

South Australia

Summary Procedure (Section 107 Statements) Regulations 2007

under section 107 of the *Summary Procedure Act 1921*

Contents

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Prescribed form of statement

Schedule 1—Information to be included in statement

- 1 Information which you may be required to give to the Director of Public Prosecutions
 - 2 Expert evidence
 - 3 Alibi evidence
-

1—Short title

These regulations may be cited as the *Summary Procedure (Section 107 Statements) Regulations 2007*.

2—Commencement

These regulations will come into operation on the day on which section 14 of the *Statutes Amendment (Criminal Procedure) Act 2005* comes into operation.

3—Interpretation

In these regulations—

Act means the *Summary Procedure Act 1921*.

4—Prescribed form of statement

For the purposes of section 107(5)(a) of the Act, a written statement containing the information set out in Schedule 1 is prescribed.

Schedule 1—Information to be included in statement

1—Information which you may be required to give to the Director of Public Prosecutions

The judge presiding over a directions hearing may authorise the Director of Public Prosecutions to serve you with a notice or notices requiring you to provide information in relation to the following matters:

- **Admitting facts**

The judge may authorise the Director of Public Prosecutions to serve on you a notice to admit certain facts about your case. The purpose of this procedure is to shorten the trial, if possible, by agreeing to matters which are not in dispute. This saves the calling of some of the witnesses. You are not required to admit these facts, but if you unreasonably fail to admit them and you are convicted of the offence(s) with which you are charged, the Court may take your failure to admit the facts into account in fixing sentence. You would unreasonably fail to admit such facts if, for example, you claimed privilege against incriminating yourself as a reason for not making the admission and made the prosecution prove facts which were not seriously contested at your trial.

- **Notification of prosecution witnesses who are not required**

This is another way in which the trial might be shortened where some of the evidence is not in dispute. The judge may require you to notify the Director of Public Prosecutions in writing whether you consent to the prosecution not calling witnesses to prove the admissibility of the following kinds of evidence:

- (a) documentary, audio, visual, or audiovisual evidence of surveillance or interview;
- (b) other documentary, audio, visual or audiovisual evidence;
- (c) exhibits.

If you fail to comply with such a notice, the Court will assume you have no objection.

- **Notice of defences**

The judge may require you to give written notice to the Director of Public Prosecutions if you intend to call evidence at the trial which tends to establish that—

- (a) you are mentally unfit to stand trial;
- (b) you were mentally incompetent to commit the alleged offences;
- (c) the circumstances of the alleged offence(s) occurred by accident;
- (d) you were entitled to any property which is the subject of the offence(s);
- (e) you were acting for a defensive purpose;
- (f) you were intoxicated at the time of the alleged offence(s).

The judge may also require you to give written notice to the Director of Public Prosecutions if you intend to call evidence at the trial relating to the defences of provocation, automatism, necessity or duress. If you fail to give the Director of Public Prosecutions notice of any of these matters, you may call evidence about them but the prosecutor or the judge or both may comment to the jury on your failure to give notice.

2—Expert evidence

If expert evidence is to be called for the defence at the trial, written notice of your intention to call the evidence must be given to the Director of Public Prosecutions on or before the date of the first directions hearing or, if the evidence does not become available to the defence until later, as soon as practicable after it becomes available to the defence.

The notice must set out the name and qualifications of the expert and described the general nature of the evidence and what it tends to establish.

The notice must be given in Form No. 15 of the *Supreme/District Court Criminal Rules*.

If you wish to introduce expert psychiatric evidence or other expert medical evidence relevant to your mental state or medical condition at the time of the alleged offence(s), the judge may require you to submit to an examination by an independent expert approved by the Court.

If you fail to submit to a psychiatric or other medical examination as required by the Court, the Court will not allow you to call expert psychiatric or medical evidence which you wish to tender to the Court.

If you fail to comply with any other requirement in relation to expert evidence, you will not be allowed to call the evidence without the Court's permission and the prosecutor or the judge may comment on your non-compliance to the jury.

3—Alibi evidence

Alibi evidence is evidence that you were at some place other than the scene of the alleged offence(s) at the relevant time.

If you wish to call alibi evidence at your trial and the evidence was not given at your committal hearing, you must give written notice of the evidence to the prosecution within 7 days from the date on which you were committed for trial.

If you do not give notice you will still be able to call alibi evidence, but the prosecutor and the judge will be able to comment to the jury on your failure to give notice of that evidence before the trial.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 1 March 2007

No 17 of 2007

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