

Version No. 003
Major Crime (Investigative Powers)
Regulations 2005

S.R. No. 73/2005

Version incorporating amendments as at 1 February 2010

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Version No. 003
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S.R. No. 73/2005

Version incorporating amendments as at 1 February 2010

1 Objective

The objective of these Regulations is to prescribe forms and other matters for the purposes of the **Major Crime (Investigative Powers) Act 2004**.

2 Authorising provision

These Regulations are made under section 70 of the **Major Crime (Investigative Powers) Act 2004**.

3 Commencement

These Regulations come into operation on 1 July 2005.

4 Definition

In these Regulations, *the Act* means the **Major Crime (Investigative Powers) Act 2004**.

5 Witness summons—Supreme Court

For the purposes of section 14(12) of the Act, the prescribed form of a witness summons is Form 1 in the Schedule.

6 Witness summons—Chief Examiner

For the purposes of section 15(11) of the Act, the prescribed form of a witness summons is Form 1 in the Schedule.

7 Order to bring a witness held in custody before the Chief Examiner

For the purposes of section 18(5) of the Act, the prescribed form of an order is Form 2 in the Schedule.

8 Taking of evidence

For the purposes of section 36(2)(a) of the Act—

- (a) the prescribed form of an oath is Form 3 in the Schedule;
- (b) the prescribed form of an affirmation is Form 4 in the Schedule;
- (c) the prescribed form of an oath to be taken by the interpreter of a person appearing at an examination is Form 5 in the Schedule;
- (d) the prescribed form of an affirmation to be made by the interpreter of a person attending an examination is Form 6 in the Schedule.

Reg. 8(d)
amended by
S.R. No.
156/2009
reg. 5.

Reg. 9
revoked by
S.R. No.
156/2009
reg. 6.

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10 Chief Examiner must report other matters to Special Investigations Monitor

(1) For the purposes of section 53(1)(d) of the Act, the following matters are prescribed—

- (a) if a witness summons has been issued—
 - (i) the date and time at which the witness summons was served on the person;
- and

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- (ii) if the summons is directed to a person suspected to be under the age of 18 years, the reason recorded under section 15(6)(b) of the Act;
 - (b) if an order has been made on application under section 18(2) of the Act—
 - (i) if the order was made in relation to a person suspected to be under the age of 18 years, the recorded reason for suspecting or believing that the person is aged 16 years or above; and
 - (ii) the statement, if any, in the order as to the general nature of the matters about which the person is to be questioned;
 - (c) if the examination ceases because of the revocation of a coercive powers order, the date of revocation, the reason for the revocation, if known, and the date of cessation of the examination;
 - (d) if the person was released from attendance or further attendance because of the revocation of a coercive powers order, the date of release and the manner of giving notice of the release;
 - (e) whether the Chief Examiner has complied with the requirements of section 31 of the Act;
 - (f) the duration of the examination;
 - (g) whether the person was aged under 18 years and if so—
 - (i) whether the person was released because the Chief Examiner became aware that the person was under the age of 16 years; and
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- (ii) whether a parent or a guardian of the person or an independent person was present during the person's examination; and
 - (iii) whether it reasonably appeared to the Chief Examiner that the person exercised his or her right to communicate with the parent, guardian or independent person (as the case may be) before giving any evidence or producing any document or thing;
 - (h) whether the Chief Examiner believed the person to have a mental impairment and if so—
 - (i) whether an independent person was present during the person's examination; and
 - (ii) whether it reasonably appeared to the Chief Examiner that the person exercised his or her right to communicate with the independent person before giving any evidence or producing any document or thing;
 - (i) whether the person had legal representation and if the person did not—
 - (i) whether the person was asked if he or she had sought legal advice; and
 - (ii) whether the person was given an opportunity to seek legal advice;
 - (j) whether the person appeared to the Chief Examiner to have insufficient knowledge of the English language to enable him or her to understand the questioning during the examination, and if so what arrangements were made for the presence of a competent interpreter;
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- (k) whether, during the examination, the Chief Examiner considered a claim for legal professional privilege and if so—
- (i) the name of the claimant;
 - (ii) the time when the claim for legal professional privilege was made;
 - (iii) the outcome of the consideration of the claim by the Chief Examiner and the date on which the outcome was reached;
- (l) whether the Chief Examiner has issued a certificate of charge and an arrest warrant under section 49 of the Act, and if so—
- (i) details of the alleged contempt of the Chief Examiner as set out in the certificate of charge; and
 - (ii) whether the arrest warrant was executed and if so, how long the person was detained under the warrant and whether the person is still in detention;
 - (iii) details of the outcome of the contempt of the Chief Examiner being dealt with by the Supreme Court (to the extent known at the time the report is made).
- (2) Subregulation (1)(l) ceases to have effect on the day on which section 49 of the Act ceases to have effect.

11 Records to be kept by Chief Commissioner

For the purposes of section 66(a) of the Act, computerised records on the following matters must be kept—

- (a) the number of applications made for a coercive powers order under section 5 of the Act, including—

- (i) the type of organised crime offences in relation to which applications for a coercive powers order were made under section 5 of the Act;
 - (ii) the number of applications for a coercive powers order made under section 5(6) of the Act before an affidavit is prepared or sworn;
 - (iii) the number of remote applications for a coercive powers order made under section 6 of the Act;
 - (iv) the number of coercive powers orders made by the Supreme Court under section 8 of the Act;
 - (v) the number of applications for a coercive powers order refused by the Supreme Court and the reasons for refusal, if given;
- (b) the number of applications for an extension of a coercive powers order including—
- (i) the type of organised crime offences in relation to which applications for an extension of a coercive powers order were made;
 - (ii) the number of extensions granted by the Supreme Court;
 - (iii) the number of applications refused and reasons for refusal, if given;
 - (iv) for each coercive powers order that has been extended, the total period for which the order has been effective;

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- (c) the number of applications for a variation of a coercive powers order, including—
 - (i) the type of organised crime offences in relation to which applications for a variation of a coercive powers order were made;
 - (ii) the number of variations granted by the Supreme Court;
 - (iii) the number of applications refused by the Supreme Court and reasons for refusal, if given;
 - (d) the number of notices to the Supreme Court under section 11 of the Act that a coercive powers order is no longer required, including—
 - (i) the reasons for giving the notice;
 - (ii) the number of coercive powers orders revoked by the Supreme Court under section 12 of the Act;
 - (e) the number of applications made to the Supreme Court for the issue of a witness summons under section 14 of the Act, including—
 - (i) the number of applications refused by the Supreme Court and reasons for refusal, if given;
 - (ii) the number of witness summonses issued by the Supreme Court;
 - (iii) the number of witness summonses issued by the Supreme Court under section 14(10) of the Act which require immediate attendance before the Chief Examiner of the person to whom the summons is directed;
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- (f) the number of applications made to the Chief Examiner for the issue of a witness summons under section 15 of the Act, including—
 - (i) the number of applications refused by the Chief Examiner;
 - (ii) the number of witness summonses issued by the Chief Examiner on the application of a member of the police force;
 - (iii) the number of witness summonses issued by the Chief Examiner under section 15(9) of the Act on the application of a member of the police force which require the immediate attendance before the Chief Examiner of the person to whom the summons is directed;
- (g) the number of applications made to the Supreme Court or the Chief Examiner for an order under section 18 of the Act to bring a witness already held in custody before the Chief Examiner to give evidence, including—
 - (i) the number of orders granted by the Supreme Court or the Chief Examiner;
 - (ii) the number of applications refused and reasons for refusal, if given;
- (h) the number of applications made under section 46 of the Act to the Supreme Court or to the County Court for the issue of an arrest warrant, including—
 - (i) the number of applications refused by the Supreme Court or the County Court and reasons for refusal;

Reg. 11(h)
amended by
S.R. No.
156/2009
reg. 7(a).

Reg. 11(h)(i)
amended by
S.R. No.
156/2009
reg. 7(b).

- (ii) the number of arrest warrants issued by the Supreme Court or the County Court;
- (iii) the number of arrest warrants which were executed, how long the person was detained and whether the person is still in detention;
- (i) the number of prosecutions for offences against sections 20(5), 35(4), 36(4), 37(3), 38(3), 42(8), 43(3), 44 and 48(3) of the Act;
- (j) the number of arrests made by police members on the basis (wholly or partly) of information obtained by the use of a coercive powers order;
- (k) the number of prosecutions that were commenced in which information obtained by the use of a coercive powers order was given in evidence and the number of those prosecutions in which the accused was found guilty.

Reg. 11(h)(ii)
amended by
S.R. No.
156/2009
reg. 7(b).

12 Register for retained documents and other things

For the purposes of section 66(b) of the Act, a computerised register of the following matters must be kept—

- (a) a description of all documents or other things which were produced at an examination or to the Chief Examiner and which were retained by a police member under section 47(1)(d) of the Act;
- (b) the reasons for retaining the documents or other things described in accordance with paragraph (a);

- (c) the current location of all documents or other things described in accordance with paragraph (a);
- (d) whether any of the documents or other things described in accordance with paragraph (a) were brought before the Magistrates' Court under section 47(3) of the Act and if so—
 - (i) the date when the document or other thing was brought before the Magistrates' Court;
 - (ii) details of any direction given by the Magistrates' Court in relation to the return of the document or other thing to the person who produced it.

13 Chief Commissioner's report to the Special Investigations Monitor

For the purposes of section 66(c) of the Act, the prescribed matters on which the Chief Commissioner must report in writing to the Special Investigations Monitor are the matters prescribed in paragraphs (a) to (k) in regulation 11.

SCHEDULE

FORMS

FORM 1

Regulations 5 and 6

Major Crime (Investigative Powers) Act 2004

Sections 14 and 15

WITNESS SUMMONS

To: *(insert name of person to whom summons is directed)*

*Male/*Female

Address:

A coercive powers order has been made under section 8 of the **Major Crime (Investigative Powers) Act 2004** by the Supreme Court of Victoria on *(date)*.

You must attend

at *(insert address)*

***immediately or *on *(insert date)* at *(insert time)* *am/pm and from day to day unless excused or released from further attendance—**

*to give evidence before the Chief Examiner in relation to *(state general nature of the matters about which the witness is to be questioned, unless the *Supreme Court/*Chief Examiner considers that this disclosure would prejudice the conduct of the investigation of the organised crime offence)*;

*to produce for examination by the Chief Examiner the following documents or things that are in your possession or control:

(specify documents or things)

*to give evidence before the Chief Examiner in relation to *(state general nature of the matters about which the witness is to be questioned, unless the *Supreme Court/*Chief Examiner considers that this disclosure would prejudice the conduct of the investigation of the organised crime offence)* and to produce for examination by the Chief Examiner the following documents or things that are in your possession or control:

(specify documents or things)

Major Crime (Investigative Powers) Regulations 2005

Form 1

S.R. No. 73/2005

Take note: If you are under the age of 16 years at the date of issue of this summons, you do not have to comply with the summons, but you **must**—

- (a) if this summons is issued by the Supreme Court, give notice in writing and proof of age to the Court at (*insert address*) and to the Chief Examiner at (*insert address*); or
- (b) if this summons is issued by the Chief Examiner, give notice in writing and proof of age to the Chief Examiner at (*insert address*).

Dated:

*Supreme Court

*Chief Examiner

*Delete if inapplicable

Major Crime (Investigative Powers) Regulations 2005

S.R. No. 73/2005

Form 2

FORM 2

Regulation 7

Major Crime (Investigative Powers) Act 2004

Section 18

Form 2
amended by
S.R. No.
156/2009
reg. 8(1).

**ORDER TO BRING A PERSON HELD IN CUSTODY BEFORE THE
CHIEF EXAMINER**

To: *(insert name of person in charge of place where person is held in custody)*

at *(insert name of place where person is held in custody)*

Under section 18 of the **Major Crime (Investigative Powers) Act 2004**

I order that *(insert name of person in custody)* born on *(insert date of birth)*

who is detained at *(insert name of place where person is held in custody)*

be delivered into the custody of *(insert name of member of police force who applies for the order)*

to be brought before the Chief Examiner

at *(insert address)*

on *(insert date)* at *a.m./p.m.

to give evidence at an examination in relation to *(state general nature of the matters about which witness is to be questioned, unless the *Supreme Court/*Chief Examiner considers that this disclosure would prejudice the conduct of the investigation of the organised crime offence)*.

A coercive powers order has been made under section 8 of the **Major Crime (Investigative Powers) Act 2004** by the Supreme Court of Victoria on *(date)*.

Take note: If the person named in this order to attend before the Chief Examiner is under the age of 16 years at the date of issue of this order, the order is of no effect and the person is not required to attend the examination.

Dated:

*Supreme Court

*Chief Examiner

*Delete if inapplicable

FORM 3

Regulation 8(a)

Major Crime (Investigative Powers) Act 2004

Section 36

OATH

I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth.

FORM 4

Regulation 8(b)

Major Crime (Investigative Powers) Act 2004

Section 36

AFFIRMATION

I do solemnly, sincerely, and truly declare and affirm that the evidence I shall give will be the truth, the whole truth and nothing but the truth.

FORM 5

Regulation 8(c)

Major Crime (Investigative Powers) Act 2004

Section 36

OATH BY INTERPRETER

I swear by Almighty God that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this examination to the best of my ability.

FORM 6

Regulation 8(d)

Major Crime (Investigative Powers) Act 2004

Section 36

AFFIRMATION BY INTERPRETER

I do solemnly, sincerely, and truly declare and affirm that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this examination to the best of my ability.

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**Form 2
revoked by
S.R. No.
156/2009
reg. 8(2).**

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ENDNOTES

1. General Information

The Major Crime (Investigative Powers) Regulations 2005, S.R. No. 73/2005 were made on 28 June 2005 by the Governor in Council under section 70 of the **Major Crime (Investigative Powers) Act 2004**, No. 79/2004 and came into operation on 1 July 2005: regulation 3.

The Major Crime (Investigative Powers) Regulations 2005 will sunset 10 years after the day of making on 28 June 2015 (see section 5 of the **Subordinate Legislation Act 1994**).

Major Crime (Investigative Powers) Regulations 2005

S.R. No. 73/2005

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the Major Crime (Investigative Powers) Regulations 2005 by statutory rules, subordinate instruments and Acts.

Major Crime (Investigative Powers) Amendment Regulations 2009,
S.R. No. 156/2009

Date of Making: 8.12.09
Date of Commencement: 1.2.10: reg. 3

3. Explanatory Details

No entries at date of publication.