

I certify that this is a copy of the authorised version of this Statutory Rule as at 26 April 2023, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 26 April 2023.

K Woodward  
Acting Chief Parliamentary Counsel  
Dated 2 May 2023

## TASMANIA

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# **CRIMINAL RULES 2006**

## **STATUTORY RULES 2006, No. 24**

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# **CRIMINAL RULES 2006**

## **IN THE SUPREME COURT OF TASMANIA**

Dated 20 April 2006.

We, the Honourable Peter George Underwood, Officer of the Order of Australia, Chief Justice, the Honourable Ewan Charles Crawford, the Honourable Pierre William Slicer, the Honourable Peter Ethrington Evans, the Honourable Alan Michael Blow, OAM, and the Honourable Shan Tennent, Puisne Judges of the Supreme Court of Tasmania, make the following Rules of Court under the *Criminal Code Act 1924*.

### **PART 1 – PRELIMINARY**

#### **1. Short title**

These Rules of Court may be cited as the *Criminal Rules 2006*.

#### **2. Commencement**

These Rules of Court take effect on the day on which their making is notified in the *Gazette*.

#### **3. Interpretation**

In these Rules of Court, unless the contrary intention appears –

*appeal* includes an application for leave to appeal;

*Code* means the Criminal Code;

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***committal order*** means an order committing a defendant to the Court under section 60 of the *Justices Act 1959*;

***Court*** means the Supreme Court;

***court of trial*** means the court –

- (a) before which an accused person is tried upon an indictment; or
- (b) which passes sentence upon a plea of guilty;

***Crown Counsel*** means a legal practitioner employed in, or instructed by, the Office of the Director;

***Director*** means –

- (a) the person who is, or who is acting in the office of, the Director of Public Prosecutions pursuant to the *Director of Public Prosecutions Act 1973*; or
- (b) the person who is, or who is acting in the office of, the Director of Public Prosecutions pursuant to the *Director of Public Prosecutions Act 1983* of the Commonwealth;

***file*** means file in the registry;

***law practice*** has the same meaning as in the *Legal Profession Act 2007*;

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***legal practitioner*** means an Australian legal practitioner;

***legal representative*** means any legal practitioner or law practice whose name is recorded in the registry under rule 3C as the legal representative of a defendant;

***preliminary proceedings order*** means an order of the Court under section 331B of the Code;

***recording apparatus*** means any electronic, electrical or mechanical device capable of recording sounds or pictures which can be stored and later recalled;

***Registrar*** means the Registrar of the Supreme Court;

***registry*** means the registry of the Court;

***victim*** means –

- (a) a victim within the meaning of section 81A of the *Sentencing Act 1997*; and
- (b) a person allowed to furnish to the Court a written statement under subsection (2A) of that section;

***victim impact statement*** means a statement furnished under section 81A of the *Sentencing Act 1997* by a victim of an offence.

## **PART 1A – CRIMINAL DIRECTIONS HEARINGS**

### **3A. Application and purpose of Part**

- (1) This Part applies to a criminal process that is conducted in court and relates to a defendant who is the subject of a committal order or against whom an indictment has been filed.
- (2) The purpose of this Part is to –
  - (a) ascertain the plea of a defendant early in proceedings; and
  - (b) eliminate any lapse of time from the committal order to the final determination of a criminal process beyond that reasonably required for its fair and just determination; and
  - (c) enable all such orders to be made as are necessary to ready and expedite the criminal process leading up to the disposition of a matter.

### **3B. Notice of instruction to act**

A legal practitioner, or a law practice, who is instructed or briefed to act for a defendant who is the subject of a committal order, must –

- (a) file a notice in writing of that fact; and
- (b) deliver a copy of the notice to the relevant Director –

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within 7 days of the committal order or, where instructions or the brief to act have been received after the making of the committal order, within 7 days after receipt of such instructions or brief.

**3C. Legal representative of defendant**

- (1) The name of the legal practitioner, or law practice, filed under rule 3B is the legal representative of the defendant.
- (2) Any document, notice or proceeding required to be delivered under these rules is to be delivered to or by –
  - (a) the legal representative of the defendant;  
or
  - (b) the defendant, if he or she is unrepresented.

**3D. Notice of change of instruction to act**

- (1) If a legal representative intends to cease acting for a defendant, the legal representative must –
  - (a) file a notice in writing of that fact; and
  - (b) deliver a copy of the notice to the Director.
- (2) On the filing of the notice, the legal representative ceases to be the legal representative of the defendant.

**3E. If notice of instruction to act not filed**

If a defendant has instructed a legal practitioner or law practice to act on his or her behalf but a notice of that fact has not been filed, the practitioner or law practice is taken to be the legal representative of the defendant.

**3F. First appearance in Court following committal order**

The first appearance in the Court for a defendant following a committal order is to be a directions hearing.

**3G. Conduct of directions hearings**

- (1) A judge may do one or more of the following:
  - (a) direct that a directions hearing be in court or in chambers;
  - (b) direct that a directions hearing be held by telephone, video link or other means;
  - (c) give directions as to the manner in which such a hearing is to be conducted and the persons who are to attend it.
- (2) A directions hearing is to be held in court unless otherwise directed by a judge.
- (3) The defendant, his or her legal representative and Crown Counsel must attend the directions hearing and any adjournment of the directions hearing unless otherwise directed by a judge.

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- (4) The Chief Justice or his or her delegate may issue practice directions from time to time with respect to the conduct of directions hearings.

**3H. Orders that may be made at directions hearings**

- (1) Where a defendant has been committed for sentence, a judge may do one or more of the following:
- (a) list the defendant for sentencing;
  - (b) remand the defendant in custody or admit him or her to bail;
  - (c) make any order necessary or convenient to facilitate the matters referred in paragraphs (a) and (b) or to give effect to any relevant law or legislative instrument.
- (2) Where a defendant has been committed for trial but an indictment has not been filed with respect to him or her, a judge may do one or more of the following:
- (a) make a preliminary proceedings order;
  - (b) remand the defendant in custody or admit him or her to bail to appear before the Court or justices on a specified day;
  - (c) adjourn the directions hearing;
  - (d) make any order necessary or convenient to facilitate the matters referred to in paragraphs (a), (b) and (c), to give effect

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to any relevant law or legislative instrument or to ensure the fair and expeditious conduct of the trial.

- (3) Where a defendant has been committed for trial and an indictment has been filed with respect to him or her, a judge may do one or more of the following:
- (a) take a plea from the defendant;
  - (b) make a preliminary proceedings order;
  - (c) remand the defendant in custody or admit him or her to bail to appear before the Court or justices on a specified day;
  - (d) adjourn the directions hearing;
  - (e) order the delivery by Crown Counsel of written notice identifying the witnesses whom Crown Counsel intends to call at the trial and setting out the evidence proposed to be adduced from each witness;
  - (f) make any order necessary or convenient to facilitate the matters referred to in paragraphs (a), (b), (c), (d) and (e), to give effect to any relevant law or legislative instrument or to ensure the fair and expeditious conduct of the trial.
- (4) At a directions hearing, a judge may make such inquiries as he or she considers necessary to achieve the purposes of this Part and to achieve the outcomes listed in subrules (1), (2) and (3).

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**3I. Dispensing with rules**

The Court may at any time dispense with compliance with any or all of the provisions in this Part.

**PART 2 – VICTIM IMPACT STATEMENTS**

**4. Duty of victim to provide copies of victim impact statement**

- (1) A victim who wishes to furnish to the Court a victim impact statement is to provide the statement to the Director, or counsel authorised by the Director, with copies for the prosecutor and the counsel for the offender.
- (2) On providing copies of the statement under subrule (1), the victim is to advise the Director whether he or she wishes to read the statement to the Court.

**5. Provision of victim impact statement to presiding judge**

The Director or counsel authorised by the Director is to –

- (a) provide to the presiding judge any victim impact statement relating to the offence which has been provided by a victim; and
- (b) inform the presiding judge whether the victim has requested to read the statement to the Court.

**6. Reading of victim impact statement**

A victim impact statement is to be read to, or by, the Court before the presiding judge passes sentence on the offender.

**7. Postponement of reading of victim impact statement**

If a victim has requested to read a victim impact statement to the Court but is not present, the presiding judge may postpone the reading of the statement and is to cause notice of the time fixed for the reading of the statement to be given to the victim.

**8. Victim may amend victim impact statement**

Subject to rule 10, a victim who has furnished a victim impact statement may amend the statement at any time before it is read to, or by, the Court.

**9. Victim may withdraw victim impact statement**

A victim who has provided a victim impact statement may withdraw the statement at any time before it is read to, or by, the Court and, if he or she does so, the statement is not to be read to, or by, the Court.

**10. Judge may exclude irrelevant material**

If the presiding judge so directs, a victim is not to read to the court any part of his or her victim

impact statement that the presiding judge considers to be irrelevant to the proceedings.

**11. Requirements for victim impact statement**

A victim may furnish to the Court only one victim impact statement and the statement –

- (a) is to be legible; and
- (b) may be either printed or handwritten; and
- (c) except with the leave of the presiding judge, may not be longer than 10 pages, excluding medical reports and other annexures; and
- (d) may, but need not, be in a form approved by the Chief Justice of the Supreme Court.

## **PART 3 – RECORDING OF PROCEEDINGS**

### **12. Recordings to be made of proceedings in court**

Subject to any direction of the court or a judge, all proceedings in any court of trial or Court of Criminal Appeal are to be recorded by a recording apparatus.

### **13. Transcripts of proceedings**

- (1) The court, a judge or the Registrar may direct that a transcript of the proceedings, or any part of the proceedings, in a court of trial or Court of Criminal Appeal is to be provided to –
  - (a) the court in which the proceedings, or part of the proceedings, were recorded; or
  - (b) that court and every party to the proceedings.
- (2) The Registrar is to provide any transcript directed to be provided under subrule (1) in accordance with that subrule.
- (3) Where a decision in any proceedings is appealed, the Registrar is to provide to each party to the appeal such transcript of those proceedings that may be reasonably required for the hearing of the appeal.

**14. Charges for transcripts**

- (1) Subject to subrule (2), where a transcript of proceedings is provided to a person under rule 13(3), that person is to pay for the transcript at the rates that are prescribed for the time being in the rules made under the *Supreme Court Civil Procedure Act 1932* in respect of the furnishing of transcripts of proceedings.
- (2) The Registrar may, in his or her discretion, waive any charge that is payable in respect of a transcript of proceedings.

**15. Period for which Registrar required to retain recordings**

- (1) The Registrar is to retain every recording made by the recording apparatus referred to in rule 12 of any proceedings or part of any proceedings –
  - (a) for the appropriate period; or
  - (b) for such other period as the Court or a judge may, in any particular case, direct.
- (2) For the purposes of this rule, the “**appropriate period**” means –
  - (a) in respect of proceedings heard before 1 January 2005 –
    - (i) in which a person has been sentenced to serve a term of imprisonment, a period equal to the length of that term; and

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- (ii) in which a person has been sentenced to serve a term of imprisonment but the execution of that term, or part of that term, has been suspended, a period equal to the aggregate of the period for which the sentence was suspended and the period of the term of imprisonment; and
  - (iii) in which a probation order has been made, a period equal to the aggregate of the period of that order and the period of any sentence of imprisonment imposed at the time of the making of the order; and
  - (iv) which are not covered by subparagraph (i), (ii) or (iii), a period of 3 years; and
- (b) in respect of proceedings heard on or after 1 January 2005, a period of 50 years.

**PART 4 – PROCEDURE ON APPEAL**

*Division 1 – Notices of appeal*

**16. Notice of appeal**

- (1) A copy of a notice of appeal, notice of application for leave to appeal or notice of application for extension of time within which either of those notices may be given is to be served upon the respondent and 3 copies of the notice are to be lodged at the office of the Registrar.
- (1A) A notice of appeal or notice of application for leave to appeal is to set out numbered grounds of appeal.
- (2) As soon as practicable after service on the respondent of a notice of appeal or a notice of application for leave to appeal, the appellant is to lodge, or cause to be lodged, at the office of the Registrar proof of the service of the notice.
- (3) For the purposes of subrule (2), proof of service may be provided by –
  - (a) an affidavit or an acknowledgment of service signed by a legal practitioner; or
  - (b) such other means as the Registrar considers sufficient.
- (4) Any notice required or authorised by the Code or by these rules may be signed by the person giving the notice or by his or her legal practitioner.

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- (5) A notice required to be given to the Court of Criminal Appeal is to be addressed to the Registrar, Court of Criminal Appeal, Hobart.
- (6) The appellant may make application for leave to amend the grounds of appeal forming part of a notice of appeal or notice of application for leave to appeal.
- (7) On receiving an application made under subrule (6), a judge, the Associate Judge or the Court of Criminal Appeal may grant leave to amend the grounds of appeal on such terms as the judge, Associate Judge or Court considers just.

**17. Appeal books**

- (1) In an appeal before the Court of Criminal Appeal, the appellant or, if more than one, an appellant selected by the Registrar is to prepare an appeal book.
- (2) The appeal book is to contain only material which is directly relevant to the appeal.
- (3) Every appellant must, within 7 days of filing either a notice of appeal or a notice of application for leave to appeal, file a list of the contents proposed to be included in the appeal book.
- (4) Upon the filing of the list, the Registrar is to give an appointment for the settlement of the contents of the appeal book, and each appellant is to serve a copy of the proposed list of contents and notice

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of appointment on every other party interested in the appeal.

- (5) For the purpose of settling the contents of the appeal book –
  - (a) the Registrar may consult with the trial judge; and
  - (b) the trial judge may direct the parties to attend before him or her for the purpose of settling the contents of the appeal book.
- (6) The appeal book is to be prepared in the manner prescribed by rule 668(1) to (6), inclusive, of the *Supreme Court Rules 2000* unless the Registrar determines otherwise.
- (7) The appeal book is to contain a certificate by the appellant or his or her legal practitioner that the contents of the book have been examined and are correct.
- (8) The contents of the appeal book are to be arranged in the following order:
  - (a) title page;
  - (b) index;
  - (c) the certificate referred to in subrule (7);
  - (d) the notice of appeal to the Court of Criminal Appeal;
  - (e) the indictment;

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- (f) evidence, either oral or by affidavit;
  - (g) any exhibits;
  - (h) any ruling given during the trial;
  - (i) the summing-up by the trial judge;
  - (j) the trial judge's comments on passing sentence;
  - (k) any other relevant material.
- (9) No later than 14 days before the first day of the term following the settling of the contents of the appeal book or such other time as the Court or a judge allows, the appellant is to –
- (a) file in the Registry 3 copies of the appeal book for the use of the judges of the Court of Criminal Appeal, together with a certified copy of the appeal book for the Court file; and
  - (b) deliver a copy of the appeal book to every other party to the appeal.
- (10) The Registrar may prepare the appeal book if satisfied that it would cause undue hardship for the appellant to prepare it.
- (11) If the Registrar refuses to prepare the appeal book, the appellant may apply to a judge to review that decision.

**18. Listing of appeal for hearing**

The Registrar is not to list an appeal for hearing by the Court of Criminal Appeal during a term that commences less than 21 days after notice of the appeal has been lodged, unless the Registrar is satisfied that there are special circumstances for directing an earlier hearing.

**19. Notice of application taken to be notice of appeal**

Where the Court of Criminal Appeal grants leave to appeal, the notice of application for such leave is taken to be notice of appeal and no further notice is required.

**20. Procedure on applications under sections 401 and 418 of Code**

- (1) An application under section 401 of the Code for a certificate may be made orally by the appellant or his or her counsel either at the trial or subsequently.
- (2) If the judge of the court of trial refuses an application under section 401 of the Code, the appellant may make application to the Court of Criminal Appeal.
- (3) An application under section 418 of the Code is to be made in the first instance to a judge and, if the judge refuses the application, the Registrar is to notify the appellant of the refusal.
- (4) For the purposes of this rule, a judge may sit and act wherever convenient.

**21. Documents, exhibits, &c.**

- (1) Subject to subrule (2), unless a judge or the Court of Criminal Appeal otherwise orders, any document, exhibit or other thing connected with any proceedings before a court of trial is to remain in the custody of that court until the expiration of 4 months after the period allowed for appealing and, in the case of an appeal, until 4 months after its determination.
- (2) The judge of the court of trial may, in any case in which he or she thinks fit, allow any document, exhibit or thing referred to in subrule (1), or any part of such a document, exhibit or thing, to be released.
- (3) The release of a document, exhibit or thing or part of a document, exhibit or thing may be subject to such conditions, and such security for its production when required, as the judge thinks necessary or desirable.
- (4) The clerk of the court is to keep a record of any order made, or direction given, by the judge under this rule.
- (5) A judge or the Court of Criminal Appeal may make such order with respect to a document, exhibit or thing referred to in subrule (1) as he, she or it considers necessary or desirable.

**22. Applications for legal assistance**

- (1) A person who intends to make an application under section 410 of the Code is to give written

notice of that intention to the Director of Tasmania Legal Aid.

- (2) An application –
  - (a) may be made to the court or to a judge in chambers; and
  - (b) is to be supported by an affidavit as to the appellant's circumstances.

### **23. Directions and orders**

- (1) A direction given by the judge of a court of trial under section 405(1) of the Code may be subject to such conditions for securing the production, on appeal, of any property or thing, or of a sample, portion or facsimile of any property or thing, as the judge may think fit.
- (2) An order for the payment of any sum of money by any person to any person, made by the judge of the court of trial upon conviction, is to be suspended until the expiration of the period provided for appeal and, in the case of an appeal, until its determination.

#### ***Division 2 – Miscellaneous appeal provisions***

### **24. Representation by legal practitioner in certain cases**

In all proceedings before a judge under section 418 of the Code, and in all preliminary and interlocutory proceedings and applications, except those heard before the court, the parties

may be represented and appear by a legal practitioner alone.

**25. Notice of decisions of Court of Criminal Appeal to be given**

If an appellant is in custody and is not present at the hearing of an application in the Court of Criminal Appeal, the Registrar is to give the appellant notice of the decision of that court in relation to the application, unless it appears to the Registrar to be unnecessary to do so.

**26. Non-compliance by appellant**

- (1) Non-compliance on the part of an appellant with these rules, or with any rule of practice under the Code, does not prevent the further prosecution of an appeal if the Court of Criminal Appeal or a judge considers that such non-compliance –
  - (a) was not wilful; and
  - (b) may be waived or remedied by amendment or otherwise.
- (2) The Court of Criminal Appeal or a judge may direct the appellant to remedy each non-compliance of a type referred to in subrule (1) and, upon the appellant so doing, the appeal is to proceed.
- (3) If the appellant is not present at the time the Court of Criminal Appeal or the judge gives a direction under this rule, the Registrar is to

notify the appellant of the direction as soon as practicable after it is given.

**27. Notification and directions by Registrar**

In order to carry out or give effect to an order or direction made or given by the Court of Criminal Appeal or a judge under the Code or these rules, the Registrar is to give to any or all of the following such notification or direction as may be necessary:

- (a) the Sheriff;
- (b) any person in charge of a gaol;
- (c) an officer of a court;
- (d) any other person.

**28. Enforcement of duties by order**

The performance of any duty imposed on a person under the Code or these rules may be enforced by order of the Court of Criminal Appeal.

**29. Reports**

- (1) The report of a judge of the court of trial is to be made to the Court of Criminal Appeal.
- (2) The Registrar must not provide any part of the report to any person, except by leave of the Court of Criminal Appeal or a judge of that court.

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**PART 5 – EXAMINATION OF WITNESSES OUT OF  
STATE IN CRIMINAL PROCEEDINGS**

**30. Interpretation of Part**

In this Part –

*Commonwealth Act* means the *Foreign  
Evidence Act 1994* of the  
Commonwealth.

**31. Application of Part**

- (1) This Part applies to an application in, or in relation to, criminal proceedings under –
  - (a) section 7 or 8 of the *Evidence on Commission Act 2001*; or
  - (b) section 7 or 10 of the Commonwealth Act.
- (2) In the case of an application under section 7 or 10 of the Commonwealth Act, a reference in this Part to a section of the in Column 1 of the Table to this subrule is a reference to the section of the Commonwealth Act opposite in Column 2.

<b>Section of the <i>Evidence on Commission Act 2001</i></b>	<b>Section of the Commonwealth Act</b>
3	3
7	7, 8 and 9
7(2)	7(1)

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<b>Section of the <i>Evidence on Commission Act 2001</i></b>	<b>Section of the Commonwealth Act</b>
7(3)	7(2)
8	10

**32. Criminal proceedings under Evidence Act**

- (1) For the purposes of section 7(2) of the *Evidence on Commission Act 2001*, criminal proceedings are before the Court if a person is committed for trial before the Court.
- (2) An application under section 7(2) of the *Evidence on Commission Act 2001* in relation to criminal proceedings before the Court is to be made by motion supported by an affidavit.
- (3) An application under section 8(1) of the *Evidence on Commission Act 2001* in relation to criminal proceedings is to be made by originating application supported by affidavit.

**33. Affidavit in support of application**

- (1) An affidavit in support of an application under section 7 or 8 of the *Evidence on Commission Act 2001* is to –
  - (a) address the matters set out in section 7(3) of that Act; and

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- (b) exhibit any documents necessary to inform the Court of the questions at issue between the parties; and
  - (c) include any other material that the applicant or the Court considers appropriate.
- (2) An affidavit in support of an application under section 7(2)(c) of the *Evidence on Commission Act 2001* is to exhibit –
  - (a) a draft of the letter of request; and
  - (b) any other material that the applicant or the Court considers appropriate.
- (3) If the language of the place outside the State in relation to which an application under paragraph (c) of section 7(2) of the *Evidence on Commission Act 2001* is made is not English, an affidavit in support of the application is to exhibit –
  - (a) a translation of the letter of request referred to in that paragraph into the language of that place; and
  - (b) a certificate by the translator stating –
    - (i) his or her name, address and qualifications for making the translation; and
    - (ii) that the translation is accurate.
- (4) An affidavit in support of an application under section 8 of the *Evidence on Commission Act*

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*2001* is to exhibit the complaint in the inferior court in respect of which the application is made.

**34. Undertaking as to costs**

An order under section 7 or 8 of the *Evidence on Commission Act 2001* may include a requirement that a party or the party's legal practitioner give –

- (a) an undertaking as to the costs of examining, or taking the evidence of, the person outside the State; and
- (b) security for those costs in any manner that the Court directs.

**35. Form and content of order**

An order under section 7 or 8 of the *Evidence on Commission Act 2001* may specify –

- (a) that a transcript be made of the questions asked and answers given in taking the evidence; and
- (b) that, in the case of a transcript, the witness sign the transcript as accurate; and
- (c) whether the evidence is to be taken in public or private.

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**36. Examiner may administer oaths**

For the purposes of sections 7 and 8 of the *Evidence on Commission Act 2001*, the person examining a witness may administer oaths.

**PART 5A – SUBPOENAS UNDER THE TRANS-  
TASMAN PROCEEDINGS ACT 2010**

**36A. Interpretation of Part**

(1) In this Part –

*addressee* means the person named in a subpoena to be served in New Zealand under this Part;

*Trans-Tasman Proceedings Act* means the *Trans-Tasman Proceedings Act 2010* of the Commonwealth.

(2) Unless the contrary intention appears, an expression used in these rules has the same meaning as it has in the Trans-Tasman Proceedings Act.

**36B. Application of Part**

This Part applies to criminal proceedings in which an order under Part 5 of the Trans-Tasman Proceedings Act is made or sought.

**36C. Proceedings under the Trans-Tasman Proceedings Act**

A party to a proceeding to which this Part applies must comply with –

- (a) this Part; and
- (b) these rules that are relevant to, and consistent with, this Part.

**36D. Subpoenas issued under this Part**

A subpoena issued under this Part must be issued in the form of a final notice issued under section 10 of the *Criminal Procedure (Attendance of Witnesses) Act 1996* with such modifications or additions as are necessary to comply with the Trans-Tasman Proceedings Act.

**36E. Application for leave to serve subpoena in New Zealand**

- (1) In any criminal proceedings in the Court, a person may apply to the Court for leave to serve a subpoena in New Zealand.
- (2) An application under subrule (1) must be accompanied by –
  - (a) a copy of the subpoena in relation to which the leave is sought; and
  - (b) an affidavit stating, briefly but specifically, the following matters:
    - (i) the name, occupation and address of the addressee;
    - (ii) whether or not the addressee has attained the age of 18 years;
    - (iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the addressee;

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- (iv) details of the steps taken by the applicant to ascertain whether the evidence, document or thing is able to be obtained by other means without significantly greater expense, and with less inconvenience to the addressee;
- (v) the date by which it is intended to serve the subpoena in New Zealand;
- (vi) details of the amounts to be tendered to the addressee to meet the addressee's reasonable expenses of complying with the subpoena;
- (vii) details of the way in which the amounts mentioned in subparagraph (vi) are to be given to the addressee;
- (viii) if the subpoena requires the addressee to give evidence, an estimate of the time that the addressee will be required to attend Court to give the evidence;
- (ix) any facts or matters known to the applicant that may be grounds for an application by the addressee to have the subpoena set aside under section 36(2) or (3) of the Trans-Tasman Proceedings Act.

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- (3) Before granting leave to serve a subpoena under the Trans-Tasman Proceedings Act, the Court may require the applicant to make an undertaking that he or she will meet the reasonable expenses incurred by the addressee in complying with the subpoena if the expenses are likely to exceed the amounts to be tendered to the addressee as specified in the affidavit accompanying the subpoena.

**36F. Application to set aside subpoena under this Part**

- (1) An addressee may apply to the Court to set aside a subpoena that was applied for under this Part and served in New Zealand.
- (2) An application under subrule (1) must be accompanied by –
  - (a) a copy of the subpoena; and
  - (b) an affidavit stating –
    - (i) the material facts on which the application is based; and
    - (ii) whether the addressee requests that any hearing be held by audio link or by audio visual link.

**36G. Application if issue of certificate of non-compliance with subpoena**

- (1) A party to criminal proceedings may apply to the Court for the issue, under section 38 of the Trans-Tasman Proceedings Act, of a certificate

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of non-compliance with a subpoena issued in respect of the proceedings.

- (2) An application under subrule (1) may be made –
  - (a) if the proceeding in which the subpoena was issued is before the Court, orally to the Court; or
  - (b) by filing an application in the proceeding.
- (3) An application under subrule (1) must be accompanied by –
  - (a) a copy of the subpoena; and
  - (b) a copy of the order, under section 31 of the Trans-Tasman Proceedings Act, giving leave to serve the subpoena; and
  - (c) an affidavit of service of the subpoena; and
  - (d) a further affidavit stating the following:
    - (i) whether any application was made to set aside the subpoena;
    - (ii) if such an application referred to in subparagraph (i) was made –
      - (A) the material provided in support of the application; and
      - (B) any order that disposed of the application;

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- (iii) the material facts relied on for the application for the certificate of non-compliance.

**PART 6 – MISCELLANEOUS**

**37. Applicant to produce affidavit**

On the hearing of an application for bail under section 304 of the Code, the applicant is to produce to the judge an affidavit setting out the facts in respect of which he or she is in custody.

**38. Application to file indictment**

- (1) An application by a private prosecutor for leave to file an indictment is to be made by application.
- (2) An application under subrule (1) is to be –
  - (a) supported by an affidavit setting out the facts in respect of which it is made; and
  - (b) served on the person sought to be prosecuted, the Director and such other persons as the judge may direct; and
  - (c) filed in the Court and heard at such time and in such manner as the judge may direct.

**39. Provisions relating to miscellaneous applications**

- (1) Except where otherwise provided by the Code or these rules, an application to a judge or to the Court of Criminal Appeal may be made by the applicant, or by counsel on his or her behalf, orally or in writing.

- (2) An appellant in custody who is not represented by counsel and who is not entitled to, or has not obtained, leave to be present before the Court, and who wishes to make an application is to make the application by forwarding it in writing to the Registrar.
- (3) On receiving an application in accordance with subrule (2), the Registrar must take the proper steps to obtain a decision on it.

**40. Notices of reference under section 388AA(1) of Code**

Notice of a reference by the Attorney-General under section 388AA(1) of the Code is to –

- (a) be given in writing; and
- (b) be signed by the Attorney-General or another Crown Law Officer; and
- (c) set out the question of law that the Attorney-General seeks to refer to the Court of Criminal Appeal.

**41. Indictments to be in triplicate**

An indictment filed in the Court is to be filed in triplicate.

**41A. Applications under *Evidence (Children and Special Witnesses) Act 2001***

For the purposes of a preliminary hearing under section 9(2) of the *Evidence (Children and Special Witnesses) Act 2001*, a judge may inform himself or herself in any way he or she thinks fit and may accept statements and assurances of the prosecutor without hearing evidence from the child or person who is giving, or is to give, evidence.

**42. Associate to record result of trial, &c.**

- (1) On the conclusion of a trial, the associate to the judge is to record particulars of the result of the trial and of any sentence imposed by the Court on, or attach those particulars to –
  - (a) the back of the original indictment filed in the Court; or
  - (b) where an accused person has been committed for sentence under the provisions of section 60(1)(a) of the *Justices Act 1959*, the back of the certified copy of the complaint supplied for the use of the judge.
- (2) When the associate has recorded the particulars specified in subrule (1) in the manner specified in that subrule, the judge is to sign the particulars.

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- (3) The associate is to return the original indictment and court file to the office of the Registrar, together with –
- (a) the exhibits produced at the trial; and
  - (b) a list in duplicate of those exhibits.

**43. Proper officer for purposes of *Sentencing Act 1997***

For the purposes of section 60(1)(b) of the *Sentencing Act 1997*, the proper officer of the Supreme Court is the Registrar, a Deputy Registrar or a District Registrar.

**44. Rescission**

The Rules of Court made under the *Criminal Code Act 1924* and published in the *Gazette* on 15 July 1924, page 1547, and all amendments to those Rules of Court, are rescinded.

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*Statutory Rules 2006, No. 24*

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P. G. UNDERWOOD  
Chief Justice

E. C. CRAWFORD  
Puisne Judge

P. W. SLICER  
Puisne Judge

P. E. EVANS  
Puisne Judge

A. M. BLOW  
Puisne Judge

S. E. TENNENT  
Puisne Judge

Countersigned,

I. G. RITCHARD  
Registrar

Printed and numbered in accordance with the *Rules  
Publication Act 1953*.

Notified in the *Gazette* on 26 April 2006.

These Rules of Court are administered in the Department of  
Justice.

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**NOTES**

The foregoing text of the *Criminal Rules 2006* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 26 April 2023 are not specifically referred to in the following table of amendments.

Citation	Serial Number	Date of commencement
<i>Criminal Rules 2006</i>	S.R. 2006, No. 24	26.4.2006
<i>Criminal Amendment Rules 2007</i>	S.R. 2007, No. 103	14.11.2007
<i>Criminal Amendment (Directions Hearing) Rules 2008</i>	S.R. 2008, No. 1	1.2.2008
<i>Criminal Amendment Rules 2008</i>	S.R. 2008, No. 155	31.12.2008
<i>Criminal Amendment Rules 2012</i>	S.R. 2012, No. 65	11.10.2013
<i>Criminal Amendment Rules 2017</i>	S.R. 2017, No. 30	14.6.2017
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2022</i>	No. 2 of 2022	18.3.2022
<i>Criminal Amendment Rules 2023</i>	S.R. 2023, No. 11	26.4.2023

**TABLE OF AMENDMENTS**

Provision affected	How affected
Rule 3	Amended by S.R. 2008, No. 1 and S.R. 2008, No. 155
Rule 3A	Inserted by S.R. 2008, No. 1
Rule 3B	Inserted by S.R. 2008, No. 1
Rule 3C	Amended by S.R. 2008, No. 155 Inserted by S.R. 2008, No. 1
Rule 3D	Amended by S.R. 2008, No. 155 Inserted by S.R. 2008, No. 1
Rule 3E	Inserted by S.R. 2008, No. 1 Amended by S.R. 2008, No. 155
Rule 3F	Inserted by S.R. 2008, No. 1
Rule 3G	Inserted by S.R. 2008, No. 1
Rule 3H	Inserted by S.R. 2008, No. 1
Rule 3I	Inserted by S.R. 2008, No. 1
Rule 11	Amended by S.R. 2017, No. 30
Rule 16	Amended by S.R. 2023, No. 11

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Provision affected	How affected
Rule 17	Amended by S.R. 2007, No. 103 and S.R. 2008, No. 155
Rule 22	Amended by No. 2 of 2022, Sched. 1
Rule 34	Amended by S.R. 2008, No. 155
Rule 36A	Inserted by S.R. 2012, No. 65
Rule 36B	Inserted by S.R. 2012, No. 65
Rule 36C	Inserted by S.R. 2012, No. 65
Rule 36D	Inserted by S.R. 2012, No. 65
Rule 36E	Inserted by S.R. 2012, No. 65
Rule 36F	Inserted by S.R. 2012, No. 65
Rule 36G	Inserted by S.R. 2012, No. 65
Rule 41A	Inserted by S.R. 2007, No. 103
Rule 42	Amended by S.R. 2008, No. 1