

Version No. 020
County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Version incorporating amendments as at 18 June 1998

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ORDER 1

PRELIMINARY

1.01 *Title*

These Rules shall constitute Chapter II of the Rules of the County Court and shall be entitled the County Court Miscellaneous Rules 1989.

1.02 *Commencement, objective, authority*

- (1) These Rules come into operation on the same day as the **County Court (Amendment) Act 1989** comes into operation.
- (2) The objective of these Rules is to prescribe miscellaneous rules of procedure for matters and proceedings in the County Court of Victoria.
- (3) These Rules are made under section 78 of the **County Court Act 1958** and all other enabling powers.

1.03 *Transitional*

Rule 1.05 of the County Court Rules of Procedure in Civil Proceedings 1989 applies to any matter or proceeding to which these Rules apply.

1.04 *Application of Chapter I*

Chapter I of the Rules of the County Court applies to any proceeding to which these Rules apply to the extent that it is not inconsistent with these Rules.

1.05 *Definitions*

In these Rules—

"**the Act**" means the **County Court Act 1958**;

"**Chapter I**" means the County Court Rules of Procedure in Civil Proceedings 1989.

ORDER 2

APPEALS TO COUNTY COURT UNDER SUBDIVISION 1, DIVISION 4 OF PART 4, MAGISTRATES' COURT ACT 1989

Order 2
(Heading and
rules
2.01–2.13)
substituted by
S.R. No.
191/1990
rule 6.

2.01 *Application*

This Order applies to any appeal from a Magistrates' Court under Subdivision 1 of Division 4 of Part 4 of the **Magistrates' Court Act 1989**.

Rule 2.01
substituted by
S.R. No.
191/1990
rule 6.

2.02 *Definitions*

In this Order—

"**appeal**" means an appeal to which this Order applies; and

"**appellant**" has a corresponding meaning.

Rule 2.02
substituted by
S.R. No.
191/1990
rule 6.

2.03 *Notice of appeal and undertaking to prosecute*

- (1) Subject to paragraphs (2) and (3), a notice of appeal and undertaking to prosecute an appeal, for the purposes of Schedule 6 of the **Magistrates' Court Act 1989**, shall be in Form 2–2A.

Rule 2.03
substituted by
S.R. No.
191/1990
rule 6,
amended by
S.R. Nos
217/1992
rule 6(a),
42/1993
rule 6(a).

- (2) A notice of appeal by the Director of Public Prosecutions for the purposes of Schedule 6 of the **Magistrates' Court Act 1989**, shall be in Form 2–2AA.

Rule 2.03(2)
inserted by
S.R. No.
217/1992
rule 6(b).

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S.R. No. 181/1989

r. 2.04

Rule 2.03(3)
inserted by
S.R. No.
42/1993
rule 6(b).

- (3) A notice of appeal and undertaking to prosecute an appeal under section 116 of the **Children and Young Persons Act 1989**, for the purposes of Schedule 6 of the **Magistrates' Court Act 1989**, shall be in Form 2–2AB.

Rule 2.04
substituted by
S.R. No.
191/1990
rule 6.

2.04 *Practitioner to notify that he or she acts*

- (1) If a practitioner is engaged to act on behalf of an appellant or respondent, the practitioner shall without delay notify the Registrar in writing that he or she so acts and furnish an address for service.
- (2) If a practitioner ceases to act on behalf of an appellant or respondent or changes the address for service, the practitioner shall without delay notify the Registrar in writing that he or she has ceased to act.

Rule 2.05
substituted by
S.R. No.
191/1990
rule 6.

2.05 *Notice of abandonment—imprisonment or detention*

A notice of abandonment of an appeal against a sentencing order which imposed a term of imprisonment or detention shall be in Form 2–2B.

Rule 2.06
substituted by
S.R. No.
191/1990
rule 6,
amended by
S.R. No.
42/1993 rule 7.

2.06 *Notice of abandonment—other sentencing order*

A notice of abandonment of an appeal against a sentencing order which did not impose a term of imprisonment or detention shall be in Form 2–2C or Form 2–2CA if the notice of abandonment of appeal concerns an appeal under section 116 of the **Children and Young Persons Act 1989**.

Rule 2.07
substituted by
S.R. Nos
191/1990
rule 6,
217/1992
rule 7, 42/1993
rule 8.

2.07 *Notice of abandonment—Registrar to make order*

When a notice of abandonment of appeal is filed—

- (a) against a sentencing order; or

- (b) which concerns an appeal under section 116 of the **Children and Young Persons Act 1989**—

the Registrar shall make an order striking out the appeal.

2.08 Order striking out appeal

- (1) An Order striking out an appeal under section 86(3) of the **Magistrates' Court Act 1989** shall be in Form 2–2D.

- (2) If an order is made under paragraph (1) the Registrar shall cause a copy of the order to be forwarded to—

- (a) the Registrar of the Magistrates' Court at the venue of the court from which the appeal was brought; or
- (b) the Registrar of the Children's Court at the venue of the court from which the appeal was brought if the appeal is under section 116 of the **Children and Young Persons Act 1989**.

Rule 2.08 substituted by S.R. No. 191/1990 rule 6, amended by S.R. No. 217/1992 rule 8(a).

Rule 2.08(2) inserted by S.R. No. 217/1992 rule 8(b), substituted by S.R. No. 42/1993 rule 9.

2.09 Registrar to fix appeal

- (1) The Registrar shall—
- (a) fix the date and place for hearing of the appeal; and
- (b) notify in writing each party and each practitioner who has given notice under Rule 2.04 of the date and place of hearing a reasonable time before the hearing.

Rule 2.09 substituted by S.R. No. 191/1990 rule 6, amended by S.R. No. 217/1992 rule 9(a).

Rule 2.09(1)(b) amended by S.R. No. 217/1992 rule 9(b).

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S.R. No. 181/1989

r. 2.10

Rule 2.09(2)
inserted by
S.R. No.
217/1992
rule 9(c).

- (2) Notification in writing under paragraph (b) may be by pre-paid ordinary mail or where a practitioner for a party has facilities for the reception of documents in a document exchange by delivering the notification into those facilities.

Rule 2.10
substituted by
S.R. No.
191/1990
rule 6.

2.10 *Recording of decision*

Rule 2.10(1)
amended by
S.R. No.
42/1993
rule 10.

- (1) When the appeal is determined by the Court, the Associate to the Judge who heard the appeal shall in all cases, record the sentence or particulars of the decision, in quadruplicate, in Form 2–2E, or Form 2–2F if the appeal is an appeal under section 116 of the **Children and Young Persons Act 1989**, which record shall constitute the final record of the order of the Court on the appeal.
- (2) If a number of appeals are heard together, it is not necessary to record the sentence or particulars required by paragraph (1) on separate forms for each appeal but it is necessary for the sentence or particulars of each charge to be recorded in full.

Rule 2.11
substituted by
S.R. No.
191/1990
rule 6.

2.11 *Copies of record*

- (1) The Associate shall deliver—
- (a) three copies of the record of the order of the Court to the Registrar who shall—
- (i) file one copy; and
- (ii) send one copy to the Registrar of the Magistrates' Court or Children's Court at the venue of the Court from which the appeal was brought; and
- (iii) if the appellant is required to serve a term of imprisonment or detention, deliver one copy to the person

Rule 2.11(1)
(a)(ii)
amended by
S.R. No.
42/1993
rule 11.

responsible for keeping the appellant;
and

- (b) if the appellant is required to serve a sentence of imprisonment or detention, one copy of the record of the order of the Court to the prison officer responsible for conveying the appellant to the place of imprisonment or detention.
- (2) The record shall be sufficient to authorise the keeping of the appellant for the period and in the manner set out in the record.

* * * * *

Rules 2.12,
2.13
revoked by
S.R. No.
191/1990
rule 6.

ORDER 3

REMITTED AND TRANSFERRED ACTIONS

3.01 *Application*

This Order applies to any proceeding—

- (a) which is remitted or transferred to the Court by another court; or
- (b) which is commenced in the Supreme Court and in which the parties consent under section 37(2)(a) of the Act to its being in the Court.

Rule 3.01(b)
amended by
S.R. No.
106/1990
rule 9(a).

3.02 *Definition*

In this Order—

"other court" means the court in which the proceeding was commenced.

3.03 *Proceeding remitted and proceeding tried by consent*

- (1) In a proceeding to which this Order applies the plaintiff or applicant shall file with the Registrar—
 - (a) in the case of a proceeding ordered to be tried in the Court, the order for remission or transfer and a copy of the originating process;
 - (b) in the case of a proceeding to be tried in the Court pursuant to the consent of the parties, the written consent and a copy of the originating process.
- (2) The plaintiff or applicant shall apply to the Prothonotary or other proper officer of the other court to send to the Registrar all pleadings, affidavits and other documents filed in the other court relating to the proceeding.
- (3) The plaintiff or applicant shall also file with the Registrar a statement of the names and addresses of all parties to the proceeding and their solicitors.

3.04 *Statement of cause of action*

If no statement of the claim has been filed and served in the other court, the plaintiff or applicant shall, before taking any further steps in the proceeding, file with the Registrar together with the copy of the originating process a concise statement of the claim in accordance with the requirements of Chapter I and shall serve a copy of the statement on each other party to the proceeding within 7 days after filing the statement.

3.05 *Time for taking any step, doing any act*

- (1) If in any Rule (including a Rule of Chapter I), a time is prescribed for taking any step in a proceeding or for doing any act by reference to the date of filing a notice of appearance, the time
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for taking such a step or doing such an act shall be determined—

- (a) in the case of a proceeding remitted from another court by order of a Judge of that other court, by reference to the date of the order for remission;
 - (b) in the case of a proceeding commenced in the Supreme Court which the parties have consented to being tried in the County Court, by reference to the date of the written consent referred to in section 37(2)(a) of the Act;
 - (c) in the case of a proceeding transferred from a Magistrates' Court, by reference to the date of the order for transfer.
- (2) In a case where the time prescribed fixes the latest date for taking any step or doing any act, the step may be taken or the act done at any time before that date.

ORDER 4

PROCEEDINGS UNDER THE INSTRUMENTS ACT 1958

4.01 *Application*

This Order applies to any proceeding under the **Instruments Act 1958**.

4.02 *General*

Except as provided in this Order, a proceeding under the **Instruments Act 1958** shall be conducted in accordance with that Act and Chapter I.

4.03 *Form 2–4A*

A proceeding on a bill of exchange or promissory note commenced after the same has become due may be commenced by writ in Form 2–4A.

4.04 *Final judgment when leave not obtained*

If the defendant does not obtain leave to defend the proceeding within the time specified in the writ the plaintiff may enter final judgment for any sum not exceeding the sum claimed in the writ with interest at the rate specified (if any) to the date of judgment together with the costs, charges and expenses fixed by the Registrar.

4.05 *Leave to defend etc. without notice*

- (1) An application for leave to defend or for leave to commence more than one proceeding on two or more bills shall be made to a Judge without notice to any person.
- (2) An application referred to in paragraph (1) shall be—
 - (a) supported by affidavit stating the facts upon which the applicant relies;
 - (b) be in Form 2–4B or 2–4C as the case requires.
- (3) An affidavit for the purposes of this Rule may be made by the applicant or by any other person who can swear positively to the facts.

4.06 *Endorsement of decision*

When the Judge has received an application under Rule 4.05, the Judge shall endorse the decision upon the application and return the application and affidavit to the Registrar.

4.07 *Registrar to inform parties*

When the decision of the Judge is received by the Registrar, the Registrar shall in writing give notice to the plaintiff and the defendant of the Judge's decision.

4.08 *Leave to defend equivalent to appearance*

- (1) If in any Rule a time is prescribed for taking any step or doing any act by reference to the date of filing notice of appearance, the time for taking any step or doing any act shall be determined by the date on which the Registrar gives notice under Rule 4.07.
- (2) A defendant who has been given leave to defend a proceeding to which this Order applies shall be taken to have filed a notice of appearance on the day leave was given.

ORDER 5

OFFICERS

5.01 *Registrar to keep seal and books*

The Registrar shall have the custody of the seal of the Court, and shall keep the books, including the register, as required.

5.02 *Registrar to permit searches in most cases*

- (1) The Registrar shall when requested in writing containing sufficient particulars and on payment of any prescribed fee, cause a search to be made in the books and registers in the Registrar's custody.
- (2) Unless the Court otherwise orders, the Registrar shall on payment of any prescribed fee permit any person to search any documents filed in any proceeding.

- (3) This Rule does not apply to any register or to any documents relating to any proceeding under the **Adoption Act 1984** (or any corresponding previous or subsequent enactment).
- (4) If at any time the Registrar requires directions as to whether any search shall be made, the Registrar shall apply to a Judge and until the Judge so directs, no such search shall be made.

5.03 Registrar to have general administrative control

Subject to the Rules and to any order or direction of the Chief Judge, the Registrar shall have general administrative control over all deputy registrars and officers of the Court and may give them such directions as are necessary to ensure efficient and uniform practice throughout the entire administration of the Court.

5.04 Additional powers

For facilitating the business of the Court, the Registrar may in any proceeding in addition to exercising any other powers or functions conferred or imposed on him by the Act, the Council of Judges, the Chief Judge or the Rules—

- (a) make an order for the payment or taxation and payment of costs, including any reserved costs;
- (b) by consent of the parties—
 - (i) give judgment for the recovery of any debt or damages together with interest or damages in the nature of interest;
 - (ii) discharge any bond lodged in Court;
 - (iii) strike out or dismiss any proceeding;
 - (iv) make an order for the payment out of Court of moneys paid into Court other

than moneys paid into Court for the benefit of a person under a disability;

(v) make an order for a stay of execution.

5.05 *Pre-trial matters after setting down*

Where a proceeding has been set down for trial—

- (a) the Registrar may give notice to the parties or to their practitioners to attend before a Judge or the Registrar for a date to be fixed for the trial;
- (b) at the time and place named in the notice the Judge or the Registrar may—
 - (i) make any order or give any direction which appears to him to be necessary to ensure that the proceeding is ready for trial, notwithstanding that no application by summons is before him;
 - (ii) forthwith refers the proceeding to a Judge;
 - (iii) fix a date for the trial of the proceeding.

5.06 *Deputy registrars*

A deputy registrar has all the powers and functions of the Registrar under this Order except the powers and functions under Rule 5.03.

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Order 6
(Heading and
rules 6.01–
6.12)
revoked by
S.R. No.
146/1995
rule 7(a).

ORDER 7

COMMERCIAL ARBITRATION

7.01 Definition

In this Order—

"the Act" means the **Commercial Arbitration Act 1984**.

7.02 Application of Order

This Order applies—

- (a) to any arbitration in respect of which the Court has jurisdiction under the Act; and
- (b) to any proceeding in the Court under the Act.

7.03 Jurisdiction

- (1) A proceeding in the Court under the Act shall be commenced by originating motion.
- (2) A Master shall have jurisdiction under the Act except under sections 38 to 45.

7.04 Enforcement of award

- (1) Unless the Court otherwise orders, an application for leave under section 33(1) of the Act to enforce an award as a judgment or order of the Court shall be supported by affidavit and may be made without notice to any person.
- (2) An affidavit referred to in paragraph (1) shall—
 - (a) exhibit the arbitration agreement and the award or, in either case, a copy;
 - (b) state the extent to which the award has not been complied with at the date the application is made;
 - (c) state the usual or last known place of residence or business of the person against whom it is sought to enforce the award or,

Rule 7.04(2)(b)
amended by
S.R. No.
106/1990
rule 9(b).

when that person is a corporation, its last known registered office.

- (3) If leave is given, any party to the award may enter judgment in terms of the award.

7.05 *Indorsement and service of order*

An order of the Court giving leave to enforce an award shall—

- (a) be indorsed with a statement that the person on whom the order is served may apply within 14 days after service of the order (or, if the order is to be served out of Victoria, within such time as the Court orders) to set aside the order and until the expiration of that period or the determination of the application to set the order aside, the award cannot be enforced;
- (b) be served on the person against whom it is sought to enforce the award.

7.06 *Appeal under section 38*

An appeal under section 38 of the Act shall be brought in accordance with Order 58 of Chapter I.

7.07 *Application under section 39(1)*

In respect of an application under section 39(1) of the Act to determine a question of law arising in the course of an arbitration, the originating motion shall be filed and served within 14 days after the arbitrator or umpire has consented to the making of the application or the parties have so consented.

7.08 *Application under section 42 or 43*

In respect of an application—

- (a) to set aside an award under section 42 of the Act; or

- (b) to remit an award under section 43 of the Act—

the originating motion shall be filed and served within 42 days after the award is made.

7.09 Offer of compromise

A party to an arbitration may serve on any other party an offer of compromise of a claim the subject of the arbitration on the terms specified in the offer.

7.10 Form of offer

An offer of compromise shall be in writing and contain a statement to the effect that it is served for the purpose of section 34 of the Act.

7.11 Time for making, accepting, payment under etc. offer

- (1) An offer of compromise may be served at any time before the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates.
 - (2) A party may serve more than one offer of compromise.
 - (3) An offer of compromise may be expressed to be limited as to the time the offer is open to be accepted after service on the party to whom it is made, but the time expressed shall not be less than 14 days after such service.
 - (4) A party on whom an offer of compromise is served shall within three days after service serve a written acknowledgement of service on the party serving the offer.
 - (5) A party on whom an offer of compromise is served may accept the offer by serving notice of acceptance in writing on the party who made the offer before—
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- (a) the expiration of the time specified in accordance with paragraph (3) or, if no time is specified, the expiration of 14 days after service of the offer; or
 - (b) the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates—
- whichever event is the sooner.
- (6) An offer of compromise shall not be withdrawn during the time it is open to be accepted, unless the Court otherwise orders.
 - (7) An offer of compromise is open to be accepted within the period referred to in paragraph (5) notwithstanding that during that period the party on whom the offer is served makes an offer of compromise, to the party who served the offer of compromise, whether or not the offer made by the party served is made in accordance with this Order.
 - (8) An offer of compromise providing for payment of a sum of money to a plaintiff shall, unless it otherwise provides, be taken to be an offer providing for payment of that sum within 14 days after acceptance of the offer.
 - (9) An application to the Court under paragraph (6) for leave to withdraw an offer shall be made by originating motion in Form 5C of Chapter I.

7.12 *Effect of offer*

An offer of compromise made in accordance with this Order shall be taken to be an offer of compromise made without prejudice, unless the offer otherwise provides.

7.13 *Disclosure of offer*

- (1) No statement of the fact that an offer of compromise has been made shall be contained in any pleading, affidavit or other document in the arbitration.
- (2) Where an offer of compromise has not been accepted, no communication with respect to the offer shall be made to the arbitrator or umpire until after the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates.
- (3) Paragraphs (1) and (2) shall not apply where an offer of compromise provides that the offer is not made without prejudice.

7.14 *Failure to comply with accepted offer*

- (1) Where a party to an accepted offer of compromise fails to comply with the terms of the offer, then, unless for special cause the Court shall otherwise order, the other party shall be entitled, as he may elect, to—
 - (a) judgment in the terms of the accepted offer; or
 - (b) where the party in default is claimant, an order that the arbitration be forever stayed, and where the party in default is respondent to the claim, an order declaring the compromise constituted by the acceptance of the offer to be of no effect and that the claimant be at liberty to proceed with the arbitration.
- (2) An application for judgment or an order under paragraph (1) shall be made to the Court by originating motion.

7.15 *Costs where offer not accepted*

In any exercise of discretion as to costs the arbitrator or umpire shall consider whether the

party serving an offer of compromise was at all material times willing and able to carry out his part of what was proposed in the offer.

7.16 *Hearing on costs*

In arbitration proceedings the arbitrator shall not make a final award with respect to costs until the parties have had an opportunity to be heard on the question of the costs of the arbitration.

ORDER 8

PAYMENT INTO COURT BY BANK GUARANTEE

8.01 *Application*

This Order applies in any proceeding in which the Court makes any of the orders referred to in Rule 8.02.

8.02 *Payment by way of irrevocable guarantee*

If the Court makes an order—

- (a) giving leave to defend conditionally upon payment of a sum of money into Court; or
- (b) requiring a party to pay money into Court as security for costs; or
- (c) requiring a party to pay money into Court pending judgment in any action or matter in the Court—

it is sufficient compliance with that order if the person ordered to pay the money into the Court files with the Registrar an irrevocable guarantee given by a bank to pay the sum.

8.03 *Requirement of guarantee*

An irrevocable guarantee given by a bank shall be in Form 2–8A and shall be—

-
- (a) given by a bank approved by the Registrar;
and
 - (b) sealed by the bank or signed by an officer of
the bank who has written authority from the
bank to sign such a guarantee on behalf of
the bank.

8.04 Liability of bank

- (1) A bank guarantee which is filed with the Registrar
pursuant to an order under Rule 8.02 shall not be
amended or revoked without the leave of the
Court.
- (2) Unless the Court otherwise orders, a bank which
has given a guarantee may discharge its liability
under the guarantee only—
 - (a) by payment into Court of the total sum
guaranteed; and
 - (b) by filing a Notice of Discharge and Payment
into Court in Form 2–8B.

Order 9
(Heading and
rules 9.01–
9.21)
amended by
S.R. Nos
106/1990
rules 5, 6
(a)–(d), 7,
9(c)(i)(ii),
131/1991
rules 5–10,
substituted as
Order 9
(Heading and
rules 9.01–
9.11) by S.R.
No. 286/1992
rule 5.

ORDER 9

FINE ENFORCEMENT RULES

Rule 9.01
substituted by
S.R. No.
286/1992
rule 5.

9.01 Definitions

In this Order—

"offender" means a person on whom the Court has imposed a fine;

"person in default" means an offender who has failed to pay a fine or an instalment under an instalment order and includes a director of a body corporate who is the subject of a declaration under section 50(6);

"section" means section of the Act;

"the Act" means the **Sentencing Act 1991**.

9.02 Proper officer

Rule 9.02
substituted by
S.R. No.
286/1992
rule 5.

- (1) For the purposes of Division 4 of Part 3 of the Act the proper officer of the Court is—
 - (a) the Judge who imposed the monetary penalty or, if that Judge so directs, the Registrar; or
 - (b) where the Judge who imposed the monetary penalty is unavailable, the Registrar.
- (2) Any direction given by a Judge under paragraph (1)(a) shall be sufficiently given if indorsed by the Judge on the application.
- (3) A Judge shall be taken to be unavailable for the purpose of paragraph (1)(b) if the Chief Judge has made an indorsement to that effect on the application.

9.03 Application

Rule 9.03
substituted by
S.R. No.
286/1992
rule 5.

- (1) An application under section 55 must be in Form 2–9A.
- (2) If the offender is a corporation, the application must be signed by the secretary of the corporation.
- (3) An application must be filed with the Registrar.
- (4) Where an application under section 55 is filed the Registrar shall appoint a time and place for the hearing of the application.

- (5) The Registrar shall cause the offender and the Director of Public Prosecutions to be notified of the time and place of the hearing, by notice in Form 2–9B.

Rule 9.04
substituted by
S.R. No.
286/1992
rule 5.

9.04 Stay of enforcement or execution

Unless a Judge or the Registrar otherwise orders, an application under section 55 operates as a stay of enforcement or execution of the order requiring the monetary penalty to be paid from the time it is filed until the application is determined.

Rule 9.05
substituted by
S.R. No.
286/1992
rule 5.

9.05 Consideration of application

In considering an application the proper officer may—

- (a) question the offender about his financial circumstances; and
- (b) require the offender to make an affidavit or produce any document concerning his financial circumstances.

Rule 9.06
substituted by
S.R. No.
286/1992
rule 5.

9.06 Order and notice

After an application under section 55 the proper officer shall cause to be given or posted to the offender within 14 days, a copy of any order made.

Rule 9.07
substituted by
S.R. No.
286/1992
rule 5.

9.07 Enforcement of fine against a natural person

- (1) A statement in writing under section 62(8) shall be in Form 2–9C.
- (2) A consent under section 62(7)(b) shall be in Form 2–9D.
- (3) An order under section 62(9) shall be in Form 2–9E.
- (4) A summons under section 64(1) shall be in Form 2–9F.

- (5) A warrant to arrest under section 64(2) shall be in Form 2–9G.

9.08 *Enforcement of fine against body corporate*

A statement in writing under section 66(3) shall be in Form 2–9H.

Rule 9.08
substituted by
S.R. No.
286/1992
rule 5.

9.09 *Undertaking to appear*

- (1) The Sheriff or a member of the police force who arrests a person in default under section 62(1) may, unless a Judge or Registrar has otherwise ordered, release the person in default upon that person entering into an undertaking to appear before the Court.
- (2) If a person in default—
- (a) has been taken into custody in accordance with a warrant to arrest issued under section 62; and
 - (b) the outstanding amount of the fine specified in the warrant is paid—

Rule 9.09
substituted by
S.R. No.
286/1992
rule 5.

the person in default may be released from custody without being taken before the Court.

9.10 *Service of notices and orders*

Where under the Act or these Rules, an offender or person in default or the Director of Public Prosecutions is required to be notified of any matter, the notification may be effected by causing a written notice of the matter to be—

- (a) delivered personally to the offender or the person in default or the Director of Public Prosecutions; or
- (b) left at the usual or last known place of residence or business of the offender or person in default or the Director of Public

Rule 9.10
substituted by
S.R. No.
286/1992
rule 5.

Prosecutions with a person apparently over the age of sixteen years and apparently residing thereat or (in the case of a place of business) apparently in charge of or employed at that place; or

- (c) sent by post addressed to the offender or person in default or the Director of Public Prosecutions at the address for service or the usual or last known place of residence or business of the offender or person in default or the Director of Public Prosecutions.

Rule 9.11
substituted by
S.R. No.
286/1992
rule 5.

9.11 *Warrant of commitment*

- (1) If under section 62(10)(b) the Court orders that a person in default be imprisoned, the Court must direct the Registrar to issue a warrant of commitment committing the person to prison for the term specified by the Court.
- (2) A warrant of commitment must be in Form 2–9J.
- (3) A warrant of commitment—
 - (a) may be recalled and cancelled by the Registrar;
 - (b) may be issued or executed on a Sunday; and
 - (c) is not void by reason of a defect or error in it.

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Rules 9.12–
9.21
revoked by
S.R. No.
286/1992
rule 5.

ORDER 10

CRIMES (CONFISCATION OF PROFITS) RULES

10.01 *Application*

Chapter I does not apply to an application to the Court under this Order.

10.02 *Definition*

In this Order—

"the Act" means the **Crimes (Confiscation of Profits) Act 1986**.

10.03 *Application*

An application under the Act shall be in Form 2–10A adapted as the circumstances of the case require.

10.04 *Notice to be in writing*

Any notice required by the Act shall be in writing.

10.05 *Notice*

- (1) An application, an affidavit and a copy of a notice given in a proceeding under the Act shall be filed in the Court unless the Court or a Judge otherwise orders.
- (2) A copy of an application, a copy of an affidavit and a notice given in a proceeding under the Act shall be served personally or in such other manner as the Court directs.
- (3) A copy of an application, a copy of an affidavit and a notice given in a proceeding under the Act shall be served personally or in such other manner as the Court directs.

10.06 *Proceeds of Crime Act*

This Order applies, with any necessary modification to an application under the Proceeds of Crime Act 1987 of the Commonwealth.

ORDER 11

PRE-TRIAL CRIMINAL PROCEDURE RULES

11.01 Application

This Order applies to the trial of any accused person.

11.02 Definitions

- (1) In these Rules, unless the context or subject-matter otherwise requires—

"accused person" means a person—

- (a) who has been committed or remanded to the County Court for trial or directed to be tried at the County Court; or
- (b) in respect of whom—
 - (i) a presentment has been made; or
 - (ii) an indictment has been filed—
at the County Court; or
- (c) upon whom a Notice of Trial at the County Court has been served;

"accused's solicitor" or **"solicitor"** means the solicitor who acts for the accused person and where the Director of Legal Aid appointed under the **Legal Aid Commission Act 1978** so acts, includes such Director;

"CTLD" means the Criminal Trial Listing Directorate;

"DPP" means the Director of Public Prosecutions for Victoria or the Director of Public Prosecutions for the Commonwealth;

"person" includes the CTLD, the DPP and the Director of Legal Aid;

"presentment" includes indictment.

- (2) Except where otherwise provided in these Rules, a document required or authorised to be served may be served by pre-paid ordinary post.
- (3) Where these Rules require or authorise service by post, whether registered post or otherwise, the envelope containing the document must be addressed to the person to be served at the address of that person last known to the person effecting service.

11.03 Notice by solicitor to DPP and CTLD

- (1) A solicitor who commences to act for an accused person must as soon as possible after commencing so to act serve upon—
 - (a) the DPP; and
 - (b) the CTLD—a notice in Form 2–11A that the solicitor acts for the accused person.
- (2) Subject to paragraph (3), a solicitor who ceases to act for an accused person must, as soon as possible after so ceasing to act—
 - (a) serve upon—
 - (i) the DPP; and
 - (ii) the CTLD; and
 - (iii) the accused person—a notice in writing in Form 2–11B that the solicitor has ceased so to act; and

- (b) return to the CTLD the copy of the depositions and all other material provided by the CTLD in relation to the matter; and
 - (c) return to the DPP all materials provided by the DPP in relation to the matter.
- (3) Where paragraph (2) applies to the Director of Legal Aid, the notice shall not be served and the materials shall not be returned until the expiration of the time for appeal against the decision to terminate legal assistance or the resolution of any such appeal (whichever last occurs) but must be respectively served and returned as soon as possible thereafter unless the decision to terminate legal assistance has been reversed.

11.04 *Copy presentment to be served*

- (1) Whenever presentment is made at the County Court, the Associate to the Judge before whom presentment is so made shall cause the presentment to be filed with the Registrar and for the purposes of these Rules a presentment shall be deemed to be filed immediately upon presentment being made.
- (2) The DPP must, as soon as practicable after a presentment is filed—
 - (a) serve or cause to be served a copy of the presentment on the accused person; and
 - (b) forward a copy of the presentment to the CTLD.
- (3) Service under paragraph (2)(a) must be by registered post or by personal service unless the accused person is represented by a solicitor.
- (4) When serving an accused person the DPP must also serve or cause to be served on the accused person a notice in writing in Form 2-11C unless

the DPP has notice that a practitioner is acting on behalf of the accused person.

11.05 *Notification of readiness for trial*

The DPP must, as soon as a case is ready for trial, make presentment (if a presentment has not already been filed) and forward to the CTLD a notice of readiness for trial in Form 2–11D.

11.06 *Notice by solicitor to Registrar*

- (1) A solicitor who acts for an accused person must file with the Registrar a notice in writing in Form 2–11A that the solicitor so acts—
 - (a) if the solicitor has commenced so to act before service of a copy of the presentment, within 14 days after service of the copy presentment; or
 - (b) if the practitioner commences so to act after service of a copy of the presentment, as soon as possible after commencing so to act.
- (2) A solicitor who having filed a notice under paragraph (1) ceases to act for an accused person must as soon as possible after so ceasing to act file with the Registrar a notice in writing in Form 2–11B.

11.07 *Unrepresented accused person*

- (1) Within 28 days of the receipt of a copy of a presentment the CTLD must, unless notified that a practitioner is acting for an accused person—
 - (a) if the accused person is on bail, contact the accused person requesting that he or she attend the office of the CTLD at a time fixed by the CTLD to determine what steps the accused person has taken to obtain legal representation for the trial and at the time of

making such request the CTLD must inform the accused person that if he or she fails to attend as requested, the Court will require the accused person to attend the Court for the same purpose; and

- (b) if the accused person is in custody, attend personally or by a representative on the accused person at the place where the accused person is held to determine what steps the accused person has taken to obtain legal representation for the trial.
- (2) The CTLD must report to the Chief Judge any uncertainty as to the legal representation of an accused person in order to enable the Chief Judge to give directions to the CTLD as to what steps are to be taken to resolve any such uncertainty.

11.08 *Questionnaire*

- (1) The CTLD must serve on an accused's solicitor a questionnaire in Form 2-11E at such time as the CTLD may consider appropriate.
- (2) The accused's solicitor must, within 14 days of receiving the questionnaire, serve on the CTLD adequate answers in writing to the questions in the questionnaire.

11.09 *Costs liability*

- (1) In this Rule "**costs thrown away**" means such amount as the Judge who hears any application or before whom a case is listed for trial determines (upon such information, evidence or material as that Judge may consider appropriate) to be in all the circumstances a reasonable quantification of the costs and expenses (including witness expenses and counsel's fees) incurred by the person in whose favour an order may be made

under this Rule and thrown away as a result of the relevant failure.

- (2) If a solicitor fails to comply with Rule 11.03, 11.06, or 11.07(2) and if the Court is satisfied that such a failure is not excusable, the Court may order that the practitioner pay to the DPP or to any co-accused person any costs thrown away as a result of the failure.
- (3) A solicitor who has informed the CTLD that the solicitor will act for an accused person at the accused person's trial and at the trial fails to do so, if the Court is satisfied that such failure was not excusable, may be ordered to pay to the DPP or any co-accused person any costs thrown away as a result of the failure.

11.10 *Pre-trial conference*

- (1) In this Rule "**Listed Date**" means the date which has been fixed by the CTLD as the date on which the trial is to be listed for hearing or, where the CTLD has fixed a period of time for that purpose, the first day of that period.
- (2) The CTLD may, before giving notice of the Listed Date or not less than 21 days before the Listed Date, conduct a pre-trial conference.
- (3) Written notice of a pre-trial conference must be given to—
 - (a) the DPP; and
 - (b) the accused person (if unrepresented); and
 - (c) the accused's solicitor (if any)—not less than 7 days before the date proposed for the pre-trial conference.
- (4) At a pre-trial conference—

- (a) in order to facilitate an efficient trial, the CTLD may inquire into any of the matters listed in the Schedule; and
 - (b) the DPP and the accused person or the accused's solicitor must be prepared to answer questions or provide information to the CTLD on the matters listed in the Schedule; and
 - (c) the DPP must, subject only to any substantial consideration of the personal safety of witnesses—
 - (i) give notice of the name of any witness who may be called as a Crown witness upon the trial and whose name does not appear upon the presentment as a witness or as an additional witness; and
 - (ii) give notice of the substance of the evidence proposed to be adduced from each such witness (whether by way of provision of a copy of a statement made by the witness or otherwise); and
 - (iii) provide to the CTLD such information as the CTLD may reasonably require as to the availability of each Crown witness; and
 - (iv) notify the CTLD and the accused person of the name of any potential Crown witness whose deposition the Crown proposes to apply to tender in evidence and the grounds of any such proposed application; and
 - (d) the accused person or the accused's solicitor must be prepared to certify that the accused person is ready to proceed on the Listed Date (if any).
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- (5) Nothing said by or on behalf of an accused person at a pre-trial conference, and no failure by an accused person to answer a question at a pre-trial conference, shall be used in any subsequent trial or made the subject of any comment at that trial.
 - (6) Nothing in paragraph (5) of this Rule shall preclude an accused person from relying on an indication of an intention to plead guilty given at a pre-trial conference.

11.11 *Pre-trial hearing*

- (1) At any time after a pre-trial conference—
 - (a) the DPP; or
 - (b) an accused person; or
 - (c) the CTLD—may apply to the Chief Judge for a pre-trial hearing to be conducted by the Court.
 - (2) An application under paragraph (1) must—
 - (a) be in Form 2–11F; and
 - (b) be filed with the Registrar.
 - (3) If upon consideration of any such application the Chief Judge considers that a pre-trial hearing should be conducted, the Chief Judge shall cause the Registrar to give notice of such hearing to such persons as the Chief Judge may direct.
 - (3A) The Chief Judge may of his own motion at any time direct that a pre-trial hearing be conducted in relation to any accused person and shall cause the Registrar to give notice of such hearing to such persons as the Chief Judge may direct.
 - (4) The Registrar shall serve notice of the pre-trial hearing upon each party specified by the Chief Judge in such manner as the Chief Judge may direct.
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- (5) A pre-trial hearing shall be conducted by the Chief Judge or such Judge as the Chief Judge shall nominate, whether the proposed trial Judge or otherwise.
- (6) At a pre-trial hearing the Judge who constitutes the Court may—
 - (a) ask such questions of the parties; and
 - (b) give such directions with respect to the preparation for trial, readiness for trial or conduct of the trial—as the Judge thinks proper having regard to all the circumstances.
- (7) A pre-trial hearing must be heard in Court.
- (8) The accused person must be present at a pre-trial hearing unless the Judge conducting the hearing otherwise determines.
- (9) Nothing said by or on behalf of an accused person at a pre-trial hearing, and no failure by an accused person to answer a question at a pre-trial hearing, shall be used in any subsequent trial or made the subject of any comment at that trial.
- (10) The powers conferred by this Rule upon the Chief Judge may be exercised by any Judge authorised so to do by the Chief Judge.

SCHEDULE

RULE 11.10

- 1. Are further particulars of the presentment likely to be sought by the accused?
 - 2. Is there to be any application to sever the presentment and if so, what is the application likely to be?
 - 3. Is there to be an application for a separate trial by any and which accused?
 - 4. Does the accused presently intend to plead Guilty or Not Guilty to any and which count(s) in the presentment?
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5. Is there any possibility of a change of plea?
 6. (a) Has there been a conference between counsel for the Director of Public Prosecutions and counsel for the accused?
(b) If not, is such a conference proposed?
 7. Does the prosecution propose to call any additional evidence?
 8. Has the prosecution notified the accused and/or his representatives of any additional evidence and if it intends to do so when is it proposed to furnish a proof of evidence?
 9. What is the probable length of trial?
 - (a) prosecution estimate
 - (b) accused estimate.
 10. Is any point of law or of admissibility of evidence likely to be raised before a jury is empanelled? If yes, what are those matters and of what duration are the matters to be raised likely to take?
 11. Does the accused or the prosecution intend to raise a special issue? e.g. unfitness to plead; change of venue; insanity.
 12. Does the accused or the prosecution intend to raise a special plea? e.g. lack of jurisdiction; autrefois convict; autrefois acquit etc.
 13. Does the accused intend to rely upon an alibi not yet disclosed in conformity with the Crimes Act?
 14. Do the parties anticipate any problems as to the availability of witnesses? If yes, give details.
 15. (a) What admissions of fact are sought by the prosecution?
(b) Is the accused prepared to make the admissions sought or any of them?
(c) What admissions of fact are sought by the accused?
(d) Is the prosecution prepared to make the admissions sought or any of them?
 16. Does any difficulty arise about photographs or plans and formal proof of them?
 17. Is any order sought for the inspection of prosecution exhibits or other evidentiary material in the possession of the prosecution as to which a question may arise in the course of the trial?
 18. Is any order sought for the preservation or detention of any document or thing relating to the trial?
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19. Is any order sought for the production before the Court of any document, tape recording or thing relating to the trial?
 20. Does any party propose to deliver to the other party a notice to admit in respect of anything not covered by question No. 15?
 21. What arrangements have been made for Counsel to hear any tape recordings in the custody of the prosecution and to be provided with any transcript thereof?
 22. Does any party intend to apply for a view, and if so where and at what stage of the trial?
 23. Is there agreement as to copy exhibits to be supplied to the jury?
 24. Will an interpreter be required during the trial?
 25. Are there any other significant matters which might affect the proper and convenient trial of the issues?

Order 11A
(Heading and
rules 11A.01–
11A.06)
inserted by
S.R. No.
129/1997
rule 5.

**ORDER 11A—APPLICATIONS UNDER PART IIA OF
THE EVIDENCE ACT 1958**

Rule 11A.01
inserted by
S.R. No.
129/1997
rule 5.

11A.01 *Application of Order*

This Order applies to applications under Part IIA
of the **Evidence Act 1958**.

Rule 11A.02
inserted by
S.R. No.
129/1997
rule 5.

11A.02 *Application under section 42E*

An application under section 42E(1) of the Act
shall be made in accordance with Order 41A of
Chapter I.

Rule 11A.03
inserted by
S.R. No.
129/1997
rule 5.

11A.03 *Application under section 42L*

Unless the application is made in accordance with
sub-section (5)—

- (a) notice of an application under section 42L of
the Act shall be in Form 2–11AA;

- (b) a copy of the notice shall be served as soon as practicable after the notice has been filed; and
- (c) service may be by pre-paid post.

11A.04 Application under section 42M

Unless the application is made in accordance with sub-section (5)—

- (a) notice of an application under section 42M of the Act shall be in Form 2-11AB;
- (b) a copy of the notice shall be served as soon as practicable after the notice has been filed; and
- (c) service may be by pre-paid post.

Rule 11A.04
inserted by
S.R. No.
129/1997
rule 5.

11A.05 Application under section 42N

Unless the application is made in accordance with sub-section (3)—

- (a) notice of an application under section 42N of the Act shall be in Form 2-11AB; and
- (b) a copy of the notice shall be served as soon as practicable after the notice has been filed; and
- (c) service may be by pre-paid post.

Rule 11A.05
inserted by
S.R. No.
129/1997
rule 5.

11A.06 Application under section 42P

Unless the application is made in accordance with sub-section (5)—

- (a) notice of an application under section 42P of the Act shall be in Form 2-11AB;
- (b) a copy of the notice shall be served as soon as practicable after the notice has been filed; and
- (c) service may be by pre-paid post.

Rule 11A.06
inserted by
S.R. No.
129/1997
rule 5.

ORDER 12

**PROCEEDINGS UNDER IMPRISONMENT OF FRAUDULENT
DEBTORS ACT 1958**

Rule 12.01
amended by
S.R. No.
106/1990
rule 9(d).

12.01 *Application*

This Order applies to any proceeding under the
Imprisonment of Fraudulent Debtors Act 1958.

12.02 *Filing of summons*

A summons to debtor shall be supported by
affidavit filed when the summons is filed.

12.03 *Service of summons*

- (1) A summons to debtor shall be served personally
not less than 6 days before the day the summons is
listed for hearing.
- (2) The summons must be served personally unless
the Court otherwise orders.

12.04 *Affidavit of service*

Unless the Court otherwise orders, an affidavit of
service of the summons shall be filed not less than
3 days before the day the summons is listed for
hearing.

12.05 *Contents of affidavit in support*

An affidavit filed in support of the summons to
debtor shall—

- (a) state the date and amount of the judgment;
- (b) state if the amount of the judgment has been
reduced, the means of and amount of the
reduction;
- (c) state the amount due on the judgment at the
date of swearing the affidavit;
- (d) state whether any other form of execution is
still outstanding;

(e) be in Form 2–12A.

12.06 *Witnesses*

Any witness may be summoned to appear at the hearing of a summons to debtor.

12.07 *Warrants to be returned*

As soon as possible after filing a summons to debtor, the judgment creditor shall give notice of the filing of the summons to the sheriff or other person to whom any warrant, filed as a result of the judgment, has been issued.

12.08 *Certificate of payment*

A certificate of payment by a prisoner shall be in Form 2–12B.

Rule 12.08
amended by
S.R. No.
106/1990
rule 9(e).

12.09 *Costs*

- (1) Unless the Court otherwise orders, costs incurred by a judgment creditor in endeavouring to enforce a judgment are recoverable under an order or judgment.
- (2) Unless the Court otherwise orders, if the amount for which judgment is given is less than \$1000, no costs shall be allowed.

12.10 *Indorsement on warrant*

If a debtor is ordered to be committed to prison, the warrant of commitment shall be indorsed with—

- (a) the amount to be paid on the judgment;
- (b) all costs to be paid;
- (c) the period of imprisonment.

12.11 *Discharge by payment*

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

- (1) At any time before a debtor is delivered into the custody of the gaoler, the debtor may pay to the sheriff, bailiff, or other person to whom the warrant is issued the full amount indorsed on the warrant.
- (2) Upon payment of the full amount the debtor shall be discharged.

Order 13
(Heading and
rules 13.01–
13.10)
inserted by
S.R. No.
69/1991 rule 6.

ORDER 13

**PROCEEDINGS UNDER PART IV OF THE
ADMINISTRATION AND PROBATE ACT 1958**

Rule 13.01
inserted by
S.R. No.
69/1991 rule 6.

13.01 *Definitions*

In this Order—

"personal representative" does not include an executor who has not proved;

"Part IV" means Part IV of the **Administration and Probate Act 1958**.

Rule 13.02
inserted by
S.R. No.
69/1991 rule 6.

13.02 *Application*

This Order applies to any proceeding in the Court under Part IV.

Rule 13.03
inserted by
S.R. No.
69/1991 rule 6.

13.03 *Application by originating motion*

An application under Part IV shall be made by originating motion and, in addition to the requirement of Rule 27.02(2) of Chapter I, shall be entitled "In the matter of the estate of [*name of deceased*], deceased".

Rule 13.04
inserted by
S.R. No.
69/1991 rule 6.

13.04 *Parties to application*

- (1) Each personal representative shall be a defendant unless he is a plaintiff.

-
- (2) If a plaintiff is the sole personal representative, the defendant shall be a person having a substantial interest in opposing the application.
 - (3) No other person shall be a defendant to the application in the first instance.

13.05 *Directions to be given*

No step shall be taken in the proceeding after appearance until directions have been given in accordance with Rule 13.06.

**Rule 13.05
inserted by
S.R. No.
69/1991 rule 6.**

13.06 *Summons for directions*

- (1) Within 7 days after the time limited for appearance the plaintiff shall apply to the Court for directions.
- (2) If the plaintiff fails to apply, the defendant may apply for directions within 14 days after the time limited for appearance.

**Rule 13.06
inserted by
S.R. No.
69/1991 rule 6.**

13.07 *Directions*

On the application for directions the Court shall—

- (a) ascertain—
 - (i) the nature of the relief which the plaintiff seeks; and
 - (ii) the persons or classes of persons who would be affected by the grant of that relief—

and for this purpose may require the plaintiff and defendant to supply such information as the Court thinks necessary;

- (b) direct that notice of the application be served on any person;
- (c) direct what persons shall be added as defendants;

**Rule 13.07
inserted by
S.R. No.
69/1991 rule 6.**

- (d) direct what persons are to represent classes of defendants;
- (e) order that any defendant be authorised to defend on behalf of or for the benefit of all persons having the same or similar interest and that all persons so interested shall be bound by any order in the proceeding;
- (f) give such other directions as the Court thinks fit.

Rule 13.08
inserted by
S.R. No.
69/1991 rule 6.

13.08 *Failure to comply with directions*

If the plaintiff does not apply for directions or comply with any direction given, the Court may dismiss the application.

Rule 13.09
inserted by
S.R. No.
69/1991 rule 6.

13.09 *Production of probate*

On the trial of the proceeding the personal representative shall produce to the Court the probate of the will of the deceased or the letters of administration of his estate.

Rule 13.10
inserted by
S.R. No.
69/1991 rule 6.

13.10 *Procedure after order for plaintiff*

- (1) If an order is made in favour of a plaintiff, the Associate or the Master's Secretary shall deliver the probate or letters of administration to the Registrar.
- (2) The Registrar shall deliver the probate or letters of administration to the Registrar of Probates together with 4 copies of the order authenticated in accordance with Order 60A of Chapter I.
- (3) The Registrar of Probates shall attach to the probate or letters of administration a copy of the order and shall—
 - (a) deliver the probate or letters of administration to the personal representative or his solicitor; and

- (b) deliver a copy of the order to the plaintiff or his solicitor.
- (4) It is sufficient compliance with section 97(3) of the **Administration and Probate Act 1958** if the Registrar of Probates attaches a copy of the order to the probate or letters of administration.

ORDER 14

SUMMONS TO WITNESS IN CRIMINAL PROCEEDINGS

14.01 Subpoenas

Order 42 of Chapter I applies with any necessary modification to any criminal proceeding in the Court.

ORDER 15

SERVICE AND EXECUTION OF PROCESS RULES

15.01 Definitions

In this Order—

"**Act**" means the Service and Execution of Process Act 1992 of the Commonwealth as amended and in force for the time being;

each of the expressions—

"appropriate court"

"court of rendition"

"place of rendition"

has the meaning ascribed by Part 6 of the Act.

Order 14
(Heading and
rule 14.01)
inserted by
S.R. No.
217/1992
rule 10.

Rule 14.01
inserted by
S.R. No.
217/1992
rule 10.

Order 15
(Heading and
rules 15.01–
15.04)
inserted by
S.R. No.
82/1993 rule 5.

Rule 15.01
inserted by
S.R. No.
82/1993 rule 5.

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

r. 15.02

Rule 15.02
inserted by
S.R. No.
82/1993 rule 5.

15.02 *How application made*

An application under section 71 or 72 of the Act shall be made by originating motion in Form 5C of Chapter I.

Rule 15.03
inserted by
S.R. No.
82/1993 rule 5.

15.03 *Enforcement of judgment*

A person who seeks to enforce a judgment registered under the Act shall before taking any step under the Act or Chapter I for such enforcement file an affidavit stating that the judgment is capable of being enforced in or by the court of rendition or a court in the place of rendition and the extent to which it is so capable.

Rule 15.04
inserted by
S.R. No.
82/1993 rule 5.

15.04 *Costs*

The same costs shall be allowed in relation to the enforcement of a judgment registered under the Act in a court in Victoria as are allowed upon the enforcement of a like judgment of the Victorian court.

Order 16
(Heading and
rules 16.01–
16.10)
inserted by
S.R. No.
145/1994
rule 4,
revoked by
S.R. No.
146/1995
rule 7(b),
new Order 16
(Heading and
rules 16.01–
16.04)
inserted by
S.R. No.
37/1998 rule 4.
New rule
16.01 inserted
by S.R. No.
37/1998 rule 4.

**ORDER 16—APPLICATIONS UNDER SECTION 26(4) OF THE
BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT
1996**

16.01 *Application of Order*

This Order applies to applications to the Court under the **Births, Deaths and Marriages Registration Act 1996**.

16.02 *Application for approval of a proposed change of name for a child*

New rule
16.02 inserted
by S.R. No.
37/1998 rule 4.

- (1) An application under section 26(4) of the Act shall be—
 - (a) by notice in Form 2–16A; and
 - (b) supported by affidavit in Form 2–16B at the time the notice is filed.
- (2) Unless the Court otherwise orders, a copy of the notice and the affidavit in support shall be served on the respondent as soon as practicable after the notice has been filed.

16.03 *Order*

New rule
16.03 inserted
by S.R. No.
37/1998 rule 4.

An order approving a proposed change of name for a child under section 26(4) of the Act shall be in Form 2–16C.

16.04 *Other applications*

New rule
16.04 inserted
by S.R. No.
37/1998 rule 4.

Any other application to the Court under the Act may be by notice in Form 2–16D and shall be supported by affidavit.

FORMS

Rule 2.03

Form 2-2A
substituted by
S.R. No.
191/1990
rule 7,
amended by
S.R. No.
217/1992
rule 11(a)-(c).

FORM 2-2A

NOTICE OF APPEAL AND UNDERTAKING TO PROSECUTE

[under section 83 of the **Magistrates' Court Act 1989**]

The name of the appellant is:

The name and address of the respondent is:

1. To the Registrar of the Magistrates' Court at
2. To the Registrar of the County Court at
3. And to the abovenamed respondent

A. The proceeding(s) appealed from:

1. Venue of the Magistrates' Court appealed from:
2. Plea entered in the Magistrates' Court:
3. Date of conviction(s)/order(s):
4. Nature of offence(s)/proceeding(s):
5. Particulars of sentencing order(s):

B. The appeal is to be heard by the County Court *at a.m. [*or*
p.m.] on 19 , at , [*or*]* at a time and place to be
fixed by the Registrar of the County Court.

C. General Ground of Appeal

- *1. that the Appellant is not guilty.
- *2. that the punishment is excessive.

- D. 1. Appellant's personal address for service:
2. Solicitor's name and address for service:

E. The Appellant requests the Registrar of the County Court to list the
appeal.

Dated:

Signature of *Appellant/*Solicitor for Appellant.

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Form 2-2A

UNDERTAKING TO PROSECUTE

I, *[name]*

of *[address]*

UNDERTAKE to

- (i) (a) *appear at the County Court to prosecute the appeal at
a.m. *[or p.m.]* on 19 , at 223 William Street,
Melbourne and to be present in the County Court for the
duration of the appeal; and

OR

*appear at the County Court sitting at to prosecute
the appeal on a day to be fixed by the Registrar of the County
Court and to be present for the duration of the appeal; and

- (ii) to notify forthwith the Registrar of the County Court in writing of
any change of address from that appearing in the notice of appeal.

Dated:

Signature of Appellant

in the presence of

[Qualification of witness: see clause 2(2), Schedule 6, **Magistrates' Court Act 1989**]

* Delete if inapplicable.

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Rule 2.03

Form 2-2AA
inserted by
S.R. No.
217/1992
rule 12.

FORM 2-2AA

NOTICE OF APPEAL

[under section 84 of the **Magistrates' Court Act 1989**]

The name of the appellant is: The Director of Public Prosecutions.

The name and address of the respondent is:

1. To the Registrar of the Magistrates' Court at
2. To the Registrar of the County Court at
3. And to the abovenamed respondent

A. The proceeding(s) appealed from—

1. Venue of the Magistrates' Court appealed from:
2. Plea entered in the Magistrates' Court:
3. Date of conviction(s)/order(s):
4. Nature of offence(s)/proceeding(s):
5. Particulars of sentencing order(s):

B. The appeal is to be heard by the County Court *at _____ a.m. [*or*
p.m.] on _____ 19____, at _____, * [*or* at a time and place to
be fixed by the Registrar of the County Court].

C. General ground of appeal

- *1. that the Respondent is guilty.
- *2. that the punishment is inadequate.

D. 1. Appellant's address for service is:

2. Appellant's reference is:

E. The Appellant requests the Registrar of the County Court to list the
appeal.

Dated:

Signature of Appellant

* Delete if inapplicable.

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Form 2-2AB

Rule 2.03(3)

FORM 2-2AB

Form 2-2AB
inserted by
S.R. No.
42/1993
rule 12.

NOTICE OF APPEAL AND UNDERTAKING TO PROSECUTE

[under section 116 of the Children and Young Persons Act 1989]

The name of the appellant is:

The name and address of the respondent is:

1. To the Registrar of the Children's Court at
2. To the Registrar of the County Court at
3. And to the abovenamed respondent
 - A. The proceeding(s) appealed from—
 1. Venue of the Children's Court appealed from
 2. Date(s) of order(s) made in Children's Court
 3. Particulars of order(s) *[if space insufficient attach extra page(s)]*
 - B. The appeal is to be heard by the County Court *at a.m. [*or* p.m.] on 19 , at , [*or*] *at a time and place to be fixed by the Registrar of the County Court
 - C. General Grounds of Appeal
[insert particulars]
 - D.
 1. Appellant's personal address for service:
 2. Solicitor's name and address for service:
 - E. The appellant requests the Registrar of the County Court to list the appeal.

Dated:

Signature of *Appellant/*Solicitor for Appellant.

UNDERTAKING TO PROSECUTE

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

I, [name]

of [address]

UNDERTAKE TO

- (i) (a)* appear at the County Court to prosecute the appeal at a.m. [*or* p.m.] on 19 , at 223 William Street, Melbourne and to be present in the County Court for the duration of the appeal; and

OR

* appear at the County Court sitting at to prosecute the appeal on a day to be fixed by the Registrar of the County Court and to be present for the duration of the appeal; and

- (ii) to notify the Registrar of the County Court in writing of any change of address from that appearing in the notice of appeal.

Dated:

Signature of appellant

in the presence of

[*Qualification of witness: see clause 2(2), Schedule 6, Magistrates' Court Act 1989 as modified by section 116 of the Children and Young Persons Act 1989*]

*Delete if inapplicable.

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Form 2-2B

Rule 2.05

FORM 2-2B

NOTICE OF ABANDONMENT OF APPEAL

[When sentence of imprisonment or detention imposed]

In the County Court of Victoria at:

The name of the appellant is:

The name and address of the respondent is:

1. To the Registrar of the County Court at:
2. To the abovenamed respondent:

I wish to abandon my appeal against *conviction/*sentence/*order.

I give notice of the abandonment of the appeal, particulars of which are set out below:

1. Venue of Magistrates' Court at which conviction/sentence/order was imposed or made:
2. County Court appealed to:
3. Name of respondent:
4. Name of appellant:
5. Date of charge:
6. Nature of offence (state shortly):
7. Sentence or order of Magistrates' Court:

I acknowledge that the sentence or order appealed from shall now take effect.

[*and I surrender myself to the Registrar of the County Court at .]

Dated:

Signature of appellant

*Delete if inapplicable.

Form 2-2B
amended by
S.R. No.
106/1990
rule 9(f)(i)(ii),
substituted by
S.R. No.
191/1990
rule 7,
amended by
S.R. No.
217/1992
rule 13.

Rule 2.06

Form 2-2C
amended by
S.R. No.
106/1990
rule 9(g)(i)(ii),
substituted by
S.R. No.
191/1990
rule 7,
amended by
S.R. No.
217/1992
rule 14.

FORM 2-2C

NOTICE OF ABANDONMENT OF APPEAL

[Where sentencing order did not impose imprisonment or detention]

In the County Court of Victoria at:

The name of the appellant is:

The name and address of the respondent is:

1. To the Registrar of the County Court at:
2. To the abovenamed respondent:

I wish to abandon my appeal against *conviction/*sentence/*order.

I give notice of the abandonment of the appeal, particulars of which are set out below:

1. Venue of Magistrates' Court at which conviction/sentence/order was imposed or made:
2. County Court appealed to:
3. Name of respondent:
4. Name of appellant:
5. Date on charge sheet:
6. Nature of offence (state shortly):
7. Sentence or order of Magistrates' Court:

I acknowledge that the sentence or order appealed from shall now take effect.

Dated:

Signature of appellant

*Delete if inapplicable.

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Form 2-2CA

Rule 2.06

FORM 2-2CA

Form 2-2CA
inserted by
S.R. No.
42/1993
rule 13.

NOTICE OF ABANDONMENT OF APPEAL

[Where appeal is under section 116 of the Children and Young Persons Act 1989]

In the County Court

of Victoria

at

The name of the appellant is:

The name and address of the respondent(s) are:

I wish to abandon my appeal against the order(s) made by the Children's Court. I give notice of the abandonment of the appeal, particulars of which are set out below:

1. Venue of Children's Court at which order(s) were made:
2. Date of order(s)
3. Particulars of order(s) *[if space insufficient attach extra page(s)]*

I acknowledge that the order(s) appealed from shall now take effect.

Dated:

Signature of Appellant.

Rule 2.08

Form 2-2D
substituted by
S.R. No.
191/1990
rule 7,
amended by
S.R. No.
217/1992
rule 15.

FORM 2-2D

ORDER STRIKING OUT APPEAL

In the County Court
of Victoria
at

In the matter of the
Magistrates' Court Act 1989
and
In the matter of an appeal by
[*name of appellant*]

ORDER

Judge:

Date made:

The Appellant * failed to appear at the time listed for the hearing of the
appeal [or]

* abandoned the appeal in accordance with clause 6 of
Schedule 6 of the **Magistrates' Court Act 1989**.

The Court orders that the appeal be struck out.

Date:

Judge/Registrar

*Delete if inapplicable.

Rule 2.10

Form 2–2F
revoked by
S.R. No.
191/1990
rule 7, new
Form 2–2F
inserted by
S.R. No.
42/1993
rule 14.

FORM 2–2F

NOTICE TO CERTAIN OFFICIALS OF COUNTY COURT'S
APPEAL DECISION

To the Registrar of the County Court at

To the Registrar of the Children's Court at

Regarding an Appeal from order(s)—recorded at the Children's Court at
on 19 .

<i>Appellant</i>	<i>Respondent</i>
------------------	-------------------

The details are as follows:

<i>Registrar's Number</i>	<i>Order(s) Appealed Against</i>	<i>Result of Appeal</i>
---------------------------	--------------------------------------	-------------------------

Before His Honour Judge at on 19 . Associate
Registrar.

Forms 2–2G,
2–2H
revoked by
S.R. No.
191/1990
rule 7.

* * * *

FORM 2-4A

In the County Court 19 No.
of Victoria
at

A.B. Plaintiff
and
C.D. Defendant

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding YOU MUST GIVE NOTICE of your intention by first obtaining the leave of the Court to file an appearance and then filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Registrar's office in the County Court, William Street, Melbourne, or, where the writ has been filed in the office of another Registrar, in the office of that Registrar; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to obtain the leave of the Court to file an appearance within the proper time and to file an appearance within that time, the plaintiff may ENTER JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME FOR OBTAINING LEAVE TO FILE AN APPEARANCE AND FOR FILING AN APPEARANCE is as follows—

- (a) where you reside within 80 kilometres of the post office corner of Bourke and Elizabeth Streets, Melbourne, within 16 days after service;
- (b) where you reside beyond that distance, within 21 days after service.

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

If you pay the amount claimed, namely, \$ and \$ for legal costs to the plaintiff or his solicitor within the proper time stated above, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

APPLICATION FOR LEAVE TO DEFEND must be made within the proper time stated above to the Court. It is not necessary to give notice of the application to the plaintiff.

THE COURT MAY GIVE LEAVE TO DEFEND if you—

- (a) pay into the Court the amount claimed, namely, \$; or
- (b) file affidavits satisfactory to the Court which disclose—
 - (i) facts which disclose defence; or
 - (ii) such facts as would make it incumbent on the holder to prove consideration; or
 - (iii) such other facts as the Court considers sufficient to support the application.

FILED [e.g. 15 June 19].

Registrar

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

INDORSEMENT OF CLAIM

The plaintiff claims \$ principal and interest [*or* \$ balance of principal and interest] due to the plaintiff as the payee [*indorsee or bearer*] of a bill of exchange [*promissory note or order for the payment of money*] of which the following is a copy:

[*Here copy bill and all indorsements on it*]

Complete as follows:

1. Place of trial—
(If no place of trial is specified, trial will be at Melbourne.)
2. Mode of trial—
(If trial before a Judge and jury is not specified, trial will be before a Judge sitting alone.)
3. * This writ was filed—
 - (a) by the plaintiff in person;
 - (b) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*]

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Form 2-4A

(c) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*] as agent for [*name or firm of principal solicitor*], solicitor, of [*business address of principal*].

4. The address of the plaintiff is—

5. The address for service of the plaintiff is—

[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 4, but, where that address is outside Victoria, the plaintiff must state an address for service within Victoria.]

6. The address of the defendant is—

* [Complete or strike out as appropriate.]

*

*

*

*

*

Forms
2-6A-2-6C
revoked by
S.R. No.
146/1995
rule 7(c).

Rule 8.03

FORM 2-8A

NOTICE OF APPLICATION

In the County Court 19 No.

at

Between

A.B. Plaintiff
and
C.D. Defendant

The [*name of bank*] of [*address*] undertakes
to hold itself responsible for the payment into Court of \$ ordered to be
paid by the *plaintiff/*defendant in the above matter by order of His Honour
Judge [*or Master*] on [*date of order*].

The bank acknowledges that this undertaking can be amended or revoked
only with the leave of the Court or discharged by payment of the sum of
\$ into Court.

Dated this day of 19

[*Sealed by the bank*
or

* *Signed by an officer of the bank
authorised in writing.*]

* Delete whichever is inapplicable.

Rule 8.04(2)(b)

FORM 2-8B

NOTICE OF DISCHARGE AND PAYMENT INTO COURT

[heading as in Form 2-8A]

The *[name of bank]* of *[address]* which
guaranteed the payment of \$ into Court on behalf of the
*plaintiff/*defendant in the above matter hereby discharges the guarantee
and pays into Court the total sum of money so guaranteed.

Dated this day of 19

[Sealed by the bank

or

** Signed by an officer of the bank
authorised in writing.]*

* Delete whichever is inapplicable.

Rule 9.03(1)

Form 2-9A
amended by
S.R. No.
106/1990
rule 9(i),
substituted by
S.R. No.
286/1992
rule 6.

FORM 2-9A

IN THE COUNTY COURT
OF VICTORIA
AT

BETWEEN:

v.

**APPLICATION FOR *TIME TO PAY A FINE
*INSTALMENT ORDER
*VARIATION OF INSTALMENT
ORDER**

1. I (*Full name*) of (*address*)
(*occupation*) apply to the proper office of the Court at
for—

- *an order that time be allowed for payment of the fine
- *an order that the fine be paid by instalments
- *an order for the variation of the terms of an instalment order.

2. On I was ordered to pay a fine.

3. The Court ordered that I pay \$ in fines and costs.

4. I *was/*was not present when the order was made.

5. The Court ordered that the fines and costs be paid—

- *by / /19
- *by instalments of \$ to be paid on the day of each
- *week/*fortnight/*month
- *did not make any order about payment

6. I have made the following payments under the order—
(*here set out details of payments made*)

7. I now want to pay the money I owe by (*date*) /*by
instalments of \$ on the day of each *fortnight/*month
starting on (*date*).

8. At present I receive \$ each week after tax has been deducted

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Form 2-9A

9. My weekly expenses are \$

10. This leaves me with \$

Dated 19

.....
(Signature of Applicant)

* Delete if inapplicable

Rule 9.03(5)

Form 2-9B
substituted by
S.R. No.
286/1992
rule 6.

FORM 2-9B

IN THE COUNTY COURT
OF VICTORIA
AT
BETWEEN:

No:

v.

NOTICE OF HEARING OF APPLICATION

To the offender _____ of _____,
and to the Director of Public Prosecutions.

TAKE NOTICE that the offender has filed an application for—

- *Time to pay a fine
- *An Instalment Order
- *Variation of an Instalment Order

The application will be heard before the Proper Officer of the County Court
of Victoria at 223 William Street, Melbourne, on
_____ at _____ (a.m. *or* p.m.) or so soon afterwards
as the business of the Court allows.

Dated:

.....
Registrar

Rule 9.07(1)

FORM 2-9C

**NOTICE ABOUT THE PROCEDURE FOR
ENFORCEMENT OF FINES**

Form 2-9C
amended by
S.R. No.
131/1991
rule 11(a)(b),
substituted by
S.R. No.
286/1992
rule 6.

A warrant to arrest has been issued to the Sheriff for non-payment of the fine(s) imposed against you in the County Court. A summary of the fine(s) and the total amount still outstanding is attached.

You may obtain further details of the penalties from the Court. To do so, you must supply the Court reference which is also on the attached summary.

YOU HAVE 7 DAYS FROM THE DATE ON WHICH THIS DEMAND IS MADE IN WHICH TO PAY THE AMOUNT OUTSTANDING, OR TO OBTAIN AN INSTALMENT ORDER OR TIME TO PAY, OR TO CONSENT TO THE MAKING OF A COMMUNITY-BASED ORDER (*see below*). Payment must be made to the Registrar of the County Court where the penalty was imposed.

IF YOU CANNOT PAY

You may apply to the proper officer of the Court for an order that the fine be paid by instalments, or an order that you be allowed time to pay the fine.

If you do not pay the fine and do not make an application to the proper officer you may consent to the Court making a community-based order requiring you to perform unpaid community work instead of paying the fine. You may be required to perform one hour of unpaid work for each \$20 or part of \$20 of each fine outstanding. A minimum of 8 hours work under the direction of the Office of Corrections must be performed, irrespective of the amount outstanding, up to a maximum of 500 hours.

You can obtain a consent form from the County Court where the penalty was imposed.

IF YOU DO NOT PAY OR TAKE ANY ACTION

If you do not take any action, you will be arrested and brought before the Court. If the Court is satisfied that you have defaulted in payment for more than one month it may—

- * make a community-based order requiring you to perform unpaid community work under the direction of the Office of Corrections for one hour for each \$20 or part of \$20 then remaining unpaid with a minimum of 8 and a maximum of 500 hours. You may also be ordered to pay additional costs.

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

- * order that you be imprisoned for one day for each \$100 or part of \$100 then remaining unpaid with a maximum of 24 months, and may order you to pay additional costs.
 - * order that the amount of the fine then unpaid be levied under a warrant to seize property.
 - * vary any existing order for payment of the fine by instalments.
 - * adjourn the hearing or further hearing of the matter for up to 6 months on any terms that the Court thinks fit.
-

Rule 9.07(2)

FORM 2–9D

IN THE COUNTY COURT
OF VICTORIA
AT
BETWEEN

Form 2–9D
amended by
S.R. No.
106/1990
rule 8(a)(b),
substituted by
S.R. No.
286/1992
rule 6.

v.

CONSENT TO A COMMUNITY BASED ORDER

I consent to the making by the Court of a community-based order requiring me to perform unpaid community work as directed by a Regional Manager of the Office of Corrections, instead of paying a total penalty of \$.

**RATE OF CONVERSION OF AMOUNT(S) TO UNPAID
COMMUNITY WORK**

I understand that the amount(s) that I owe for each unpaid fine will be converted into hours of unpaid community work at the rate of 1 hour for each \$20 or part of \$20 which I owe, with a minimum of 8 hours and a maximum of 500 hours work to be performed by me.

Conditions of the order

I understand that the following conditions will apply to the order and I agree to comply with them:

During the period of the community-based order I must—

- * not commit another offence punishable by imprisonment
- * report to a Community Corrections Centre specified by the Court
- * report to, and receive visits from, a Community Corrections Officer
- * notify an officer at the specified Community Corrections Centre of any change of address or employment within 2 clear working days after the change
- * not leave Victoria except with the permission of an officer at the specified Community Corrections Centre
- * obey all lawful instructions and directions of Community Corrections Officers

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

-
- * perform unpaid community work as directed by the Regional Manager for a period determined by the Court.

Dated at _____, ____ / ____ /19 ____.

Witnessed by

(Signature of person in default)

(Print name)

TO THE PERSON IN DEFAULT

The Court will send you a notice of the making of a community-based order and its conditions.

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Form 2-9E

Rule 9.07(3)

FORM 2-9E

**COMMUNITY BASED ORDER IN DEFAULT OF PAYMENT
OF A FINE**

**Form 2-9E
substituted by
S.R. No.
286/1992
rule 6.**

To
of

Ref. No.

Date of Birth / / .

On / / , with your signed consent, this community-based order is made against you requiring you to perform unpaid community work in respect of the unpaid fine set out below which was imposed by the County Court at on / / .

UNPAID AMOUNTS

<i>Fine</i>	<i>Statutory Cost</i>	<i>Costs</i>	<i>Hours of work ordered</i>	<i>How hours to be served</i>
-------------	-----------------------	--------------	----------------------------------	-----------------------------------

Where the hours are stated as being served cumulatively, they are to be performed cumulatively, or in addition to any other community based order made in respect of unpaid fines. A minimum of 8 hours unpaid community work is required to be performed.

This order commences on / / and ends on / / .

You must attend [address of Community Corrections Centre] within 2 clear working days after / / .

The Magistrates' Court at will supervise this order.

The conditions of this order are that you must—

- * not commit another offence for which you could be imprisoned during the time that the order is in force;
- * report to the above Community Corrections Centre within 2 clear working days of the order starting;
- * report to, and receive visits from, a Community Corrections Officer;
- * notify an officer at the above Community Corrections Centre of any change of your address or employment within 2 clear working days after the change;
- * not leave Victoria without first obtaining permission to do so from an officer at the above Community Corrections Centre;

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

-
- * obey all lawful instructions and directions given to you by Community Corrections Officers;
 - * perform unpaid community work as directed by the Regional Manager of the Office of Corrections for the period determined by the Court.

This order was made on / /19 at .

Signature of Proper Officer

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Form 2-9F

Rule 9.07(4)

FORM 2-9F

Form 2-9F
substituted by
S.R. No.
286/1992
rule 6.

IN THE COUNTY COURT
OF VICTORIA
AT

Court Ref:

SUMMONS FOR FAILURE TO PAY A FINE

BETWEEN

v.

To:

1. On / /19 you were found guilty of an offence and the Court ordered you to pay the following amount(s):

<i>Act/Section</i>	<i>Fine</i>	<i>Statutory Costs</i>	<i>Cost/Other amount(s)</i>	<i>Paid</i>	<i>Unpaid</i>
	\$	\$	\$	\$	\$
TOTAL AMOUNT PAYABLE \$					

2. The Court records show that you have not paid the above amount and a warrant to seize your property to recover this amount has been returned unsatisfied.
3. YOU ARE DIRECTED TO APPEAR BEFORE THE COURT
AT AT AM/PM ON , 19
TO BE EXAMINED CONCERNING YOUR FAILURE TO PAY THE
ABOVE AMOUNT(S).

Issued at

Dated 19 .

Registrar

NOTES:

1. If you pay the above amount to the Registrar on or before the date for hearing of this summons, you will not be required to appear at Court. If you do not pay before the hearing of this summons, the Court may order you to pay additional costs.

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

2. Payments must be made personally or posted to the Registrar. You must quote the Court reference at the top of this summons.
 3. If you do not pay the amount due or appear at Court as directed by this summons, a warrant for your arrest may be issued.
-

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Form 2-9G

Rule 9.07(5)

FORM 2-9G

Form 2-9G
substituted by
S.R. No.
286/1992
rule 6.

IN THE COUNTY COURT
OF VICTORIA
AT

WARRANT TO ARREST FOR FAILURE TO PAY A FINE

BETWEEN

v.

Defendant

To the Sheriff and all members of the Police Force in the State of Victoria.

Whereas [*name of person in default*] of [*Address*] has failed to comply with the order of the County Court at [*place*] where he/she was fined the sum of [*amount*] for the offence of [*state offence*].

You are authorised to break, enter and search any place where the defendant is suspected to be and to arrest *him/her and cause the defendant when arrested—

(a) to be brought before the County Court as soon as practicable to be dealt with according to Law; or

(b) to be released on bail in accordance with the following provisions.

That the defendant be released upon his own undertaking in writing to appear at the County Court at on the at
[a.m./p.m.]

or

[*Here insert any other bail provisions*]

Date 19 .

Registrar

may be issued.

Rule 9.08

Form 2-9H
substituted by
S.R. No.
286/1992
rule 6.

FORM 2-9H

**NOTICE ABOUT THE PROCEDURE FOR ENFORCEMENT OF A
FINE (BODIES CORPORATE)**

A warrant to seize property owned by the company has been issued to satisfy the amount of a fine or instalment under an instalment order imposed on the company by the County Court, and all lawful costs of execution. The attached document sets out a summary of the details and the total amount outstanding. You may obtain further details of the penalty from the Court. To do so, you must supply the Court reference which is also on the attached summary.

THE COMPANY HAS 7 DAYS FROM THE DATE ON WHICH THIS DEMAND IS MADE TO PAY THE AMOUNT OUTSTANDING OR TO OBTAIN AN INSTALMENT ORDER OR TIME TO PAY ORDER [see below]. Payment must be made to the Registrar of the County Court.

If the Company cannot pay

It may apply to the proper officer of the Court for an order that the fine be paid by instalments or for an order that the company be allowed time to pay the fine.

If the Company does not pay or take any action

If the company does not pay or take any action, the Sheriff is required to seize and sell property belonging to the company to satisfy the amount outstanding.

Dated 19 .

Registrar

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Form 2-9J

Rule 9.11(2)

FORM 2-9J

No.

Form 2-9J
inserted by
S.R. No.
286/1992
rule 6.

IN THE COUNTY COURT
AT

THE QUEEN

v.

WARRANT OF COMMITMENT

To the Sheriff and to all members of the Police Force of the State of Victoria
and to the Officer in Charge of the prison at Pentridge or any other prison
more accessible or more convenient:

of

has failed for a period of one month to pay the/monetary penalty imposed on
him on 19 / instalment payable under the order made by
on 19 /and having been this day
ordered by this Court to be imprisoned for a term of .

You the Sheriff and members of the Police Force are authorised and required
to take and safely convey him to the above-mentioned prison or any other
prison which is more accessible or more convenient, and there deliver him to
the Officer in Charge together with this warrant.

And you the Officer in Charge are authorised and required to receive
into your
custody in such prison and there to imprison him for the term of

Dated 19 .

Registrar.

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Rule 10.03

Form 2-10A
amended by
S.R. No.
106/1990
rule 9(j).

FORM 2-10A

IN THE COUNTY COURT
OF VICTORIA
AT

19 No.

IN THE MATTER of the **Crimes**
(Confiscation of Profits) Act 1986

BETWEEN

A.B.	Applicant
and	
C.D.	Respondent

APPLICATION

TO:

TAKE NOTICE that [*name of applicant*] will apply to the Court at
the County Court, William Street, Melbourne, on [*e.g.* 20 June 19]
at a.m. for [*specify orders sought*].

DATED: [*e.g.* 15 June 19].

[*signed*]

Filed:

the applicant's address for service is

[Note: This Form is to include, in a Schedule if necessary, details of any
property in respect of which an order is sought.].

Rule 11.03, 11.06

FORM 2-11A

IN THE COUNTY COURT
OF VICTORIA
AT

The Queen

v.

[*name of accused*]

NOTICE THAT SOLICITOR ACTS

Date of committal for trial: [*if any*].

Committed for trial on [*charges on which accused person committed*].

Date of notice of trial: [*if any*].

Charges indicated by Notice of Trial:

TAKE NOTICE that the solicitor (or firm) indicated below acts for the accused [*name(s)*] in this matter.

Date: [*e.g.* 14 September 19].

[*Signed*]

Name of Solicitor (or firm):

Address of Solicitor (or firm):

Telephone number:

Name of person handling matter:

Present address of accused person:

NOTES:

- (1) This notice must be sent to the D.P.P. and to the Criminal Trial Listing Directorate as soon as possible after a solicitor commences to act for an accused person.
- (2) This notice must be filed with the Registrar after a copy of a presentments has been served.

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Rule 11.03, 11.06

Form 2–11B
amended by
S.R. No.
106/1990
rule 9(k).

FORM 2–11B

[heading as in Form 2–11A]

NOTICE THAT SOLICITOR HAS CEASED TO ACT

Date of committal for trial: *[if any]*.

Committed for trial on *[charges on which accused person committed]*.

Date of notice of trial: *[if any]*.

Charges indicated by Notice of Trial:

TAKE NOTICE that the solicitor (or firm) indicated below has ceased to act for the accused *[name(s)]* in this matter.

Filed: *[e.g. 14 September 19]*.

[Signed]

NOTES:

- (i) This notice must be served on—
 - the DPP, and
 - the CTLD, and
 - the former client—as soon as possible after a solicitor has ceased to act for an accused person.
- (ii) As soon as possible after ceasing to act for an accused person, the solicitor must return—
 - to the CTLD, the copy depositions,
 - to the DPP, all materials provided by the DPP—in relation to the matter.
- (iii) If a Notice under Rule 11.03(1) or 11.06(1) has been filed with the Registrar this notice must be filed with the Registrar as soon as possible after a solicitor ceases to act for an accused person.

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Form 2-11C

Rule 11.04

FORM 2-11C

NOTICE TO ACCUSED PERSON

The Director of Public Prosecutions has not received any notice that you have instructed a solicitor to act for you in relation to the charges set out in the copy presentment which accompanies this notice.

You should take this notice and the presentment to your solicitor or to Victoria Legal Aid *without delay*.

If you wish to be legally aided in this matter, your solicitor or Victoria Legal Aid will be able to assist in your application for legal aid.

You will soon receive notification from the Criminal Trial Listing Directorate of a date on which this matter will be listed for hearing. You should note that the Court can commence the hearing on this date whether or not you believe you are ready to proceed. An adjournment or other delay in commencing the hearing will not necessarily be permitted to allow you time to obtain legal representation.

[If the accused person is to be presented on a charge of rape the following paragraph must also be included in the notice.]

As you are charged with an offence of rape your trial must be commenced within 3 months (subject to any extension of time granted by the Supreme Court) of *[insert date of committal or Notice of Trial]*. To ensure that the person who will represent you at your trial has an adequate time to prepare your defence, you should contact a solicitor or Victoria Legal Aid *at the earliest opportunity*.

Form 2-11C
amended by
S.R. Nos
106/1990
rule 9(I),
165/1996
rule 15.

Rule 11.05

FORM 2-11D

[heading as in Form 2-11A]

NOTICE OF READINESS FOR TRIAL

To: Criminal Trial Listing Directorate

D.P.P. File No.:

Charges:

*Accused: [names and
addresses]*

*Surety(ies): [names and
addresses]*

Presentment filed on: [date]

Preparation officer:

Telephone No.:

Co-ordinator:

Telephone No.:

Team Leader:

Telephone No.:

Practitioners for accused person(s)

Accused Solicitor (or firm) Barrister (if known)
[names of solicitor and counsel]

Witnesses: Civilians: Police: Interpreter:

Availability: [set out details of witnesses' availability]

Listing comments:

[Indicate whether the DPP understands that the matter will be a trial or a plea]

Co-accused previously dealt with by: Judge [name] on [date].

Time limits:

Trial to commence by: [date]

Estimated duration of Crown case:

Re-committal: [date]

*Re-trial: A previous trial of this matter before Judge [name] concluded on [date]. (*Mistrial/*Disagreement/*Conviction set aside)*

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Form 2-11D

[*Signed*] Solicitor to the Director of Public Prosecutions

* Delete if not applicable.

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Rule 11.08

FORM 2-11E

[heading as in Form 2-11A]

QUESTIONNAIRE

To [solicitor for accused person]

The trial of [name of accused person] is now—

- * [if a bail case] ready to be listed;
- * [if a rape case] required to be commenced by [insert date];
- * [if a remand case] proposed to be listed not later than [date];
- * proposed to be listed for hearing [insert date].

Under Rule 11.08 of Chapter II of the County Court Rules YOU ARE REQUIRED WITHIN 14 DAYS to answer the following questions and to return the answers to the Criminal Trial Listing Directorate.

1. Is your firm acting for [name of accused person]? YES/NO
2. Have you (or your firm) made arrangements satisfactory to you (or your firm) for payment of legal costs in relation to this matter? YES/NO
3. Will your firm represent [accused person] on the trial? YES/NO
4. If NO to question 1:
 - (a) Do you understand that [accused person] has other legal representation? YES/NO
If YES, please state the name and address of that other practitioner (if known);
 - (b) When did your firm cease to act for [accused person]?
5. If NO to question 2:
 - (a) Has application been made by your firm or by [names of any other persons] for legal assistance on behalf of [accused person]? YES/NO
If YES, give the date of such application (if known);
 - (b) If NO to (a), has [accused person] been advised by your firm to apply for legal assistance? YES/NO

Director,
Criminal Trial Listing Directorate

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Form 2–11F

Rule 11.11(2)(a)

FORM 2–11F

[heading as in Form 2–11A]

APPLICATION FOR PRE-TRIAL HEARING

1. This application is made by—
 - * The Director of Public Prosecutions
 - * The Criminal Trial Listing Directorate
 - * The accused person [*name*]
 2. The applicant applies for a pre-trial hearing in this matter.
 3. The ground(s) on which this application is made **is/*are* [*set out grounds*].
 4. The applicant seeks [*set out details of directions or orders sought*].
- Date: [*e.g.* 14 September, 19].

*[signed by applicant or
solicitor for applicant]*

NOTICE OF PRE-TRIAL HEARING

TAKE NOTICE that a pre-trial hearing in the above matter will be held at the County Court at on
at o'clock.

Date: [*e.g.* 14 September, 19].

Registrar

To: [*names of parties to be served*]

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Rule 11A.03

Form 2-11AA
inserted by
S.R. No.
129/1997
rule 6.

FORM 2-11AA

**NOTICE OF APPLICATION UNDER SECTION 42L OF THE
EVIDENCE ACT 1958**

In the County Court
at

The Queen

v.

[*name of accused*]

PARTICULARS OF APPLICATION

TAKE NOTICE that the applicant,[*name of applicant*], intends to apply to the Court for a direction that the accused appear, or be brought, physically before it.

Type of hearing—[*insert details*].

Date of hearing—[*insert details*]

The grounds on which this application is made are—[*set out grounds*]

Date—

[*Signature*]

County Court Miscellaneous Rules 1989
S.R. No. 181/1989

Form 2-11AB

Rules 11A.04, 11A.05 and 11A.06

FORM 2-11AB

**NOTICE OF APPLICATION UNDER SECTION 42M, 42N or 42P OF
THE EVIDENCE ACT 1958**

**Form 2-11AB
inserted by
S.R. No.
129/1997
rule 6.**

In the County Court
at

The Queen

v.

[*name of accused*]

PART 1—PARTICULARS OF APPLICATION

TAKE NOTICE that the applicant, [*name of applicant*], intends to apply to the Court for a direction that the accused appear before it by audio visual link.

1. Type of hearing—[*insert details*].
2. Date of hearing—[*insert details*].
3. The grounds on which this application is made are—[*set out grounds*]
4. Is this application being made with the consent of the parties to the proceeding?—
5. If the answer to question 4 is No, what parties have not given consent?—

6. If the accused is in custody, do facilities exist for an audio visual link?—

Date—

[*Signature*]

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

PART 2—PARTICULARS OF HEARING

(to be completed by the Registrar)

The application will be heard before the Judge in the Court, County Court, William Street, Melbourne, on [*e.g.* 20 June, 19] at a.m. [*or* p.m.] or so soon afterwards as the business of the Court allows.

FILED [*e.g.* 15 June, 19].

**Form 2-12B
amended by
S.R. No.
106/1990
rule 9(m).**

[Heading as in Form 2-12A]

I hereby certify that the said *A.B.*, has paid into my hands the sum of \$ _____ in satisfaction of the sums mentioned in the Order for Commitment made herein on the _____ day of _____, 19____.

Dated this day of , 19 .

* * * * *

Rule 16.02

FORM 2-16A

NOTICE OF APPLICATION BY A CHILD'S PARENT FOR
APPROVAL OF A PROPOSED CHANGE OF NAME OF A
CHILD

New
Form 2-16A
inserted by
S.R. No.
37/1998
rule 5.

(Section 26(4) of the Births, Deaths and Marriages Registration
Act 1996)

In the County Court
at

A.B. Applicant
and
C.D. Respondent

PART 1—PARTICULARS OF APPLICATION

To the Respondent—

1. TAKE NOTICE that the applicant, a parent of *[set out full name[s] of child/children whose name[s] is/are sought to be changed]* intends to apply to the Court for approval for the name[s] of—
[insert name[s] of child/children]
to be changed to—
[insert proposed name[s] for child/children].
2. The Respondent is the other parent of the child/children referred to in paragraph 1.
[If approval is sought for changing the name of more than one child and the Respondent is not the other parent of that child, a separate application must be made]

Date—

[Signature]

PART 2—PARTICULARS OF HEARING

(to be completed by the Registrar)

The application will be heard before the Judge/Master in the Court,
County Court, William Street, Melbourne, on *[e.g. 20 June, 19]* at a.m.
[or p.m.] or so soon afterwards as the business of the Court allows.

FILED *[e.g. 15 June, 19]*.

Rule 16.02

New
Form 2-16B
inserted by
S.R. No.
37/1998
rule 5.

FORM 2-16B

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR
APPROVAL OF A PROPOSED CHANGE OF NAME OF A
CHILD**

[heading as in application]

1. I, [name of applicant], c/o the Registrar, County Court at [or
insert address of applicant], [occupation], am a parent of [insert full
name[s] of child/children whose name[s] *is/*are sought to be
changed].
2. The date of birth of [name of child] is—
[Insert extra name[s] and dates[s] of birth if application is for more
than one child and the Respondent is the other parent of the other
child/children]
3. The other parent of the *child/*children is the Respondent in these
proceedings whose full name and address is—
[Insert details]
- *4. That I was married to the Respondent at [insert date].
or
- *4. That I had a de facto relationship with the Respondent from [insert
date].
5. That I last resided with the Respondent on [insert date].
6. [If applicable] That I was divorced from the Respondent in the Family
Court of Australia at [insert date].
7. I *have made/*can make the following attempts to contact the
Respondent about this application—
[Insert details]
8. The Respondent last *had/*sought personal contact with the
*child/*children on—
[Insert details]
9. The Respondent last contributed to the financial support of the
*child/*children on [insert date].

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Form 2-16B

*10. The following order was made by the _____ Court at _____ on
[insert date] with respect to the *residence of and parental contact with/
*custody of and access to the *child/*children—

or

*10 No Court orders have been made with respect to the residence of and
parental contact with/*custody of and access to the *child/*children.

11. I believe that it is in the best interests of the *child/*children that the
name[s] of the *child/*children be changed for the following reasons—

[Set out reasons]

*delete if inapplicable

Sworn etc.

Rule 16.03

Form 2-16C
inserted by
S.R. No.
37/1998
rule 5.

FORM 2-16C

**ORDER APPROVING A PROPOSED CHANGE OF NAME
FOR A CHILD**

JUDGE [*or* MASTER]:

DATE MADE:

HOW OBTAINED:

Application dated _____, 19____ supported by affidavit sworn _____ 19____.

ORDER:

The Court being satisfied that the proposed change of name is in the child's best interests APPROVES of the proposal of the applicant that the name of [*full name of child*] who was born on [*insert date*] be changed to [*insert proposed name*].

[*If order is for approval for changing the names of more than one child, a separate order is required for each child*].

FORM 2-16D

Form 2-16D
inserted by
S.R. No.
37/1998
rule 5.

(Section of the **Births, Deaths and Marriages Registration Act 1996**)
In the County Court
at

A.B. Applicant

*and

*C.D.

*Respondent

PART 1—PARTICULARS OF APPLICATION

*To the Respondent—

TAKE NOTICE that the applicant intends to apply to the Court for the following orders under the above Act—

[set out orders sought]

PART 2—PARTICULARS OF HEARING

(to be completed by the Registrar)

The application will be heard before the Judge/Master in the Court,
County Court, William Street, Melbourne, on [e.g. 20 June, 19] at a.m.
[or p.m.] or so soon afterwards as the business of the Court allows.

FILED [e.g. 15 June, 19__].

*delete where no respondent".

And we do hereby certify the same under our hands.

Dated: 23 June 1989

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

G. R. D. WALDRON, <i>CJ</i>	F. WALSH
G. JUST	C. VILLENEUVE-SMITH
J. R. O'SHEA	G. FRICKE
J. G. GORMAN	J. T. HASSETT
G. M. BYRNE	L. R. HART
G. H. SPENCE	G. R. G. CROSSLEY
S. G. HOGG	T. A. NEESHAM
M. RAVECH	J. R. HANLON
J. HOWSE	M. C. KIMM
J. L. READ	T. H. SMITH
F. G. DYETT	F. B. LEWIS
P. R. MULLALY	C. KEON-COHEN
A. E. DIXON	M. J. STRONG
W. M. R. KELLY	L. C. ROSS

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Notes

NOTES

1. General Information

The County Court Miscellaneous Rules 1989, S.R. No. 181/1989 were made on 23 June 1989 by a majority of the Judges of the County Court under section 78 of the **County Court Act 1958**, No. 6230/1958 and came into operation on 1 August 1989: rule 1.02(1).

The County Court Miscellaneous Rules 1989 will sunset 10 years after the day of making on 23 June 1999 (see section 5 of the **Subordinate Legislation Act 1994**).

*County Court Miscellaneous Rules 1989**S.R. No. 181/1989*

2. Table of Amendments

This version incorporates amendments made to the County Court Miscellaneous Rules 1989 by statutory rules, subordinate instruments and Acts.

County Court (Chapter II Amendment No. 1) Rules 1990, S.R. No. 106/1990

Date of Making: 22.5.90

Date of Commencement: 22.5.90

County Court (Chapter II Amendment No. 2) Rules 1990, S.R. No. 191/1990

Date of Making: 27.6.90

Date of Commencement: 1.9.90: reg. 2

County Court (Chapter II Amendment No. 3) Rules 1991, S.R. No. 69/1991

Date of Making: 25.3.91

Date of Commencement: 4.4.91: reg. 2

County Court (Chapter II Amendment No. 4) Rules 1991, S.R. No. 131/1991

Date of Making: 20.6.91

Date of Commencement: 20.6.91

County Court (Chapter II Amendment No. 5) Rules 1992, S.R. No. 217/1992

Date of Making: 25.6.92

Date of Commencement: 1.8.92: reg. 2

County Court (Chapter II Amendment No. 6) Rules 1992, S.R. No. 286/1992

Date of Making: 30.9.92

Date of Commencement: 30.9.92

County Court (Chapter II Amendment No. 7) Rules 1993, S.R. No. 42/1993

Date of Making: 4.3.93

Date of Commencement: 5.4.93: reg. 2

County Court (Chapter II Amendment No. 8) Rules 1993, S.R. No. 82/1993

Date of Making: 24.5.93

Date of Commencement: 24.5.93

County Court (Chapter II Amendment No. 9) Rules 1994, S.R. No. 145/1994

Date of Making: 20.9.94

Date of Commencement: 20.9.94

County Court (Chapter I Amendment No. 24) Rules 1995, S.R. No. 146/1995

Date of Making: 10.11.95

Date of Commencement: 1.1.96: reg. 3

County Court (Chapter I Amendment No. 28) Rules 1996, S.R. No. 165/1996

Date of Making: 16.12.96

Date of Commencement: 1.1.97: reg. 3

County Court (Chapter II Amendment No. 10) Rules 1997, S.R. No. 129/1997

County Court Miscellaneous Rules 1989

S.R. No. 181/1989

Date of Making: 20.11.97
Date of Commencement: 22.12.97; reg. 3

County Court (Chapter II Amendment No. 11) Rules 1998, S.R. No. 37/1998

Date of Making: 31.3.98
Date of Commencement: 31.3.98

3. Explanatory Details

No entries at date of publication