

## Chapter 1A      **General rules of procedure in criminal proceedings**

### Order 81A      **General**

#### Part 1              **Preliminary**

##### 81A.01      **Interpretation**

(1) In this Chapter, unless the contrary intention appears –

***accused*** means a person –

- (a) who has been committed or remanded to the Court for trial or sentence or directed to be tried at the Court; or
- (b) in respect of whom an indictment has been presented.

***appeal period*** means the time for giving notice of appeal or notice of application for leave to appeal under section 417 of the Criminal Code and, if the time has been extended by the Court, includes that extension.

***court of trial*** has the same meaning as in section 406(1) of the Criminal Code.

***criminal registrar*** means the Sheriff and includes –

- (a) the Master and the Registrar; and
- (b) any other officer of the Court who has been assigned the duties of a criminal registrar by the Chief Justice.

***Director*** means –

- (a) the Director of Public Prosecutions for the Northern Territory within the meaning of the *Director of Public Prosecutions Act*, or
- (b) the Director of Public Prosecutions for the Commonwealth within the meaning of the *Director of Public Prosecutions Act 1983* of the Commonwealth,

as the case requires.

***legal aid agency*** means an organisation, whether established by or under an Act or otherwise, the primary function of which is to provide legal assistance to persons free of charge, whether or not those persons actually make a payment in respect of that assistance.

**prison** has the same meaning as in section 5 of the *Prisons (Correctional Services) Act*.

**proper officer** means –

- (a) in relation to a provision of an Act specified in subrule (2) – a person specified as the proper officer for the purposes of that provision; or
- (b) in any other case – an officer of the Court who is authorised to –
  - (i) receive documents on behalf of the Court; or
  - (ii) do an act or thing for or on behalf of the Court, the doing of which is required for the purposes of or is referred to in this Chapter.

**trial** includes a plea hearing.

- (2) The proper officer of the Court for the purposes of –
  - (a) sections 11(4)(b), 13(4)(b), 21, 25 and 96 of the *Sentencing Act* – is the Master, the Registrar or the Sheriff;
  - (b) section 43(8) of the *Sentencing Act* – is the associate to the Judge who made the order or the Sheriff;
  - (c) section 99(4) of the *Sentencing Act* – is the associate to the Judge who made the order;
  - (d) section 99(6)(a) and (b) and (7) of the *Sentencing Act* – is the Registrar or the Sheriff; and
  - (e) section 139 of the *Justices Act* – is the Registrar and any person employed in the Registry of the Court.

#### **81A.02 Application**

This Chapter applies to a proceeding in the Court relating to its criminal jurisdiction.

#### **81A.03 Dispensing with compliance**

The Court may dispense with compliance with a requirement of this Chapter, either before or after the occasion for compliance arises.

#### **81A.04 Time**

Rules 3.01, 3.02 and 3.03, with the necessary changes, apply for the purposes of this Chapter.

### **81A.05 Private practitioner acting for accused to notify Court**

- (1) Subject to subrule (2), a legal practitioner who is engaged to act for an accused in a proceeding must notify the Court as soon as reasonably practicable after beginning to act for the accused.
- (2) Subrule (1) does not apply –
  - (a) to a person who practises solely as a barrister; or
  - (b) to a legal practitioner who is an employee of a legal aid agency and who is acting on behalf of the accused.

## **Part 2 Filing, sealing and inspection of court documents**

### **81A.06 How document is filed**

A document in a proceeding is to be filed –

- (a) in the Registry where the proceeding commenced; or
- (b) with the proper officer of the Court.

### **81A.07 Place of filing**

- (1) Documents in respect of a proceeding in Darwin are to be presented in the Registry at Darwin for filing.
- (2) Documents in respect of a proceeding in Alice Springs are to be presented in the Registry at Alice Springs for filing.
- (3) A document received in a registry for filing is not filed until it is accepted by the proper officer.
- (4) Despite subrules (1) and (2), if an urgent application is made in a proceeding, a document may be filed in connection with that application at the Registry at the place where the application is made.

### **81A.08 Date of filing**

The Registrar or proper officer must endorse the date and time of filing on every document filed.

### **81A.09 Inspection of documents**

- (1) When the Registry of the Court is open, a person may inspect and obtain a copy of a document filed in a proceeding that is part of the record of proceedings of a trial within the meaning of rule 81A.39.

- (2) Despite subrule (1) –
  - (a) a person may not inspect or obtain a copy of a document that the Court has ordered remain confidential; and
  - (b) a person who is not a party may not without leave of the Court inspect or obtain a copy of a document that in the opinion of a Registrar ought to remain confidential to the parties.

#### **81A.10 Service**

Subject to this Chapter, if a document referred to in this Chapter is required to be served, service of the document is to be effected by –

- (a) subject to paragraph (c), if the provision requiring service of the document specifies a person on whom the document is to be served – serving personally in accordance with rule 6.03(1) on the person a signed and sealed copy of the document;
- (b) subject to paragraph (c), if the provision requiring service of the document does not specify a person on whom the document is to be served – by serving personally in accordance with rule 6.03(1) on each person who is affected by the application to which the document relates and is entitled to be heard a signed and sealed copy of the document;
- (c) if the person being served is in prison – by serving personally on the person's legal representative or on a prison officer at the prison a signed and sealed copy of the document; or
- (d) if the Court orders otherwise – in the manner specified by the Court.

### **Part 3 Applications to Court**

#### **81A.11 Applications generally**

- (1) Unless otherwise provided for in this Chapter, an application to the Court may be made orally.
- (2) If a written application is required by this rule or this Chapter to be served –
  - (a) the form of the application is to be in accordance with Form 81A-A unless otherwise provided for in these Rules; and
  - (b) the application is to be served, sealed and filed, together with any supporting affidavit, not later than 2 days before the hearing of the application.

- (3) If a written application is required by this rule or this Chapter but is not required to be served, the application is to be in accordance with Form 81A-B unless otherwise provided for in these Rules.
- (4) A written application to the Court is required –
  - (a) for a review of a community work order under section 38 of the *Sentencing Act*;
  - (b) to vary or cancel an order conditionally suspending a sentence under section 42 of the *Sentencing Act*;
  - (c) for an order relating to a breach of an order suspending a sentence under section 43 of the *Sentencing Act*;
  - (d) for a review of a home detention order under section 47 of the *Sentencing Act*;
  - (e) for a review of an indefinite sentence under section 72 or 73 of the *Sentencing Act*;
  - (f) to vary or cancel a hospital order under section 85 of the *Sentencing Act* or to discharge a hospital order and impose another sentence under section 20BU of the *Crimes Act 1914* of the Commonwealth;
  - (g) for an order relating to a breach of a hospital order under section 86 of the *Sentencing Act*;
  - (h) to discharge or vary the terms of a recognisance under section 20AA of the *Crimes Act 1914* of the Commonwealth or to release a person from custody under section 20BC(7) of that Act;
  - (j) to reopen proceedings under section 112(3)(b) of the *Sentencing Act*;
  - (k) for an order under an Act where the application is to be in writing but the form is not prescribed;
  - (m) in any case where the Chief Justice directs by practice direction; or
  - (n) in any other case where the Court directs.

## **Part 4                      Pre-trial procedure**

### **81A.14    Arraignments**

- (1) Except in special circumstances, the Director must present an indictment to the Court in respect of an accused on the first occasion on which the accused is required to appear in court.

- (2) If suitable arrangements for a video-conferencing link between the Court and a prison can be made, an accused who is on remand at the prison may be present by means of that link at an arraignment day after he or she is committed for sentence or trial.
- (3) Despite subrule (2), if an accused is on remand, the accused, his or her legal representative or the Director may request that the accused attend arraignment day in person and the Court may order that the accused so attend.
- (4) An accused who is present at arraignment day by means of a video-conferencing link is not to be required to plead.
- (5) If a matter before the Court on an arraignment day has been allocated a date for trial or hearing of submissions on a point of law or evidence, the Court may confirm, change or vacate that date.
- (6) In addition to any other powers that the Court has in relation to a matter on an arraignment day, the Court has the powers and functions of a Judge at a pre-trial hearing.

#### **81A.15 Fixing time for pre-trial conference**

As soon as practicable after becoming aware that an accused has been committed for trial or sentence or an ex officio indictment has been laid, a criminal registrar must –

- (a) file the notice of committal for trial or sentence or notice of the ex officio indictment, as the case may be;
- (b) fix a time and date for a pre-trial conference; and
- (c) not less than 14 days before the date fixed for the conference, notify –
  - (i) the Director; and
  - (ii) the accused's legal representative or, if the accused is unrepresented, the accused,of the time and date of the conference.

#### **81A.16 Pre-trial conference**

- (1) A pre-trial conference –
  - (a) is to be conducted by a criminal registrar;
  - (b) is to be attended by –
    - (i) the Director; and

- (ii) the accused's legal representative or, if the accused is unrepresented, the accused; and
  - (c) may be conducted by teleconference or video-conference.
- (2) At a pre-trial conference –
  - (a) for the expeditious conduct of the proceedings, the criminal registrar may enquire into a matter specified in Schedule 2;
  - (b) the Director and the accused person or his or her legal representative are to be prepared to answer questions and provide information to the criminal registrar on the matters specified in Schedule 2; and
  - (c) the Director must, subject to subrule (3) –
    - (i) give notice of the name of each person who may be called as a witness for the prosecution at the trial and whose statement has not been provided to the accused or who was not called to give evidence at the committal hearing;
    - (ii) give notice of the substance of the evidence proposed to be adduced from each person referred to in subparagraph (i), either by providing a copy of a statement made by the witness or otherwise;
    - (iii) if the Director has not already done so – comply with sections 116(2) and 139 of the *Justices Act*;
    - (iv) provide to the criminal registrar the information the criminal registrar reasonably requires in relation to the availability of each witness for the prosecution; and
    - (v) notify the criminal registrar and the accused person's legal representative or, if the accused is unrepresented, the accused, of the name of a potential witness for the prosecution whose deposition the prosecution proposes to apply to tender in evidence and the grounds of the proposed application.
- (3) The Director does not have to comply with subrule (2)(c)(i) or (2)(c)(v) in respect of a witness if he or she is satisfied that it is not in the interests of the witness's personal safety to comply with that subrule.
- (4) Anything said at a pre-trial conference by or on behalf of the prosecution or an accused, or a failure by the prosecution or an accused or his or her legal representative to answer a question at a pre-trial conference, is not to be used in the trial or made the subject of comment at the trial.

- (5) Subrule (4) does not preclude an accused from relying at the trial on an indication of an intention to plead guilty given at a pre-trial conference.

**81A.17 Powers of criminal registrar at pre-trial conference**

- (1) At a pre-trial conference the criminal registrar may –
- (a) subject to subrule (2), allocate a trial date to a matter, either as a head trial or as a back-up trial, which date may be confirmed by a Judge at the next arraignment day or at some other date;
  - (b) fix a time and date for the hearing of a plea or for a mention before a Judge;
  - (c) adjourn the pre-trial conference for further hearing by the criminal registrar;
  - (d) allocate a hearing date to a matter for a hearing before the jury is empanelled on a point of law or admissibility of evidence, which date is to be confirmed by a Judge at the next arraignment day or at some other date; or
  - (e) adjourn the pre-trial conference for a pre-trial hearing by a Judge.
- (2) A criminal registrar may allocate a date under subrule (1)(a), (b) or (d) even if the accused or his or her legal representative does not certify that the accused will be ready to proceed on the matter on that date.
- (3) If, at a pre-trial conference, the criminal registrar is of the opinion that –
- (a) the trial of the matter is likely to exceed the length of a criminal sitting;
  - (b) additional time, other than that presently allocated for the trial of criminal matters, will be needed for the trial of the matter;
  - (c) the trial of the matter is urgent;
  - (d) the accused is not legally represented and intends to conduct his or her own defence at the trial; or
  - (e) there is any other reason for doing so,
- the criminal registrar must adjourn the pre-trial conference for a pre-trial hearing.
- (4) If the criminal registrar determines that a pre-trial hearing is to be



held, he or she must allocate a date for the hearing, which date is to be confirmed by a Judge.

- (5) At a pre-trial conference, the criminal registrar may, with the consent of the Director and the accused, make an order for the inspection or copying of documents in the custody of the prosecution or in the custody of the Court.

#### **81A.18 Pre-trial hearing**

- (1) A pre-trial hearing –
  - (a) is to be conducted by a Judge in open court;
  - (b) is to be attended by –
    - (i) the Director; and
    - (ii) the accused's legal representative or, if the accused is unrepresented or if the Court determines, the accused; and
  - (c) may be conducted by teleconference or video-conference.
- (2) At a pre-trial hearing, the Court may –
  - (a) ask any questions it considers necessary;
  - (b) give directions it thinks fit with respect to the preparation for trial, readiness for trial or conduct of the trial; and
  - (c) make any order, whether by consent or otherwise, for the expeditious conduct of the trial.
- (3) Anything at a pre-trial hearing said by or on behalf of the prosecution or an accused, or a failure by the prosecution or an accused or his or her legal representative to answer a question at a pre-trial hearing, is not to be used in the subsequent trial or made the subject of comment at the trial.
- (4) Subrule (3) does not preclude an accused from relying at the trial on an indication of an intention to plead guilty given at a pre-trial hearing.

#### **81A.19 Tendering documents at pre-trial conference or pre-trial hearing**

- (1) If –
  - (a) a party intends to tender a document at a trial; and
  - (b) the criminal registrar conducting the pre-trial conference or the

Judge conducting the pre-trial hearing, as the case may be, is satisfied that it is appropriate in the circumstances,

the party may produce the document at the pre-trial conference or pre-trial hearing to be marked as a preliminary exhibit.

- (2) A party producing a preliminary exhibit must ensure that a copy of the exhibit is served upon each party before or at the time it is tendered at the pre-trial conference or pre-trial hearing.
- (3) A preliminary exhibit –
  - (a) is to be placed in the custody of the Court with a number of copies of the exhibit sufficient for the use of the trial Judge and the jury;
  - (b) is to be marked as a preliminary exhibit by the criminal registrar or Judge's associate, as the case may be; and
  - (c) is not to be taken to be evidence until admitted into evidence at the trial.

## **Part 5 Prisoners at risk**

### **81A.20 Definition**

In this Part, ***at risk*** includes at risk of suicide or any other significant risk to physical or mental health.

### **81A.21 Duty to disclose risk**

If –

- (a) there is information available to a prosecutor that the accused may be at risk if remanded into custody or committed to a prison; or
- (b) the accused's legal representative forms the opinion that the accused may be at risk if remanded into custody or committed to a prison,

the prosecutor or legal representative must disclose the information or opinion to the Court as soon as possible.

### **81A.22 Court may order disclosure to Sheriff and officer in charge of prison**

If –

- (a) information or an opinion has been disclosed to the Court under rule 81A.21; or

- (b) there is material before the Court upon which the Court may conclude that the accused may be at risk if remanded into custody or committed to a prison,

and the accused is to be remanded or committed, the Court may order that the information, opinion or material disclosed be brought to the attention of the Sheriff and the officer in charge of the prison to which the accused is to be remanded or committed.

**81A.23 Sheriff to be informed of and explain order**

- (1) If an order has been made under rule 81A.22, the Court must as soon as possible inform the Sheriff of the making of the order.
- (2) After receiving notice of the making of an order under subrule (1), the Sheriff must –
  - (a) write out the order and deliver it to the Judge for signature;
  - (b) attach to a sealed copy of the order the relevant transcript of the proceedings and any other document the Court ordered to be attached to the order;
  - (c) forward a sealed copy of the order, whether by facsimile or otherwise, to the officer in charge of the prison, together with the attachments referred to in paragraph (b);
  - (d) ensure that the terms of the order are explained to each Deputy Sheriff, and to each prison officer, into whose custody the prisoner is to be delivered;
  - (e) forward a sealed copy of the order, together with the attachments referred to in paragraph (b), to each prison officer into whose custody the prisoner is to be delivered; and
  - (f) ensure that the prisoner is not left unsupervised while in the custody of the Court.

**81A.24 "At risk" to be written on warrants**

If an order is made in accordance with rule 81A.22, a warrant relating to the custody of the person who is or is to become a prisoner is to be stamped with the words "AT RISK" in large letters.

**Part 6 Evidence generally**

**81A.25 Subpoenas**

Order 42 applies to a proceeding to which this Chapter applies.

## 81A.26 Evidence by video-conferencing

- (1) Evidence may be given by way of a video-conferencing link –
  - (a) on the hearing of a guilty plea;
  - (b) on the hearing of an application in pursuance of section 26L of the *Evidence Act*, or
  - (c) at the trial of an accused.
- (2) A submission in relation to evidence given by way of a video-conferencing link –
  - (a) on the hearing of a guilty plea; or
  - (b) on the hearing of an application in pursuance of section 26L of the *Evidence Act*,may be heard by way of a video-conferencing link.
- (3) If the Director or the accused intends to adduce evidence by means of a video-conferencing link, he or she must, not later than 4 weeks before the date fixed for the hearing or trial of the accused –
  - (a) give notice to the other party or the other party's legal representative of his or her intention;
  - (b) file a copy of the notice; and
  - (c) deliver a copy of the notice to the trial Judge's associate or to the criminal registrar.
- (4) A notice under subrule (3) is to specify –
  - (a) the name of each witness who is to be called;
  - (b) the proposed time of the video-conference; and
  - (c) the anticipated duration of the witness's evidence-in-chief.
- (5) A party to whom a notice under subrule (3) has been given may, not later than 7 days after receiving the notice, object to the proposal contained in the notice, by filing in the Registry an objection in writing.
- (6) The objection is to be served on the other party not later than 14 days before the trial or hearing at which the evidence is proposed to be adduced.
- (7) An objection is to be dealt with by the trial Judge.
- (8) The party proposing to adduce evidence by means of a video-

conferencing link must arrange and pay for the booking of all necessary facilities and other associated costs and expenses.

- (9) If an objection has not been filed within the period referred to in subrule (5), the proposal to adduce evidence by means of a video-conferencing link is to be taken to have been consented to by both parties.
- (10) If it is proposed to show to the witness whose evidence is being given by way of a video-conferencing link a document in the course of the examination-in-chief or cross-examination, the party proposing to show the document must provide a copy of the document to the trial Judge's associate in sufficient time to enable the document to be transmitted or sent to the place where the witness will be giving his or her evidence.
- (11) A document transmitted or sent in accordance with subrule (10) is to be kept in a sealed envelope and not shown to the witness or any other person until counsel for the party proposing to show the document requires the witness to be shown the document while the witness is giving evidence.

#### **81A.27 Victim impact statements and victim reports**

For the purposes of section 106B(8) of the *Sentencing Act* –

- (a) in the case of a written victim impact statement or report – the copy of the statement or report; or
- (b) in the case of an oral victim impact statement or report – the written or oral summary of its contents,

is to be provided to the offender not later than 7 days before the date of the hearing of the plea for sentence.

### **Part 6A Special hearing to pre-record evidence**

#### **81A.27A Special hearing**

If the prosecution intends to elect under section 21B(2)(b) of the *Evidence Act* to present the whole of the evidence of a witness by video-tape or other audio-visual means –

- (a) the prosecution must give notice of its intention to the accused and the Court as soon as reasonably practicable after the accused has been committed for trial; and
- (b) the criminal registrar must allocate a date for the special hearing; and
- (c) to the extent possible, the Judge allocated to conduct the special hearing must be the Judge allocated to conduct the

trial; and

- (d) the Registrar must ensure the recording equipment necessary for the special hearing is available and reserved for the hearing.

#### **81A.27B Accused to plead**

At the commencement of the special hearing, the accused must be arraigned and he or she must plead guilty or not guilty.

#### **81A.27C Objection to admissibility of evidence**

- (1) The Judge conducting the special hearing must hear and decide all objections to the admissibility of evidence at the time of the special hearing.
- (2) An objection can be reactivated at the time of trial (or re-trial) with leave of the Judge conducting the proceedings.
- (3) If an objection is upheld in relation to the admissibility of evidence that has been recorded, the recording must be edited before being presented at the trial.

#### **81A.27D Special hearing may be re-opened**

- (1) A special hearing stands adjourned at the completion of the recording of evidence.
- (2) If the Court considers it necessary in the interests of justice, the Court may re-open the special hearing of its own volition or on application by the prosecution or defence.
- (3) The special hearing may be re-opened at any time before the jury retires to consider its verdict (including in a re-trial).
- (4) Unless the Judge otherwise orders, the prosecution and defence can question the witness at a re-opened special hearing only in respect of any issue that gave rise to the re-opening.
- (5) If the Judge who presided over a special hearing was not the trial Judge, the re-opened hearing may be conducted by another Judge whether or not that Judge is the trial Judge.

#### **81A.27E Duplicate of recording to be made**

- (1) At the completion of the special hearing, the Sheriff must make a duplicate copy of the recording.
- (2) The original recording must be marked as such and given to the Registrar for safe-keeping.

- (3) The duplicate recording must, unless required for editing in accordance with this Part, also be given to the Registrar for safe-keeping.

#### **81A.27F Editing of recording**

- (1) If the recording of the evidence requires editing, the Judge may make the orders that he or she thinks fit.
- (2) An order under subrule (1) may include an order that the duplicate tape is to be given to the prosecution to effect the editing.
- (3) The order may also include directions for the means by which the edited recording is to be validated as correctly edited for use at the trial.
- (4) The edited version of the recording must be marked as such and, once validated, must be given to the Sheriff.
- (5) The Sheriff must make a duplicate copy of the edited tape and mark the duplicate as "trial copy".
- (6) The edited recording and the trial copy, along with the duplicate unedited recording (if such a version still exists) must be given to the Registrar for safe-keeping.

#### **81A.27G Access to recording**

- (1) Each version of the recording of a special hearing is the property of the Court and, subject to the necessity to edit in accordance with this Part, must remain in the custody of the Court at all times.
- (2) No copies of the pre-recorded evidence are to be given to the parties (except for editing in accordance with rule 81A.27F), but the prosecution and defence may, on request, view the trial copy under the supervision of the Sheriff or Registrar.
- (3) The Sheriff must produce the trial copy of the recording of the special hearing at the trial.
- (4) The trial copy of the pre-recorded evidence must be played to the jury at the trial but not tendered as an exhibit.

#### **81A.27H Transcript**

- (1) A transcript must be made of the trial copy of the recording of the special hearing.
- (2) The transcript must be made available to all parties.

### **81A.27J Other matters**

- (1) The Judge who conducts a special hearing may make any directions that he or she considers necessary for the efficient conduct of the trial.
- (2) Without limiting subrule (1), directions may include making an order under section 21A(2A) of the *Evidence Act*.

## **Part 7 Orders for discovery**

### **81A.28 Discovery, inspection and preservation of property**

- (1) If it appears that a person (other than the accused) has or is likely to have, or had or is likely to have had, in his or her possession or power a document that relates to a question likely to be raised at the trial of the accused, the Director or the accused may apply to the Court for an order that the person make discovery to the applicant of the document.
- (2) Documents ordered to be discovered may be discovered –
  - (a) if the Court does not specify a method of discovery –
    - (i) by delivering to the applicant a list of the documents prepared in accordance with rule 29.04; or
    - (ii) by producing to the applicant the original documents for inspection; or
  - (b) if the Court specifies a method of discovery – by that method.
- (3) If a document is produced to an applicant, the applicant may –
  - (a) copy the document, including by taking a photocopy or photograph of it; or
  - (b) request a photocopy of the document.
- (4) If an applicant requests a photocopy of a document, the person producing the document must, at his or her option, either –
  - (a) allow the applicant to photocopy the document at a place agreed by the parties; or
  - (b) supply the applicant with a photocopy of the document.
- (5) The cost of photocopying a document is payable by the applicant.



- (6) If a person provides a list of documents in accordance with subrule (2)(a)(i), the person to whom the list is provided may apply to the Court for an order that –
  - (a) the documents or some of them be produced to the applicant for inspection; and
  - (b) the applicant pay the costs of preparing and serving the list of documents and the costs of opposing the order incurred by the person who was required to produce the document.
- (7) Unless otherwise ordered by the Court, an application under subrule (1) or (6) is to be supported by affidavit and the application and supporting affidavit are to be served on the person against whom discovery is sought.
- (8) An order under subrule (1) or (6) may be made ex parte if the applicant establishes that it is necessary to do so in the interests of justice.

**81A.29 Inspection, detention and preservation of property**

- (1) The Director or the accused may apply to the Court for an order for the inspection, detention, custody or preservation of property, including the property of the accused, that is in the possession, custody or power of another person or body.
- (2) An order under subrule (1) is not to be made unless it is established by the applicant that the order is necessary in the interests of justice.
- (3) An order under subrule (1) may authorise a person to –
  - (a) enter land or do any other thing for the purpose of obtaining access to the property;
  - (b) take samples of the property;
  - (c) make observations of the property, including photographing the property;
  - (d) conduct an experiment on or with the property; or
  - (e) observe a process in relation to the property.
- (4) The Court may not make an order under subrule (1) unless –
  - (a) subject to subrule (5), the application and a supporting affidavit are served upon the person or body who or which has possession or custody of or power over the property to which the order relates; and

- (b) the applicant gives security for the costs and expenses of any loss or damage that may be caused to that person or body if the order is made.
- (5) The application and supporting affidavit are not required to be served on the person or body who or which has possession or custody of or power over the property to which the order relates if the Court is satisfied that it is necessary, in the interests of justice, to make the order *ex parte*.
- (6) If the application is for an order for the preservation of property that is –
  - (a) a living thing;
  - (b) of a perishable nature; or
  - (c) likely to deteriorate or diminish in value if kept,the Court may order instead that the property be photographed or that a video recording be made of it.
- (7) A photograph taken or recording made of property in pursuance of an order under subrule (6) is admissible in evidence at the trial without production of the original property.
- (8) The Court must not make an order under subrule (6) unless a copy of the application has been served on –
  - (a) if the application was made by the Director – the accused or his or her legal representative; or
  - (b) if the application was made by the accused or his or her legal representative – the Director.

**81A.30 Rights of person affected by *ex parte* orders**

- (1) A person against whom an *ex parte* order under this Chapter is made may apply to the Court to set aside that order.
- (2) An application under subrule (1) and a supporting affidavit are to be served on the person who obtained the order or his or her legal representative.
- (3) On the hearing of an application under subrule (1), the Court may make –
  - (a) the orders it considers to be in the interests of justice; and
  - (b) the orders for the costs of the application it considers appropriate.

**Part 8**                      **Orders made at trial or other hearing relating to exhibits and other property**

**81A.31**    **Return of preliminary exhibits**

A preliminary exhibit that is not to be tendered at a trial is –

- (a) if it was produced on behalf of the prosecution – to be returned to the custody of the prosecution; and
- (b) if it was produced otherwise than by the prosecution – to be returned to the custody of the person who produced it.

**81A.32**    **Preservation of exhibits**

- (1) The Court may make orders or give directions for the production, custody or disposal of an exhibit or other item tendered in evidence.
- (2) The Court must keep a record of an order made or direction given under subrule (1).
- (3) Subject to an order or direction under subrule (1), an exhibit or other item must be retained by the criminal registrar until:
  - (a) if an appeal is lodged – 6 months after the conclusion of the appeal; or
  - (b) if no appeal is lodged – 6 months after the appeal period expires.
- (4) Subrule (3) does not apply to:
  - (a) a document of a kind kept by the criminal registrar; or
  - (b) an exhibit to which section 415 of the Criminal Code applies.
- (5) After the conclusion of an appeal, the Registrar must return to the criminal registrar the original depositions, exhibits, indictments, plea and other documents forming part of the record of the trial that were given to the Registrar for the purposes of the appeal.

**81A.33**    **Court of trial may permit conditional release of documents etc.**

The court of trial may permit the conditional release of a document, exhibit or other item tendered at the trial to a party on receipt of an undertaking by the party to return the document, exhibit or item –

- (a) on a date fixed by the court of trial; or
- (b) 7 days after lodgement of a notice of appeal,

whichever is the earlier.

**81A.34 Release of documents etc. tendered in pursuance of section 26L of *Evidence Act***

On the determination of a question under section 26L of the *Evidence Act*, the trial Judge may immediately release to a party a document, exhibit or other item tendered for the purposes of that section without requiring an undertaking by the party to return the document.

**81A.35 Destruction of uncollected documents etc.**

The court of trial may order the destruction of documents, exhibits and other items tendered at the trial that are uncollected or unable to be returned as at the end of 6 months after –

- (a) the appeal period expires; or
- (b) if an appeal is lodged – the date on which the Court of Criminal Appeal delivers judgment or the appeal is withdrawn.

**81A.36 Custody of property of person found guilty**

If the trial Judge makes an order for the restitution of property or the payment of compensation by a person found guilty at the trial, the Judge must give directions for the custody, during the appeal period, of money or other valuable property belonging to the person that –

- (a) was taken from that person when arrested; or
- (b) is in the possession of the prosecution at the date the person was found guilty or the date of application for leave to appeal.

**81A.37 Order for security to be given**

If the trial Judge makes an order for the payment of money and suspends the order, the Judge may direct that security is to be given to the satisfaction of the person in whose favour the order is made.

**81A.38 Consequential orders**

- (1) If –
  - (a) a person has been found guilty of an offence and the trial Judge has made orders consequential on that finding; and
  - (b) an appeal is instituted –
    - (i) under Order 86 by the person found guilty; or
    - (ii) under section 414 of the Criminal Code by a Crown Law

Officer within the meaning of the Code,

the court of trial may, on written application –

- (c) make orders suspending or refusing to suspend the consequential orders pending the determination of the appeal;
- (d) make orders or give directions in relation to the effect of the consequential orders pending the determination of the appeal;  
or
- (e) make orders or give directions in relation to the vesting, preservation or disposal of the property to which the consequential orders relate,

on the terms the court thinks fit.

- (2) An application under subrule (1) is to be in accordance with Form 81A-E.
- (3) If, on a finding of guilt, the trial Judge orders under a law in force in the Territory that any property, matter or thing be destroyed or forfeited, subject to subrule (1)(e), the order is suspended until –
  - (a) the appeal period expires; or
  - (b) if an appeal is lodged – the period of 28 days after the determination of the appeal expires.
- (4) If –
  - (a) a person has been found guilty of an offence; and
  - (b) a claim may be made or proceedings taken against that person or another person as a result of that finding,  
that claim may not be made or those proceedings taken until –
    - (c) the appeal period expires;
    - (d) if an appeal is lodged – the period of 28 days after the date of the determination of the appeal expires; or
    - (e) after a later date ordered by the trial Judge.
- (5) A person affected by an order to which this rule applies, may, with the leave of the Court of Criminal Appeal, be heard on the final determination of an appeal before the order is varied or annulled by that Court.

## **Part 9 Record of proceedings**

### **81A.39 Record of proceedings and recording of orders**

- (1) For the purposes of section 428 of the Criminal Code, the record of the proceedings of a trial consists of –
  - (a) the indictment;
  - (b) subject to subrules (4) and (5), the official tape recordings of the proceedings of the trial made by persons approved by the Chief Justice; and
  - (c) the official transcript, made by persons approved by the Chief Justice, of the official tape recordings.
- (2) An official transcript is to be made of the evidence of each witness called to give evidence at a trial.
- (3) The Court or a Judge may order that an official transcript of any other part of the proceedings be made.
- (4) The trial Judge may at any time correct an official transcript of an official tape recording if he or she is satisfied that it does not correspond with the official tape recording.
- (5) Once an official transcript has been made, the official tape recording of the part of the proceedings transcribed ceases to be part of the record of the proceedings of the trial.
- (6) All official tape recordings of a trial cease to be part of the record of the proceedings of the trial and may be erased or destroyed –
  - (a) if an appeal has not been lodged – after 6 months after the appeal period has expired; or
  - (b) if an appeal has been lodged – after 28 days after the determination of the appeal.
- (7) A person approved by the Chief Justice may correct the official transcript of the proceedings of a trial by reference to the official tape recording of the proceedings, whether or not the tape recordings have ceased to be official tape recordings under subrule (5) or (6).
- (8) A Judge or his or her associate must note on the back of the indictment or on a piece of paper attached to the back of the indictment –
  - (a) the accused's plea or pleas;
  - (b) the verdict of the jury, if any;

- (c) the recording of a conviction, if any;
  - (d) the sentence of the Court, if any;
  - (e) the order finally disposing of the indictment;
  - (f) any other order made by the Court after a plea of guilty has been entered or the verdict of the jury has been taken; and
  - (g) the amount of the levy payable by the accused under Part 6 of the *Victims of Crime Assistance Act*.
- (9) The Judge or associate must, in respect of each notation made under subrule (8) –
- (a) include the date of the plea, verdict, conviction, sentence, order or levy; and
  - (b) sign and date the notation.
- (10) In the case of an order in relation to a criminal trial to which subrule (8) does not apply –
- (a) the order is to be recorded on the back of the application and then filed; or
  - (b) if there is no application – a written note of the order is to be made by the Judge or his or her associate and then filed.
- (11) A notation made in accordance with subrule (8), (9) or (10) forms part of the record referred to in section 428 of the Criminal Code.

## **Part 10                      Certificate of conviction and other forms**

### **81A.40      Certificate of conviction**

- (1) A proper officer must not issue –
- (a) a certificate of conviction of a person convicted in the Court;
  - (b) a certificate of conviction of a person convicted by a magistrate under Division 2 of Part V of the *Justices Act*; or
  - (c) a certificate under section 21B of the *Crimes Act 1914* of the Commonwealth,
- until –
- (d) the appeal period expires; or
  - (e) if an appeal is lodged – after the determination of the appeal.
- (2) A person may apply, not earlier than 28 days after a conviction is

recorded, to a proper officer for a certificate of conviction in relation to that conviction.

- (3) The proper officer must issue a certificate of conviction if the application is accompanied by a certificate, in the form approved by the Registrar and signed by the Registrar and certifying that no appeal has been lodged against the conviction.
- (4) A certificate of conviction is to be in accordance with Form 81A-F.
- (5) In this rule, ***appeal*** includes an application for leave to appeal.

#### **81A.41 Form of warrants, orders etc.**

- (1) A warrant of commitment –
  - (a) to a prison is to be in accordance with Form 81A-G; and
  - (b) to a detention centre within the meaning of the *Youth Justice Act* is to be in accordance with Form 81A-H.
- (2) A copy of a warrant of commitment to a prison or a detention centre is to be given by the Sheriff to the Director and to the offender or the offender's legal representative.
- (3) If the Court imposes a sentence of imprisonment but directs that it be wholly or partly suspended without requiring any security, the Sheriff must prepare a notice in accordance with Form 81A-I and give it to the Director and the offender or the offender's legal representative.
- (4) A recognisance release order under the *Crimes Act 1914* of the Commonwealth or an order to release a person on his or her giving security is to be in accordance with Form 81A-J or 81A-K, respectively, and a copy of the order is to be given by the Sheriff to the Director and the offender.
- (5) A community work order is to be in accordance with Form 81A-L and a copy of the order is to be given by the Sheriff to the Director and the offender.
- (6) A home detention order is to be in accordance with Form 81A-M and a copy of the order is to be given by the Sheriff to the Director and the offender.
- (7) A warrant of remand is to be in accordance with Form 81A-N.
- (8) A warrant of arrest for non-payment of restitution in accordance with an order is to be in accordance with Form 81A-O.
- (9) A warrant under section 39 of the *Bail Act* is to be in accordance with Form 81A-P.



- (10) A warrant for failure to comply with a recognisance release order under the *Crimes Act 1914* of the Commonwealth is to be in accordance with Form 81A-Q.
- (11) A warrant of commitment for non-payment of a fine is to be in accordance with Form 81A-R.
- (12) A summons under section 39(2) or 48(2)(a) of the *Sentencing Act* is to be in accordance with Form 81A-S.
- (13) An information under section 48(2) of the *Sentencing Act* is to be in accordance with Form 81A-T.
- (14) An order requiring a prisoner to be removed from a prison or police prison to another prison or police prison or to be produced to the Court or such other place as is required is to be in accordance with Form 81A-U.
- (15) A hospital order under section 80 of the *Sentencing Act*, a treatment order under section 83 of that Act or a hospital order under section 20BS of the *Crimes Act 1914* of the Commonwealth is to be in accordance with Form 81A-V.
- (16) A residential or passport order under section 99 of the *Sentencing Act* or section 22 of the *Crimes Act 1914* of the Commonwealth is to be in accordance with Form 81A-W.
- (17) An order under section 19B of the *Crimes Act 1914* of the Commonwealth is to be in accordance with Form 81A-X.
- (18) An order releasing a person from custody, whether subject to conditions or not, is to be in accordance with Form 81A-Y.
- (19) An order under section 20BC(2) of the *Crimes Act 1914* of the Commonwealth is to be in accordance with Form 81A-Z.
- (20) An order under section 20BJ(1) or (4) of the *Crimes Act 1914* of the Commonwealth is to be in accordance with Form 81A-ZA.
- (21) A psychiatric probation order made under section 20BV of the *Crimes Act 1914* of the Commonwealth is to be in accordance with Form 81A-ZB.
- (22) A program probation order made under section 20BY of the *Crimes Act 1914* of the Commonwealth is to be in accordance with Form 81A-ZC.
- (23) A notice to show cause under section 93(3) of the *Sentencing Act* is to be in accordance with Form 81A-ZD.
- (24) A warrant for failure to comply with an order for payment of compensation is to be in accordance with Form 81A-ZE.

