody of another court:
 - (a) a Registrar must ask the other court to send the document or thing to that Registrar; and
 - (b) after receiving it, that Registrar must produce the document or thing:
 - (i) in Court or to any person authorised to take evidence in the proceedings as required by the party; or
 - (ii) as the Court directs.

Part 9—Other matters

9.01 Interlocutory applications

Absence of party

- (1) An interlocutory application may be heard and determined in the absence of a party if:
 - (a) the application has been served on the party; and
 - (b) the party does not appear.

Interlocutory applications if no approved form

- (2) Subrules (3) and (4) apply if:
 - (a) a party wants to make an interlocutory application in criminal proceedings; and
 - (b) these Rules do not otherwise provide for the application to be made in accordance with a particular approved form.
 - (3) The application may be made:
 - (a) by filing an application in accordance with Form CP45, accompanied by an affidavit stating briefly, but specifically, the facts that support the application; or
 - (b) subject to any other provision of these Rules—orally at a hearing of the Court.
- Note: When the application is filed, a Registrar will fix a return date and place for hearing and endorse those details on the application or an accompanying notice.
- (4) If an application is made in accordance with paragraph (3)(a), the party filing the application must serve a stamped copy of the application and the accompanying affidavit on any other party to the proceedings at least 3 days before the date fixed for the hearing of the application.

9.02 Bringing accused before the Court

Accused who is not in custody

- (1) If it is necessary to bring before the Court an accused who is not in custody, the Court may:
 - (a) issue a summons, in accordance with rule 9.04, requiring the accused to appear before the Court; or
 - (b) issue a warrant for the arrest of the accused.

Note: For the form of the warrant, see rule 9.06.

- (2) Without limiting subrule (1), the Court may issue a warrant for the arrest of the accused if the accused does not appear before the Court on any day the accused is required to appear.

Note: Under rule 1.08 the power to issue a summons or a warrant may be exercised on the Court's own initiative, or on application by a party to the proceedings.

Rule 9.03

Accused who is in custody

- (3) If the accused is in custody, the Court may order that the accused be brought before the Court.

Note: For the form of the order, see rule 9.05.

- (4) If the Court makes an order under subrule (3), the Court may make an order regarding the continuing custody of the accused pending the determination of the proceedings.

9.03 Bringing a witness before the Court

- (1) If a witness in criminal proceedings is in custody, the Court may order that the witness be brought before the Court.

Note: For the form of the order, see rule 9.05.

- (2) If the Court makes an order under subrule (1), the Court may make an order regarding the continuing custody of the witness pending the determination of the proceedings.

9.04 Summons to appear before the Court

- (1) A summons requiring a person to appear before the Court may be in accordance with Form CP46.

- (2) The summons must be served personally on the person at least 5 days before the day the person is required to appear before the Court.

- (3) The Court may issue a warrant for the arrest of the person if the person does not appear before the Court on a day the person is required to appear in accordance with the summons.

Note 1: For the form of the warrant, see rule 9.06.

Note 2: The person may also be in contempt of court—see Part 42 of the *Federal Court Rules 2011*.

- (4) To avoid doubt, this rule does not apply in relation to a summons referred to in:
(a) rule 2.01 (a summons to which an information is attached); or
(b) rule 3.12 (a summons to a person to attend for jury service).

9.05 Order that a person in custody be brought before the Court

An order under subrule 9.02(3) or 9.03(1) that a person in custody be brought before the Court may be in accordance with Form CP47.

9.06 Warrant for arrest

A warrant for arrest may be in accordance with Form CP48.

9.07 Warrant for imprisonment

If the Court makes an order that a person be imprisoned, a Judge may issue a warrant in accordance with Form CP49.

9.08 Notice of intention to adduce evidence of previous representation

A notice of intention to adduce evidence of a previous representation, under section 67 of the *Evidence Act 1995*:

- (a) must be in accordance with Form CP50; and
- (b) may have attached to it an affidavit that sets out evidence of the previous representation.

Note: The Court may dispense with compliance with these Rules—see rule 1.06.

9.09 Notice of intention to adduce tendency evidence

A notice of intention to adduce tendency evidence, under subsection 97(1) of the *Evidence Act 1995*, must be in accordance with Form CP51.

Note: The Court may dispense with compliance with these Rules—see rule 1.06.

9.10 Notice of intention to adduce coincidence evidence

A notice of intention to adduce coincidence evidence, under subsection 98(1) of the *Evidence Act 1995*, must be in accordance with Form CP52.

Note: The Court may dispense with compliance with these Rules—see rule 1.06.

9.11 Return of exhibits

Proceedings other than criminal appeal proceedings—exhibits tendered by the prosecutor

- (1) At the conclusion of criminal proceedings (other than criminal appeal proceedings), any exhibit tendered by the prosecutor in the proceedings will:
 - (a) be returned to the custody of the prosecutor; and
 - (b) be retained by the prosecutor pending any appeal.
- (2) If:
 - (a) an exhibit is returned to the custody of the prosecutor under subrule (1); and
 - (b) appeal proceedings are started in relation to the criminal proceedings;a Registrar may direct the prosecutor to produce the exhibit to the Court.

Proceedings other than criminal appeal proceedings—exhibits tendered by the accused

- (3) An exhibit tendered by the accused in criminal proceedings (other than criminal appeal proceedings) will:
 - (a) be retained by the Court for such period after the conclusion of the proceedings as the Court considers appropriate pending a possible appeal, and then returned to the accused; and
 - (b) if criminal appeal proceedings are started in relation to the criminal proceedings before the exhibit is returned in accordance with paragraph (a)—be dealt with in accordance with subrule (4).

Rule 9.11

Criminal appeal proceedings

- (4) An exhibit held by the Court in relation to criminal appeal proceedings will, subject to subrule (5):
 - (a) be retained by the Court for such period after the conclusion of the proceedings as the Court considers appropriate pending a possible further appeal; and
 - (b) then be returned to the person who tendered the exhibit.
- (5) If, before an exhibit is returned in accordance with subrule (4), a party starts appeal proceedings in the High Court, the exhibit will:
 - (a) be retained by the Court until the appeal proceedings have concluded or until the High Court otherwise orders or directs; and
 - (b) then, subject to an order or direction of the High Court, the Court or a Registrar, be returned to the person who tendered the exhibit.

Documents or things produced in response to a subpoena

- (6) If an exhibit tendered in criminal proceedings is a document or thing produced in response to a subpoena, a Registrar may, despite subrule (1), (3), (4) or (5), return the exhibit to the person who produced it if that Registrar considers it appropriate to do so.

Schedule 1—Dictionary

Note: See rule 1.11.

(1) In these Rules, the following expressions have the same meaning as in the *Federal Court Rules 2011*:

- (a) **business day**, in a place;
- (b) **conduct money**;
- (c) **corporation**;
- (d) **description**;
- (e) **direction**;
- (f) **document**;
- (g) **electronic communication**;
- (h) **email address**;
- (i) **expert**;
- (j) **expert evidence**;
- (k) **expert report**;
- (l) **interlocutory application**;
- (m) **Litigants Fund**;
- (n) **order**;
- (o) **proper address**, for a person to be served;
- (p) **proper place**, for a proceeding;
- (q) **proper Registry**, for a proceeding;
- (r) **Registrar**;
- (s) **Registry**;
- (t) **stamp**, for a document;
- (u) **without notice**.

(2) In these Rules:

accused, in relation to summary criminal proceedings, means the respondent in the proceedings.

Note: For the meaning of **accused** in relation to indictable primary proceedings and criminal appeal proceedings, see section 4 of the Act.

Act means the *Federal Court of Australia Act 1976*.

address for service: see rule 1.38.

appellant includes:

- (a) a person who files a notice referred to in subrule 4.01(1) or (2) (an application for leave to appeal); and
- (b) a person who files an application referred to in subrule 4.02(1) or 4.11(1) (an application for an extension of time to seek leave to appeal or to file a notice of appeal).

application for leave to appeal means an application for leave to appeal under subsection 30AA(1), (2) or (4) of the Act.

approved form means a form approved by the Chief Justice under subrule 1.12(2).

committal order means:

- (a) an order that:
 - (i) is made by a court of a State or Territory exercising jurisdiction under subsection 68(2) of the *Judiciary Act 1903*; and
 - (ii) is for the commitment for trial on indictment of a person who has been charged with an offence against a law of the Commonwealth; or
- (b) an order referred to in subsection 23GB(1) of the Act.

committal papers, for committal proceedings, includes:

- (a) the evidence relied on at the committal proceedings; and
- (b) the orders (however described) made at the committal proceedings.

convention has the same meaning as in Division 10.4 of the *Federal Court Rules 2011*.

criminal proceedings means any of the following proceedings:

- (a) criminal appeal proceedings;
- (b) indictable primary proceedings;
- (c) summary criminal proceedings.

Dictionary has the meaning given by rule 1.11.

notice of appeal means a notice of appeal referred to in rule 4.10.

party:

- (a) to criminal proceedings—means any of the following parties:
 - (i) a party to summary criminal proceedings;
 - (ii) a party to indictable primary proceedings;
 - (iii) a party to criminal appeal proceedings; and
- (b) to summary criminal proceedings—means the applicant or respondent in the proceedings; and
- (c) to indictable primary proceedings—means the prosecutor or accused in the proceedings; and
- (d) to criminal appeal proceedings—means the appellant or respondent in the proceedings.

prosecutor includes a member of the staff of the Office of the Director of Public Prosecutions established by section 5 of the *Director of Public Prosecutions Act 1983*.

summary criminal proceedings means a prosecution dealt with by a single Judge in the exercise of the Court's summary criminal jurisdiction.

Note: The Court has jurisdiction in relation to summary offences under certain Acts including the *Bankruptcy Act 1966*, the *Competition and Consumer Act 2010*, the *Copyright Act 1968* and the *Fair Work Act 2009*.