



Queensland

Criminal Practice Amendment Rule (No. 1) 2008

Subordinate Legislation 2008 No. 61

made under the

Supreme Court of Queensland Act 1991

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1 Short title

This rule may be cited as the *Criminal Practice Amendment Rule (No. 1) 2008*.

2 Rules amended

This rule amends the *Criminal Practice Rules 1999*.

3 Amendment of r 55 (Custody of exhibits)

Rule 55(2)—

omit, insert—

‘(2) If an order to the contrary is not made under subrule (1) or rule 100(1) about the custody or disposal of an exhibit, the proper officer of the court of trial must—

(a) subject to paragraph (b), hold the exhibit in safekeeping; and

(b) return the exhibit to the party who tendered it if—

(i) a verdict of not guilty is returned or a finding of not guilty is made; or

(ii) a verdict of guilty is returned or a finding of guilty is made and an appeal is not started within the appeal period.’.

4 Amendment of r 56 (Inspection of exhibits)

(1) Rule 56(1), ‘produced’—

omit, insert—

‘tendered’.

(2) Rule 56(1), after ‘court of trial’—

insert—

‘, or the trial judge.’.

(3) Rule 56—

insert—

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- ‘(3) If the trial judge is not available to hear an application for a further order, the application may be heard by—
- (a) for the Supreme Court—a judge nominated by the Chief Justice; or
 - (b) for the District Court—a judge nominated by the Chief Judge of the District Court; or
 - (c) for the Magistrates Court—a magistrate sitting at the place the trial was conducted.’.

5 Insertion of new r 56A

After rule 56—

insert—

‘56A Copying for publication of exhibits

- ‘(1) A person who is not a party to a trial may apply to the trial judge during or after the trial for an order permitting the copying for publication of an exhibit tendered at the trial.
- ‘(2) If the trial judge is not available to hear the application, the application may be heard by—
- (a) for the Supreme Court—a judge nominated by the Chief Justice; or
 - (b) for the District Court—a judge nominated by the Chief Judge of the District Court; or
 - (c) for the Magistrates Court—a magistrate sitting at the place the trial was conducted.
- ‘(3) The judge or magistrate hearing the application may make an order permitting the copying for publication of the exhibit.
- ‘(4) Without limiting subrule (3), the judge or magistrate may, in deciding whether to make the order, have regard to the following matters—
- (a) whether the copying for publication is in the public interest or another legitimate interest;
 - (b) the nature of the proposed or potential publication by the applicant or another person;

- (c) the nature of the exhibit;
- (d) the content of the exhibit and whether the exhibit contains information that is private, confidential or personally or commercially sensitive;
- (e) whether the copying for publication is likely to prejudice the fair trial of an accused person;
- (f) the likely effect of the copying for publication on the following persons—
 - (i) a victim or alleged victim of the offence alleged against the accused person;
 - (ii) a family member of a victim or alleged victim of the offence alleged against the accused person;
 - (iii) a family member of the accused person;
 - (iv) a person referred to directly or indirectly in the exhibit;
 - (v) a person whose personal, proprietary or commercial interests may be affected by the copying for publication (including the owner of any copyright in the exhibit);
- (g) whether the persons mentioned in paragraph (f) have been notified of the application and given an opportunity to be heard on the application;
- (h) whether the owner of any copyright in the exhibit consents to the copying for publication;
- (i) whether the copying for publication is authorised under the *Copyright Act 1968* (Cwlth), section 43(1);
- (j) whether access to, or dealing with, the thing produced as the exhibit was or is restricted under an Act because the thing is—
 - (i) sensitive evidence within the meaning of the Code, section 590AF; or
 - (ii) a recording within the meaning of the *Evidence Act 1977*, section 21AY; or

- (iii) a section 93A criminal statement within the meaning of the *Evidence Act 1977*, section 93AA;
- (k) whether the exhibit was produced in open court;
- (l) whether the copying may damage the exhibit or risk its security;
- (m) whether the court has facilities to copy the exhibit;
- (n) the likely cost of copying the exhibit and whether the applicant offers to bear the cost of the copying.’.

6 Amendment of r 100 (Returning exhibits)

- (1) Rule 100(2)(a), ‘produced’—
omit, insert—
‘tendered’.
- (2) Rule 100(2)(b), after ‘court of trial’—
insert—
‘who must return the exhibit to the party who tendered it’.

ENDNOTES

- 1 Made by the Governor in Council on 13 March 2008.
- 2 Notified in the gazette on 14 March 2008.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.