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| Applications for supervision orders under the *Serious Offenders Act 2018* |
| **Practice note** |

**DOCUMENT CONTROL**

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# Preliminary

* 1. As from 1 September 2019, applications for orders pursuant to the provisions of Parts 3, 4 and 8 of the *Serious Offenders Act 2018* (“the Act”) (“Supervision Orders”) will be managed, listed and determined within the Common Law Division of the Court.
  2. This Practice Note supersedes any practice note within the Criminal Division relating to Supervision Orders.
  3. Judge O’Neill (or such other Judge as may be appointed by the Judge in charge of the Common Law Division) is the Judge in charge of the Appeals and Post Sentence Applications List (APSA List), including Supervision Orders.
  4. It is the intention of the Court to manage and determine Supervision Orders in a just, efficient, timely and cost-effective manner.

# Application for a Supervision Order (Section 13), Renewal of a Supervision Order (Section 22) or Review of a Supervision Order (Sections 99 and 102)

## Appropriate Venue for Application

* 1. An application for a Supervision Order may be made to the County Court if the court that sentenced the offender for the relevant offence was the County Court,[[1]](#footnote-1) or the equivalent court of another State or Territory.[[2]](#footnote-2)

## Electronic Filing of Documents

* 1. The parties must ensure that all documents are filed via the Court’s *electronic filing system*. For new applications, the Civil Registry will provide the Secretary to the Department of Justice and Community Safety (“the Secretary”) with a court-allocated number.
  2. Where the respondent is self-represented, filing by the respondent via eLodgement is not required. A self-represented respondent may file documents with the Court in person, by email or via postal delivery to the County Court of Victoria, 250 William Street, Melbourne VIC 3000.

## Listing an Application

* 1. Applications for a Supervision Order or Renewal of a Supervision Order should be filed by the Secretary at least *three months prior to* the expiration of the offender’s sentence or their existing Supervision Order. If there is insufficient time, consideration should also be given to the filing of an application for an Interim Supervision Order.
  2. Review of Supervision Order applications are to be filed as early as practicable *prior to the date set out* in the respondent’s existing Supervision Order.
  3. Prior to filing the application documents with the Court, solicitors for the Secretary must contact the Civil Registry to obtain a hearing date and a date for a final Directions Hearing.
  4. The parties must advise the Court if the application will realistically take more than a day to hear. It is the expectation of the Court that all applications under the Act will be heard and determined within one day.

## Filing and Service of the Application and Supporting Documents on the Respondent

* 1. Upon being given a hearing date and a court-allocated number by the Civil Registry, the Secretary must, as soon as practicable:[[3]](#footnote-3)
     1. File the application and accompanying Progress/Assessment Report;[[4]](#footnote-4) and
     2. Serve copies on the respondent, together with the necessary notices as set out in the Act.[[5]](#footnote-5)
  2. In relation to an application for a Supervision Order pursuant to s13 of the Act, if the Secretary seeks the imposition of an intensive treatment and supervision condition, the application must be accompanied by a treatment and supervision plan.[[6]](#footnote-6) The treatment and supervision plan must also be served on the respondent as soon as practicable after the application is filed.[[7]](#footnote-7)
  3. If represented, the respondent’s legal practitioner must file and serve on the solicitors for the Secretary a *Form 1A Notice that Legal Practitioner Acts*.[[8]](#footnote-8)
  4. As soon as practicable thereafter, the Secretary must provide the application and supporting documents to the respondent’s legal representative. If a legal representative for the respondent has not been appointed within *14 days* of serving the application, the Secretary should apply through the Civil Registry to list the matter for a Directions Hearing (“DH”) to determine how the matter should proceed.

## Filing and Service of Further Documents

* 1. Within *three weeks* of the Application being filed, the Secretary must file and serve on the respondent the following:
     1. Draft Supervision Order (setting out the conditions sought by the Secretary);
     2. Any additional psychological, psychiatric or medical reports (if applicable);
     3. A chronology; and
     4. Any other material upon which the Secretary seeks to rely.
  2. Within *four weeks* of the Application being filed, the Secretary must file and serve on the respondent the Outline of Submissions (briefly setting out the basis for the making of the order and the rationale for each of the conditions sought by the Secretary).[[9]](#footnote-9)
  3. It is expected that any material specifically relied on by the author of the Assessment/Progress Report in formulating their assessment will be provided to the respondent’s legal practitioner by the Secretary. This material should not be filed with the Court.
  4. Within *nine weeks* of the Application being filed, the respondent must file and serve on the Secretary the following documents:
     1. Notice of Intention to Dispute Report (if applicable);
     2. Outline of Submissions (briefly setting out whether the making, renewal or continuation of the Supervision Order will be contested and which, if any, of the conditions sought by the Secretary will be challenged);
     3. Psychiatric, psychological or medical reports (if applicable and available at this time); and
     4. (d) Any other material upon which the respondent seeks to rely.
  5. At least *one week* prior to the hearing date, the parties must file and serve any further material upon which they seek to rely, and the Secretary must file and serve a Notice of Intention to Dispute Report (if applicable). If there has been any changes to the proposed form of order, the Secretary must also file a copy of the updated Draft Supervision Order (in Microsoft Word compatible format) and provide a copy to the respondent.
  6. If the parties require additional time to file documents, consent orders can be prepared and filed with the Court.

## Final Directions Hearing

* 1. The Final Directions Hearing (“FDH”) will normally be listed at 9.30am on a Friday approximately two weeks before the hearing.
  2. At the FDH it is expected that parties will:
     1. Where possible, brief the same counsel engaged to appear at the hearing of the application; and
     2. Be in a position to advise the Court as to how the matter is likely to proceed, including:
        1. whether the application will be contested;
        2. whether any proposed conditions of the Supervision Order are in dispute;
        3. whether any witnesses are required to attend for cross-examination;
        4. whether the respondent seeks to obtain and/or rely upon an independent report. If such a report has not yet been filed and served, the respondent should be prepared to advise when such a report is expected;
        5. the estimated duration of the matter;
        6. in the case of an Application for Supervision Order or Renewal of Supervision Order, whether there is a need for the matter to proceed as an Interim Supervision Order in the first instance; and
        7. whether the respondent intends to make an application for a non-publication order.

# Interim Supervision Order Applications (Section 46)

## Listing an Application for an Interim Supervision Order

* 1. To minimise the attendance of the parties at hearings, the Secretary should only apply for an Interim Supervision Order if an Application for a Supervision Order or an Application for Renewal of a Supervision Order *has not been made* within three (3) months of the expiry of an offender’s sentence or Supervision Order or where the application cannot be determined before the expiry of the Supervision Order or the end of the offender’s custodial sentence.
  2. Where the Secretary intends to apply for an Interim Supervision Order, the Secretary must contact the Civil Registry to obtain a date for the hearing, or if required, a DH.
  3. It is the expectation of the Court that the hearing of the application will be heard and determined within one day.

## Filing and Service of Application and Supporting Documents on the Respondent

* 1. Upon being given a hearing date and court-allocated number by the Civil Registry, the Secretary must, as soon as practicable:[[10]](#footnote-10)
     1. File the Interim Supervision Order Application;[[11]](#footnote-11) and
     2. Serve a copy on the respondent, together with the necessary notices as set out in the Act.[[12]](#footnote-12)
  2. The legal representative for the respondent must file and serve on the applicant a *Notice that Legal Practitioner Acts* in accordance with the Rules.
  3. As soon as practicable thereafter, the Secretary must provide the application and supporting documents to the respondent’s legal representative. If difficulties are met in confirming whether the respondent has legal representation prior to the hearing, the Secretary should request the Civil Registry arrange a DH.

## Filing and Service of Further Documents

* 1. *As soon as practicable after* the Interim Supervision Order application has been filed, the Secretary *must* file and serve the following documents on the respondent:
     1. Draft Interim Supervision Order (setting out the conditions sought by the Secretary);
     2. Outline of Submissions (briefly setting out the basis for the making of the Interim Supervision Order and the rationale for each of the conditions sought by the Secretary);
     3. Any additional psychological, psychiatric or medical reports (if applicable);
     4. A chronology; and
     5. Any other material upon which the Secretary seeks to rely.
  2. After receipt of the above materials from the Secretary, and as soon as practicable prior to the hearing of the application, the respondent *must* file and serve the following documents on the Secretary:
     1. Notice of Intention to Dispute Report (if applicable);[[13]](#footnote-13)
     2. Outline of Submissions (setting out whether the making of the Interim Supervision Order will be contested and which, if any, of the conditions sought by the Secretary will be challenged);
     3. Psychiatric, psychological or medical reports (if applicable and available at this time); and
     4. Any other material upon which the respondent seeks to rely.
  3. As soon as practicable after receiving the respondent’s materials, the Secretary *must* file and serve a Notice of Intention to Dispute Report (if applicable).
  4. If there have been any changes to the proposed form of order, the Secretary must, as soon as practicable, also file a copy of the updated Draft Interim Supervision Order (in Microsoft Word compatible format) and provide a copy to the respondent.

## Extending an Interim Supervision Order (Section 57)

* 1. The Secretary may apply to extend an Interim Supervision Order by way of an application pursuant to s57 of the Act or orally at a DH.
  2. If the Secretary intends to make a written Application to Extend an Interim Supervision Order pursuant to s57, prior to the expiry of the Interim Supervision Order, the Secretary must:
     1. Contact the Civil Registry at [supervisionorders@countycourt.vic.gov](mailto:supervisionorders@countycourt.vic.gov).au or the associate to the Judge in charge of the APSA List;
     2. File and serve on the respondent the Application to Extend an Interim Supervision Order *as soon as practicable*;
     3. Ensure that the Application to Extend an Interim Supervision Order is accompanied by the necessary notices as set out in the Act for service on the respondent.[[14]](#footnote-14)

## Extending an Interim Supervision Order in Chambers

* 1. The Court may dispense with the requirement to file a formal notice of application in accordance with the Rules and hear an Application to Extend an Interim Supervision Order in Chambers and ‘on the papers” providing:
     1. The parties consent to the extension of the Interim Supervision Order;
     2. The parties consent to the matter being heard in Chambers; and
     3. The Court does not require the parties to attend in person.

# Review of Conditions of Supervision Order Applications (Section 110)

## Listing an Application for a Review of Conditions of a Supervision Order

* 1. Where the Secretary or offender intends to apply for a Review of Conditions of a Supervision Order (including an Interim Supervision Order) the Secretary or offender must contact the Civil Registry to obtain a date for the hearing.

## Listing an Urgent Application for a Review of Conditions of a Supervision Order (Section 143)

* 1. The Post Sentence Authority (“PSA”) may exercise its power under s142 of the Act to give directions to an offender and/or to manage the offender in a way that is inconsistent with, or not provided for, by the conditions of the Supervision Order or Interim Supervision Order.
  2. The Post Sentence Authority (“PSA”) may exercise its power under s142 of the Act to give directions to an offender and/or to manage the offender in a way that is inconsistent with, or not provided for, by the conditions of the Supervision Order or Interim Supervision Order.
  3. An emergency power of direction under s142 ceases to have effect 72 hours after it is given.
  4. When the emergency power of direction under s142 has been exercised and the Secretary or the Offender intends to apply for an urgent Review of Conditions of a Supervision Order, the Secretary or Offender must contact the Civil Registry to obtain a hearing date *as soon as practicable before the expiration of the 72-hour period*.

## Filing and Service of Documents

* 1. Upon being given a hearing date for the hearing of the application by the Civil Registry, the applicant must file and serve the Application for a Review of Conditions of a Supervision Order on the respondent *as soon as practicable*.
  2. The applicant *must* file and serve on the respondent *as soon as practicable after* the filing of the Review of Conditions Application, but *no later than ten (10) days prior to* the hearing date:[[15]](#footnote-15)
     1. A Progress Report (if applicable);
     2. A Certificate of Available Resources (if applicable);[[16]](#footnote-16)
     3. A Draft Supervision Order (setting out the conditions sought);
     4. Psychological, psychiatric or medical reports (if applicable);
     5. A Chronology; and
     6. Any other material upon which the applicant seeks to rely.[[17]](#footnote-17)
  3. The respondent *must* file and serve on the applicant, *as soon as practicable after* being served with the applicant’s materials, but no later than five (5) days prior to the hearing date:[[18]](#footnote-18)
     1. A Notice of Intention to Dispute Report (if applicable);
     2. An Outline of Submissions;
     3. Psychiatric, psychological or medical reports (if applicable); and
     4. Any other material upon which the respondent seeks to rely.
  4. The Secretary must provide to the PSA copies of the Application and supporting materials filed by both the applicant and respondent *as soon as practicable* for the PSA to determine whether to make submissions in respect of the application.[[19]](#footnote-19)
  5. At least two (2) days prior to the hearing date, the parties must file and serve any other material upon which they seek to rely and the applicant must file and serve a Notice of Intention to Dispute Report (if applicable). If there have been any changes to the proposed form of order, the applicant must also file a copy of the updated Draft Supervision Order (in Microsoft Word compatible format) and provide a copy to the respondent.

# Extension or Review of Intensive Treatment and Supervision Order Condition (Sections 43 and 113)

## Listing an Application to Extend an Intensive Treatment and Supervision Condition (Section 43)

* 1. At any time while an intensive supervision and treatment condition is in force in respect of an offender, the Secretary may apply to extend the condition.[[20]](#footnote-20)
  2. If the Secretary intends to extend the intensive supervision and treatment condition, at least one month *prior to the expiry of the condition*, the Secretary must:
     1. Contact the Civil Registry to obtain a date for a hearing;
     2. File with the Court the Application to Extend an Intensive Supervision and Treatment Condition, together with:
        1. a Treatment and Supervision plan;
        2. an Assessment Report or the latest Progress Report.
  3. These documents should be served on the offender as soon as practicable, together with the necessary notices as set out in the Act.[[21]](#footnote-21)

## Listing an Application for a Review of an Intensive Treatment and Supervision Condition (Section 113)

* 1. The Secretary *must* apply for review of an intensive treatment and supervision condition by the date set out in the respondent’s Supervision Order, which must not be later than twelve (12) months after such a condition commenced operation (and thereafter at twelve (12) monthly intervals).
  2. Such an application need not be made by the Secretary if an application has already been made to:
     1. Extend the intensive treatment and supervision condition under s43;
     2. Review the relevant Supervision Order under s99; or
     3. Review the conditions of the relevant Supervision Order under s110.
  3. Prior to the date set out in the respondent’s Supervision Order for review of the intensive treatment and supervision condition, the Secretary must:
     1. Contact the Civil Registry to obtain a date for a DH or hearing date for the application.
     2. File with the Court the Application to Review an Intensive Supervision and Treatment Condition, together with:
        1. a Treatment and Supervision Plan; and
        2. an Assessment Report or the latest Progress Report.
  4. These documents should be served on the offender as soon as practicable, together with the necessary notices as set out in the Act.[[22]](#footnote-22)

## Filing Requirements

* 1. The Secretary *must* file and serve on the respondent *at least two (2) weeks before* the hearing date:
     1. A Draft Supervision Order;
     2. Psychological, psychiatric or medical reports (if applicable); and
     3. Any other material upon which the Secretary seeks to rely.[[23]](#footnote-23)
  2. The respondent *must* file and serve on the Secretary, *at least five (5) days before* the hearing date:
     1. A Notice of Intention to Dispute Report (if applicable);
     2. An Outline of Submissions;
     3. Psychiatric, psychological or medical reports (if applicable); and
     4. Any other material upon which the respondent seeks to rely.[[24]](#footnote-24)
  3. The Secretary *must* file and serve on the respondent, *at least two (2) days before* the hearing date the Notice of Intention to Dispute Report (if applicable).

# Non-Publication Order

* 1. An offender may apply for an order restricting the identification of the offender pursuant to s279 of the Act.
  2. It is expected that the respondent will be in a position to advise the Court as at the FDH whether the respondent seeks a non-publication order. An application for a non-publication order may be made orally at the hearing.

# Victim Submissions

* 1. Victim submissions may be made in respect of any of the Supervision Order applications addressed in this Practice Note.
  2. The Secretary must notify the Victim Support Agency of the Department of Justice and Community Safety (“VSA”) of any Supervision Order application under Parts 3, 4 or 8 of the Act as soon as practicable, but by no later than three (3) working days following the Secretary’s decision to lodge an application, or when an application is filed in Court.
  3. The VSA must give notice to any registered victim[[25]](#footnote-25) regarding any such application. The notice must specify the nature of the application and the period within which the victim submission can be made in relation to the application.[[26]](#footnote-26)
  4. The victim submission must be addressed to the County Court Civil Registry and may be filed in person or via email at [supervisionorders@countycourt.vic.gov.au](mailto:supervisionorders@countycourt.vic.gov.au) at least five (5) days before the hearing date.
  5. In the event that a victim submission cannot be filed with the Court five (5) days before the hearing date, the Judge may allow the victim submission to be provided to the Court on the day of the hearing.
  6. The VSA may send email notification to the County Court Civil Registry advising of a pending victim submission.
  7. The victim submission is *not* to be served on the respondent or his/her legal representative.[[27]](#footnote-27)

# Contravention of Supervision Order or Interim Supervision Order Hearings (Section 169)

## Listing a Contravention of Supervision Order Hearing

* 1. Where the Secretary or Victoria Police intend to file a charge for the contravention of a Supervision Order imposed by the County Court, they *must*:
     1. Contact the Civil Registry to obtain a date for a mention.
     2. File the charge sheet in the Magistrates’ Court.[[28]](#footnote-28)
  2. Once the Magistrates’ Court has ordered the transfer of the proceeding to the County Court,[[29]](#footnote-29) the Prosecution must contact the Civil Registry to obtain the court-allocated number for the case so that documents may be filed using the Court’s electronic filing system. The court-allocated number will be a different number to the court-allocated number used for the Application for a Supervision Order.

## Prosecution Filing Requirements

* 1. The Prosecution *must* file and serve on the accused or their legal representative *as soon as practicable*:
     1. A Charge sheet and, where applicable, summons or bail undertaking;
     2. An Order for Transfer of Proceedings for Contravention of Supervision Order; and
     3. An Affidavit of Service (where required, in matters initiated by the Secretary).
  2. At the mention, a date will be set for the Contravention of Supervision Order Hearing and the Judge will determine the filing requirements of the parties.
  3. After hearing from the parties, the Judge will determine the date by which the full brief of evidence is required to be filed and served by the Secretary or Victoria Police (as applicable). If the parties agree, the Judge may determine to waive the requirement for a full brief of evidence.
  4. The Judge will also determine an appropriate timeframe for the Prosecution to file and serve on the defence:
     1. A Summary of Prosecution Opening and, where applicable, Prosecution Outline of Submissions;
     2. Criminal Record (if applicable, and only if it is to be a plea of guilty);
     3. A chronology; and
     4. (d) Any other material upon which the Prosecution seeks to rely.[[30]](#footnote-30)

## Defence Filing Requirements

* 1. At the mention, after hearing from the parties, the Judge will determine an appropriate time frame for the defence to serve on the Prosecution:
     1. Defence Outline of Submissions (if applicable);
     2. Psychiatric, psychological or medical reports (if applicable); and
     3. Any other material sought to be relied upon.
  2. Unless an alternative timeframe is set, the judge will order that the Secretary or Victoria Police (as applicable) serve the brief of evidence at least twenty-eight (28) days prior to the Contravention of Supervision Order Hearing, with the remaining Prosecution documents to be served at least fourteen (14) days prior. In matters prosecuted on behalf of the Director of Public Prosecutions, it is the responsibility of the Director’s legal representatives to advise Victoria Police of the deadline for service of the brief of evidence. All defence documents are required to be served at least seven (7) days before the hearing.

## Video Links and Attendance at Hearing

### Directions Hearings

* 1. A respondent who is legally represented, is not required to be present as a DH in relation to an application.[[31]](#footnote-31) If a respondent seeks to appear via video link, it is the responsibility of their legal practitioner to ensure all necessary arrangements (including completing an application form) have been made with the Court’s Video Link Coordinator.

### Applications Hearing

* 1. A respondent is required to be present in person or via video link at the hearing of an application.[[32]](#footnote-32) If a respondent seeks to appear via video link, it is the responsibility of their legal practitioner to ensure all the necessary arrangements (including completing an application form) have been made with the Court’s Video Link Coordinator. If a respondent is unable to be present, their legal representative must advise the Secretary and the Court as soon as practicable.[[33]](#footnote-33)

### Contravention of Supervision Order Hearings

* 1. A respondent (accused) must be present for a hearing unless alternative arrangements are made with the approval of the Court.

## Transcripts

* 1. DHs and mentions will not usually be transcribed. Where a party requires a transcript, leave of the Court should be sought. Hearings and reasons for determination or sentence will be transcribed and transcripts provided to the parties.

## Interpreters

* 1. The Court is not responsible for arranging nor funding an interpreter for any party or witness. Where an interpreter is required, the Secretary or the Prosecution will be responsible for arranging an interpreter to attend Court.

# Contact details

## Civil Registry

* 1. Email: [supervisionorders@countycourt.vic.gov.au](mailto:supervisionorders@countycourt.vic.gov.au)  
     Pre-Trial Officer  
     Laura Martin – 8636 6565

## Associates to Judge O’Neill

* 1. Email: judgeo'neill.chambers@courts.vic.gov.au  
     Sarah Ward – 8636 6686  
     Lucinda Buckley – 8636 6475

## Administrator of the Common Law Division

* 1. Email: CCVcommonlawadmin@courts.vic.gov.au  
     Kate Alberico – 8636 6314

1. Section 12(1) of the Act [↑](#footnote-ref-1)
2. Section 12(2) [↑](#footnote-ref-2)
3. NB: Section 13(3) and s97(2) of the Act [↑](#footnote-ref-3)
4. For supervision order applications see s13(2)(b); for renewal of supervision order applications see s22(2)(b); for review of supervision order applications see s98 and s103 [↑](#footnote-ref-4)
5. For supervision order applications see s13(3)(c); for renewal of supervision order applications see s22(3)(c); for review of supervision order applications see s97(2)(c) [↑](#footnote-ref-5)
6. Section 13(2)(c) [↑](#footnote-ref-6)
7. Section 13(3)(b) [↑](#footnote-ref-7)
8. See Order 1.07, *County Court Criminal Procedure Rules* 2009(“the Rules”) [↑](#footnote-ref-8)
9. Section 28(1) of the Act [↑](#footnote-ref-9)
10. NB: Section 46(3) of the Act requires that the application and other documents are to be served on the offender as soon as practicable [↑](#footnote-ref-10)
11. Section 46(2) of the Act [↑](#footnote-ref-11)
12. Section 46(3) of the Act [↑](#footnote-ref-12)
13. Section 271 of the Act [↑](#footnote-ref-13)
14. Section 57(3) of the Act [↑](#footnote-ref-14)
15. In the case of an urgent application under s143, these time frames may not be able to be complied with [↑](#footnote-ref-15)
16. Section 110(2) states that an application may be accompanied by a certificate of available resources or a progress report, or both [↑](#footnote-ref-16)
17. Voluminous material such as affidavit and supporting material in Supervision Order proceedings may be delivered or handed to the Civil Registry [↑](#footnote-ref-17)
18. In the case of an urgent application under s143, these time frames may not be able to be complied with [↑](#footnote-ref-18)
19. Section 111(1) of the Act [↑](#footnote-ref-19)
20. Section 43 of the Act [↑](#footnote-ref-20)
21. Section 43(3)(c) of the Act [↑](#footnote-ref-21)
22. Section 97 of the Act [↑](#footnote-ref-22)
23. Voluminous material such as affidavit and supporting material in Supervision Order proceedings may be delivered or handed to the Civil Registry [↑](#footnote-ref-23)
24. *Ibid* [↑](#footnote-ref-24)
25. “Victim” has the same meaning as in s30A of the *Corrections Act* 1986 [↑](#footnote-ref-25)
26. Section 134(3) and (4) of the Act [↑](#footnote-ref-26)
27. However, s135 of the Act provides that the Court may disclose to the offender or their legal representative the victim submission in some circumstances [↑](#footnote-ref-27)
28. When a charge sheet is filed in the Magistrates’ Court, the Magistrates’ Court must order that the proceeding be transferred to the court that made the Supervision Order. See s173(6) and s175(2) of the Act [↑](#footnote-ref-28)
29. Pursuant to s173(6) [↑](#footnote-ref-29)
30. Voluminous material such as affidavit and supporting material in supervision order proceedings may be delivered or handed to the Civil Registry [↑](#footnote-ref-30)
31. See s126(3) of the Act [↑](#footnote-ref-31)
32. See s128(1) of the Act [↑](#footnote-ref-32)
33. The Court may determine to proceed with the hearing of the application in the absence of the respondent – see s128(3) of the Act [↑](#footnote-ref-33)