

SUPPLEMENTARY GAZETTE



**THE SOUTH AUSTRALIAN
GOVERNMENT GAZETTE**

www.governmentgazette.sa.gov.au

PUBLISHED BY AUTHORITY

ALL PUBLIC ACTS appearing in this GAZETTE are to be considered official, and obeyed as such

ADELAIDE, FRIDAY, 19 SEPTEMBER 2014

CONTENTS

	Page
District Court Criminal Rules 2014.....	5272
District Court Criminal Supplementary Rules 2014.....	5327
District Court Fast Track Rules Adoption Rules 2014.....	5417
District Court Fast Track Supplementary Rules Adoption Rules 2014.....	5437
District Court Special Applications Rules 2014.....	5457
District Court Special Applications Supplementary Rules 2014.....	5479

SOUTH AUSTRALIA**DISTRICT COURT CRIMINAL RULES 2014**

By virtue and in pursuance of Section 51 of the *District Court Act 1991* and all other enabling powers, we, Geoffrey Louis Muecke, Chief Judge, and Rauf Soulio and Paul Vincent Slattery, Judges of the District Court of South Australia, make the following Rules of Court.

Contents

Chapter 1—Preliminary

Part 1—Formal provisions

- 1—Citation
- 2—Commencement

Part 2—Objects

- 3—Objects

Part 3—Interpretation

- 4—Interpretation
- 5—Calculation of periods of time
- 5A—Numbering of Rules

Part 4—Application of Rules

- 6—Application of Rules

Part 5—Repeal and transitional provisions

- 7—Repeal
- 8—Transitional provision

Chapter 2—General procedural rules and allocation of Court business

Part 1—Sittings

- 9—Sittings

Part 2—Public access to hearings

- 10—Public access to hearings
- 11—Recording events in court
- 12—Electronic communications to and from court

Part 3—Court's control of procedure

- 13—Power of Court to control procedure
- 14—Dispensation
- 15—Supplementary Rules

Part 4—Distribution of Court's business

- 16—Jurisdiction of Masters
- 17—Registrar's functions

Part 5—Representation

- 18—Solicitor acting for party
- 19—Service of documents on solicitor acting for party

Chapter 3—Initiation of criminal proceedings

Part 1—Information

- 20—Revocation of Schedule 3 rules
- 21—Information
- 22—Particulars
- 23—Serious and organised crime offences

Part 2—Arraignment

- 24—Arraignment of persons committed for trial or sentence
- 25—Arraignment on multiple counts
- 26—Court of trial
- 27—Referral to directions hearing

Chapter 4—Documents, service and hearings generally

Part 1—Documents

- 28—Approved forms
- 29—Inspection of court records
- 30—Production of court records
- 31—Child pornography material

Part 2—Service

- 32—Address for service
- 33—Obligation to give address for service
- 34—Service of documents at address for service

Part 3—Hearings generally

- 35—Appearance of defendant in person
- 36—Appearance of defendant by audiovisual link

Part 4—Hearings for interstate courts

- 37—Audiovisual evidence for interstate proceedings

Chapter 5—Election for trial by Judge alone

- 38—Election
- 39—Election by joint accused
- 40—Manner of making election
- 41—Practitioner’s certificate
- 42—Time for making election
- 43—Election irrevocable
- 44—Election after direction for new trial
- 45—Application by Director

Chapter 6—Pre-trial applications and directions

Part 1—Matters before first directions hearing

- 46—Legal representation certificate or written assurance
- 47—Application for deferred trial date for serious and organised crime suspect

- Part 2—Convening directions hearings
 - 48—Convening directions hearing
- Part 3—Pre-trial applications
 - 49—Written application
 - 50—Oral application
 - 51—Time for making certain applications
- Part 4—Determination without oral hearing
 - 52—Determination of application without hearing oral submissions
- Part 5—Proceedings at directions hearings
 - 53—Forum for directions hearing
 - 54—First directions hearing
 - 55—Directions hearings generally
 - 56—Tender documents and aids
- Part 6—Special directions hearings
 - 57—Special directions hearing
- Part 7—Pre-trial directions hearings
 - 58—Convening pre-trial directions hearing
 - 59—Proceedings at pre-trial directions hearing
- Part 8—Outcome of directions hearings
 - 60—Outcome of directions hearing

Chapter 7—Notice of and dispensing with evidence

- Part 1—Notice of evidence
 - 61—Evidence of discreditable conduct
 - 62—Evidence of self-defence or other designated matters
 - 63—Expert evidence
- Part 2—Admissions
 - 64—Dispensing with prosecution witnesses
 - 65—Admission of facts
- Part 3—Subpoenas
 - 66—Interpretation
 - 67—Issuing subpoena
 - 68—Form of subpoena
 - 69—Alteration of date for attendance or production
 - 70—Setting aside or other relief
 - 71—Service
 - 72—Compliance with subpoena
 - 73—Production otherwise than on attendance
 - 74—Removal, return, inspection, copying and disposal of documents and things

75—Inspection of, and dealing with, documents and things produced otherwise than on attendance

76—Disposal of documents and things produced

77—Costs and expenses of compliance

78—Failure to comply with subpoena—contempt of court

79—Documents and things in court custody

Chapter 8—Trial

Part 1—Evidence

80—Audiovisual link evidence or submissions

81—Evidence to be taken interstate or overseas

82—Audiovisual record of evidence

Part 2—Exhibits

83—Exhibits

Chapter 9—Juries

84—Interpretation

85—Juror's oath or affirmation

86—Jury panel

87—Selection of jurors by ballot

88—Jurors in charge of Sheriff or Sheriff's officer

89—Non attendance

Chapter 10—Sentencing

90—Victim impact statements

91—Community impact statements

92—Application to fix non-parole period

93—Mental impairment detention

Chapter 11—Statutory applications

94—Mental impairment

95—Note- there is no Rule 95- see rule 5A

96—Note- there is no Rule 96- see rule 5A

97—Note- there is no Rule 97- see rule 5A

98—Confiscation orders

Chapter 12—Note- there is no Chapter 12- see rule 5A

Chapter 13—Note- there is no Chapter 13 – see rule 5A

Chapter 14—Contempt of Court

Part 1—Contempt committed in face of Court

128—Contempt committed in face of Court

Part 2—Court initiated proceedings for contempt—other cases

129—Court initiated proceedings for contempt—other cases

Part 3—Contempt proceedings by party to proceeding

130—Contempt proceedings by party to proceeding

Part 4—Hearing of charge of contempt

131—Charge to be dealt with by Judge

132—Procedure on charge of contempt

133—Punishment of contempt

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

These Rules may be cited as the *District Court Criminal Rules 2014*.

2—Commencement

These Rules commence on 1 October 2014.

Part 2—Objects

3—Objects

- (1) The objects of these Rules are to—
 - (a) establish orderly procedures for the conduct of the business of the Court in its criminal jurisdiction;
 - (b) promote the just and efficient determination of such business; and
 - (c) facilitate the timely disposal of such business at a cost affordable to the parties and the community generally.
- (2) These Rules are not intended to defeat a proper prosecution by or frustrate a proper defence of a party who is genuinely endeavouring to comply with the procedures of the Court.
- (3) Proceedings in the Court will be managed and supervised with a view to best attaining the objects in subrule (1).
- (4) These Rules are to be construed and applied, and the processes and procedures of the Court conducted, so as best to attain the objects in subrule (1).

Part 3—Interpretation

4—Interpretation

In these Rules, unless the contrary intention appears—

Act means the *Criminal Law Consolidation Act 1935*;

address for service – see rule 32;

approved form means a form approved under rule 28 and contained in the Schedule to the Supplementary Rules;

audiovisual link means a communication between the Court and a party or a party's representative or a witness by video, telephone or other electronic means for the purpose of a court hearing;

business day means a day on which the Registry is ordinarily open for business;

the Civil Rules means the *District Court Civil Rules 2006*;

child pornography – see rule 31;

commencement date means the date on which these Rules came into operation;

community impact statement means a neighbourhood impact statement or a social impact statement as defined in section 7B of the *Criminal Law (Sentencing) Act 1988*;

Confiscation Acts – see rule 98;

Court means the District Court of South Australia;

Director means the Director of Public Prosecutions for the State or Commonwealth as the context requires;

election - see rule 38;

lawyer means a legal practitioner within the meaning of the *Legal Practitioners Act 1981*;

legal representative certificate – see rule 46;

practitioner's certificate - see rule 41;

preliminary question - see rule 49(1)(h);

prescribed proceeding means a proceeding in which a person—

- (a) is charged with a serious and organised crime offence within the meaning of section 5(1) of the Act; or
- (b) is or becomes the subject of a serious and organised crime suspect determination under section 3A of the *Bail Act 1985*;

Registrar means the Registrar and includes the Deputy Registrar (Criminal) and any other officer or employee of the Court performing functions delegated by the Registrar or under the Registrar's supervision;

the Rules means these Rules;

Sentencing Act means the *Criminal Law (Sentencing) Act 1988*;

Special directions hearing – see rule 57;

Supplementary Rules - see rule 15;

Written assurance – see rule 46.

5—Calculation of periods of time

- (1) When a rule or order of the Court fixes prospectively the time within which something is required or permitted to be done, the period runs from the end of the day from which the calculation is to be made.

Example—

On 1 March, the Court orders a party to file a document within 14 calendar days. The party must file the document by no later than 15 March.

- (2) When a rule or order fixes the time within which something is required or permitted to be done as being not less than a specified number of days before a day or event in the future, the calculation of the period commences on the day before the day or event in question.

Example—

The Court orders a party to file a document at least 14 days or 14 clear days before a hearing scheduled on 31 March. The party must file the document by no later than 16 March.

- (3) If the time within which something is required or permitted to be done under these Rules or an order is fixed at 7 days or less, the period is to be understood as a reference to business days only.

Example 1—

On Thursday, 1 March, the Court orders a party to file a document within 4 days. The party must file the document by no later than Wednesday, 7 March.

Example 2—

The Court orders a party to file a document at least 4 days or 4 clear days before a hearing scheduled on Monday, 31 March. The party must file the document by no later than Monday, 24 March.

- (4) When the time within which something is required or permitted to be done under these Rules or an order ends on a day on which the Registry is closed, the period is extended so that it ends on the next day on which the Registry is open for business.
- (5) During the period fixed by the Supplementary Rules as the Christmas vacation—
- (a) documents may be filed on any day on which the Registry is open for business; but
 - (b) subject to any contrary direction by the Court, the time for filing a document or taking any other step in a proceeding does not run during the Christmas vacation.

5A—Numbering of Rules

It is intended that the numbering of these rules is to match (so far as possible) the numbering of the *Supreme Court Criminal Rules 2014* (and thus, if any of the *Supreme Court Criminal Rules 2014* are inapplicable in the District Court, there will be a gap in the sequential numbering of these rules)

Note-

There is no equivalent to this rule in the *Supreme Court Criminal Rules 2014*

Part 4—Application of Rules

6—Application of Rules

- (1) There is no subrule (1)- see rule 5A
- (2) These Rules do not derogate from the Court's inherent jurisdiction.

Part 5—Repeal and transitional provisions

7—Repeal

The *District Court Criminal Rules 2013* are repealed.

8—Transitional provision

- (1) Unless the Court otherwise directs, these Rules apply to—
 - (a) proceedings commenced on or after the commencement date; and
 - (b) steps taken or required to be taken or matters occurring on or after the commencement date in proceedings commenced before the commencement date.
- (2) The Court may direct that these Rules, or the Rules in force before these Rules were made, apply to a transitional proceeding or a particular step or matter in a transitional proceeding.

Chapter 2—General procedural rules and allocation of Court business

Part 1—Sittings

9—Sittings

The sittings of the Court in its criminal jurisdiction will be at such times and places as the Chief Judge from time to time directs.

Part 2—Public access to hearings

10—Public access to hearings

- (1) All proceedings before the Court are, as a general rule, to be held in a place open to the public.
- (2) This general rule is, however, subject to the following exceptions—
 - (a) directions hearings and pre-trial conferences are usually heard in private;
 - (b) the Court has a general discretion to direct, if there is good reason to do so, that a proceeding be heard wholly or partly in private or that the public be excluded from the whole or a particular part of a hearing.

11—Recording events in court

- (1) Subject to this rule and to any contrary direction of the Court, the making of a record of persons, things, or events in court is not permitted.
- (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
- (3) Despite subrule (1) and subject to subrules (4) and (5)—
 - (a) a party to a proceeding that is being heard by the Court, a lawyer, law clerk, student or bona fide member of the media may make a handwritten or electronic note of persons, things or events in court; and
 - (b) a bona fide member of the media may make an audio recording of a proceeding for the sole purpose of verifying notes and for no other purpose.
- (4) A record made in court permitted by this rule must—
 - (a) be made in a manner that does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceeding;
 - (b) not interfere with the Court's sound system or other technology; and
 - (c) not generate sound or require speaking into a device.
- (5) An audio recording made by a member of the media under subrule (3)(b) —
 - (a) must not record any private conversation occurring in court;
 - (b) must not be made available to any other person or used for any other purpose; and

- (c) must be erased entirely within 48 hours of the recording.
- (6) For the purpose of this rule, *record* means a record by any means whatsoever, including by handwriting, other physical means, audio and/or visual recording or electronic record.

12—Electronic communications to and from court

- (1) Subject to this rule and to any contrary direction of the Court, communication by means of an electronic device to and from a courtroom during the conduct of proceedings is not permitted.
- (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
- (3) Despite subrule (1) and subject to subrules (4) and (5), a party to a proceeding that is being heard by the Court, a lawyer or a bona fide member of the media may communicate by means of an electronic device to and from a courtroom during the conduct of the proceeding.
- (4) An electronic communication permitted by this rule must—
 - (a) be made in a manner that does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceeding;
 - (b) not interfere with the Court's sound system or other technology; and
 - (c) not generate sound or require speaking into a device.
- (5) An electronic communication of evidence adduced or a submission made in a proceeding, whether in full or in part, must not be made until at least 15 minutes have elapsed since the evidence or submission in question, or until the Court has ruled on any application for suppression or objection made in relation to the evidence or submission within that period of 15 minutes, whichever occurs last.
- (6) For the purpose of this rule, *electronic device* means any device capable of transmitting and/or receiving information, audio, video or other matter (including a cellular phone, computer, personal digital assistant, digital or analogue audio and/or visual camera or similar device).

Part 3—Court's control of procedure

13—Power of Court to control procedure

- (1) The Court may, on its own initiative or on application by a party, give directions about the procedure to be followed in a particular proceeding.
- (2) A direction may be given under this rule—
 - (a) when these Rules do not address or address fully a procedural matter that arises in a proceeding;
 - (b) to resolve uncertainty about the correct procedure to be adopted;
 - (c) to achieve procedural fairness in the circumstances of a particular case; or
 - (d) to expedite the hearing or determination of a particular case or to avoid unnecessary delay or expense.

- (3) A direction may be given under this rule irrespective of whether it involves some departure from these Rules or the established procedures of the Court.
- (4) A direction may be given under this rule superseding an earlier direction but a step taken in a proceeding in accordance with a direction that has been superseded is to be regarded as validly taken.

14—Dispensation

- (1) The Court may at any time dispense with compliance with all or any part of these Rules including a rule relating to or governing powers that the Court may exercise on its own initiative.
- (2) The Court may extend or abridge the time for taking a step prescribed by or under these Rules whether or not such time has expired.

15—Supplementary Rules

- (1) It is intended that the Court make supplementary rules necessary or convenient for the regulation of proceedings in the Court (the *Supplementary Rules*).
- (2) In particular, it is intended that the Supplementary Rules—
 - (a) supplement these Rules;
 - (b) modify these Rules in respect of a particular category of proceedings;
 - (c) give directions as to practices to be followed;
 - (d) prescribe scales of costs;
 - (e) prescribe approved forms.

Part 4—Distribution of Court's business

16—Jurisdiction of Masters

A Master has jurisdiction to make interlocutory orders in criminal proceedings governed by these Rules only in respect of —

- (a) the adjudication of costs; and
- (b) any matter referred to a Master by a Judge.

17—Registrar's functions

- (1) The Registrar is the Court's principal administrative officer.
- (2) The Registrar's functions include the following—
 - (a) to establish and maintain appropriate systems—
 - (i) for filing documents in the Court; and
 - (ii) for issuing the Court's process as provided by these Rules or as directed by the Court;
 - (b) to ensure that proper records of the Court's proceedings are made and to provide for the safe keeping of the Court's records;
 - (c) to take custody of documents and objects produced to the Court in response to a subpoena, and of all exhibits tendered in proceedings before the Court,

and to deal with them as authorised by these Rules or as directed by the Court;

- (d) to ensure that judgments and orders of the Court are properly entered in the records of the Court.
- (3) The Registrar may delegate functions under these Rules to another officer of the Court.
- (4) No record is to be taken out of the Registrar's custody without the Court's authorisation.

Part 5—Representation

18—Solicitor acting for party

- (1) A solicitor instructed to act for a person committed for trial or sentence is, not less than 5 clear business days before that person's first arraignment, to give notice in writing to the Registrar that the solicitor is so acting.
- (2) A solicitor appearing or counsel instructed by a solicitor to appear to represent a person committed for trial or sentence is to announce to the Court the name of the solicitor who acts for the person.
- (3) A solicitor is to be recorded in the Court's records as the solicitor acting for a party if—
 - (a) the solicitor's name appears on the first document to be filed in the Court on behalf of the party as the name of the party's solicitor;
 - (b) the solicitor's name is announced to the Court as the party's solicitor by a lawyer appearing in court to represent the party; or
 - (c) the solicitor gives notice to the Court, in an approved form, that the solicitor is acting for the party.
- (4) The Court will alter its records so that a particular solicitor no longer appears as the solicitor for a party if—
 - (a) the party files in the Court a notice, in an approved form, to the effect that the party is no longer represented by a solicitor; or
 - (b) a solicitor files a notice, in an approved form, to the effect that the solicitor is to be recorded as the solicitor acting for the party in place of the solicitor previously recorded as the solicitor acting for the party; or
 - (c) the Court orders on its own initiative, or on the application of a party or a solicitor, that the Court's records be altered so that the solicitor no longer appears as the solicitor acting for the party.
- (5) If the Court makes an order under subrule (4)(c), it may make ancillary orders—
 - (a) requiring that notice be given of the order; and
 - (b) providing that the order is not to take effect until notice has been given of the order.

19—Service of documents on solicitor acting for party

Unless these Rules otherwise provide and subject to any contrary direction by the Court, any document, notice or proceeding to be served on a party may be served on the solicitor recorded in the Court's record as the solicitor for the party.

Chapter 3—Initiation of criminal proceedings

Part 1—Information

20—Revocation of Schedule 3 rules

The Rules contained in Schedule 3 to the Act are revoked.

21—Information

- (1) An information presented under section 275(1) of the Act is to—
 - (a) be in an approved form;
 - (b) contain in a separate numbered paragraph, called a count, a description of each offence charged;
 - (c) have endorsed on the back the names of the witnesses who the Director intends to call at the trial.
- (2) The accused is to be sufficiently identified in the information without necessarily stating his or her full name, address and occupation.
- (3) Each count in an information is to—
 - (a) describe the offence briefly in ordinary language, avoiding technical terms when possible, and without necessarily stating all the essential elements of the offence;
 - (b) state the section of the statute creating the offence when applicable; and
 - (c) contain in ordinary language particulars of the offence, avoiding technical terms whenever possible.
- (4) If an offence comprises—
 - (a) any one of several different acts or omissions;
 - (b) an act or omission in any one of several capacities;
 - (c) an act or omission with any one of several intentions;
 - (d) any other element in the alternative,the acts, omissions, capacities, intentions or other matters in the alternative may be stated in the alternative in the count charging the offence.
- (5) It is not necessary, in a count charging a statutory offence, to negative any exception or exemption from, or qualification of, the operation of the statute creating the offence.
- (6) An information is not open to objection by reason only of any failure to comply with this rule or with rule 22.

22—Particulars

- (1) The description or designation of any other person to whom reference is made is to be sufficient to identify the person, without necessarily stating his or her full and correct name, address and occupation.
- (2) If such a description or designation cannot be given, the best description or

designation is to be given, or the person may be described as “a person unknown”.

- (3) The description of property should be sufficient to identify the property. Unless an offence depends on the special ownership or value of property, it is not necessary to state the owner or value of the property.
- (4) If reference is made to property with multiple owners, it is sufficient to describe it as owned by one named person “with others”. If the owners are a body of persons with a collective name, such as “Trustees”, “Commissioners” or “Club”, it is sufficient to use the collective name without naming any individual.
- (5) The description of a document or instrument should be sufficient to identify it. It is sufficient to describe a document or instrument by a name or designation by which it is usually known, or by its effect, without setting out a copy of it.
- (6) The description of a place, time, thing, matter, act or omission should be sufficient to identify it.
- (7) Figures and abbreviations may be used to express anything commonly expressed in that manner.
- (8) If a rule of law or statute limits the particulars required to be given, this rule does not require more detailed particulars than those required by the rule or statute.

23—Serious and organised crime offences

- (1) If a proceeding comprises a prescribed proceeding, the information is to be accompanied by a notice in an approved form—
 - (a) identifying that the proceeding is a prescribed proceeding;
 - (b) identifying why the proceeding is a prescribed proceeding; and
 - (c) stating that the proceeding may be expedited in accordance with section 275(3) of the Act and these Rules.
- (2) If a proceeding becomes a prescribed proceeding after an information has been filed, the Director is to apply as soon as practicable for permission to amend the information to add a notice complying with subrule (1).
- (3) The Director is to inform the Court at the first arraignment that a proceeding is a prescribed proceeding.

Part 2—Arraignment

24—Arraignment of persons committed for trial or sentence

- (1) Subject to subrule (2), a person committed for trial or sentence is to appear before the Court on the date prescribed by the Supplementary Rules.
- (2) The Court may direct that a person appear before the Court at an earlier or later date.

25—Arraignment on multiple counts

- (1) If—
 - (a) a person committed for trial or sentence is to be arraigned on an information charging more than one offence; and

- (b) the Court is satisfied that the person is literate,
the Court may direct the person to be arraigned under this rule.
- (2) Upon arraignment under this rule—
 - (a) a true copy of the information is to be provided to the person before or at the arraignment;
 - (b) the person is, before or at the arraignment, to write against each charge on a true copy of the information his or her plea;
 - (c) a summary of the offences is to be read to the person;
 - (d) the person is to sign his or her name at the foot of the true copy of the information and his or her signature is to be witnessed by the person's solicitor or counsel or, if not represented, by a person directed by the Judge;
 - (e) the Judge will record the respective pleas in accordance with the signed copy of the information; and
 - (f) if the person pleads not guilty and the arraignment is in the presence of the jury panel or a jury—a copy of the information bearing the pleas may be given to the jury.

26—Court of trial

- (1) If a person committed for trial pleads not guilty to an offence or offences, the Director and the defence may make submissions under section 110 of the *Summary Procedure Act 1921* as to the appropriate court of trial.
- (2) A decision whether a proceeding is to be referred to the Supreme Court for trial may be made by the Court at any time before trial.
- (3) In determining the court of trial, regard will be had to the matters set out in section 110(5) of the *Summary Procedure Act 1921* including the availability of Judges of each of the Supreme and District Courts to preside over criminal trials.

27—Referral to directions hearing

If upon arraignment or attendance for arraignment—

- (a) a person committed for trial pleads not guilty to an offence;
- (b) an issue of fitness to stand trial is raised and no plea is entered; or
- (c) there is a dispute as to the facts in respect of a person committed for sentence or who pleads guilty having been committed for trial,

the Court will refer the proceeding to a directions hearing.

Chapter 4—Documents, service and hearings generally

Part 1—Documents

28—Approved forms

- (1) It is intended that approved forms will be promulgated in a schedule to the Supplementary Rules.
- (2) On promulgation of an approved form, it is to be published on the Court's website.
- (3) A document to be filed in the Court is to be in an approved form.
- (4) The Court may, in a particular action, give directions—
 - (a) about the form in which documents are to be filed in the Court; and
 - (b) imposing additional requirements about the filing or form of documents.

29—Inspection of court records

- (1) Unless an Act or rule otherwise provides or the Court otherwise directs, a party to a proceeding or a party's solicitor may inspect any court record relating to the proceeding or take a copy on payment of the appropriate copying fee.
- (2) No record is to be taken out of the Court without an order of the Court.
- (3) Subject to subrule (1) and section 54 of the *District Court Act 1991*, no person is entitled to inspect or take a copy of a court record without first obtaining the permission of the Court.

30—Production of court records

- (1) This rule applies to a request by a court or tribunal, including an umpire or arbitrator, for production of a court record.
- (2) Subject to subrule (3), unless the Registrar is satisfied that there is good reason why the original of a record should be produced, the Registrar is to answer a request for production of a court record by sending a copy of the record certified by the Registrar to be a true copy. The court or tribunal requesting production of the record is liable to pay the charges prescribed by regulation for the copy. The copy need not be returned to the Court.
- (3) The Court may direct that the original court record be produced subject to such conditions, if any, as the Court thinks fit.
- (4) If the Court directs or the Registrar decides that the original court record be produced, subject to compliance with any condition stipulated by the Court or the Registrar, the Registrar is to send the original record to the requesting court or tribunal, together with a certificate signed by the Registrar certifying that the record was filed in or is in the custody of the Court and specifying the date upon and matter in which it was filed.
- (5) Subject to subrule (6), the original record is to be sent to the requesting court or tribunal by messenger or registered post.
- (6) If the Registrar thinks fit, the Registrar may require that an officer of the Court attend the requesting court or tribunal to produce the original record.

- (7) The court or tribunal to which an original record is sent under this rule is to—
 - (a) keep the record in safe custody; and
 - (b) return it by messenger or registered post to the Registrar immediately it is no longer required.
- (8) The Registrar is to keep a register containing a description of any original record sent, the date upon which it is sent, the court or tribunal to which it is sent and the date of its return. The Registrar is to ensure that each original record is duly returned within a reasonable time.

31—Child pornography material

- (1) This rule applies to child pornography marked for identification, received as an exhibit or otherwise received into the custody of the Court in proceedings in the criminal jurisdiction of the Court.
- (2) The purpose of this rule is to ensure that the handling and storing of child pornography is lawful, safe and efficient.

Note—
Child pornography is sensitive material as defined in section 67H of the *Evidence Act 1929*.
- (3) A reasonable time before tender, a party who proposes to tender child pornography in electronic form is to inform the Registrar of the computer hardware and software required to access it.
- (4) At the time of tender, a party tendering child pornography in electronic form is to—
 - (a) tender it in a sealed envelope marked with the title and file number of the proceeding, a description of the material, the name of the party tendering it and any code needed to access it; and
 - (b) provide computer hardware and software enabling it to be viewed.
- (5) The Registrar is to maintain a computer especially designated for viewing child pornography in electronic form.
- (6) Upon receipt of child pornography into the custody of the Court, the Judge's staff will keep it and any relative code in secure storage and, at the conclusion of the hearing, deliver it to the Registrar to be kept in secure storage.
- (7) Subject to subrule (8), the Registrar is to keep in secure storage all child pornography in hard copy or electronic form and any relative code.
- (8) Subject to section 54 of the *District Court Act 1991*, child pornography and the relative code may only be accessed—
 - (a) by direction of a Judge; and
 - (b) for the purpose of the proceeding in which the material is received into the custody of the Court; and
 - (c) if in electronic format—on the computer maintained by the Registrar or provided by the tendering party for that purpose.
- (9) If copies of exhibits containing child pornography are provided during a trial for the assistance of the jury, at the conclusion of the trial, the Sheriff is to ensure that

- all copies are retrieved from the jury and delivered to the Registrar and—
- (a) if a copy has been marked by a jury member—the Registrar is to immediately destroy the copy; and
 - (b) otherwise—the Registrar is to keep the copies in secure storage in accordance with subrule (7) for return to the party who tendered the exhibit in accordance with subrule (11).
- (10) When access to the child pornography is no longer required for the purpose of the proceeding, the material and any relative code are to be returned to the Registrar and the Registrar is to—
- (a) cause any images to be erased from all drives of the computer;
 - (b) place the child pornography in any physical form and any relative code in a sealed envelope marked “Not to be opened except by order of a Judge”; and
 - (c) keep the envelope in secure storage.
- (11) Unless a Judge otherwise directs, no later than six months after finalisation of the proceeding including any appeal, the Registrar is to return the child pornography and any relative code to the party who tendered it and for this purpose may open the sealed envelope in which they are contained.
- (12) In this rule, *child pornography* means—
- (a) in relation to a Commonwealth prosecution—child pornography material or child abuse material as defined by the *Criminal Code* enacted by the *Criminal Code Act 1995* (Cth); and
 - (b) otherwise—child pornography as defined by section 62 of the Act, marked for identification, received as an exhibit or otherwise received into the custody of the Court.

Part 2—Service

32—Address for service

- (1) The *address for service* of a party is an address recorded (or to be recorded) in the Court's records as an address at which documents may be served on the party.
- (2) A party must submit a physical address as an address for service.
- (3) A *physical address* for service is an address of premises at which service may be effected on the party—
 - (a) by leaving the document for the party; or
 - (b) if there is no separate postal address for service—by sending the document by prepaid post in an envelope addressed to the party at that address.
- (4) The premises to which a physical address for service relates—
 - (a) must be in separate occupation; and
 - (b) must—
 - (i) be premises at which the party's lawyer practises in South Australia;

or

- (ii) unless service was effected on the party under the *Service and Execution of Process Act 1992* (Cth) or the *Trans-Tasman Proceedings Act 2010* (Cth)—be within 50 kilometers of the GPO at Adelaide.
- (5) A party may submit, in addition to a physical address, one or more of the following as an address for service—
- (a) a postal address at which service may be effected on the party by sending the document by prepaid post in an envelope addressed to the party at that address (a *postal address*);
 - (b) a box number at an approved document exchange, or a branch of an approved document exchange, at which service may be effected on the party by delivery of the document to the box in an envelope addressed to the party (a *DX address*);
 - (c) a fax number at which the party is prepared to accept service of documents transmitted by fax (a *fax address*);
 - (d) an address at which the party is prepared to accept service of documents by the transmission of documents in electronic form to the relevant address (an *email address*).

33—Obligation to give address for service

- (1) A document filed in the Court by or on behalf of a party must be endorsed with the party's address for service.
- (2) The address for service shown on the first document filed in the Court by a party (including a notification of address for service) is to be recorded as the party's address for service.
- (3) A party may designate or change the party's address for service by giving the Registrar notice, in an approved form, of the address for service.

34—Service of documents at address for service

Unless these Rules otherwise provide, any document, notice or proceeding to be served on a party may be served at the address for service recorded for that party.

Part 3—Hearings generally

35—Appearance of defendant in person

- (1) A person who has appeared before the Court under rule 24 or 25 and been remanded in custody for trial or sentence is to appear before the Court in person on a subsequent occasion—
 - (a) for the trial or sentence, as the case may be; or
 - (b) if the Court directs.
- (2) A defendant who has been convicted and is in custody will not appear before the Court in person for the hearing of an application for permission to appeal or of an appeal unless—

- (a) the defendant requests; and
- (b) the appeal is not on a ground of law alone or the Court directs.

36—Appearance of defendant by audiovisual link

- (1) Subject to section 59IQ of the *Evidence Act 1929* and to any contrary direction by the Court, a person in custody is to appear by audiovisual link for—
 - (a) directions hearings;
 - (b) bail application and bail review hearings;
 - (c) permission to appeal hearings;
 - (d) appeal hearings, unless the defendant requests to be personally present and the appeal is not on a ground of law alone or the Court so directs;
 - (e) such other hearings as the Court directs.
- (2) A party may object to the use of an audiovisual link by—
 - (a) an oral submission whenever the proceeding is before the Court; or
 - (b) filing a notice of objection in an approved form at least 3 clear business days before the relevant hearing.
- (3) A notice of objection may be determined at the discretion of the Court—
 - (a) at a hearing in court;
 - (b) in chambers without hearing from any party; or
 - (c) at a hearing using an audiovisual link (whether a hearing to which subrule (1) refers or otherwise).
- (4) If during the course of a hearing by audiovisual link counsel is required to take instructions on a matter that could not reasonably have been anticipated, counsel will be provided with access to a private telephone linked to the audiovisual link facility at the custodial institution in which the person is held.

Part 4—Hearings for interstate courts

37—Audiovisual evidence for interstate proceedings

- (1) A party to a proceeding seeking to enforce an order of a recognised court under Part 6C Division 3 of the *Evidence Act 1929* is to file with the Registrar a sealed copy of the order.
- (2) The Registrar will maintain a register of orders made by a recognised court filed under subrule (1). The register may be maintained in electronic format.
- (3) After filing the order, the party seeking to enforce the order may do so in accordance with the provisions of section 59IL(2) of the *Evidence Act 1929*.
- (4) In this rule, *recognised court* has the meaning defined in section 59IA of the *Evidence Act 1929*.

Chapter 5—Election for trial by Judge alone

38—Election

- (1) An accused may make an election under section 7(1)(a) of the *Juries Act 1927* (the *election*) in the manner and at the time stipulated in this Chapter and not otherwise.
- (2) Subject to subrule (3), the election applies to the trial of all charges in the information in respect of which a trial is to be held. An election that purports to be limited to certain charges contained in the information is not valid or effectual.
- (3) When an accused is charged in an information in respect of more than one count and proposes to apply for a separate trial in respect of one or more counts, a separate election may be made as to the counts sought to be severed or as to the counts remaining in anticipation of an order for severance. The election is to be made in the manner and at the time stipulated in this Chapter and will be valid and effectual only if the application for severance is granted.

39—Election by joint accused

- (1) Subject to subrule (2), when two or more accused are jointly charged with an offence, they must concur, as required by section 7(3) of the *Juries Act 1927*, in making the election by jointly signifying their concurrence in the election or by each of them separately notifying his or her election in accordance with this Chapter.
- (2) When two or more accused are jointly charged in an information and an accused proposes to apply for a separate trial from the trial of others jointly charged, a separate election may be made by that accused in anticipation of an order for separate trials. The election is to be made in the manner and at the time stipulated in this Chapter and will be valid and effectual only if the application for separate trials is granted or all co-accused make a valid election in accordance with subrule (1).

40—Manner of making election

- (1) An election made by the defendant is to be made by filing a notice of election in an approved form signed by the accused making the election and a practitioner's certificate.
- (2) An election made by counsel on behalf of the defendant under section 269W(2) of the Act is to be made by filing a notice of election in an approved form signed by counsel and no practitioner's certificate is required.
- (3) When an accused or counsel files a notice of election, the accused or counsel, as the case may be, is as soon as practicable to serve a copy of the notice on the Director and on any person jointly charged with the accused on a charge contained in an information the subject of the election.
- (4) Unless the election was made under subrule (2), a notice of election complying with this rule is admissible at any stage of the proceeding as evidence that the accused before making the election sought and received advice in relation to the election from a lawyer.

41—Practitioner’s certificate

- (1) A *practitioner’s certificate* is a certificate signed by a lawyer stating that the signatory holds a current practising certificate and has advised the accused on all matters relevant to the election. The certificate is to identify clearly the charge in respect of which the advice has been given.
- (2) A practitioner’s certificate is to be in an approved form.
- (3) A practitioner’s certificate complying with this rule is admissible at any stage of the proceeding as evidence that the accused before making the election sought and received advice in relation to the election from a lawyer.

42—Time for making election

- (1) If an accused is committed for trial to sittings at Adelaide, the election is to be made no later than the day of the accused’s first arraignment on the information in respect of which the trial is intended to be held or within such time and in such manner as the Judge on the first arraignment directs.
- (2) If an accused is committed for trial to a circuit sittings, the election is to be made within 28 calendar days after the accused is committed for trial.
- (3) Subject to subrules (4) and (5) and to rule 44, if the election is not made in accordance with the preceding subrules, the accused is precluded from making the election subsequently notwithstanding that the information is amended or that the trial proceeds upon an information filed in substitution for an earlier information or informations on which the accused has been arraigned.
- (4) If an amended or new information referred to in subrule (3) materially alters the substance of the charge or charges upon which the accused is to be tried, the accused may make an election at or before the first arraignment on the amended or new information.
- (5) The Court may extend the time prescribed by or under this rule if satisfied that there are special reasons for so doing or that it would be unjust not to do so notwithstanding that such period has expired.

43—Election irrevocable

- (1) Subject to rule 44, an accused who has made an election in accordance with the preceding rules is not permitted to revoke the election without the permission of the Court.
- (2) Permission to revoke the election may be granted only if the Court is satisfied that, because of events occurring after the election, there are special reasons for so doing or that it would be unjust to refuse such permission.

44—Election after direction for new trial

- (1) Despite rule 42, when there has been a mistrial or a jury has been unable to reach a verdict or an appeal against conviction has been allowed and the accused has been remanded for a new trial, the accused may make the election in the manner set out in the preceding rules within 28 calendar days after being remanded for a new trial.
- (2) Despite rule 43, when an appeal against conviction by a Judge alone has been allowed and the accused has been remanded for a new trial, the accused may

revoke an election for trial by Judge alone by filing a notice of revocation in an approved form signed by the accused and a practitioner's certificate within 28 calendar days after being remanded for a new trial.

- (3) A notice of revocation and practitioner's certificate complying with subrule (2) are admissible at any stage of the proceeding as evidence that the accused before making the revocation sought and received advice in relation to revoking the election from a lawyer.

45—Application by Director

An application by the Director for a determination under section 7(3a) of the *Juries Act 1927* that the trial of an information that includes a charge of a serious and organised crime offence be heard by Judge alone is to be made by written application under rule 49 no later than 28 calendar days after the first arraignment.

Chapter 6—Pre-trial applications and directions

Part 1—Matters before first directions hearing

46—Legal representation certificate or written assurance

- (1) If the accused is represented by a lawyer, the lawyer is, at least 5 clear business days before the first directions hearing, to file a certificate (a *legal representation certificate*) under section 8(2) of the *Criminal Law (Legal Representation) Act 2001* certifying that—
 - (a) the accused is an assisted person; or
 - (b) the lawyer undertakes that the accused will be provided with legal representation for the duration of the trial; or
 - (c) the accused is not an assisted person and the lawyer is not prepared to give an undertaking under paragraph (b).
- (2) The legal representation certificate is to be in an approved form.
- (3) A written assurance under section 8(3)(c) of the *Criminal Law (Legal Representation) Act 2001* that the accused does not want legal representation at trial (a *written assurance*) is to be in an approved form.

47—Application for deferred trial date for serious and organised crime suspect

An application by the Director or an accused for an order under section 275(3) of the Act that exceptional circumstances justify the trial not commencing within six months of the determination that an accused is a serious and organised crime suspect is to be filed and served at least 5 clear business days before the first directions hearing.

Part 2—Convening directions hearings

48—Convening directions hearing

- (1) A directions hearing will be convened—
 - (a) when the proceeding has been referred upon arraignment to a directions hearing under rule 27;
 - (b) when convened by the Registrar under rule 49; or
 - (c) when convened by the Court (including by the trial Judge in preparation for the trial) on the Court's own initiative or on the application of a party.
- (2) Any directions hearing required in relation to prescribed proceedings will be held as soon as possible and, in any event, within four weeks of the arraignment.

Part 3—Pre-trial applications

49—Written application

- (1) An application—
 - (a) by the Director under section 3A(1) of the *Bail Act 1985* for a determination that a person is a serious and organised crime suspect or under section 19A

- of the *Bail Act 1985* for the cancellation of bail;
- (b) by the Director for an order under section 7(3a) of the *Juries Act 1927* for a trial by Judge alone;
 - (c) by the accused for an extension of time under rule 42 to elect for trial by Judge alone or for permission to revoke an election under rule 43;
 - (d) to quash or stay a proceeding on the ground of an abuse of process or otherwise;
 - (e) for separate trials of different charges or different accused charged in the same information;
 - (f) for an order under section 285BB of the Act requiring the defence to notify the Director in writing whether the defence consents to dispensing with calling prosecution witnesses or to give written notice of intention to introduce certain kinds of evidence;
 - (g) for permission under section 285BA of the Act to serve on an unrepresented defendant a notice to admit specified facts;
 - (h) to determine before trial any question relating to the admissibility of evidence or any other question of law affecting the conduct of the trial (a *preliminary question*);
 - (i) to adduce evidence or make submissions by audiovisual link under section 59IE or 59IQ of the *Evidence Act 1929*;
 - (j) required by these Rules to be made by written application;
 - (k) that cannot reasonably be made without notice to the other party or parties;
or
 - (l) that the applicant seeks to be determined in chambers under rule 52; or
 - (m) to vacate or alter the commencement of a trial date,
- is to be made by filing and serving an application for directions in an approved form.
- (2) The Court may dispense with the need for a written application or may direct that a written application be made when an oral application is made under rule 50.
 - (3) A written application is to set out—
 - (a) the orders sought; and
 - (b) sufficient particulars of the grounds relied upon to enable each other party to consider whether evidence will be necessary in respect of the issues raised.
 - (4) A written application is to be supported by an affidavit—
 - (a) when it is an application under section 3A(1) or section 19A of the *Bail Act 1985*; or
 - (b) if it relies upon evidence that is potentially contentious.
 - (5) A written application for taking evidence interstate is to be accompanied by a draft letter of request.

- (6) The Registrar will endorse the written application with the date, time and place of its hearing, which may be a hearing that has already been fixed under rule 48 or a hearing before the trial Judge at or immediately before the commencement of the trial.

50—Oral application

Unless the Court otherwise directs, an oral application may be made at a directions hearing—

- (a) to amend the information;
- (b) for bail or a variation in the conditions of bail;
- (c) to issue a bench warrant;
- (d) to make a subpoena for documents returnable before commencement of trial;
- (e) to abridge or extend time for service of a subpoena including a subpoena served or to be served interstate under section 30 of the *Service and Execution of Process Act 1992* (Cth);
- (f) to permit inspection of documents produced on subpoena before commencement of trial;
- (g) for special arrangements for protection of a witness under section 13 of the *Evidence Act 1929*;
- (h) to enter a *nolle prosequi*; or
- (i) subject to rule 49, in relation to any other matter concerning the conduct of the proceeding and of the trial.

51—Time for making certain applications

- (1) An application for separate trials or to quash or stay a proceeding is to be filed within 28 calendar days after the first arraignment.
- (2) An application for an order or permission under section 285BA or 285BB of the Act is to be filed within 28 calendar days after the first directions hearing.
- (3) An application to determine a preliminary question is to be filed within 28 calendar days after the date on which the proceeding is listed for trial.
- (4) An application to adduce evidence or make submissions by audiovisual link or interstate is to be filed no less than 28 calendar days before the listed trial date.
- (5) An application for special arrangements for the protection of a witness under section 13 of the *Evidence Act 1929* is to be made no less than 28 calendar days before the listed trial date.

Part 4—Determination without oral hearing

52—Determination of application without hearing oral submissions

- (1) The Court may determine an application by making an order in chambers without the attendance of the parties and without hearing oral submissions from the parties if—

- (a) the application is not contentious; or
 - (b) the Court decides on its own initiative or on the application of a party to determine the application on the basis of written submissions.
- (2) Unless the Court otherwise directs, any submissions to be made on an application to which this rule applies are to be sent to the Court in electronic form.

Part 5—Proceedings at directions hearings

53—Forum for directions hearing

- (1) Unless the Court otherwise directs—
- (a) a directions hearing will be presided over by a Judge of the Court; and
 - (b) the accused is to attend but attendance may be by audiovisual link under rule 36.
- (2) Unless the Court otherwise directs—
- (a) subject to paragraphs (b) and (c), a directions hearing will be held in private and only the persons involved in the directions hearing, and lawyers whether involved in the hearing or not, are permitted to be present;
 - (b) when a contested application is set down for argument, the hearing will be in open court;
 - (c) the recording of a *nolle prosequi* will be in open court if the accused so requests.

54—First directions hearing

- (1) At the first directions hearing after arraignment, the Court will consider any legal representation certificate or written assurance that has been filed and will consider whether to make a direction under section 8 of the *Criminal Law (Legal Representation) Act 2001* that the defendant make an application to the Legal Services Commission for legal assistance.
- (2) At the first directions hearing for prescribed proceedings, the parties are to address the means by which—
- (a) the proceeding may be expedited; and
 - (b) subject to rule 47, the trial of a proceeding involving an accused who is a serious and organised crime suspect is to commence within six months after a determination is made that an accused is such a suspect.

55—Directions hearings generally

- (1) At a directions hearing, the Court may—
- (a) adjourn the hearing;
 - (b) give directions and set time limits for steps in the proceeding;
 - (c) set or alter the date for the commencement of the trial;
 - (d) record the entry of a *nolle prosequi*;
 - (e) hear and determine any application made under rule 49 or rule 50;

- (f) make an order relating to any other matter concerning the conduct of the proceeding and of the trial.
- (2) No failure to answer a question nor anything said by or on behalf of an accused at a directions hearing may be used or made the subject of comment at any subsequent trial.
- (3) Directions given at a directions hearing may be supplemented or varied at an adjourned or subsequent directions hearing.

56—Tender documents and aids

- (1) The Court may, on its own initiative or on application of a party, direct that, by a specified date, a party proposing to tender documentary exhibits to the Court file and serve on all other parties a list of such documents.
- (2) The Court may direct that a list of documents be numbered or marked to correspond with the marking of the documents to be tendered at the trial and include such other details as the Court thinks fit.
- (3) The Court may direct that a list of documents and copies of the documents referred to therein be filed and served in hard copy form, electronic form or both.
- (4) The Court may give directions for the production and use at trial of summaries, diagrams, charts, illustrations, graphs, photographs, films, documents, models or other audio, video, or visual media as an aid to illustrating or assisting to explain the evidence.

Part 6—Special directions hearings

57—Special directions hearing

- (1) At a directions hearing, the Court may refer the proceeding to a special directions hearing (a *special directions hearing*).
- (2) The accused is to attend at the special directions hearing but that attendance may be by audiovisual link under rule 36.
- (3) At a special directions hearing, the principal matters to be considered are possible resolution of the matter or of specific issues.
- (4) Nothing said at a special directions hearing can be used at a subsequent trial, sentencing hearing or other substantive hearing.
- (5) If the matter resolves or partially resolves at the special directions hearing, a *noUe prosequi* can be entered at that hearing in respect of any counts agreed to be withdrawn, and any counts to which it is agreed that the defendant will plead guilty will generally be referred to the next convenient arraignment.
- (6) If the matter does not fully resolve at the special directions hearing, it will remain in the trial list with its allocated trial date.

Part 7—Pre-trial directions hearings

58—Convening pre-trial directions hearing

- (1) When a criminal trial is pending, a directions hearing before commencement of the trial may be held on the Court's own initiative or on application by a party.

- (2) A directions hearing may be convened or conducted under this rule by any Judge but will usually be conducted by the Judge to whom the trial has been assigned.

59—Proceedings at pre-trial directions hearing

- (1) Counsel briefed to appear at the trial (or, if the attendance of a party's counsel is not practicable, that party's solicitor) and, subject to rule 36, the accused are to attend at a directions hearing convened under rule 58.
- (2) At a directions hearing convened under rule 58, the Court will discuss with the parties matters (including any arising by virtue of section 59J of the *Evidence Act 1929*) with respect to the trial to ensure that the trial will be conducted in an expeditious and fair manner.

Part 8—Outcome of directions hearings

60—Outcome of directions hearing

- (1) To give effect to an agreement arrived at between the parties in the course of a directions hearing, the Court may direct that—
 - (a) a specified fact may be proved at trial in a specified manner that is not in accordance with the rules of evidence;
 - (b) a specified fact is to be treated as admitted or established without proof at trial;
 - (c) a specified exhibit is to be admitted in evidence at trial without proof of its authenticity;
 - (d) specified evidence may be read or a specified statement may be tendered at trial without a witness being called; or
 - (e) with respect to any specified matter or topic, the regular course of procedure at the trial is to be modified or varied to facilitate proof of facts.
- (2) An order made under this rule is to be drawn up at the direction of and signed by the Court.
- (3) Subject to these Rules, the trial is to be conducted in conformity with the provisions of any such order.
- (4) Despite any order made under this rule, a party may, with the permission of the trial Judge, withdraw agreement to any provision contained in that order, whereupon that provision ceases to have effect and the trial is thereafter with respect to the subject matter of that provision to be conducted in accordance with the law and practice generally applicable.
- (5) Nothing in these Rules, or any order made under them, precludes the Court—
 - (a) at any time, on its own initiative or on the application of a party, setting aside or varying by administrative direction the listing of a trial;
 - (b) adjourning the trial or giving any other necessary directions as to how it is to proceed;
 - (c) making any order or giving any direction at trial that, in the opinion of the Court, should be made in the interest of justice and to ensure that there is a

fair trial according to law.

Chapter 7—Notice of and dispensing with evidence

Part 1—Notice of evidence

61—Evidence of discreditable conduct

- (1) Notice of intention to adduce evidence of discreditable conduct under section 34P(4) of the *Evidence Act 1929* is to be in an approved form and filed and served on all other parties to the proceeding—
 - (a) in the case of a notice by the Director—within 21 calendar days after the date on which the proceeding is listed for trial;
 - (b) in all other cases—at least 21 clear calendar days before the listed trial date.
- (2) A party who intends to object to the admission of proposed evidence of discreditable conduct is to file and serve on all other parties to the proceeding a notice of objection in an approved form—
 - (a) in the case of an objection to evidence proposed to be led by the Director—within 28 calendar days after the filing of the Director’s notice of intention;
 - (b) in all other cases—at least 5 clear business days before the listed trial date.
- (3) The Court may vary the time within which a notice under this rule is to be filed and served.

62—Evidence of self-defence or other designated matters

- (1) An application under section 285BB(1) of the Act to require the defence to give to the Director notice of intention to adduce evidence of a certain kind is to be in an approved form.

Note —

Rule 51(2) requires an application to be made within 28 calendar days after the first directions hearing.

- (2) An order requiring the defence to give notice of intention to adduce evidence of a certain kind is to be in an approved form.
- (3) The defence response to an order is to be in an approved form.

63—Expert evidence

A notice under section 285BC of the Act of intention by the defence to call expert evidence is to be in an approved form.

Part 2—Admissions

64—Dispensing with prosecution witnesses

- (1) An application under section 285BB(4) of the Act to require the defence to give to the Director notice whether it consents to dispensing with calling certain prosecution witnesses is to be in an approved form and is to state the time within which it is proposed the defence is to respond.

Note —

Rule 51(2) requires an application to be made within 28 calendar days after the first directions hearing.

- (2) An order requiring the defence to give notice whether it consents to dispensing with calling certain prosecution witnesses is to be in an approved form.
- (3) The defence response to an order is to be in an approved form.

65—Admission of facts

- (1) An application under section 285BA of the Act for permission to serve on an unrepresented accused a notice to admit facts is to be in an approved form.

Note —

Rule 51(2) requires an application to be made within 28 calendar days after the first directions hearing.

- (2) A notice to the defence to admit specified facts under section 285BA of the Act is to be in an approved form.
- (3) The defence response to a notice to admit facts is to be in an approved form.

Part 3—Subpoenas

Note —

This Part follows the form of harmonised rules adopted in jurisdictions across Australia.

66—Interpretation

- (1) In this Part, unless the contrary intention appears—

addressee means a person who is the subject of the order expressed in a subpoena;

conduct money means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending;

issuing party means the party at whose request a subpoena is issued;

subpoena means an order in writing requiring a person (an *addressee*)—

- (a) to attend to give evidence; or
 - (b) to produce the subpoena or a copy of it and a document or thing; or
 - (c) to do both those things.
- (2) To the extent that a subpoena requires an addressee to attend to give evidence, it is called a *subpoena to attend to give evidence*.
 - (3) To the extent that a subpoena requires an addressee to produce the subpoena or a copy of it and a document or thing, it is called a *subpoena to produce*.

67—Issuing subpoena

- (1) The Court may, in any proceeding, by subpoena order an addressee—
 - (a) to attend to give evidence as directed by the subpoena; or
 - (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or
 - (c) to do both those things.

- (2) The Court may exercise its power to issue a subpoena not only for the purposes of a proceeding in the Court but also for the purposes of proceedings extraneous to the Court for which the issue of a subpoena by the Court is authorised by statute.
- (3) The Registrar is empowered to issue subpoenas on the Court's behalf.
- (4) The Registrar—
 - (a) may issue a subpoena if requested by a party to a proceeding to do so; and
 - (b) must issue a subpoena if directed by the Court to do so.
- (5) A subpoena is not to be issued—
 - (a) if the Court has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena—
 - (i) not be issued; or
 - (ii) not be issued without permission of the Court and that permission has not been given; or
 - (b) requiring the production of a document or thing in the custody of the Court or another court.
- (6) A subpoena is not to be issued to compel the production of a public document unless a Judge authorises the issue of the subpoena.
- (7) On issuing a subpoena, the Court will authenticate it by affixing its seal or in some other appropriate manner.

68—Form of subpoena

- (1) A subpoena must be in the approved form.
- (2) A subpoena—
 - (a) may be addressed to one or more persons; and
 - (b) must, unless the Court otherwise orders, identify the addressee or addressees by name, or by description of office or position.
- (3) A subpoena may, however, be issued without the identification of the addressee or addressees on the basis that the necessary identifying names or descriptions are to be inserted before service of the subpoena by a solicitor for the party on whose application the subpoena was issued.
- (4) A subpoena to produce must—
 - (a) identify the document or thing to be produced; and
 - (b) specify the date, time and place for production.
- (5) A subpoena to attend to give evidence must specify, for each addressee who is required to attend, the date, time and place for attendance.
- (6) If a subpoena requires an addressee's personal attendance at a particular date, time and place to produce a document or thing, or to give evidence (or both)—
 - (a) the date, time and place for attendance must be the date, time and place at which the trial is scheduled to commence or some other date, time and place permitted by the Court; but

- (b) if the course of the Court's business makes it necessary or expedient to change the date, time or place for attendance—
 - (i) the issuing party may amend the date, time or place by serving notice of the amendment on the addressee personally and tendering any additional conduct money that may be reasonable in the light of the amendment; and
 - (ii) the subpoena then operates in its amended form.
- (7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.
- (8) The last date for service of a subpoena—
 - (a) is the date falling 5 clear business days before the earliest date on which an addressee is required to comply with the subpoena or an earlier or later date fixed by the Court; and
 - (b) must be specified in the subpoena.
- (9) If an addressee is a company, the company must comply with the subpoena by its appropriate or proper officer.
- (10) If there is a mistake in the terms in which a subpoena is issued, and the mistake is discovered before the subpoena is served, the issuing party may correct the mistake and, after filing a corrected copy of the subpoena in the Court, proceed with service of the subpoena in its corrected form.

69—Alteration of date for attendance or production

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.
- (2) When notice is given under subrule (1), the subpoena has the effect as if the date or time notified appeared in the subpoena instead of the date or time which appeared in the subpoena.

70—Setting aside or other relief

- (1) The Court may on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or part, or grant other relief in respect of it.
- (2) Any application under subrule (1) must be made on notice to the issuing party.
- (3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

Note—

Sections 33, 43 and 44 of the *Service and Execution of Process Act 1992* (Cth) contain provisions governing applications to set aside subpoenas served interstate.

71—Service

- (1) A subpoena must be served personally on the addressee on or before the last business day for service specified in the subpoena.
- (2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee or

addressees.

72—Compliance with subpoena

- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the date on which attendance is required.
- (2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.

Note—

1. Section 30 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served interstate, service is only effective if it is not less than 14 days before the person is required to comply unless the Court allows a shorter period in defined circumstances.
 2. Section 31 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served interstate, service is only effective if prescribed notices and a copy of any order under section 30 are attached to the subpoena served.
 3. Section 32 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served interstate, service is only effective if, a reasonable time before compliance is required, sufficient allowances and travelling expenses are paid or tendered to the person.
- (3) Despite rule 71(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.
 - (4) Subject to subrules (5) and (6), the addressee must comply with a subpoena to produce—
 - (a) by attending at the date, time and place specified for production or, if the addressee has received notice of a later date or time from the issuing party, at that later date or time and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or
 - (b) by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified for the purpose in the subpoena, or, if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production or, if the addressee has received notice of a later date or time from the issuing party, before that later date.

Note—

Section 34 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served interstate, a document or thing may be delivered to the Registrar not less than 24 hours before the date for compliance.

- (5) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the

document or thing in any of the ways permitted by subrule (4) does not discharge an addressee from the obligation to attend to give evidence.

- (6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.
- (7) The copy of a document may be—
 - (a) a photocopy; or
 - (b) in an electronic form that the issuing party has indicated will be acceptable.

73—Production otherwise than on attendance

- (1) This rule applies if an addressee produces a document or thing in accordance with rule 72(4)(b).
- (2) The Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.
- (3) If the addressee produces more than one document or thing, the addressee must, if requested by the Registrar, provide a list of the documents or things produced.

74—Removal, return, inspection, copying and disposal of documents and things

The Court may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

75—Inspection of, and dealing with, documents and things produced otherwise than on attendance

- (1) On request in writing of a party, the Registrar must inform the party whether production in response to a subpoena has occurred in accordance with rule 72(4)(b) and, if so, include a description, in general terms, of the documents and things produced.
- (2) The following provisions of this rule apply if an addressee produces a document or thing in accordance with rule 72(4)(b).
- (3) Subject to this rule, no person may inspect a document or thing produced unless the Court has granted permission and the inspection is in accordance with that permission.
- (4) Unless the Court otherwise orders, the Registrar may permit the parties to inspect at the Registry any document or thing produced if—
 - (a) the Registrar is satisfied that a copy of the subpoena to produce was served on each other party in accordance with rule 71(2); and
 - (b) there has been no objection to inspection under this rule by a party or any person having a sufficient interest.
- (5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must, at the time of production, notify the Registrar in writing of the objection and of the grounds of the objection.
- (6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify the Registrar

in writing of the objection and of the grounds of the objection.

- (7) On receiving notice of an objection under this rule, the Registrar—
 - (a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and
 - (b) must refer the objection to the Court for hearing and determination.
- (8) The Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party must notify the addressee, the objector and each other party accordingly.
- (9) The Registrar must not permit any document or thing produced to be removed from the Registry except on application in writing signed by the solicitor for a party.
- (10) A solicitor who signs an application under subrule (9) and removes a document or thing from the Registry undertakes to the Court by force of this rule that—
 - (a) the document or thing will be kept in the personal custody of the lawyer for the party; and
 - (b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the Registrar.
- (11) The Registrar may, in the Registrar's discretion, grant an application under subrule (9) subject to conditions or refuse to grant the application.

76—Disposal of documents and things produced

- (1) Unless the Court otherwise orders, the Registrar may, in the Registrar's discretion, return to an addressee any document or thing produced in response to the subpoena.

Note—

It should be noted, however, that if the document or thing has been tendered as an exhibit, the Registrar is to deal with the exhibit as directed by the Court (see rule 83)).

- (2) Unless the Court otherwise orders, the Registrar must not return any document or thing under subrule (1) unless the Registrar has given to the issuing party at least 14 calendar days notice of the intention to do so and that period has expired.
- (3) The issuing party must attach, to the front of a subpoena to produce to be served on the addressee, a notice and declaration in the approved form.
- (4) The addressee must complete the notice and declaration and attach it to the subpoena or copy of the subpoena which accompanies the documents produced to the Court under the subpoena.
- (5) Subject to subrule (6), the Registrar may, on the expiry of four months from the conclusion of the proceeding, cause to be destroyed all the documents produced in the proceeding in compliance with a subpoena which were declared by the addressee to be copies.
- (6) The Registrar may cause to be destroyed those documents declared by the addressee to be copies which have become exhibits in the proceeding when they

are no longer required in connection with the proceeding, including on any appeal.

77—Costs and expenses of compliance

- (1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.
- (2) If an order is made under subrule (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.
- (3) An amount referred to in this rule is separate from and in addition to—
 - (a) any conduct money paid to the addressee; or
 - (b) any witness expenses payable to the addressee.

Note—

Sections 35 and 45 of the *Service and Execution of Process Act 1992* (Cth) provide that, when a subpoena is served interstate, the person served is entitled to reasonable expenses incurred in compliance and empowers the Court to make orders for this purpose.

78—Failure to comply with subpoena—contempt of court

- (1) An addressee who fails to comply with a subpoena without lawful excuse is in contempt of court and may be dealt with accordingly.
- (2) Despite rule 71(1), if a subpoena has not been served personally on an addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and its requirements.
- (3) Subrules (1) and (2) are without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

79—Documents and things in court custody

- (1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the Registrar in writing accordingly, identifying the document or thing.
- (2) If the document or thing is in the custody of the Court, the Registrar must produce the document or thing—
 - (a) in court or to any person authorised to take evidence in the proceeding, as required by the party; or
 - (b) as the Court directs.
- (3) If the document or thing is in the custody of another court, the Registrar must, unless the Court has otherwise ordered—
 - (a) request the other court to send the document or thing to the Registrar; and
 - (b) after receiving it, produce the document or thing—
 - (i) in court or to any person authorised to take evidence in the proceeding as required by the party; or
 - (ii) as the Court directs.

Chapter 8—Trial

Part 1—Evidence

80—Audiovisual link evidence or submissions

- (1) When an order has been made for taking evidence or submissions by audiovisual link, an applicant who no longer requires the evidence or submissions to be taken by audiovisual link is to notify the Registrar immediately.
- (2) Unless the Court otherwise orders, if the Court makes an order under section 59IF of the *Evidence Act 1929*, the amount fixed by the Court under section 59IF of that Act is to be paid by the applicant for the order.

81—Evidence to be taken interstate or overseas

- (1) A request under section 59E(1)(c) of the *Evidence Act 1929* to a foreign court to take evidence is to be in an approved form.
- (2) The party obtaining the order is responsible for all expenses incurred by the Court, or by any person at the request of the Court, in respect of the letter of request to the foreign court.

82—Audiovisual record of evidence

- (1) This rule applies to an audiovisual record of the evidence of a vulnerable or other witness given in a proceeding before the Court.
- (2) An application under section 13C(3) of the *Evidence Act 1929* to take custody of an audiovisual record of the evidence of a vulnerable witness given in a proceeding before the Court for the purpose of a related proceeding—
 - (a) may be made orally at a directions hearing in the proceeding;
 - (b) otherwise is to be made by application under rule 49.
- (3) Subject to any contrary direction by the Court, a party who is authorised by the Court under section 13C(3) of the *Evidence Act 1929* to take custody of an audiovisual record of evidence—
 - (a) will be provided with a duplicate copy of the record;
 - (b) is to use the duplicate record for the sole purpose of the related proceeding in respect of which the authorising order is made;
 - (c) is not to copy or disseminate the duplicate record to any third party; and
 - (d) is to ensure the safekeeping of the duplicate record and to return it to the Court at the conclusion of the related proceeding in respect of which the authorising order is made.
- (4) An application under section 13D of the *Evidence Act 1929* to admit an official record of evidence given in an earlier criminal proceeding in a later proceeding is to be made by application under rule 49.
- (5) If editing of an official record of evidence is required under section 13D(3) of the *Evidence Act 1929*, the party tendering the evidence—
 - (a) will be provided with a duplicate copy of the official record and the editing

- is to be carried out on the duplicate record;
- (b) is to ensure that the edited version is prepared in a form that, if tendered, may be displayed on the Court's audio or audiovisual equipment;
 - (c) is to keep all edited versions of the official record in safekeeping; and
 - (d) is to return to the Court all edited versions not already in the custody of the Court immediately upon the conclusion of the proceeding.

Part 2—Exhibits

83—Exhibits

- (1) Subject to section 54 of the *District Court Act 1991*, a Judge may at any time make such direction as he or she thinks fit for the custody, disposal or production at the conclusion of the trial of any exhibit.
- (2) Subject to any direction under subrule (1) and subject to the Registrar not having received any notice of appeal, the Registrar may, at the expiration of 28 calendar days after the conclusion of the trial, return any exhibit to the custody of the person who produced it or to the solicitor for the party who tendered it, as may be appropriate, and the person to whom any exhibit is returned is liable for any costs incurred by the Registrar in returning the exhibit.
- (3) Subject to any direction under subrule (1), if a notice of appeal is received by the Registrar before returning the exhibits, the Registrar is to retain the exhibits in custody until required to transmit them to the Full Court.
- (4) Upon the exhibits being returned, the Registrar may deal with the exhibits in accordance with subrule (2).
- (5) If an exhibit is returned while an appeal is pending, the person to whom it is returned is, so far as is practicable having regard to the nature of the exhibit, to keep it marked and labelled as before so that the person may be able to produce the exhibit so marked and labelled at the hearing of the appeal if required to do so.
- (6) If there is an appeal, the Registrar will include the list of exhibits amongst the documents supplied to the proper officer of the Full Court for the purpose of the appeal.

Chapter 9—Juries

84—Interpretation

In this Chapter—

jury card means the jury card referred to in section 42 of the *Juries Act 1927*;

jury pool room means the place appointed from time to time by the Sheriff for the attendance of the jury pool for a jury district;

Sheriff includes the Deputy Sheriff and any other person for the time being performing the functions of the Sheriff under the *Juries Act 1927*;

sheriff's officer means an officer appointed by the Sheriff.

85—Juror's oath or affirmation

- (1) Before first directing a juror to attend for a criminal trial, the Sheriff is to cause the juror to take an oath or affirmation in the form of Schedule 6 to the *Juries Act 1927*.
- (2) The Sheriff is to cause a record to be made of the taking by each juror of the oath or affirmation. The record is not to be shown or communicated to any person other than a Judge except by leave of a Judge.

86—Jury panel

- (1) When a trial of an accused is to commence, the Sheriff is to ensure that a jury panel of not less than 20 jurors attend for the trial.
- (2) When a trial of more than one accused is to commence, the Sheriff is to ensure that a jury panel of not less than 20 jurors plus not less than 3 extra jurors in respect of each additional accused attend for the trial.
- (3) Subject to subrule (4), a copy of the jury panel list giving the number, name, suburb and occupation of the jurors selected by the Sheriff under subrule (1) or (2) will be made available to counsel for the parties or an unrepresented accused by the Sheriff's Officer in court sufficiently early before the jury is empanelled to enable decisions to be made on challenge.
- (4) The Presiding Judge may direct the Sheriff to have information included or removed from the jury panel list for a particular trial.

87—Selection of jurors by ballot

- (1) The Associate will conduct the juror ballot by drawing a jury card from the ballot box and reading aloud to the Court the jury number only of the juror selected as shown on the jury card.
- (2) This procedure will continue, allowing for challenges, until 12 jurors, or 12 jurors and any additional jurors, are seated in the jury box.
- (3) After the selection of the jury, the Sheriff's Officer will collect the jury panel list from counsel and from any unrepresented accused.
- (4) The jury panel list is not a public document and is supplied to the parties for the purpose of jury selection only. Subject to any direction of the trial Judge, it ceases to be available to counsel or the accused after the jury has been selected.

- (5) The cards of the jurors empanelled for a criminal trial are to be kept apart from the cards of all other jurors until a verdict has been given or until such jurors have been discharged.
- (6) A ballot required to be held in accordance with section 6A(2) of the *Juries Act 1927* is to be conducted by drawing at random the number of cards necessary to reduce the number of jurors to 12 from those cards kept apart in accordance with subrule (5).

88—Jurors in charge of Sheriff or Sheriff’s officer

The Sheriff is to ensure that jurors while in a jury pool room, jury retiring room, courtroom, building in which a courtroom is situated, at a view or proceeding between any of those places are in the charge of the Sheriff or a sheriff’s officer.

89—Non attendance

If a juror does not attend in obedience to a summons or in compliance with a direction by the Sheriff, the Sheriff is to report the fact to a Judge.

Chapter 10—Sentencing

90—Victim impact statements

- (1) A person wishing to furnish to the Court a victim impact statement under section 7(2a) or 7A of the Sentencing Act or section 269R(3) of the Act is to provide the statement in writing to the Director.
- (2) A copy of the statement is to be provided to the Court and the defence as soon as reasonably practicable after the defendant pleads or is found guilty or the Court declares that the defendant is liable to supervision under Part 8A of the Act.
- (3) The Director may request the Court to—
 - (a) allow an audio or audiovisual record of the person reading the statement to be played to the Court;
 - (b) exercise, in relation to the person making the statement, any power that the Court has with regard to a vulnerable witness;
 - (c) direct that the defendant, or if the defendant is a body corporate a director or other representative of the body corporate satisfactory to the Court, be present when the statement is read or played to the Court.
- (4) The Court may appoint the time when the victim impact statement will be read or played to the Court and may refuse to postpone reading or playing it if the resulting delay would be unreasonable in the circumstances.
- (5) If the person providing the statement is not in court when the Court gives a direction under subrule (4), the Director is to advise the person of the time fixed for reading or playing it.
- (6) The person making the statement may amend it at any time before it is read or played to the Court.
- (7) The Court may direct that irrelevant material in the statement not be read or played to or taken into account by the Court.
- (8) A person may at any time withdraw the statement, in which event it will not be read or played to or taken into account by the Court.

91—Community impact statements

- (1) If the Director or the Commissioner for Victims' Rights wishes to furnish to the Court a community impact statement in a proceeding to determine sentence or to fix a limiting term, he or she is to provide a copy of it to the Court and to the defence upon the accused pleading or being found guilty or upon the Court declaring that the defendant is liable to supervision under Part 8A of the Act.
- (2) The Court will appoint the time at which the statement will be read to the Court and may refuse to postpone its reading if the resulting delay would be unreasonable in the circumstances.
- (3) The statement will not be read out in court if the Court determines that it is inappropriate or if it would be unduly time consuming to do so.
- (4) The Court may direct that irrelevant material in the statement not be read or taken into account by the Court.

92—Application to fix non-parole period

- (1) An application under section 32(3) of the Sentencing Act to fix a non-parole period is to be made by originating application in an approved form.
- (2) The application is to be served—
 - (a) if made by the prisoner—on the Parole Board, the Director and any other person directed by the Court; and
 - (b) if made by Parole Board—on the prisoner, the Director and any other person directed by the Court.

93—Mental impairment detention

When the Court makes a supervision order committing the defendant to detention under section 269O of the Act, the warrant to be issued by the Court will be in an approved form.

Chapter 11—Statutory applications

94—Mental impairment

- (1) An application to revoke, vary or revise a supervision order under section 269P or 269U of the Act (other than a telephone application under section 269U(1)) is to be made by originating application in an approved form.
- (2) The application is to be served on the Director, the defendant, the Parole Board and the Public Advocate (other than the applicant) within 5 business days after being filed.
- (3) The Registrar will list the application before the Court and it is to proceed in accordance with any directions given by the Court.
- (4) When an order is made by the Court committing the defendant to detention under section 269P or 269U of the Act, the warrant issued by the Court will be in an approved form.
- (5) When an order is made by the Court committing the defendant to an appropriate form of custody under section 269X(1) or (2) of the Act, the warrant issued by the Court will be in an approved form.

95—Note- there is no Rule 95- see rule 5A

96—Note- there is no Rule 96- see rule 5A

97—Note- there is no Rule 97- see rule 5A

98—Confiscation orders

- (1) This rule applies to proceedings instituted in the criminal jurisdiction of the Court under the *Proceeds of Crime Act 2002* (Cth) or the *Criminal Assets Confiscation Act 2005* (the **Confiscation Acts**).
- (2) A party may initiate a proceeding under the Confiscation Acts in the Court's criminal jurisdiction—
 - (a) if there is a criminal proceeding underway against the person to whom the application relates for an offence upon which the confiscation application relies—by a written application under rule 49 in that proceeding; or
 - (b) otherwise—by originating application in an approved form.
- (3) An application—
 - (a) under subrule (2)(a) will proceed in accordance with directions given by the Court on a directions hearing;
 - (b) under subrule (2)(b) will be listed by the Registrar before the Court and is to proceed in accordance with directions given by the Court.
- (4) Without affecting the right of any party to adduce further evidence, the Court may receive any evidence given in a criminal proceeding concerning the person to whom the application relates and may give such weight to that evidence as it thinks fit.
- (5) Subject to the Confiscation Acts, the Court may direct that an application under the Confiscation Acts in the criminal jurisdiction of the Court be transferred to the civil

jurisdiction of the Court, and in that event the application will be governed by the Civil Rules.

Chapter 12—Note- there is no Chapter 12- see rule 5A

Note- there is no rule 99– see rule 5A

Note- there is no rule 100– see rule 5A

Note- there is no rule 101– see rule 5A

Note- there is no rule 102– see rule 5A

Note- there is no rule 103– see rule 5A

Note- there is no rule 104– see rule 5A

Chapter 13—Note- there is no Chapter 13 – see rule 5A

Note- there is no rule 105– see rule 5A

Note- there is no rule 106– see rule 5A

Note- there is no rule 107– see rule 5A

Note- there is no rule 108– see rule 5A

Note- there is no rule 109– see rule 5A

Note- there is no rule 110– see rule 5A

Note- there is no rule 111– see rule 5A

Note- there is no rule 112– see rule 5A

Note- there is no rule 113– see rule 5A

Note- there is no rule 114– see rule 5A

Note- there is no rule 115– see rule 5A

Note- there is no rule 116– see rule 5A

Note- there is no rule 117– see rule 5A

Note- there is no rule 118– see rule 5A

Note- there is no rule 119– see rule 5A

Note- there is no rule 120– see rule 5A

Note- there is no rule 121– see rule 5A

Note- there is no rule 122– see rule 5A

Note- there is no rule 123– see rule 5A

Note- there is no rule 124– see rule 5A

Note- there is no rule 125– see rule 5A

Note- there is no rule 126– see rule 5A

Note- there is no rule 127– see rule 5A

Chapter 14—Contempt of Court

Part 1—Contempt committed in face of Court

128—Contempt committed in face of Court

- (1) If a contempt is committed in the face of the Court and it is necessary to deal urgently with it, the Court may—
 - (a) if the person alleged to have committed the contempt (the *accused*) is within the precincts of the Court—order that the accused be taken into custody; or
 - (b) issue a warrant to have the accused arrested and brought before the Court to be dealt with on a charge of contempt.
- (2) The Court must formulate a written charge containing reasonable details of the alleged contempt and have the charge served on the accused when, or as soon as practicable after, the accused is taken into custody.

Part 2—Court initiated proceedings for contempt—other cases

129—Court initiated proceedings for contempt—other cases

- (1) If the Court decides on its own initiative to deal with a contempt of the Court, the Court will require the Registrar to formulate a written charge containing reasonable details of the alleged contempt.
- (2) The Registrar will then issue a summons requiring the person alleged to have committed the contempt (the *accused*) to appear before the Court at a nominated time and place to answer the charge.
- (3) The Court may issue a warrant to have the accused arrested and brought before the Court to answer the charge if—
 - (a) there is reason to believe that the accused will not comply with a summons; or
 - (b) a summons has been issued and served but the accused has failed to appear in compliance with it.

Part 3—Contempt proceedings by party to proceeding

130—Contempt proceedings by party to proceeding

- (1) A party to a proceeding who claims to have been prejudiced by a contempt of the Court committed by another party, a witness or another person in relation to the proceeding may apply to the Court to have the accused charged with contempt.
- (2) The application is to—
 - (a) be made as an application for directions under rule 49; and
 - (b) include details of the alleged contempt.
- (3) The application may be made without notice to the accused or other parties but the Court may direct the applicant to give notice of the application to the accused or the other parties (or both).

- (4) If the Court is satisfied on an application under this rule that there are reasonable grounds to suspect the accused of the alleged contempt, subject to subrule (7), the Court may require the Registrar to formulate a written charge containing reasonable details of the alleged contempt.
- (5) The Registrar will then issue a summons requiring the accused to appear before the Court at a nominated time and place to answer the charge.
- (6) The Court may issue a warrant to have the accused arrested and brought before the Court to answer the charge if—
 - (a) there is reason to believe that the accused will not comply with a summons; or
 - (b) a summons has been issued and served but the accused has failed to appear in compliance with it.
- (7) Despite subrule (4), the Court may, if satisfied that there are reasonable grounds to suspect the accused of the alleged contempt, grant permission to the applicant to issue a summons requiring the accused to appear before the Court at a nominated time and place to answer the charge and, in that event, the applicant—
 - (a) must, within the time fixed by the Court, issue and serve a summons in an approved form requiring the accused to appear before the Court at the nominated time and place to answer the charge;
 - (b) must be named as the prosecuting party in the summons;
 - (c) will have the carriage of the prosecution of the charge;
 - (d) must prosecute the charge at its own expense and satisfy any costs orders made in favour of the accused;
 - (e) must comply with any direction of the Court in relation to the prosecution of the charge.

Part 4—Hearing of charge of contempt

131—Charge to be dealt with by Judge

A charge of contempt is to be dealt with by a Judge.

132—Procedure on charge of contempt

- (1) Apart from those cases to which rule 130(7) applies, the Registrar will have carriage of the prosecution of a charge of contempt, and the Registrar may retain solicitors and counsel for that purpose.
- (2) In relation to a proceeding for contempt that was initiated by an application under rule 130(1), the Court may direct the applicant to indemnify the Registrar in respect of the costs incurred by the Registrar or ordered to be paid by the Registrar.

Note—

This right of cost recovery is additional to that contained in Rule 133(3).

- (3) The Court will deal with a charge of contempt as follows—

- (a) the Court will hear relevant evidence for and against the charge from the prosecutor and the accused;
 - (b) the Court may, on its own initiative, call witnesses who may be able to give relevant evidence;
 - (c) at the conclusion of the evidence, the Court will allow the prosecutor and the accused a reasonable opportunity to address the Court on the question whether the charge has been established;
 - (d) if, after hearing the evidence and representations from the prosecutor and the accused, the Court is satisfied beyond reasonable doubt that the charge has been established, the Court will find the accused guilty of the contempt;
 - (e) the Court will, if it finds the accused guilty of the contempt, allow the prosecutor and the accused a reasonable opportunity to make submissions on penalty;
 - (f) the Court will then determine and impose penalty.
- (4) A witness called by the Court may be cross-examined by the prosecutor and the accused.
- (5) In a proceeding founded on a charge of contempt—
- (a) the Court—
 - (i) may exercise with respect to the charge any of the powers that it has with respect to a charge of an indictable offence; and
 - (ii) may exercise with respect to the accused any of the powers that it has in relation to a person charged with an indictable offence; and
 - (b) evidence may be received by way of affidavit if the accused does not require attendance of the witness for cross-examination.

133—Punishment of contempt

- (1) The Court may punish a contempt by a fine or imprisonment (or both).
- (2) If the Court imposes a fine, the Court may fix—
 - (a) the time for payment of the fine; and
 - (b) a term of imprisonment in default of payment of the fine.
- (3) The Court may order a person who has been found guilty of a contempt to pay the costs of the proceeding for contempt.
- (4) The Court may release a person who has been found guilty of a contempt on the person entering into an undertaking to the Court to observe conditions determined by the Court.
- (5) The Court may, on its own initiative or on application by an interested person, cancel or reduce a penalty imposed for a contempt.
- (6) An order for the imposition of a penalty for a contempt, or for the cancellation of a penalty imposed for a contempt may be—
 - (a) made on conditions the Court considers appropriate; and

- (b) suspended on conditions the Court considers appropriate.
- (7) The Court may, on its own initiative or on application by the Registrar—
 - (a) cancel the release of a person who has been released under subrule (4) for breach of a condition of the undertaking; and
 - (b) issue a warrant to have the person arrested and brought before the Court to be dealt with for the original contempt.
- (8) The Registrar, if so directed by the Court, must make an application under subrule (7).

Dated 16 September 2014

G L Muecke
Chief Judge

R Soulio
Judge

P V Slattery
Judge

SOUTH AUSTRALIA**DISTRICT COURT CRIMINAL SUPPLEMENTARY RULES 2014**

By virtue and in pursuance of Section 51 of the *District Court Act 1991* and all other enabling powers, we, Geoffrey Louis Muecke, Chief Judge, and Rauf Soulio and Paul Vincent Slattery, Judges of the District Court of South Australia, make the following Rules of Court.

Contents

The Schedule—Approved Forms

Chapter 1—Preliminary

Part 1—Formal provisions

- 1—Citation
- 2—Commencement

Part 2—Objects

Part 3—Interpretation

- 3—Interpretation
- 3A—Numbering of Rules

Part 4—Application of Rules

- 4—Note- there is no rule 4

Part 5—Repeal and transitional provisions

- 5—Repeal and transitional provision

Chapter 2—General procedural rules and allocation of Court business

Part 1—Sittings

Part 2—Public access to hearings

Part 3—Court's control of procedure

Part 4—Distribution of Court's business

Part 5—Representation

- 6—Notice of acting and address for service

Chapter 3—Initiation of criminal proceedings

Part 1—Information

- 7—Information

Part 2—Arraignment

- 8—Timing of arraignment and listing of trials
- 9—Procedure at arraignment

Part 3—Listing for trial and disposition of cases

- 10—Disposition of cases
- 11—Listing of trials

Chapter 4—Documents, service and hearings generally

Part 1—Documents

- 12—Approved forms
- 13—Form of documents

- 14—Original of affidavit
- 15—Form of affidavit
- 16—Exhibits to affidavit
- 17—Binding of affidavit and exhibits
- 18—Form of list of authorities
- 19—Citations in list of authorities
- 20—Electronic delivery of summary of argument and list of authorities
- 21—Criminal Registry

Part 2—Service

- 22—Address for service

Part 3—Hearings generally

- 23—Appearance of defendant by audiovisual link
- 24—Addressing Judges
- 25—Barristers' attire
- 26—Noting of appearances of counsel and solicitors
- 27—Interpreters in court
- 28—Copies of authorities
- 29—Information for reporters
- 30—Record of proceedings

Part 4—Hearings for interstate courts

Chapter 5—Election for trial by Judge alone

- 31—Manner of making election
- 32—Practitioner's certificate
- 33—Revocation of election

Chapter 6—Pre-trial applications and directions

Part 1—Matters before first directions hearing

- 34—Representation of defendants
- 35—Directions hearings

Part 2—Convening directions hearings

Part 3—Pre-trial applications

- 36—Written applications

Part 4—Determination without oral hearing

Part 5—Proceedings at directions hearings

Part 6—Special directions hearings

- 37—Special directions hearings

Part 7—Pre-trial directions hearings

Part 8—Outcome of directions hearings

Chapter 7—Notice of and dispensing with evidence

Part 1—Notice of evidence

- 38—Evidence of discreditable conduct
- 39—Evidence of self-defence or other designated matters
- 40—Expert evidence

Part 2—Admissions

- 41—Dispensing with prosecution witnesses
- 42—Admission of facts

Part 3—Subpoenas

- 43—Subpoenas

Chapter 8—Trial

Part 1—Evidence

- 44—Evidence to be taken interstate or overseas
- 45—Evidence by vulnerable witnesses
- 46—Conduct of trials
- 47—Conduct of views
- 48—Witness identification

Part 2—Exhibits

Chapter 9—Juries

Chapter 10—Sentencing

- 49—Application to fix non-parole period
- 50—Mental impairment detention

Chapter 11—Statutory applications

- 51—Mental impairment
- 52—Note- there is no rule 52
- 53—Note- there is no rule 53
- 54—Note- there is no rule 54
- 55—Confiscation order

Chapter 12—Note- there is no Chapter 12

- 56—Note- there is no rule 56

Chapter 13—Note- there is no Chapter 13

- Note- there are no rules 57-76

Chapter 14—Contempt of Court

Part 1—Contempt committed in face of Court

Part 2—Court initiated proceedings for contempt—other cases

- 77—Summons to appear

Part 3—Contempt proceedings by party to proceeding

Part 4—Hearing of charge of contempt

The Schedule—Approved Forms

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

- (1) These Supplementary Rules may be cited as the *District Court Criminal Supplementary Rules 2014*.
- (2) These Supplementary Rules supplement the *District Court Criminal Rules 2014*.
- (3) These Supplementary Rules follow the Chapter and Part headings of the *District Court Criminal Rules 2014*.

2—Commencement

These Supplementary Rules commence on 1 October 2014.

Part 2—Objects

[no supplementary rules]

Part 3—Interpretation

3—Interpretation

- (1) Unless the contrary intention appears, expressions in these Supplementary Rules have the same meaning as in the Rules.
- (2) In these Supplementary Rules, unless the contrary intention appears—
FDN means the file document number when the Registrar elects to allocate a file document number to a document filed with the Court;
the *Rules* means the *District Court Criminal Rules 2014*;
the *Supplementary Rules* means the *District Court Criminal Supplementary Rules 2014*.
- (3) Unless the contrary intention appears, rule 5 of the Rules applies to the calculation of time under these Supplementary Rules.

3A—Numbering of Rules

It is intended that the numbering of these rules is to match (so far as possible) the numbering of the *Supreme Court Criminal Supplementary Rules 2014* (and thus, if any of the *Supreme Court Criminal Supplementary Rules 2014* is inapplicable in the District Court, there will be a gap in the sequential numbering of these rules).

Note- There is no equivalent to this rule in the *Supreme Court Criminal Supplementary Rules 2014*

Part 4—Application of Rules

4—Note- there is no rule 4

Part 5—Repeal and transitional provisions

5—Repeal and transitional provision

- (1) Unless the Court otherwise directs, these Supplementary Rules apply to—
 - (a) proceedings commenced on or after the commencement date; and
 - (b) steps taken or required to be taken or matters occurring on or after the commencement date in proceedings commenced before the commencement date.
- (2) All practice directions and practice notes made before the commencement date, insofar as they applied to the criminal jurisdiction, are superseded by these Supplementary Rules.
- (3) The Court may give directions about which rule is to apply to a transitional proceeding or a particular step in a transitional proceeding.

Chapter 2—General procedural rules and allocation of Court business

Part 1—Sittings

[no supplementary rules]

Part 2—Public access to hearings

[no supplementary rules]

Part 3—Court's control of procedure

[no supplementary rules]

Part 4—Distribution of Court's business

[no supplementary rules]

Part 5—Representation

6—Notice of acting and address for service

- (1) A notice of acting and address for service under rule 18(3)(c) of the Rules is to be in form 5A.
- (2) A notice of acting and address for service under rule 18(4)(b) of the Rules is to be in form 5A.
- (3) A notice of acting in person and address for service by a party under rule 18(4)(a) of the Rules is to be in form 5B.

Chapter 3—Initiation of criminal proceedings

Part 1—Information

7—Information

- (1) An information under rule 21(1) of the Rules is to be in form 3.
- (2) A notice of prescribed proceedings under rule 23(1) of the Rules is to be in form 4.

Part 2—Arraignment

8—Timing of arraignment and listing of trials

- (1) Persons committed for trial or sentence in Adelaide, whether in custody or on bail, are to appear before the Court on the first business day of the first week after the expiration of 28 calendar days from their committal for trial or sentence.
- (2) Persons committed for trial or sentence at a place other than Adelaide, whether in custody or on bail, are to appear before the Court on the second business day of the first week of the next sittings after the expiration of 28 calendar days from their committal for trial or sentence.
- (3) Despite paragraphs (1) and (2), a Judge may direct that a person committed for trial or sentence is to appear before the Court at an earlier or later date.

9—Procedure at arraignment

- (1) Subject to paragraph (2), on a plea of not guilty at arraignment, or if there is to be a disputed facts hearing, the matter will usually be remanded to a directions hearing approximately 4 to 6 weeks thereafter.
- (2) In proceedings in which a sexual offence against a child is alleged, on a plea of not guilty at arraignment, or if there is to be a disputed facts hearing, the matter will usually be remanded to a directions hearing within 4 weeks.
- (3) On a plea of guilty at arraignment, or on matters committed for sentence, a later date will usually be set for submissions on sentence.
- (4) If, between arraignment and the first directions hearing, it is agreed that a matter is to be a plea of guilty, the parties are to arrange with the Registrar to place the matter into an arraignment list and for the directions hearing to be vacated.

Part 3—Listing for trial and disposition of cases

10—Disposition of cases

- (1) The system of case flow management will be administered with the aims that—
 - (a) cases for trial are disposed of or come to trial within 6 months after first arraignment and in any event by no later than 12 months after first arraignment; and

- (b) cases committed for sentence are disposed of or sentenced within 4 months after first appearance in Court.
- (2) The system of case flow management in proceedings in which a sexual offence against a child is alleged will be administered with the aims that—
 - (a) cases for trial are disposed of or come to trial in Adelaide within 4 months after first arraignment and in Port Augusta and Mount Gambier within 6 months after first arraignment; and
 - (b) cases committed for sentence are disposed of or sentenced within 4 months after first appearance in Court.

11—Listing of trials

- (1) Unless there are exceptional circumstances, on a plea of not guilty the Court will give the matter a date for trial or disputed fact hearing at the first directions hearing.
- (2) In proceedings in which a sexual offence against a child is alleged—
 - (a) if the proceeding is to be heard at Adelaide, at the first directions hearing the Court will fix a date for trial or disputed facts hearing within the next 3 months;
 - (b) if the proceeding is to be heard at Port Augusta or Mount Gambier, it will be given a date for trial or disputed fact hearing within 6 months of first arraignment.
- (3) Counsel accepting a brief to appear in a proceeding in which a sexual offence against a child is alleged should do so on the basis that they will be able to appear at the trial or hearing within 4 months or 6 months, as the case requires, of first arraignment.
- (4) When a matter is listed for trial, a date will usually be set for a directions hearing before trial so that parties can report on the status of the matter and obtain pre-trial ancillary orders if needed.

Chapter 4—Documents, service and hearings generally

Part 1—Documents

12—Approved forms

- (1) The forms in the Schedule to these Supplementary Rules are approved forms.
- (2) A proceeding heading is to be in form 1 and used on all documents in respect of which a front sheet is not required.
- (3) A front sheet is to be in form 2 and used on all documents to be filed or lodged by a party in Court. The text of the document itself is to start on a fresh page.
- (4) The Registrar may allocate an FDN to a document filed by a party in Court.

13—Form of documents

- (1) Unless these Supplementary Rules otherwise provide or the Registrar otherwise directs, a document prepared for filing or lodgment in Court is to—
 - (a) be in the English language;
 - (b) be on A4 size white bond paper;
 - (c) be paginated;
 - (d) be typed or printed so as to be completely legible in no less than size 12 font except for quotations and footnotes which may be in size 10 font;
 - (e) have margins of 4 centimetres to the left and 2 centimetres to the right;
 - (f) have one and a half spacing between lines (unless the document is to be settled by the Court, in which case double spacing is to be used);
 - (g) have double spacing between paragraphs;
 - (h) have figures and amounts of money expressed in numerals and not in words; and
 - (i) have any erasures or handwritten additions authenticated.
- (2) Unless the Court otherwise directs, a document prepared for filing or lodging in Court is to be typed or printed—
 - (a) on a single side of the page if it is an original affidavit or statutory declaration (including the exhibits to an affidavit or annexures to a statutory declaration); and
 - (b) otherwise on both sides of the page if it is any other document.
- (3) If the Registrar is satisfied that a self-represented litigant is unable to comply with one or more of the above requirements, the Registrar may accept a document for filing, provided that it is legible and able to be filed conveniently.
- (4) When there is substantial non-compliance with this supplementary rule, the Registrar may refuse to accept a document for filing.

14—Original of affidavit

- (1) An affidavit filed or produced in Court is to be an original bearing the original signature of the deponent and not a copy. A lawyer or self-represented party

lodging or producing an affidavit to the Court impliedly undertakes to the Court that the signatures on the documents are originals and not copies.

- (2) In a case of urgency when it is impracticable for a lawyer to obtain the original of the affidavit before a hearing, the lawyer may swear an affidavit exhibiting a copy of that affidavit. A lawyer swearing such an affidavit impliedly undertakes to the Court that the lawyer will file the original of the affidavit immediately upon receipt.

15—Form of affidavit

- (1) An affidavit is to state that the deponent is speaking of his or her own knowledge except when a statement is made in accordance with paragraph (2).
- (2) An affidavit made for the purpose of an application or hearing other than the trial or final hearing of a criminal proceeding or with the Court's permission may contain statements that the witness honestly believes to be true if the witness also states the source and grounds of the belief.

Note—

A statement to the effect, "I know the facts deposed herein from my own knowledge except where otherwise appears", without properly identifying the sources and grounds of information and belief, is unacceptable.

- (3) The address of a deponent in an affidavit may be a business address provided it is a place where the deponent may usually be found during normal working hours.
- (4) Each page of an affidavit is to be signed by the deponent and the witness and dated.

16—Exhibits to affidavit

- (1) An affidavit (including an affidavit of service) that refers to a document already on the court file or part of the court record in a proceeding or a related proceeding is not to exhibit that document but is to describe the document by reference to its FDN when applicable and proceeding number or another indication where it is to be found on the court file. The object of this supplementary rule is that a document should appear only once on a court file or set of related court files.
- (2) Unless a lawyer forms the view that there is good reason not to, documents comprising a sequence of correspondence between the same or related persons and other documents comprising a sequence of a similar kind are to be made a single exhibit instead of being marked as separate exhibits.

17—Binding of affidavit and exhibits

- (1) If an affidavit with exhibits—
 - (a) comprises 50 or more pages (including the body of the affidavit and its exhibits but excluding front sheets); or
 - (b) includes 5 or more exhibits,the exhibits are to be bound together into a volume or volumes with or separate from the body of the affidavit.
- (2) In respect of an affidavit to which paragraph (1) applies—

- (a) each volume is to be paginated and contain an index showing the page at which each exhibit commences;
 - (b) each exhibit is to be clearly marked with its exhibit designation and tagged so that its commencement can be seen without opening the volume;
 - (c) the binding is to be of an appropriate size and allow the volume to lie flat when opened at any page;
 - (d) each volume (with any binding) is to be no more than 3 centimetres thick;
 - (e) the authorised person before whom the affidavit is made is to make a single certification that exhibits in the bundle are the exhibits produced by the deponent when making the affidavit;
 - (f) the certification is to be made on the front sheet of the volume of exhibits and, if there is more than one volume, is to be reproduced and included as a front sheet on each volume together with an index of the exhibit numbers contained in each volume.
- (3) A party may file an affidavit comprising less than 50 pages or including less than 5 exhibits in the manner required by paragraphs (1) and (2), but is not obliged to do so.

18—Form of list of authorities

- (1) A list of authorities is to contain the—
 - (a) full heading of the proceeding;
 - (b) anticipated date of hearing;
 - (c) name of the Judge who will hear the case (if known).
- (2) A list of authorities is to be divided into two parts—
 - (a) PART I to be headed “Authorities to be Read” is to contain the authorities from which counsel will or may read passages to the Court;
 - (b) PART II to be headed “Authorities to be Referred To” is to contain the authorities that are relied upon but from which counsel does not expect to read.

19—Citations in list of authorities

- (1) When a case is reported in an authorised series of reports such as the South Australian State Reports, Commonwealth Law Reports, Federal Court Reports, the English authorised reports (The Law Reports) or in a series of reports containing only decisions of a State or Territory Supreme Court, the citation of the case in those reports is to be used. In addition, the medium neutral citation, when available, is to be provided for all cases, whether reported or not.
- (2) Each authority in a list of authorities provided by email is to be hyperlinked to a page from which the authority can be accessed in HyperText Markup Language (*HTML*), Rich Text Format (*RTF*), Portable Document Format (*PDF*) or other comparable format, so as to facilitate access by the Court to that authority.

- (3) If alternatives are available, a searchable format of the authority is to be preferred over a non-searchable format. In the case of reports provided by Thomson Reuters (eg CLR, SASR or NSWLR) or LexisNexis (eg VLR), the link is to be to the HTML version (and not the PDF version) of the authorised report. In the case of reports sourced from Austlii (the medium neutral version), the link is to be directly to the RTF version of the report (if available).
- (4) If an online authorised series of reports is available to the party delivering the list of authorities, the hyperlink is to be to the report of the case in that series as well as to a freely available medium neutral version of the case (if available).
- (5) If hyperlinking is not possible because, for example, an electronic report of the authority is not available, the authority is to be marked in the list with the words “hyperlinking unavailable”.
- (6) If a hyperlink comprises more than 75 characters, parties should use a hyperlink shortening service such as <http://goo.gl>, <http://bit.ly> or <http://tinyurl.com> to shorten the hyperlink to a manageable form.
- (7) In all cases, the hyperlink provided is to be in addition to, and not in place of, a citation in conformity with paragraph (1).

20—Electronic delivery of summary of argument and list of authorities

- (1) When a summary of argument, list of authorities, chronology or summary of evidence and facts is to be provided for any hearing, it is to be lodged with the Court by email in accordance with the following paragraphs of this supplementary rule.
- (2) The email is to be sent with the subject line required by paragraph (3) to the criminal registry at
ccrcs@courts.sa.gov.au
- (3) The email is to be sent with a subject line that contains the file number and the names of the parties only.

Example—

File No DCCRM- 14-123 *R v Bloggs*

- (4) Authorities are not to be provided as an attachment to the email.
- (5) In every case, a copy of the document lodged by email with the Court is to be sent simultaneously by email to each other party.
- (6) If an email address for another party is not known and cannot reasonably be ascertained, a hard copy of the document is to be served on the other party no later than 5.00 pm on the same business day as the document is emailed to the Court.

21—Criminal Registry

- (1) The Registry is open for business from 9.30 am to 4.30 pm each day except on Saturdays, Sundays, Public Holidays and the Christmas vacation, which comprises the calendar days between Christmas Day and New Year’s Day.

- (2) If it is sought to file or lodge a document or arrange for an urgent hearing when the Registry is not open for business, the party should phone the after hours business number of the Registry ((08) 82040289). The number will provide the current contact details of the rostered on call officer. If that officer is satisfied about the urgency of the request, he or she will arrange for the opening of the Registry and/or for a special hearing.
- (3) Other than with the prior permission of the Judge, no lawyer or party is to contact a Judge to seek an urgent hearing.
- (4) Unless the Rules or these Supplementary Rules otherwise provide or the Court otherwise orders, a party to a proceeding may inspect or obtain copies of documents held on the Court file for that proceeding by an informal request to the Registry.

Exception—

Rule 75 of the Rules imposes special requirements for the inspection and copying of documents produced pursuant to a subpoena.

- (5) When the permission of the Court is required by a member of the public to inspect or obtain a copy of a court record, permission may be sought by letter or email to the Registrar without notice to any party or person interested.

Part 2—Service

22—Address for service

- (1) A notice of acting and address for service under rule 18(3)(c) or 18(4)(b) of the Rules is to be in form 5A.
- (2) A notice of acting in person and address for service by a party under rule 18(4)(a) of the Rules is to be in form 5B.
- (3) A notice of change of address for service under rule 33(3) of the Rules is to be in form 6.

Part 3—Hearings generally

23—Appearance of defendant by audiovisual link

Notice of objection to the use of an audiovisual link for a hearing under rule 36(2)(b) of the Rules is to be in form 7.

24—Addressing Judges

- (1) In Court—
 - (a) the Chief Judge of the Court is to be addressed and referred to by the title Chief Judge, eg “Chief Judge Smith” and as “Your/His/Her Honour”;
 - (b) a Judge of the Court is to be addressed and referred to by the title Judge, eg “Judge Brown” and as “Your/His/Her Honour”.
- (2) In documents filed or used in the Court and in correspondence, a Judge of the Court is to be referred to as “The Chief Judge....” or as “Judge....” as the case may be.

25—Barristers' attire

- (1) The dress of a barrister appearing in court is to be black court coat or bar jacket, white jabot and gown (silk for Queen's Counsel and Senior Counsel and stuff for junior counsel), dark trousers for men and dark skirt or slacks/trousers for women. As an alternative to the jabot, white bands may be worn with white shirt and winged collar.
- (2) Wigs will be worn when the Court is hearing criminal proceedings (including appeals).
- (3) Barrister's attire is not required for directions hearings or for any other matter not heard in open court.
- (4) A barrister's attire is at all times to be in a clean and neat condition.

26—Noting of appearances of counsel and solicitors

The counsel or solicitor appearing in a case listed before the Court is to inform the Judge's associate before the hearing of his or her name, the party for whom he or she appears and, when applicable, the name of his or her instructing solicitor.

27—Interpreters in court

- (1) An interpreting service to the Courts is provided by the Interpreting and Translation Centre, a branch of the Office of Multicultural & Ethnic Affairs.
- (2) The service provides interpreting facilities during court hearings for persons accused of criminal offences and witnesses giving evidence.
- (3) The service does not provide interpreters for lawyers taking instructions from clients or for parties to communicate with their lawyers.
- (4) A lawyer or self-represented party is to notify the listing section of the Court of the requirement for interpreting services at a directions hearing or trial at the earliest possible time to allow the maximum possible time for arrangements to be made.

28—Copies of authorities

- (1) The Court discourages the provision of hard copies of authorities readily available in the District Court library or available electronically.
- (2) Unless the client consents or the Court so directs, the cost of copying such authorities is not to be charged to the client.
- (3) Notwithstanding paragraph (1), if a party proposes to rely on an authority not contained in the list of authorities, the party should provide a hard copy to the Court and to any other parties.
- (4) Unless the client consents or the Court so directs, the cost of copying such authorities is not to be charged to the client.
- (5) Only in exceptional cases should a hard copy of an authority in Part II of the list of authorities be provided to the Court.

29—Information for reporters

- (1) A party is to give a copy of any list of authorities, or summary of argument when there is no list of authorities, to the reporters in court before commencement of the hearing to ensure the reporters have the correct details for any authority cited during the hearing.

- (2) A party calling a witness is to give the name of the witness to the reporters in court before the witness is called.

30—Record of proceedings

- (1) As soon as practicable after a judicial officer has pronounced an order or direction, its contents are to be entered into the Court's computer system.
- (2) A hard copy as signed by the judicial officer, the associate or a person delegated by the judicial officer for that purpose is to be placed onto a hard copy court file.

Part 4—Hearings for interstate courts

[no supplementary rules]

Chapter 5—Election for trial by Judge alone

31—Manner of making election

- (1) An election for trial by Judge alone made by a defendant under rule 40(1) of the Rules is to be in form 8A.
- (2) An election for trial by Judge alone made by counsel under rule 40(2) of the Rules is to be in form 8B.

32—Practitioner’s certificate

A practitioner’s certificate under rule 41(2) or 44(2) of the Rules is to be in form 9.

33—Revocation of election

A revocation of election for trial by Judge alone made by a defendant under rule 44(2) of the Rules is to be in form 10.

Chapter 6—Pre-trial applications and directions

Part 1—Matters before first directions hearing

34—Representation of defendants

- (1) A legal representation certificate under rule 46(2) of the Rules is to be in form 11.
- (2) A written assurance under rule 46(3) of the Rules is to be in form 12.

35—Directions hearings

Directions hearings will generally be listed for—

- (a) defendants on bail —Tuesday or Thursday morning (9.00am to 10.00am) each week when the Court is sitting;
- (b) defendants in custody and present by audiovisual link—Wednesday morning (9.00am to 10.00am) each week when the Court is sitting.

Part 2—Convening directions hearings

[no supplementary rules]

Part 3—Pre-trial applications

36—Written applications

- (1) An application for directions under rule 49(1) of the Rules is to be in form 13.
- (2) A written application for directions to adduce evidence or make submissions by audiovisual means under rule 49(1)(i) of the Rules is to be in form 14.

Part 4—Determination without oral hearing

[no supplementary rules]

Part 5—Proceedings at directions hearings

[no supplementary rules]

Part 6—Special directions hearings

37—Special directions hearings

- (1) The decision to refer a proceeding to a special directions hearing is in the discretion of the Court and will depend in part on the nature of the charges.
- (2) A proceeding will only be referred to a special directions hearing when the defendant is legally represented.
- (3) If a proceeding is to be referred to a special directions hearing, it will generally be referred at the same time as the proceeding is listed for trial.
- (4) Special directions hearings will generally be listed approximately 8 weeks in advance for a 20 minute hearing.

- (5) Special directions hearings will generally be listed during the first week in the month.

Part 7—Pre-trial directions hearings

[no supplementary rules]

Part 8—Outcome of directions hearings

[no supplementary rules]

Chapter 7—Notice of and dispensing with evidence

Part 1—Notice of evidence

38—Evidence of discreditable conduct

- (1) Notice of intention to adduce evidence of discreditable conduct under—
 - (a) rule 61(1)(a) of the Rules is to be in form 15;
 - (b) rule 61(1)(b) of the Rules is to be in form 16.
- (2) Notice of intention to object to the admission of proposed evidence of discreditable conduct under rule 61(2) of the Rules is to be in form 17.

39—Evidence of self-defence or other designated matters

- (1) An application to require the defence to give to the Director notice of intention to adduce evidence of a certain kind under rule 62(1) of the Rules is to be in form 13.
- (2) An order requiring the defence to notify the Director of an intention to adduce evidence under rule 62(2) of the Rules is to be in form 22.
- (3) Notice of the defence's intention to adduce evidence in response to an order under rule 62(3) of the Rules is to be in form 23.

40—Expert evidence

Notice of intention by the defence to introduce expert evidence under rule 63 of the Rules is to be in form 24.

Part 2—Admissions

41—Dispensing with prosecution witnesses

- (1) An application to require the defence to give to the Director notice whether it consents to dispensing with calling certain prosecution witnesses under rule 64(1) of the Rules is to be in form 13.
- (2) An order requiring the defence to notify the Director whether it consents to dispensing with calling certain prosecution witnesses under rule 64(2) of the Rules is to be in form 18.
- (3) Notice whether the defence consents to dispensing with calling certain prosecution witnesses in response to an order under rule 64(3) of the Rules is to be in form 19.

42—Admission of facts

- (1) An application for permission to serve on an unrepresented accused a notice to admit facts under rule 65(1) of the Rules is to be in form 13.
- (2) A notice to the defence to admit facts under rule 65(2) of the Rules is to be in form 20.
- (3) The defence response to a notice to admit facts under rule 65(3) of the Rules is to be in form 21.

Part 3—Subpoenas**43—Subpoenas**

- (1) A subpoena under rule 68(1) of the Rules is to be in form 26.
- (2) A notice and declaration to be attached to the front of a subpoena to produce under rule 76(3) and (4) of the Rules is to be in form 27.

Chapter 8—Trial

Part 1—Evidence

44—Evidence to be taken interstate or overseas

A request to a foreign court to take evidence under rule 81(1) of the Rules is to be in form 25.

45—Evidence by vulnerable witnesses

- (1) A party calling a witness who is to give evidence by audiovisual link from a location remote from the courtroom is to make arrangements with the Sheriff's office for the witness to be brought into the building and to the witness room.
- (2) When counsel wishes to ask questions of a witness giving evidence by audiovisual link from a remote location relating to a document or thing, counsel is to give sufficient notice to court staff to allow appropriate arrangements to be made for the document or thing to be displayed electronically to the witness or taken to the remote location by court staff.

46—Conduct of trials

- (1) This supplementary rule applies subject to any contrary direction by the trial Judge.
- (2) Defence counsel will sit at the end of the bar table closer to the dock.
- (3) The Judge will be present on the Bench when—
 - (a) an accused enters the dock;
 - (b) the jury enters and leaves the courtroom;
 - (c) a witness enters or leaves the courtroom while the accused is in the dock.
- (4) When a jury is about to be empanelled, an accused will enter the dock in the presence of the Judge and the jury panel. If counsel seeks a direction to the contrary, it should be requested before the jury panel is brought to the courtroom.

47—Conduct of views

- (1) This supplementary rule applies subject to any contrary direction by the trial Judge.
- (2) A view is part of the trial and is under the control of the trial Judge.
- (3) Any person may attend on a view, but this supplementary rule does not authorise any such person to trespass on private property.
- (4) When a view takes place in a confined space, the trial Judge may limit the persons to enter that space.
- (5) No member of the media or the public is to be in such proximity to jurors as to be able to overhear what is said between them.
- (6) No member of the media or the public is to be in such proximity to the trial Judge or counsel as to be able to overhear private conversations.
- (7) Jurors are not to be filmed, photographed or sketched.

- (8) Witnesses are not to be filmed or photographed.
- (9) If there is no suppression order relating to the identity of an accused, he or she may be filmed, photographed and sketched from a distance, but not so as to show that he or she is in custody or under restraint or in any way that might suggest guilt.
- (10) There is to be no sound recording at a view other than by the court reporter.

48—Witness identification

- (1) A witness in a criminal proceeding is required to submit his or her address in writing for inclusion in court records. A lawyer calling a witness is to arrange for the witness to write out his or her address and hand it to the Judge's associate when taking the oath or affirmation.
- (2) A witness in a criminal proceeding will not be asked when taking the oath or affirmation to state his or her address or occupation.
- (3) This supplementary rule does not restrict the right of counsel for either party to ask a witness to state his or her address or occupation if the address or occupation, as the case may be, is relevant to an issue or to credit.

Part 2—Exhibits

[no supplementary rules]

Chapter 9—Juries

[no supplementary rules]

Chapter 10—Sentencing

49—Application to fix non-parole period

An application to fix a non-parole period under rule 92(1) of the Rules is to be in form 28.

50—Mental impairment detention

A warrant committing the defendant to detention under rule 93 of the Rules is to be in form 30.

Chapter 11—Statutory applications

51—Mental impairment

- (1) An originating application to revoke, vary or revise a supervision order under rule 94(1) of the Rules is to be in form 29.
- (2) A warrant committing the defendant to detention under rule 94(4) of the Rules is to be in form 30.
- (3) A warrant committing the defendant to an appropriate form of custody under rule 94(5) of the Rules is to be in form 31 or form 32 as applicable.

52—Note- there is no rule 52

53—Note- there is no rule 53

54—Note- there is no rule 54

55—Confiscation order

An application under the Confiscation Acts—

- (a) if made in existing criminal proceedings under rule 98(2)(a) of the Rules—is to be in form 13; or
- (b) if an originating application under rule 98(2)(b) of the Rules—is to be in form 29.

Chapter 12—Note- there is no Chapter 12**56—Note- there is no rule 56**

Chapter 13—Note- there is no Chapter13

Note- there are no rules 57-76

Chapter 14—Contempt of Court

Part 1—Contempt committed in face of Court

[no supplementary rules]

Part 2—Court initiated proceedings for contempt—other cases

77—Summons to appear

A summons requiring the accused to appear before the Court at the nominated time and place under rule 130(7)(a) of the Rules is to be in form 55 of Schedule 3 to the *District Court Civil Supplementary Rules 2014*.

Part 3—Contempt proceedings by party to proceeding

[no supplementary rules]

Part 4—Hearing of charge of contempt

[no supplementary rules]

Dated 16 September 2014

G L Muecke

Chief Judge

R Soulio

Judge

P V Slattery

Judge

South Australia
District Court Criminal Supplementary Rules
2014

SCHEDULE—APPROVED FORMS

INDEX OF FORMS

Form 1	Proceeding heading	1
Form 2	Front Sheet	2
Form 3	Information.....	3
Form 4	Notice of prescribed proceedings.....	4
Form 5A	Notice of acting and address for service.....	5
Form 5B	Notice of acting in person and address for service	6
Form 6	Notice of change of address for service	7
Form 7	Objection to audiovisual link	8
Form 8A	Election by defendant for trial by Judge alone	9
Form 8B	Election by counsel for trial by Judge alone.....	10
Form 9	Practitioner’s certificate	11
Form 10	Revocation of election by defendant	12
Form 11	Legal representation certificate.....	13
Form 12	Assurance that defendant does not want legal representation	14
Form 13	Application for directions.....	15
Form 14	Application for directions to use audiovisual link.....	17
Form 15	Notice of intention by Director to adduce discreditable conduct evidence.....	20
Form 16	Notice of intention by defendant to adduce discreditable conduct evidence.....	22
Form 17	Notice of intention to object to proposed discreditable conduct evidence.....	24
Form 18	Order for notification whether defence dispenses with calling witnesses	26
Form 19	Notice whether defence consents to dispensing with prosecution witnesses.....	27
Form 20	Notice to admit facts	28
Form 21	Response to notice to admit facts	29
Form 22	Order requiring defence to give notice of intention to adduce evidence	30
Form 23	Notice of intention to adduce evidence.....	31
Form 24	Notice of intention to introduce expert evidence.....	32
Form 25	Letter of request	34
Form 26	Subpoena.....	36
Form 27	Subpoena – notice and declaration by addressee of subpoena.....	45
Form 28	Originating application to fix non-parole period.....	47
Form 29	Originating application	50

Form 30	Warrant for detention.....	52
Form 31	Warrant of remand in custody pending investigation.....	54
Form 32	Warrant of remand in custody after declared liable to supervision	56

Form 1

Proceeding heading

**IN THE DISTRICT COURT OF SOUTH AUSTRALIA
IN THE CRIMINAL JURISDICTION****DCCRM of***(NAME)*R/Applicant *(delete whichever is inapplicable)*

v

*(NAME)*Defendant/Respondent/The Queen *(delete whichever is inapplicable)*

Form 2

Front Sheet

**IN THE DISTRICT COURT OF SOUTH AUSTRALIA
IN THE CRIMINAL JURISDICTION****DCCRM of***(NAME)*R/Applicant *(delete whichever is inapplicable)*

v

*(NAME)*Defendant/Respondent *(delete whichever is inapplicable)*

(Document type, eg Application, Notice, etc.)

Filed on behalf of *(name of party)* by *(name of solicitor)**(OR)*Filed by *(name of party)**(address) (Mandatory Field)**(telephone)**(mobile)**(facsimile)**(DX Box)**(email)**(‘L’ Code)**(‘P’ Code)*

Form 3

Rule 21(1)
Information

(insert proceeding heading)

INFORMATION

Criminal Law Consolidation Act 1935 s 275(1)

For arraignment on.....

Information of the Director of Public Prosecutions

(insert name) is charged with the following offence(s):

1.

2.

(etc)

Rule 23(1)

Form 4

Notice of prescribed proceedings

(insert front sheet)

NOTICE OF PRESCRIBED PROCEEDINGS

Criminal Law Consolidation Act 1935 s 5(1), Bail Act 1985 s 3A

TO THE REGISTRAR

AND TO THE DEFENDANT: *(insert name)*

Notice

The proceedings instituted by information for arraignment on *(insert date)* are prescribed proceedings because

.....
.....
.....
.....
.....

The proceedings may be expedited under section 275(3) of the *Criminal Law Consolidation Act 1935* and the *District Court Criminal Rules 2014*.

Date:

(signed)

Director of Public Prosecutions

Rules 18(3)(c), 18(4)(b), 111(2)(a)

Form 5A

Notice of acting and address for service

(insert front sheet)

NOTICE OF ACTING AND ADDRESS FOR SERVICE

Notice

(name of solicitor)
acts/now acts *(delete whichever is inapplicable)* as solicitor for the
defendant/respondent *(delete whichever is inapplicable)*
whose address for service is/is now *(delete whichever is inapplicable)*
.....
.....

Date:

(signed)

Solicitor for the defendant/respondent/Director *(delete whichever is inapplicable)*

Rule 18(4)(a), 33(3), 111(3)

Form 5B

Notice of acting in person and address for service

(insert front sheet)

NOTICE OF ACTING IN PERSON AND ADDRESS FOR SERVICE

Notice

The defendant/applicant/respondent *(delete whichever is inapplicable)*.....
is/is now *(delete whichever is inapplicable)* self-represented.

The address for service for the defendant/applicant/respondent *(delete whichever is inapplicable)* is/is now *(delete whichever is inapplicable)*

.....
.....

Date:

(signed)

Defendant/Applicant/Respondent *(delete whichever is inapplicable)*

Form 6

Rules s 33(3), 111(1)(b) and 111(2)(b)
Notice of change of address for service

(insert front sheet)

NOTICE OF CHANGE OF ADDRESS FOR SERVICE

Notice

The address for service of the defendant/applicant/respondent *(delete whichever is inapplicable)**(insert name of party)*
is now
.....

Date:

(signed)

Solicitor for the Defendant/ Applicant/Respondent *(delete whichever is inapplicable)*

(or)

Defendant/Applicant/Respondent *(delete whichever is inapplicable)*

Rule 36(2)(b)

Form 7

Objection to audiovisual link

(insert front sheet)

NOTICE OF OBJECTION TO AUDIOVISUAL LINK

Notice

(name of person in custody objecting)

of

.....

objects to appearing by audiovisual link in the Court on the following hearing: *(insert details of the hearing the subject of the objection)*

.....

.....

The grounds of the objection are as follows: *(insert a brief statement of the grounds of objection)*

.....

.....

.....

Date:

(signed)

Objector /Solicitor for the Objector *(delete whichever is inapplicable)*

Rule 40(1)

Form 8A

Election by defendant for trial by Judge alone

(insert front sheet)

ELECTION BY DEFENDANT FOR TRIAL BY JUDGE ALONE

Juries Act 1927 s 7(1)

Election

I, *(full name of defendant)*

of *(address)*

ELECT under section 7(1)(a) of the *Juries Act 1927* to be tried by Judge alone in
respect of all charges in the following information, namely: *(set out details of the charges)*

Acknowledgement

I ACKNOWLEDGE that I have received legal advice about making the election before
making the election.

Date:

(signed)

Defendant

Rule 40(2)

Form 8B

Election by counsel for trial by Judge alone

(insert front sheet)

ELECTION BY COUNSEL FOR TRIAL BY JUDGE ALONE

Criminal Law Consolidation Act 1935 s 269W

Election

I, *(full name of lawyer)*

of *(address of practice)*

barrister/barrister and solicitor *(delete whichever is inapplicable)*

CERTIFY that:

1. I am a legal practitioner holding a current practising certificate under the *Legal Practitioners Act 1981*.
2. I am the counsel for the defendant *(name)* in this proceeding.
3. I believe that the defendant is unfit to instruct counsel or give rational instructions in respect of all charges in the information, namely: *(set out details of the charges)*
.....
.....
4. I have considered all matters relevant to the making of an election.
5. I consider that a trial by Judge alone would be in the best interest of the defendant.
6. I exercise my independent discretion under section 269W of the *Criminal Law Consolidation Act 1935* and ELECT under section 7(1)(a) of the *Juries Act 1927* that the defendant be tried by Judge alone on the above charges.

Date:

(signed)

Counsel for the defendant

Rules 41(2), 44(2)

Form 9

Practitioner's certificate

(insert front sheet)

PRACTITIONER'S CERTIFICATE

Certificate

I, *(full name of practitioner)*

of *(address of practice)*

barrister/solicitor/barrister and solicitor *(delete whichever is inapplicable)*

CERTIFY that:

- 1. I am a lawyer holding a current practising certificate under the *Legal Practitioners Act 1981*; and
- 2. I am the solicitor/counsel *(delete whichever is inapplicable)* for the defendant.....in this proceeding.
- 3. I have advised the defendant on all matters relevant to the defendant making/revoking *(delete whichever is inapplicable)* an election for trial by Judge alone under section 7(1)(a) of the *Juries Act 1927* in respect of all charges in the information, namely: *(set out details of the charges)*

.....
.....

Date:

(signed)

Solicitor/Counsel for the defendant *(delete whichever is inapplicable)*

Rule 44(2)

Form 10

Revocation of election by defendant

(insert front sheet)

REVOCATION OF ELECTION BY DEFENDANT

Revocation

I, *(full name of defendant)*

of *(address)*

.....

REVOKE the election that I previously made on

under section 7(1)(a) of the *Juries Act 1927* to be tried by a Judge alone in respect of all

charges in the following information, namely: *(set out details of the charges)*

.....

.....

.....

Acknowledgement

I ACKNOWLEDGE that I have received legal advice about making the revocation of my previous election before making the revocation.

Date:

(signed)

Defendant

Rule 46(2)

Form 11

Legal representation certificate

(insert front sheet)

LEGAL REPRESENTATION CERTIFICATE
Criminal Law (Legal Representation) Act 2001 s 8(2)

Certificate

1. I, *(full name of lawyer)*
of *(address of practice)*
.....
act for the named defendant *(insert name)*.....

2. I certify that the defendant is an assisted person within the meaning of section 4 of the *Criminal Law (Legal Representation) Act 2001*.

(or)

I undertake that the defendant will be provided with legal representation for the duration of the trial.

(or)

I certify that the defendant is not an assisted person and I am not prepared to give an undertaking that the defendant will be provided with legal representation for the duration of the trial.

(delete whichever is inapplicable)

Date:

(signed)

Solicitor for the defendant

Rule 46(3)

Form 12

Assurance that defendant does not want legal representation

(insert front sheet)

ASSURANCE THAT DEFENDANT DOES NOT WANT LEGAL REPRESENTATION

Criminal Law (Legal Representation) Act 2001 s 8(3)(c)

Assurance

I, *(full name of defendant)*
of *(address)*
.....

STATE that:

- 1. I am the defendant in these proceedings.
- 2. I am charged with: *(insert charges)*
.....
.....
.....
.....
.....

- 3. I do not want to be legally represented at the trial of the above charge/charges.

Date:

(signed)
Defendant

Rules 49(1)

Form 13

Application for directions

(insert front sheet)

APPLICATION FOR DIRECTIONS

TO THE *(INSERT ROLE)*: *(insert name of other party)*.....

AND TO *(insert names of others to whom notice of the application is to be given)*.....

.....

Application

The Director of Public Prosecutions/Defendant/Applicant/Respondent *(delete whichever is inapplicable)* *(insert name)* seeks

the following orders or directions:

- 1. *(set out orders or directions sought)*

Endorsements

Application made pursuant to rule *(no)* of the *District Court Criminal Rules 2014*/section *(no)* of the *(Act)* *(delete whichever is inapplicable)*.

Grounds

The grounds relied upon are as follows: *(set out sufficient particulars to give proper notice of the issues to be raised so that the other party may determine whether there will be dispute on the relevant facts)*

.....
.....
.....
.....

Date:

(signed)

Director of Public Prosecutions

(or)

Defendant/Applicant/Respondent *(delete whichever is inapplicable)*

(or)

Solicitor for the defendant/applicant/respondent *(delete whichever is inapplicable)*

Hearing

(When the application is to be given a separate listing date, the following will be completed by the Registry)

This application will be heard before.....in the District Court at on at or so soon afterwards as the business of the Court allows.

The courtroom in which the application will be heard will be published:

- on the Courts Administration Authority website the day before;
- in the Advertiser on the day; and
- on the notice board at the Courts Building.

The parties and all persons served with this application are required then to attend if they wish to be heard on the application and, in their absence, the Court may make such order as it sees fit.

Date:

(signed)

Registrar

Rule 49(1)(h)

Form 14

Application for directions to use audiovisual link

(insert front sheet)

**APPLICATION FOR DIRECTIONS TO RECEIVE EVIDENCE OR
SUBMISSIONS BY AUDIOVISUAL LINK**

Evidence Act 1929 s 59IE/59IQ

TO THE *(INSERT ROLE): (insert name of other party)*
AND TO *(insert names of others to whom notice of the application is to be given)*
.....

Application

The Director of Public Prosecutions/Defendant *(delete whichever is inapplicable)* applies for the following orders or directions:

- 1. an order that
 - the evidence of *(identify the witness)*.....
 - submissions by *(identify the person and subject matter)*

(delete whichever is inapplicable)

at the

- hearing of the application for *(identify the application)*.....
- directions hearing on *(insert date)*
- trial on *(insert date)*

(delete whichever is inapplicable)

be conducted with the aid of an audio link/audiovisual link *(delete whichever is inapplicable)*.

- 2. *(set out any other order(s) or direction(s) sought)*

Particulars

1. It is proposed that the link be utilised in relation to the whole of the proceeding/portion only of the proceeding, namely..... *(delete whichever is inapplicable)*
2. The persons proposed appear before the Court or give evidence by the proposed link are as follows: *(names and roles)*
3. The link is required from *(originating city/town)* to *(receiving city/town)*.
4. The time proposed for the commencement of the link is *(time and date)*.
5. The estimated duration of the link is *(period)*.
6. The application is made with/without *(delete whichever is inapplicable)* the consent of all parties to the proceedings.

(If all parties do not consent, identify any non-consenting party and the nature of the objection raised)

Grounds

The grounds relied upon are as follows: *(set out sufficient particulars to give proper notice of the issues to be raised so that the other party may determine whether there will be a dispute on the relevant facts)*

.....
.....
.....
.....

Date:

(signed)

Director of Public Prosecutions/Defendant/Solicitor for the defendant *(delete whichever is inapplicable)*

Hearing

(When the application is to be given a separate listing date, the following will be completed by the Registry)

This application will be heard before.....in the District Court at
..... at on at or so
soon afterwards as the business of the Court allows.

The courtroom in which the application will be heard will be published:

- on the Courts Administration Authority website the day before;
- in the Advertiser on the day; and
- on the notice board at the Courts Building.

The parties and all persons served with this application are required then to attend if they wish to be heard on the application and, in their absence, the Court may make such order as it sees fit.

Date:

(signed)

Registrar

Rule 61(1)(a)

Form 15 Notice of intention by Director to adduce discreditable conduct evidence

(insert front sheet)

NOTICE OF INTENTION BY DIRECTOR TO ADDUCE DISCREDITABLE CONDUCT EVIDENCE

Evidence Act 1929 s 34P(4)

TO THE DEFENDANT: *(insert name of defendant)*

Notice

The Director of Public Prosecutions intends at trial to seek to adduce evidence of discreditable conduct of *(insert name)*

Particulars of evidence of conduct

- A. In respect of the first item of discreditable conduct:
 - A1. The nature of the discreditable conduct is
.....
.....
 - A2. The witness from whom the evidence is to be led, whether in examination-in-chief or in cross-examination, is
.....
.....
 - A3. The use of the evidence said to be permissible under section 34P(2)(b) in respect of count *(identify the first count to which the evidence is said to be relevant)* is
.....
.....
.....
 - A4. The use of the evidence said to be permissible under section 34P(2)(b) in

respect of count (*identify the second count to which the evidence is said to be relevant*) is

.....
.....
.....

(Repeat number 4 for each further count to which the evidence is said to be relevant)

B. (Repeat A1 to A4 for each additional item of discreditable conduct alleged)

Action required

If you wish to object to the admission of the evidence of discreditable conduct proposed to be adduced by the Director of Public Prosecutions you must, within 28 calendar days after the filing of this Notice, file in the Court and serve on all other parties to the proceeding a Notice using form 17 which sets out the grounds of your objection.

Date:

(signed)

Director of Public Prosecutions

Note

This Notice must be filed in the Court and served on all other parties to the proceedings within 21 calendar days after the date on which proceeding is listed for trial.

Rule 61(1)(b)

Form 16 Notice of intention by defendant to adduce discreditable conduct evidence

(insert front sheet)

**NOTICE OF INTENTION BY DEFENDANT TO ADDUCE
DISCREDITABLE CONDUCT EVIDENCE**

Evidence Act 1929 s 34P(4)

TO THE DEFENDANT: *(insert name of co-defendant)*

AND TO THE DIRECTOR OF PUBLIC PROSECUTIONS

Notice

The defendant *(insert name)*..... intends at trial to seek to
adduce evidence of discreditable conduct of *(insert name)*

Particulars of evidence of conduct

A. In respect of the first item of discreditable conduct:

A1. The nature of the discreditable conduct is

.....
.....

A2. The witness from whom the evidence is to be led, whether in
examination-in-chief or in cross-examination, is

.....
.....

A3. The use of the evidence said to be permissible under section 34P(2)(b) in
respect of count *(identify the first count to which the evidence is said to be
relevant)* is

.....
.....

A4. The use of the evidence said to be permissible under section 34P(2)(b) in respect of count (*identify the second count to which the evidence is said to be relevant*) is

.....
.....
.....

(Repeat number 4 for each further count to which the evidence is said to be relevant)

B. (Repeat A1 to A4 for each additional item of discreditable conduct alleged)

Action required

If you wish to object to the admission of the evidence of discreditable conduct proposed to be adduced by your co-defendant you must, at least 5 clear business days before the listed trial date, file in the Court and serve on all other parties to the proceeding a Notice using form 17 that sets out the grounds of your objection.

Date:

(signed)

Defendant/Solicitor for the defendant (*delete whichever is inapplicable*)

Note

This Notice must be filed in the Court and served on all other parties to the proceeding at least 21 clear calendar days before the listed trial date.

Rule 61(2)

Form 17 Notice of intention to object to proposed discreditable conduct evidence

(insert front sheet)

**NOTICE OF INTENTION TO OBJECT TO PROPOSED DISCREDITABLE
CONDUCT EVIDENCE**

Evidence Act 1929 s 34P(4)

TO THE DIRECTOR OF PUBLIC PROSECUTIONS

AND TO THE DEFENDANT: *(insert name of co-defendant if applicable)*.....

.....

Notice

TAKE NOTICE that *(insert role and name of party objecting)*

will object to the evidence of discreditable conduct proposed to be adduced by *(insert role and name of relevant party)*

The evidence of discreditable conduct to which objection is taken is *(specify the particular proposed evidence of discreditable conduct to which and the counts in respect of which objection is taken)*

.....

Grounds

The grounds of objection are as follows:

1. *(set out, separately in relation to each allegation of discreditable conduct, the grounds of objection)*

- 2.

(etc)

Date:*(signed)*

.....

Director of Public Prosecutions/Defendant/Solicitor for the defendant (*delete
whichever is inapplicable*)

Note

This Notice must be filed in the Court and served on all other parties to the proceeding:

- if in response to evidence proposed to be led by the Director of Public Prosecutions—no later than 28 calendar days after the Director of Public Prosecutions filed a Notice of Intention to Adduce Discreditable Conduct;
- otherwise— at least 5 clear business days before the listed trial date.

Rule 64(1)

Form 18 Order for notification whether defence dispenses with calling witnesses

(insert proceeding heading)

ORDER REQUIRING NOTIFICATION WHETHER DEFENCE DISPENSES WITH CALLING PROSECUTION WITNESSES

Criminal Law Consolidation Act 1935 s 285BB(4)

TO THE DEFENDANT: *(insert name of defendant)*

Order

The Court requires you to notify the Director of Public Prosecutions whether you consent to dispensing with calling the following prosecution witnesses *(names of witnesses)*.....

.....
to establish the admissibility of evidence of the following: *(description of evidence)*.....

.....
.....
.....

Action required

YOU ARE REQUIRED to give a written reply to this Notice in form 19 of the *Criminal Supplementary Rules 2014* within days of the service of this Order on you or your solicitor.

Warning

If you fail to reply within this time, your consent to the tender of the evidence specified in this Notice for the purposes specified in this Notice will be conclusively presumed.

Date:

(signed)

Judge *(insert name)*

Rule 64(2)

Form 19 Notice whether defence consents to dispensing with prosecution witnesses

(insert front sheet)

NOTIFICATION WHETHER DEFENCE CONSENTS TO DISPENSING WITH CALLING PROSECUTION WITNESSES

Criminal Law Consolidation Act 1935 s 285BB(4)

TO THE DIRECTOR OF PUBLIC PROSECUTIONS

Response

In response to the order datedof Judge,
the defendant *(insert name of defendant)*

- consents to the prosecution dispensing with the need to call witnesses to establish the admissibility of the following evidence *(description of evidence)*

.....
.....
.....

- does not consent to the prosecution dispensing with the need to call witnesses to establish the admissibility of the evidence/other evidence *(delete whichever is inapplicable)* identified in the order.

(delete whichever is inapplicable)

Date:

(signed)

Defendant/Solicitor for the defendant *(delete whichever is inapplicable)*

Form 20

Rule 65(1)
Notice to admit facts

(insert front sheet)

NOTICE TO ADMIT FACTS
Criminal Law Consolidation Act 1935 s 285BA

TO THE DEFENDANT: *(insert name of defendant)*.....

Notice

The Director of Public Prosecutions seeks that you admit the following facts:

1. *(specify each fact in a separate numbered paragraph)*

Action required

You must provide your response in form 21 of the *Criminal Supplementary Rules 2014* to this Notice within days of the service of the Notice upon you or within a time fixed by the Court on an application by you.

Warning

You are not required to admit these facts, but if you are convicted, the Court is required to take an unreasonable failure to make an admission in response to this Notice into account in fixing sentence.

Date:

(signed)

Director of Public Prosecutions

Rule 65(2)

Form 21

Response to notice to admit facts

*(insert front sheet)***RESPONSE TO NOTICE TO ADMIT FACTS***Criminal Law Consolidation Act 1935 s 285BA*

TO THE DIRECTOR OF PUBLIC PROSECUTIONS

Response

In response to the Notice to Admit Facts dated

the defendant (*name of defendant*)

- admits the facts set out in the following paragraphs of the Notice to Admit Facts:
 1. (*set out each fact admitted in a separate numbered paragraph by reference to the relevant paragraph number in the Notice to Admit*)
- does not admit the facts set out in the Notice to Admit Facts/remaining paragraphs of the Notice to Admit Facts (*delete whichever is inapplicable*)

*(delete whichever is inapplicable)***Date:***(signed)*Defendant/Solicitor for the defendant (*delete whichever is inapplicable*)

Rule 62(2)

Form 22 Order requiring defence to give notice of intention to adduce evidence

(insert proceeding heading)

ORDER REQUIRING DEFENCE TO GIVE PROSECUTION NOTICE OF INTENTION TO ADDUCE EVIDENCE
Criminal Law Consolidation Act 1935 s 285BB(1)

TO THE DEFENDANT: *(insert name of defendant)*.....

Order

The Court requires you to give to the Director of Public Prosecutions notice of an intention to introduce at trial evidence of the following kind: *(description of the kind of evidence)*

.....
.....

Action required

YOU MUST give written notice in form 23 of the *Criminal Supplementary Rules 2014* of your intention to call evidence of the kind set out above within days of service of this Order on you or your solicitor.

Warning

Non-compliance with this order does not render evidence inadmissible, but the prosecutor or the Judge (or both) may comment on the non-compliance to the jury.

Date:

(signed)
Judge *(insert name)*

Rule 62(3)

Form 23

Notice of intention to adduce evidence

(insert front sheet)

NOTICE OF INTENTION TO ADDUCE EVIDENCE
Criminal Law Consolidation Act 1935 s 285BB(1)

TO THE DIRECTOR OF PUBLIC PROSECUTIONS

Response

In response to the order datedof Judge,
the defendant (*name of defendant*)
intends to introduce at the trial evidence of the following kind:

.....
.....
.....
.....
.....

Date:

(signed)

Solicitor for the defendant/Defendant (*delete whichever is inapplicable*)

Rule 63

Form 24

Notice of intention to introduce expert evidence

(insert front sheet)

NOTICE OF INTENTION TO INTRODUCE EXPERT EVIDENCE
Criminal Law Consolidation Act 1935 s 285BC

TO THE DIRECTOR OF PUBLIC PROSECUTIONS

Notice of intention

The defendant *(name of defendant)*.....
intends to introduce at the trial/during submissions on sentence *(delete whichever is inapplicable)*, expert evidence from *(insert name and field of expertise of expert)*

.....
.....
.....

The witness will give the following evidence: *(set out concisely the general nature of the evidence and what it tends to establish)*

.....
.....

Warning

Section 285BC of the *Criminal Law Consolidation Act 1935* provides that, if a defendant is to be tried or sentenced for an indictable offence, unless exempted by the Court, expert evidence cannot be adduced by a defendant without the Court’s permission unless the Director of Public Prosecutions receives notice of intention to introduce expert evidence:

- (a) in the case of trial—on or before the date of the first directions hearing; and
- (b) in the case of sentence—at least 28 calendar days before the date appointed for submissions on sentence; or
- (c) if the evidence does not become available to the defence until later—as soon

as practicable after it becomes available to the defence,

Section 285BC of the *Criminal Law Consolidation Act 1935* also provides that, if a defendant fails to comply with the section in a case of trial by jury, the prosecutor or the Judge (or both) may comment on the non-compliance to the jury.

Date:

(*signed*)

.....

Solicitor for the defendant/Defendant (*delete whichever is inapplicable*)

Note:

If the Director of Public Prosecutions receives notice of intention to introduce expert evidence less than 28 calendar days before the date appointed for trial or for submissions on sentence, the Court may, on application by the prosecutor, adjourn the case to allow the prosecution a reasonable opportunity to obtain expert advice on the proposed evidence if the defendant is to be permitted to adduce the evidence.

Rule 81(1)

Form 25

Letter of request

(insert proceeding heading)

LETTER OF REQUEST
Evidence Act 1929 s 59E(1)(c)

TO THE COMPETENT JUDICIAL AUTHORITY OF *(insert place)*.....
..... in *(insert country)*.....

Background

An action has been commenced in the District Court of South Australia, in which
(insert name of party)of *(insert address)*.....
is the *(insert role of party)*

and *(insert name of party)*.....of *(insert address)*.....
is the *(insert role of party)*

It is necessary, for the determination of the matters in dispute, that the following person,
resident within your jurisdiction, be examined as a witness upon oath or affirmation
concerning those matters: *(insert name, address of proposed witness and state concisely the
matters to which the witness is required to testify)*

.....
.....

Request

I *(name)*....., the Registrar of the District Court of South
Australia, request pursuant to section 59E of the *Evidence Act 1929* that, for the assistance
of the Court, you summon the witness to attend, at a time and place you appoint, before a
person who according to your procedure is competent to take examinations of witnesses,
and that you cause the witness to be examined orally with regard to the matters in question,
in the presence of the agents of the parties, or such of them as, on due notice given, attend

the examination.

I request that you permit the agents of the (*insert name of party seeking that witness be called*)..... to examine the witness, and permit any other party to cross examine the witness and the party producing the witness for examination to re-examine the witness orally.

I request that the evidence of the witness be reduced into writing and all documents and things produced upon the examination be duly marked for identification, and that you authenticate the examination by the seal of your Court or in another way in accordance with your procedure, and return them to me together with a note of the charges and expenses payable in respect of this request through the Attorney-General of South Australia from whom this request was received for transmission to the District Court of South Australia.

I request that you cause me, and the agents of the parties if appointed, to be informed of the date and time when and place where the examination is to take place.

Date:

(*signed*)

Registrar

Form 26

Rule 68(1)

Subpoena

*(insert proceeding heading)***SUBPOENA**TO: *(name)* of *(address)***You are ordered:**

- **to attend to give evidence—see Section A of this form; or**
- **to produce this subpoena or a copy of it and the documents or things specified in the Schedule—see Section B of this form; or**
- **to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule—see Section C of this form**

*(select one only of these three options)***Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.**

Please read Notes 1 to 15 at the end of this subpoena.

The last date for service of this subpoena is *(date)*. *(see Note 1)**(if applicable)*: The last date for service was fixed by order made by Judge *(name)* dated *(date)*.

FILED:

*(Registry to place seal or authentication)*Issued at the request of *(role of party)*, *(name)* whose address for service is:

Place:

Email:

(delete whichever of the following Section A, B or C is not applicable)

SECTION A. Details of subpoena to attend to give evidence only

Date, time and place at which you must attend to give evidence, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: District Court, Sir Samuel Way Building, 241-259 Victoria Square, Adelaide

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

SECTION B. Details of subpoena to produce only

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to the Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*see Notes 5-11*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: District Court, Sir Samuel Way Building, 241-259 Victoria Square, Adelaide

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

District Court Criminal Registry
Ground Floor
Sir Samuel Way Building
241-259 Victoria Square
Adelaide, South Australia, 5000

Schedule of documents

The documents and things you must produce are as follows:

(List the documents or things. If insufficient space attach list)

SECTION C. Details of subpoena both to attend to give evidence and to produce

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: District Court, Sir Samuel Way Building, 241-259 Victoria Square, Adelaide

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

In so far as you are required by this subpoena to produce the subpoena or a copy of it and documents or things, you must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to the Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*see Notes 5-11*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date:

Time:

Place: District Court, Sir Samuel Way Building, 241-259 Victoria Square, Adelaide

Address, or any address, to which the subpoena (or copy) and documents or things may be

delivered or posted:

District Court Criminal Registry
Ground Floor
Sir Samuel Way Building
241-259 Victoria Square
Adelaide, South Australia, 5000

Schedule of documents

The documents and things you must produce are as follows:

(List the documents or things. If insufficient space attach list)

NOTES**Last day for service**

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date on which your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

5. In so far as this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to the Registrar:

- (a) at the address specified in the subpoena for the purpose; or
- (b) if more than one address is so specified, at any one of those addresses;

so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production or, if you receive notice of a later date or time from the issuing party, before that later date or time.

Objection to inspection of the document or thing produced

6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, the Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by the Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. If the subpoena requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
- 9A. The copy of a document may be:
 - (i) a photocopy; or
 - (ii) in an electronic form that the issuing party has indicated will be acceptable (and otherwise in PDF format on a CD-rom).

Return or destruction of documents or copies

10. You may, at the time of production, inform the Court that any document or copy of a document produced need not be returned and may be destroyed.
11. If you have so informed the Court, the Registrar may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. You have the right to apply to the Court:
 - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

13. You may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court – arrest

14. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
15. Note 14 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

Rules 76(3) and 76(4)

Form 27

Subpoena – notice and declaration by addressee of subpoena

*(insert proceeding heading)***NOTICE AND DECLARATION BY ADDRESSEE OF SUBPOENA**TO: *(name of addressee)**(address)***Notice to Addressee**

The **Addressee** is the person to whom the subpoena is addressed and who will be the recipient of the subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form (preferably in PDF format on a CD).

You must complete the Declaration below, attach it to the subpoena or a copy of the subpoena, and return them with the documents or things you provide to the Court under the subpoena.

If you declare that the materials you produce are copies of documents, the Registrar may, without further notice to you, destroy the copies after the expiry of 4 months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.

If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

DECLARATION BY ADDRESSEE (SUBPOENA RECIPIENT)

(Tick the relevant option below, provide your address as appropriate, sign and date)

All of the material I am providing to the Court in compliance with the attached subpoena is **copies of documents**. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.

Some or all of the material I am providing to the Court in compliance with the attached subpoena is an **original** document. Once the material is no longer required, all of the material should be returned to me at the following address:

.....
.....

(signature of addressee)

(name of addressee)

(date)

Rule 92(1)

Form 28

Originating application to fix non-parole period

(insert proceeding heading)

ORIGINATING APPLICATION TO FIX NON-PAROLE PERIOD

Criminal Law (Sentencing) Act 1988 s 32(3)

TO THE PAROLE BOARD

TO THE PRISONER: *(insert name)*

.....

(delete whichever is inapplicable)

AND THE DIRECTOR OF PUBLIC PROSECUTIONS

Application

(name of applicant)

applies under section 32(3) of the *Criminal Law (Sentencing) Act 1988* for an order fixing a non-parole period in respect of a sentence imposed in the *(insert Court)* on *(insert date)*.....

of imprisonment for *(insert sentence imposed)*

.....

with a non-parole period of *(insert non-parole period imposed)*.....

(delete if inapplicable)

- On *(insert date)*.....the Parole Board of South Australia cancelled the applicant’s release on parole and directed that the applicant serve the balance of the sentence being *(insert period)*.....which commenced on *(insert date)*.
- The applicant is serving a term of imprisonment of one year or more, and has not had a non-parole period fixed in respect of that sentence

(delete whichever is inapplicable)

The applicant's sentence will expire on *(insert date)*.....

Relevant matters

The applicant would like the sentencing Court to consider the following facts when it fixes the non-parole period:

.....
.....
.....

Applicant's address

The applicant's address for service is:

Place:
.....

Email:

The applicant's address is *(place of residence or business)*:

.....
.....

Date:

(signed)

Prisoner/Solicitor for the prisoner/Parole Board of South Australia *(delete whichever is inapplicable)*

Hearing

(When the application is to be given a separate listing date, the following will be completed by the Registry)

This application will be heard before in the District Court at on at or so soon afterwards as the business of the Court allows.

The courtroom in which the application will be heard will be published:

- on the Courts Administration Authority website the day before;
- in the Advertiser on the day; and
- on the notice board at the Courts Building.

The parties and all persons served with this application are required then to attend if they wish to be heard on the application and, in their absence, the Court may make such order as it sees fit.

Date:

(signed)

Registrar

Rules 94(1), 96(1), 97(1), 98(2)(b)

Form 29

Originating application

(insert front sheet)

ORIGINATING APPLICATION

TO THE *(INSERT ROLE): (insert name of other party)*.....

AND TO *(insert names of others to whom notice of the application is to be given)*.....

Application

The Director of Public Prosecutions/Parole Board/Public Advocate/Attorney-General/Defendant/ Applicant *(delete whichever is inapplicable) (insert name and address where application made by or on behalf of the defendant or another individual)* seeks the following orders:

1. *(state briefly but specifically the orders sought)*

Grounds

The grounds relied upon by the applicant are as follows: *(set out sufficient particulars to give proper notice of the basis of the orders sought)*

.....
.....

Applicant's address

The applicant's address for service is:

Place:

.....

Email:

The applicant's address is *(place of residence or business)*:

.....

.....

Date:

(signed)

Director of Public Prosecutions/Parole Board/Public Advocate/Attorney-
General/Defendant/Applicant (*delete whichever is inapplicable*)

Hearing

*(When the application is to be given a separate listing date, the following will be completed
by the Registry)*

This application will be heard before.....in the District Court
at.....on at or so soon
afterwards as the business of the Court allows.

The courtroom in which the application will be heard will be published:

- on the Courts Administration Authority website the day before;
- in the Advertiser on the day; and
- on the notice board at the Courts Building.

The parties and all persons served with this application are required then to attend if they
wish to be heard on the application and, in their absence, the Court may make such order as
it thinks fit.

Date:

(signed)

Registrar

Rules 93, 94(4)

Form 30

Warrant for detention

(insert proceeding heading)

WARRANT FOR DETENTION

Criminal Law Consolidation Act 1935 s 269O/269P/269U

Particulars of Defendant

Name:
Date of Birth:
Address:
.....

Particulars of supervision order

Offence charged:
Section and Act under which offence charged:
Court which made supervision order:
Terms of Supervision Order:
Date of Supervision Order:
Period of limiting term:
Date Warrant issued:

Warrant

TO THE SHERIFF
AND TO THE COMMISSIONER OF POLICE AND MEMBERS OF THE POLICE
FORCE
AND THE MINISTER OF HEALTH.

- The defendant named in this warrant has been dealt with by the Court and, having been declared liable to supervision, committed to detention with a limiting term pursuant to Part 8A of the *Criminal Law Consolidation Act 1935*.
- The defendant named in this warrant was committed to detention with a limiting term pursuant to Part 8A of the *Criminal Law Consolidation Act 1935*. The

defendant was subsequently released on licence but on (date) the
Court cancelled the release.

(delete whichever is inapplicable)

You, the Sheriff, and you, the Commissioner of Police and Members of the Police Force,
are directed to convey the defendant to James Nash House and you, the Minister of Health
are directed to detain the defendant in accordance with the supervision order.

Date:

(signed)

Judge *(name)*

Rule 94(5)

Form 31

Warrant of remand in custody pending investigation

(insert proceeding heading)

WARRANT OF REMAND IN CUSTODY PENDING INVESTIGATION

Criminal Law Consolidation Act 1935 s 269X(1)

Particulars of Defendant

Name:

Date of Birth:

Address:

Particulars of investigation and institution

Offence charged:

Section and Act under which offence/s charged:

Investigation into the mental fitness of the defendant to stand trial on the offence charged/the mental competence of the defendant to commit the offence charged *(delete whichever is inapplicable)*

Institution defendant is to be taken to:

Warrant

TO THE SHERIFF

AND TO THE COMMISSIONER OF POLICE AND MEMBERS OF THE POLICE FORCE

AND TO THE MINISTER OF HEALTH/THE CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONAL SERVICES *(delete whichever is inapplicable)*

The defendant named in this warrant is subject of an investigation into his/her *(delete whichever is inapplicable)* fitness to stand trial/mental competence *(delete whichever is inapplicable)* pursuant to Part 8A of the *Criminal Law Consolidation Act 1935*

You, the Sheriff, and you, the Commissioner of Police and Members of the Police Force, are directed to convey the defendant to the institution referred to above.

The defendant is to be taken to the institution referred to above until a placement at a secure mental health facility is available and then the defendant is to be transferred to the care of the Minister of Health.

You, the/the Chief Executive of the Department of Correctional Services/Minister of Health (*delete whichever is inapplicable*) are directed to detain the defendant until the conclusion of the investigation.

Date:

(*signed*)

Judge (*name*)

Rule 94(5)

Form 32 Warrant of remand in custody after declared liable to supervision

(insert proceeding heading)

WARRANT OF REMAND IN CUSTODY AFTER DECLARED LIABLE TO SUPERVISION

Criminal Law Consolidation Act 1935 s 269X(2), 269U(3)

Particulars of Defendant

Name:

Date of Birth:

Address:

Particulars of declaration and institution

Offence charged:

Section and Act under which offence charged:

Court which made declaration liable to supervision:

Date declared liable to supervision:

Institution defendant is to be taken to:

Date and time to which remanded:

Warrant

TO THE SHERIFF

AND TO THE COMMISSIONER OF POLICE AND MEMBERS OF THE POLICE
FORCE

AND TO THE CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONAL
SERVICES

The defendant named in this warrant has been declared liable to supervision under Part 8A
of the *Criminal Law Consolidation Act 1935*.

You, the Sheriff, and you, the Commissioner of Police and Members of the Police Force, are directed to convey the defendant to the correctional institution referred to above.

- The defendant is to be taken to the institution referred to above until a placement at a secure mental health facility is available and then the defendant is to be transferred to the care of the Minister of Health.
- You, the Chief Executive, Department of Correctional Services/ Minister of Health, are directed to detain the defendant until such time as the Court makes all orders which are required to be made pursuant to s 269O of the Act.
- The defendant named in this warrant was committed to detention with a limiting term pursuant to Part 8A of the *Criminal Law Consolidation Act 1935*. The defendant was subsequently released on licence but on..... the Court on an application for review of the supervision order under section 269U made an order that the defendant be detained until the application is determined.

(delete whichever is inapplicable)

Date:

(signed)

Judge *(name)*

RULES OF COURT

District Court Fast Track Rules Adoption Rules 2014

By virtue and in pursuance of Section 51 of the *District Court Act 1991* and all other enabling powers, we, Geoffrey Louis Muecke, Chief Judge, and Rauf Soulio and Paul Vincent Slattery, Judges of the District Court of South Australia, make the following Rules of Court.

1—Citation

These rules may be cited as the *District Court Fast Track Rules Adoption Rules 2014*.

2—Commencement

These rules commence on 1 October 2014.

3—Adoption

The Schedule to these rules forms part of the rules of this Court made pursuant to section 51 of the *District Court Act 1991* and may be cited as the *Fast Track Rules 2014*.

Dated 16 September 2014

G L Muecke
Chief Judge

R Soulio
Judge

P V Slattery
Judge

The Schedule

South Australia

Fast Track Rules 2014

Contents

Chapter 1—Preliminary

Part 1—Formal provisions

- 1—Citation
- 2—Commencement

Part 2—Objects

- 3—Objects

Part 3—Interpretation

- 4—Interpretation

Part 4—Application of Rules

- 5—Application of Rules

Part 5—Court’s control of procedure

- 6—Supplementary Rules

Chapter 2—Establishment of streams

Part 1—Establishment of streams

- 7—Establishment of Fast Track Stream
- 8—Establishment of Ordinary Stream

Part 2—Entry into and designation of streams

- 9—Entry of proceedings into appropriate stream

Chapter 3—Entry into and transfer between streams

Part 1—Election into Fast Track Stream

- 10—Election of party
- 11—Quantum of claims

Part 2—Discretionary transfer between streams

- 12—Transfer into Fast Track Stream
- 13—Transfer out of Fast Track Stream
- 14—Criteria for discretionary transfer

Chapter 4—Elements of action at first instance

15—Pleadings

Chapter 5—Pre-trial procedures

Note—

Part 1—Preliminary hearing

16—Preliminary hearing

Part 2—Initial Hearing

17—Initial Hearing

Part 3—Pre-Trial Hearing

18—Pre-Trial Hearing

Part 4—Interlocutory steps

19—Interpretation

20—Interlocutory steps

21—Interlocutory applications

22—Interlocutory hearings

Part 5—Expert reports

23 Disclosure of instructions to expert

Chapter 6—Settlement offers

Part 1—Offers of settlement

24—Exclusion of General Civil Rules

25—Offers of settlement

26—Acceptance of offer

27—Unreasonable rejection of formal offer of settlement

Chapter 7—Trial

Part 1—Listing for trial

28—Supreme and District Courts

29—Magistrates Court

Part 2—Trial

30—Conduct of trial

Chapter 8—Costs

Part 1— Court’s discretion as to costs

31—Exclusion of General Civil Rules

32—Court’s discretion as to costs

33—Fast Track Ordinary Scale

34—Levels of Ordinary Scale

35—Fast Track Elevated Scale

36—Amount of judgment

Chapter 9—Appeals

- 37—Application of General Civil Rules
- 38—Interlocutory appeal
- 39—Final appeal
- 40—Costs on appeal

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

These Rules may be cited as the *Fast Track Rules 2014*.

2—Commencement

These Rules commence on 1 October 2014.

Part 2—Objects

3—Objects

The objects of these Rules are to—

- (a) establish a Fast Track Stream in the Supreme and District Courts for the resolution of civil disputes in straight forward cases;
- (b) provide an optional process for the resolution of civil disputes to ensure a more expeditious and less expensive determination of straight forward cases;
- (c) encourage the resolution of civil disputes by agreement between the parties;
- (d) facilitate the allocation and transfer of actions between streams and courts to ensure that an action is heard in the most appropriate stream and court;
- (e) limit interlocutory steps and pre-trial hearings in fast track proceedings;
- (f) facilitate the listing of fast track proceedings for trial at an early stage; and
- (g) simplify the trial of fast track proceedings.

Part 3—Interpretation

4—Interpretation

- (1) In these Rules, unless the contrary intention appears, terms which are defined by the *Supreme Court Civil Rules 2006* have the meaning defined by those rules.
- (2) In these Rules, unless the contrary intention appears—
contract offer – see rule 25(2)(b);
the Court means the Court in which a matter is proceeding;
defendant—a party against whose interest the action lies or who is entitled to be heard in opposition to the plaintiff's claim;

Examples—

- 1 A person against whom contribution or indemnity is sought is a defendant to the claim for contribution or indemnity.
- 2 If a counterclaim is brought by a defendant, the plaintiff on the claim is defendant to the counterclaim. (In a composite action, a person may be defendant in one or more of the constituent actions and plaintiff in another or others).
- 3 A person against whom a third party action is brought is a defendant to the third party claim.

Fast Track Appeal Scale means the scale of costs so defined in the Fast Track Supplementary Rules;

Fast Track Elevated Scale means the scale of costs so defined in the Fast Track Supplementary Rules;

Fast Track Ordinary Scale means the scale of costs so defined in the Fast Track Supplementary Rules;

Fast Track Stream – see rule 7;

Fast Track Supplementary Rules – see rule 6;

formal offer of settlement – see rule 25(1);

General Civil Rules means the rules of the Court in which a matter is proceeding applying generally to civil proceedings, being—

- (a) the *Supreme Court Civil Rules 2006* in the Supreme Court;
- (b) the *District Court Civil Rules 2006* in the District Court;
- (c) the *Magistrates Court (Civil) Rules 2013* in the Magistrates Court;

or their successors.

Initial Hearing – see rule 17;

judgment offer – see rule 25(2)(a);

notice of election into the Fast Track Stream – see rule 10;

Ordinary Stream – see rule 8;

plaintiff—the party that seeks relief in a primary or secondary action is the plaintiff (and, in the case of a composite action, a person may be defendant in one or more of the individual actions and plaintiff in another or others);

prescribed date – see rule 10(3);

Pre-Trial Hearing – see rule 18;

prima facie eligibility criteria – see rule 10(2);

quantum – see rules 10 and 11;

Registrar means the Registrar of the Court, a Deputy Registrar or other person performing administrative functions under a Registrar's supervision;

Relevant Stage means the Relevant Stage defined in the Fast Track Supplementary Rules;

special proceedings means—

- (a) proceedings governed by Chapters 8 or 15 of the *Supreme Court Civil Rules 2006* or governed by rules other than the *Supreme Court Civil Rules 2006*;
- (b) proceedings governed by Chapters 8 or 15 of the *District Court Civil Rules 2006* or governed by rules other than the *District Court Civil Rules 2006*;

tender documents means documents which a party intends to tender in evidence at trial;

trial includes an assessment of damages when judgment for the plaintiff on liability has been or will be entered;

unreasonably rejects – see rule 27(2).

Part 4—Application of Rules

5—Application of Rules

- (1) It is intended that these Rules operate in a Court if they are adopted by that Court.
- (2) It is intended that, if these Rules are adopted by the Supreme Court, they apply generally to civil proceedings instituted in or transferred to the Fast Track Stream in the Supreme Court.
- (3) It is intended that, if these Rules are adopted by the District Court, they apply generally to civil proceedings instituted in or transferred to the Fast Track Stream in the District Court.
- (4) It is intended that, if a proceeding in the Fast Track Stream is transferred to the Magistrates Court, these Rules except Chapter 3 apply to the proceeding in the Magistrates Court if an order is made by a Magistrate that these Rules are to apply to that proceeding.
- (5) It is intended that, if a proceeding is instituted in the Magistrates Court and a Magistrate in his or her discretion considers that it is desirable that and orders that the proceeding be governed by these Rules, these Rules except Chapter 3 apply to that proceeding in the Magistrates Court.
- (6) Unless the Court otherwise directs, these Rules do not apply to special proceedings.
- (7) Unless the Court otherwise directs, these Rules do not apply to proceedings instituted before 1 October 2014.
- (8) To the extent of any inconsistency between these Rules and the General Civil Rules, these Rules prevail insofar as they operate.
- (9) Unless the Court otherwise orders, if a proceeding is transferred from the Fast Track Stream to the Ordinary Stream or vice versa—
 - (a) the Rules applicable to the proceeding at the time a formal offer of settlement is made govern the validity and meaning of that offer; and
 - (b) the Rules applicable at the time of acceptance of the formal offer of settlement or at trial, as the case may be, govern the costs consequences

of the making of that offer and of any acceptance or non-acceptance of it.

- (10) Subject to subrules (8) and (9), the General Civil Rules apply to proceedings in the Fast Track Stream.

Part 5—Court’s control of procedure

6—Supplementary Rules

- (1) It is intended that the Court make supplementary rules necessary or convenient for the regulation of proceedings in and institution and transfer of proceedings into or out of the Fast Track Stream (the *Fast Track Supplementary Rules*).
- (2) In particular, it is intended that the Fast Track Supplementary Rules—
- (a) supplement these Rules;
 - (b) modify these Rules in respect of a particular category of proceedings;
 - (c) give directions as to practices to be followed;
 - (d) prescribe scales of costs;
 - (e) prescribe approved forms.

Chapter 2—Establishment of streams

Part 1—Establishment of streams

7—Establishment of Fast Track Stream

- (1) A Fast Track Stream is established in the Supreme Court.
- (2) A Fast Track Stream is established in the District Court.
- (3) It is intended that proceedings which are straight forward and which are suited to Fast Track Stream processes without causing unfairness to a party will proceed in the Fast Track Stream of the appropriate court.

8—Establishment of Ordinary Stream

- (1) An Ordinary Stream is established in the Supreme Court.
- (2) An Ordinary Stream is established in the District Court.
- (3) General civil proceedings will proceed in the Ordinary Stream unless they are instituted in or transferred into the Fast Track Stream.

Part 2—Entry into and designation of streams

9—Entry of proceedings into appropriate stream

- (1) The Registrar of the Court is to maintain a record of the stream in which a general civil proceeding is proceeding.

- (2) All documents filed in a general civil proceeding are to show as part of the action heading, immediately above the action number, the stream in which the matter is proceeding at the time of filing the relevant document.

Chapter 3—Entry into and transfer between streams

Part 1—Election into Fast Track Stream

10—Election of party

- (1) Any party may elect that a proceeding be instituted in or transferred into the Fast Track Stream by filing in the Court and serving on all other parties a notice of election into the Fast Track Stream on or before the prescribed date.
- (2) A *notice of election into the Fast Track Stream* is to be in the approved form and to include a certification by the party's solicitor, or the party where self-represented, that in the reasonable opinion of the solicitor or party respectively—
 - (a) the combined quantum of the claim and of any counterclaim does not exceed \$250,000; and
 - (b) the trial of the proceeding is not expected to take more than three days (the *prima facie eligibility criteria*).
- (3) For the purpose of this rule, the *prescribed date* is five days after the last to occur of—
 - (a) the date or due date (whichever first occurs) of or for filing of the defence by the defendant or each defendant to the primary action; and
 - (b) the date or due date (whichever first occurs) of or for filing of the defence by the defendant or each defendant to a cross action when a cross action is commenced at the same time as a defence; and
 - (c) the date or due date (whichever first occurs) of or for filing of the defence by the third party or each third party to a third party action when a third party action is commenced at the same time as a defence.

11—Quantum of claims

- (1) The following rules apply for the purpose of forming an opinion concerning the quantum of the claim and of any counterclaim.
- (2) When the plaintiff elects upon institution of the action that it be entered in the Fast Track Stream, the quantum of the plaintiff's claim will be the amount shown in the statement of claim. If the defendant had foreshadowed a claim against the plaintiff before institution of the action, the quantum of the anticipated counterclaim will be the amount quantified by the defendant or otherwise the amount reasonably anticipated by the plaintiff to be the amount of a counterclaim upon filing.

Note—

Under rule 15(4), a statement of claim and a counterclaim in the Fast Track Stream are required to quantify the amount of the plaintiff's or counterclaimant's claim, whether the claim is liquidated or unliquidated.

- (3) When a party elects that an action be transferred into the Fast Track Stream after it has been instituted, the quantum of the claim and counterclaim (where applicable) will be the amount claimed in the statement of claim and any counterclaim and otherwise the amount reasonably anticipated to be the amount of the claim and of any counterclaim or anticipated counterclaim.

Part 2—Discretionary transfer between streams

12—Transfer into Fast Track Stream

- (1) A party may apply to the Court to transfer a proceeding out of the Ordinary Stream into the Fast Track Stream even if it does not meet the *prima facie* eligibility criteria.
- (2) Unless the Court otherwise orders, any such application is to be made at or before the first hearing of the proceeding (whether a preliminary hearing or directions hearing).
- (3) The Court may on its own initiative transfer a proceeding out of the Ordinary Stream into the Fast Track Stream or to a different court to which the Court has power to transfer.

13—Transfer out of Fast Track Stream

- (1) A party may apply to the Court to transfer a proceeding out of the Fast Track Stream into the Ordinary Stream notwithstanding that it meets the *prima facie* eligibility criteria.
- (2) Unless the Court otherwise orders, any such application is to be made at or before the Initial Hearing.
- (3) A party may request that the application be heard as soon as practicable at a preliminary hearing. Unless the Court otherwise orders, any such application must be made within 5 days of the applicant receiving notice that the proceeding is in or is now in the Fast Track Stream.
- (4) Subject to subrule (3), unless the Court otherwise orders, the application will be heard and determined at the Initial Hearing.
- (5) The Court may on its own initiative transfer a proceeding out of the Fast Track Stream into the Ordinary Stream or to a different court to which the Court has power to transfer.

14—Criteria for discretionary transfer

When considering whether to transfer a proceeding into or out of the Fast Track Stream, the criteria are—

- (a) whether the proceeding is straight forward so as to be suitable to proceed at both the pre-trial and trial stages in the Fast Track Stream;

- (b) the advantages and disadvantages to the parties of the matter proceeding in the Fast Track Stream;
- (c) whether it will be unfair to a party for the matter to proceed in the Fast Track Stream; and
- (d) the preferences of the parties.

Chapter 4—Elements of action at first instance

15—Pleadings

- (1) Subject to subrules (2) to (5), the pleadings are governed by the General Civil Rules.
- (2) The originating process for an action, cross action or third party action is to be accompanied by a pleading and not an affidavit in lieu of a pleading. However, if the proceeding is transferred into the Fast Track Stream after having proceeded on affidavits in lieu of pleadings, unless the Court otherwise orders, it is to continue on affidavits in lieu of pleadings.
- (3) The pleadings are to be expressed simply and concisely, identify the issues in dispute and give to the other parties notice of the case to be met.
- (4) A pleading of an action, cross action or third party action is to quantify all claims whether liquidated or unliquidated.
- (5) If a pleading or affidavit in lieu of pleading filed before transfer into the Fast Track Stream does not comply with subrule (4), the party filing it is within five days after the transfer to file a pleading or affidavit in lieu of pleading, as the case may be, complying with subrule (4).

Chapter 5—Pre-trial procedures

Note—

Parts 1 and 2 of Chapter 7 of the *Supreme Court Civil Rules 2006* and the *District Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream – see rule 124(1) exception 4 of those Rules.

Part 1—Preliminary hearing

16—Preliminary hearing

- (1) A preliminary hearing will be convened by the Registrar if a party requests a preliminary hearing—
 - (a) under rule 13(3); or
 - (b) under the General Civil Rules.
- (2) At a preliminary hearing, the Court may fix the date and time for an Initial Hearing or make any directions which could be made at an Initial Hearing.

Part 2—Initial Hearing

17—Initial Hearing

- (1) An Initial Hearing is to be held on a date and at a time fixed by the Registrar and notified to the parties.
- (2) In the District and Supreme Courts, the notice of Initial Hearing will also nominate a proposed trial week.
- (3) The principal matters to be considered at the Initial Hearing are—
 - (a) settlement;
 - (b) identification of the real issues in dispute;
 - (c) determination whether there should be split trials (dividing liability from quantum, issue from issue, or claim from counterclaim or third party claim);
 - (d) transfer to a different stream or a different court;
 - (e) any application that the Low, Mid or High Fast Track Scale of costs apply to the proceeding instead of the otherwise applicable Fast Track Scale;
 - (f) directions for interlocutory steps and evidence at trial;
 - (g) hearing or fixing a date for hearing any interlocutory application or other pre-trial matter;
 - (h) fixing the date of the Pre-Trial Hearing; and
 - (i) fixing the trial week for a proceeding in the District or Supreme Courts or a trial date for a proceeding in the Magistrates Court.
- (4) If it is proposed that expert evidence be adduced at trial, the Court will consider whether—
 - (a) a single independent expert should be jointly instructed by the parties to provide a report;
 - (b) expert evidence should be adduced only from experts retained separately by the parties; or
 - (c) expert evidence should be adduced under both paragraphs (a) and (b).

Part 3—Pre-Trial Hearing

18—Pre-Trial Hearing

- (1) A Pre-Trial Hearing is to be held on a date fixed at the Initial Hearing or otherwise on a date fixed by the Registrar and notified to the parties.
- (2) The principal matters to be considered at the Pre-Trial Hearing are—
 - (a) settlement;
 - (b) confirmation of readiness for trial and estimated trial length;

- (c) pre-trial directions not already made at the Initial Hearing; and
 - (d) identification of the real issues in dispute.
- (3) At the Pre-Trial Hearing, the parties are to produce to the Court—
- (a) tender documents;
 - (b) lists of witnesses;
 - (c) written evidence when a direction has previously been made for written evidence; and
 - (d) copies of expert reports not previously filed.

Part 4—Interlocutory steps

19—Interpretation

In this Part, unless the contrary intention appears—

general interlocutory application means an interlocutory application relating to pleadings (including particulars), disclosure of documents, notices to admit, written answers to written questions, expert reports or other interlocutory steps taken in preparation towards trial;

special interlocutory application means an interlocutory application seeking—

- (a) an extension of time or permission to serve originating process, to constitute or continue an action as a representative action, or other permission needed to proceed with the action; or
- (b) a search order, a freezing order, an interim or interlocutory injunction, security for costs, default or summary judgment, setting aside judgment, transfer of the action, a stay of proceedings, referral to mediation or other special order outside the scope of orders for steps in preparation for trial.

20—Interlocutory steps

- (1) The parties to a proceeding, and their lawyers, have a duty to the Court to take all steps necessary to ensure that the proceeding is ready for trial at the allocated time and to use all reasonable endeavours to agree on any dispute which arises in the progress towards trial.
- (2) If a party fails to comply with an applicable timetable fixed by these Rules or a direction of the Court, the Court may order that the defaulting party pay the costs incurred due to the delay in an amount fixed by way of lump sum payable immediately.

21—Interlocutory applications

- (1) Before making an interlocutory application for any order which the Court is empowered to make before trial, a party is first to use reasonable endeavours to resolve the issue by agreement.

- (2) An interlocutory application is to identify concisely the orders sought and grounds on which it is sought.
- (3) A supporting affidavit is not to be filed with a general interlocutory application.
- (4) A supporting affidavit may be filed with a special interlocutory application if necessary.

22—Interlocutory hearings

- (1) The hearing of an interlocutory application will be conducted informally according to equity, good conscience and the substantial merits of the case. The interlocutory hearing will take the form of an inquiry by the Court into the matters in dispute.
- (2) In general, the Court will not receive sworn evidence on a general interlocutory application.
- (3) No order for costs of a general interlocutory application or hearing will be made, unless the Court is satisfied that a party has adopted an unreasonable position, in which event an order for costs may be made against that party in an amount fixed by way of lump sum payable immediately.
- (4) No order for costs of an application for permission to proceed with or transfer of an action will ordinarily be made.

Part 5—Expert reports

23 Disclosure of instructions to expert

- (1) Upon providing assumptions and questions to an expert for the purpose of obtaining an expert report upon which a party intends to rely at trial, a party must simultaneously serve upon each other party to the action a copy of the assumptions and questions.
- (2) For the purposes of this rule, a party intends to rely upon the expert report at trial despite the intention being conditional upon the opinions expressed by the expert.

Chapter 6—Settlement offers

Part 1—Offers of settlement

24—Exclusion of General Civil Rules

- (1) Rules 187 and 188 of the *Supreme Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream.
- (2) Rules 187 and 188 of the *District Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream.

25—Offers of settlement

- (1) A party may at any time file an offer of settlement in the Court (a *formal offer of settlement*).
- (2) A formal offer of settlement is to be expressed—
 - (a) in terms of a judgment to be entered upon acceptance of the offer (a *judgment offer*); or
 - (b) in terms capable of constituting a legally binding contract upon acceptance (a *contract offer*).
- (3) A formal offer of settlement is to—
 - (a) be in the approved form;
 - (b) if the offer relates to some, but not all, of the claims involved in the proceeding – state to which claims it relates; and
 - (c) address costs separately from all other matters.
- (4) A formal offer of settlement may—
 - (a) include any terms as to principal relief;
 - (b) include any terms as to costs;
 - (c) stipulate a time, being not less than 21 days after service of the offer, after which the offer is withdrawn;
 - (d) contain any conditions subject to which the offer is made;
 - (e) include reasons why it would be unreasonable for the offer not to be accepted;
 - (f) attach correspondence or other documents;
 - (g) be expressed to be an open offer.
- (5) Subject to compliance with subrule (3), a formal offer of settlement may comprise or reproduce an offer (whether without prejudice, without prejudice save as to costs or open) made before institution of the proceeding.
- (6) A formal offer of settlement is to be served on all other parties to the proceeding immediately upon being filed.
- (7) Provided that it has not been accepted, a formal offer of settlement may be withdrawn any time after 21 days have elapsed after service of the offer, by the filing and service on each party of a notice of withdrawal in the approved form.
- (8) Unless expressed to be an open offer, a formal offer of settlement will be treated as being made without prejudice save as to costs.
- (9) Unless expressed to be an open offer, a formal offer of settlement is to be filed in a suppressed file and is not to be disclosed to the trial Judge or Magistrate (or the adjudicating officer) unless—
 - (a) the offer is accepted in accordance with rule 26; or
 - (b) all questions to which the offer is relevant have been determined; or

- (c) the Court permits disclosure of the offer.

26—Acceptance of offer

- (1) A party to whom a formal offer of settlement has been made which has not expired or been withdrawn may, before judgment in the proceeding, accept the offer or, where the offer contains alternatives, an alternative contained in the offer.
- (2) The acceptance of a formal offer of settlement is to be in the approved form.
- (3) When a judgment offer is accepted and any conditions subject to which the offer is made are satisfied, judgment reflecting the terms of the offer may be entered by consent.
- (4) When a contract offer is accepted, either party may apply to the Court for appropriate orders in light of the terms of the contract constituted by the offer and acceptance.
- (5) When a formal offer of settlement is accepted which is expressed to include payment of a party's costs of action up to the date of acceptance or any other date specified in the offer, the party whose costs are to be paid is entitled to costs up to the Relevant Stage on the appropriate Fast Track Scale in accordance with the Fast Track Supplementary Rules.

27—Unreasonable rejection of formal offer of settlement

- (1) Subject to the residual discretion of the Court, when a party unreasonably rejects a formal offer of settlement—
 - (a) the costs incurred in the proceeding up to the Relevant Stage which has been reached 14 days after service of the formal offer of settlement are unaffected by the unreasonable rejection; but
 - (b) thereafter that party will not be entitled to costs and the offeror will be entitled to costs for subsequent Relevant Stages on the appropriate Fast Track Elevated Scale in accordance with the Fast Track Supplementary Rules.
- (2) For the purpose of this Rule—
 - (a) a plaintiff unreasonably rejects a judgment offer by a defendant if the Court determines the proceeding on terms not more favourable than 90 per cent of the monetary value of the defendant's offer and the plaintiff does not accept the offer;
 - (b) a defendant unreasonably rejects a judgment offer by a plaintiff if the Court determines the proceeding on terms not less than 10 per cent more favourable to the plaintiff than the monetary value of the plaintiff's offer and the defendant does not accept the offer;
 - (c) a plaintiff unreasonably rejects a formal offer of settlement by a defendant if the defendant is successful at trial and the trial Judge or Magistrate considers that in all the circumstances the plaintiff unreasonably rejected the formal offer of settlement;

- (d) a co-defendant or co-defendants unreasonably reject a formal offer of settlement by another defendant to contribute a specified dollar figure or a specified percentage of the quantum awarded to the plaintiff if the defendants are found to be jointly and severally liable to the plaintiff and the trial Judge or Magistrate considers that in all the circumstances the co-defendant or co-defendants unreasonably rejected the formal offer of settlement.

Chapter 7—Trial

Part 1—Listing for trial

28—Supreme and District Courts

- (1) The Registrar will designate certain months during the year as Fast Track Months.
- (2) Proceedings will not be listed for trial on a specific date but will be listed for a specific week in a Fast Track Month.
- (3) A callover of proceedings listed for trial in a Fast Track Month will be held on a date fixed by the Registrar during the preceding month.
- (4) At the callover, there will be identified those proceedings which are proceeding to trial during the allocated weeks and the order of listing of proceedings for each allocated week.

29—Magistrates Court

Proceedings will be listed for trial in the same manner as in the Ordinary Stream.

Part 2—Trial

30—Conduct of trial

- (1) The parties to a proceeding, and their lawyers, have a duty to the Court to take all reasonable steps to ensure that the trial proceeds as expeditiously and efficiently as possible.
- (2) The trial Judge or Magistrate may control the conduct of the trial to efficiently identify the issues in dispute, the parties' respective contentions and hear the evidence relevant to those issues.
- (3) The trial Judge or Magistrate may give directions about—
 - (a) the issues on which the Court requires evidence;
 - (b) the nature of the evidence the Court requires to decide those issues;
 - (c) the way in which the evidence is to be placed before the Court;
 - (d) limiting the number of witnesses or the amount of evidence that a party may call or introduce on a particular issue.
- (4) For example, the trial Judge or Magistrate may—
 - (a) inquire into and determine the issues in dispute at trial;

- (b) give directions as to the order in which witnesses give evidence, regardless of the party by whom they are called;
 - (c) direct that witnesses give evidence on different topics at different times during the trial;
 - (d) direct the concurrent hearing of evidence by experts in the same or related fields of expertise;
 - (e) direct the concurrent hearing of evidence by lay witnesses concerning similar or overlapping topics;
 - (f) direct that submissions be heard on different topics at different times during the trial or otherwise depart from the usual order in which submissions are made;
 - (g) direct that evidence or submissions or both be heard on one issue before they are heard on another issue;
 - (h) limit the time spent on the whole or any part of evidence or submissions.
- (5) The trial Judge or Magistrate will exercise existing powers under the *Evidence Act 1929* to dispense with technicalities and control the trial to ensure that it proceeds efficiently and expeditiously.
- (6) The trial Judge or Magistrate may use his or her power under this rule to exclude evidence that would otherwise be admissible.

Chapter 8—Costs

Part 1— Court’s discretion as to costs

31—Exclusion of General Civil Rules

- (1) Parts 1 and 2 of Chapter 12 of the *Supreme Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream.
- (2) Parts 1 and 2 of Chapter 12 of the *District Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream.

32—Court’s discretion as to costs

- (1) Subject to the express provisions of any applicable legislation and these Rules, the costs of a proceeding in the Fast Track Stream are in the discretion of the Court.
- (2) As a general rule, costs follow the event.
- (3) The Court may make an order reflecting different results on discrete issues in the proceeding but only if there are exceptional circumstances.

33—Fast Track Ordinary Scale

Unless and to the extent that costs are to be on the Fast Track Elevated Scale in accordance with these Rules and the Fast Track Supplementary Rules or the Court otherwise orders in its residual discretion, when costs are awarded in favour of a

party, the costs are to be determined in accordance with the Fast Track Ordinary Scale.

34—Levels of Ordinary Scale

- (1) At any time before or at the Initial Hearing, any party may elect that the Fast Track Mid or High Scale applies to the proceeding by filing and serving a notice in the approved form. Otherwise the Fast Track Low Scale is applicable.
- (2) If one party so elects, the Fast Track Mid or High Scale, as the case may be, will apply in lieu of the Fast Track Low Scale (for the purposes of both rules 33 and 35) unless the Court otherwise orders at the Initial Hearing.
- (3) The criterion for determining whether the Low, Mid or High scale is to apply is whether the work required before and at trial is likely to be in the low, mid or high range for a Fast Track proceeding.

35—Fast Track Elevated Scale

The appropriate Fast Track Elevated Scale applies to Relevant Stages of a proceeding in accordance with rule 27.

36—Amount of judgment

- (1) Subject to the Court's order to the contrary, general costs of action are not to be awarded in favour of a successful plaintiff unless the amount or value of the principal relief (excluding interest since institution of the action and costs) exceeds the prescribed sum.
- (2) The prescribed sum means \$25,000 or a higher or lower sum as may be fixed by the Court at the Initial Hearing or, in exceptional circumstances, at the Pre-Trial Hearing.
- (3) The Court may make an order that subrule (1) does not apply at any stage of the proceeding.

Chapter 9—Appeals

37—Application of General Civil Rules

- (1) Subject to rules 38 to 40, Chapter 13 of the *Supreme Court Civil Rules 2006* applies to appeals to the Supreme Court in relation to interlocutory and final judgments in Fast Track Stream proceedings.
- (2) Subject to rules 38 to 40, Chapter 13 of the *District Court Civil Rules 2006* applies to appeals to the District Court from interlocutory judgments of Masters in Fast Track Stream proceedings.

38—Interlocutory appeal

- (1) An appeal in respect of an order made for the transfer of a proceeding into or out of the Fast Track Stream is an appeal in respect of an interlocutory order.

- (2) All interlocutory appeals are subject to the granting of permission to appeal in accordance with the General Civil Rules.
- (3) The application for permission to appeal and the appeal will be heard concurrently. The hearing will be conducted informally according to equity, good conscience and the substantial merits of the case.

39—Final appeal

- (1) An appeal is to be by way of re-hearing (unless the law under which the appeal is brought provides to the contrary).
- (2) Subject to any limitation on its powers arising apart from these Rules, the Court may determine an appeal as the justice of the case requires despite the failure of parties to the appeal to raise relevant grounds of appeal, or to state grounds of appeal appropriately in the notice of appeal.
- (3) Subject to any limitation on its powers arising apart from these Rules, the Court may—
 - (a) draw inferences of fact from evidence taken at the original hearing and, in its discretion, hear further evidence on a question of fact;
 - (b) amend or set aside the judgment subject to the appeal and give any judgment that the justice of the case requires; and
 - (c) make orders for the costs of the appeal.
- (4) The Court will not remit the case or part of the case for re-hearing or re-consideration unless exceptional circumstances apply and it is necessary in the interests of justice.

40—Costs on appeal

- (1) Unless the Court otherwise orders, any costs awarded on an appeal against an interlocutory judgment will be for a fixed sum in accordance with the Fast Track Appeal Scale payable immediately.
- (2) Unless the Court otherwise orders, any costs awarded in respect of an appeal against a final judgment will be for a fixed sum in accordance with the Fast Track Appeal Scale.

RULES OF COURT

District Court Fast Track Supplementary Rules Adoption Rules 2014

By virtue and in pursuance of Section 51 of the *District Court Act 1991* and all other enabling powers, we, Geoffrey Louis Muecke, Chief Judge, and Rauf Soulio and Paul Vincent Slattery, Judges of the District Court of South Australia, make the following Rules of Court.

1—Citation

These rules may be cited as the *District Court Fast Track Supplementary Rules Adoption Rules 2014*.

2—Commencement

These rules commence on 1 October 2014.

3—Adoption

Schedule 1 to these rules forms part of the rules of this Court made pursuant to section 51 of the *District Court Act 1991* and may be cited as the *Fast Track Supplementary Rules 2014*.

Dated 16 September 2014

G L Muecke
Chief Judge

R Soulio
Judge

P V Slattery
Judge

The Schedule
South Australia
Fast Track Supplementary Rules 2014

Contents

Chapter 1—Preliminary

Part 1—Formal provisions

- 1—Citation
- 2—Commencement

Part 2—Objects

- 3—Objects

Part 3—Interpretation

- 4—Interpretation

Part 4—Application of Supplementary Rules

- 5—Application of Supplementary Rules

Chapter 2—Establishment of streams

Part 1—Establishment of streams

Part 2—Entry into and designation of streams

- 6—Entry of proceedings into appropriate stream

Chapter 3—Entry into and transfer between streams

Part 1—Election into Fast Track Stream

- 7—Election of party

Part 2—Discretionary transfer between streams

- 8—Criteria for discretionary transfer

Chapter 4—Elements of action at first instance

Chapter 5—Pre-trial procedures

Part 1—Preliminary hearing

- 9—Preliminary hearing

Part 2—Initial Hearing

- 10—Initial Hearing

Part 3—Pre-Trial Hearing

11—Pre-Trial Hearing

Chapter 6—Settlement offers

Part 1—Offers of settlement

12—Offers of settlement

13—Acceptance of offer

Chapter 7—Trial

14—Reasons for judgment

Chapter 8—Costs

Part 1—Court’s discretion as to costs

15—Relevant Stages

16—Costs scales

Chapter 9—Appeals

17—Fast Track Appeal Scale

Schedule 1 — Fast Track Scales of Costs

Schedule 2 — Approved Forms

Form FTS 1	Election into Fast Track Stream
Form FTS 2A	Formal Offer of Settlement (Judgment Offer)
Form FTS 2B	Formal Offer of Settlement (Contract Offer)
Form FTS 3	Withdrawal of Formal Offer of Settlement
Form FTS 4A	Acceptance of Offer (Judgment Offer)
Form FTS 4B	Acceptance of Offer (Contract Offer)
Form FTS 5	Election for Fast Track Mid/High Scale

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

These Supplementary Rules may be cited as the *Fast Track Supplementary Rules 2014*.

2—Commencement

These Supplementary Rules commence on 1 October 2014.

Part 2—Objects

3—Objects

The objects of these Supplementary Rules are to—

- (a) make rules necessary or convenient for the regulation of proceedings involving the institution and transfer of proceedings into and out of the Fast Track Stream;
- (b) supplement the Rules;
- (c) modify the Rules in respect of a particular category of proceedings;
- (d) prescribe approved forms; and
- (e) prescribe costs scales.

Part 3—Interpretation

4—Interpretation

- (1) Unless the contrary intention appears, terms which are defined by the *Fast Track Rules 2014* have the meaning defined by those Rules.
- (2) In these Supplementary Rules, unless the contrary intention appears—
Fast Track Rules or the *Rules* means the *Fast Track Rules 2014*;
General Civil Supplementary Rules means the supplementary rules, if any, of the Court in which a matter is proceeding applying generally to civil proceedings, being—
 - (a) the *Supreme Court Civil Supplementary Rules 2014* in the Supreme Court;
 - (b) the *District Court Civil Supplementary Rules 2014* in the District Court;

or their successors.

principal relief – see Schedule 1;

professional costs – see Schedule 1;

quantum – see Schedule 1.

Part 4—Application of Supplementary Rules

5—Application of Supplementary Rules

- (1) It is intended that these Supplementary Rules operate in a Court if they are adopted by that Court.
- (2) It is intended that, if these Supplementary Rules are adopted by the Supreme Court, they apply generally to civil proceedings instituted in or transferred to the Fast Track Stream in the Supreme Court.
- (3) It is intended that, if these Supplementary Rules are adopted by the District Court, they apply generally to civil proceedings instituted in or transferred to the Fast Track Stream in the District Court.
- (4) It is intended that, if a proceeding in the Fast Track Stream is transferred to the Magistrates Court, these Supplementary Rules except Chapter 3 apply to the proceeding in the Magistrates Court if an order is made by a Magistrate that the Fast Track Rules are to apply to that proceeding.
- (5) It is intended that, if a proceeding is instituted in the Magistrates Court and a Magistrate in his or her discretion considers that it is desirable and orders that the proceeding be governed by the Fast Track Rules and Fast Track Supplementary Rules, these Supplementary Rules, except Chapter 3, apply to that proceeding in the Magistrates Court.
- (6) Unless the Court otherwise directs, these Supplementary Rules do not apply to special proceedings.
- (7) Unless the Court otherwise directs, these Supplementary Rules do not apply to proceedings instituted before 1 October 2014.
- (8) To the extent of any inconsistency between these Supplementary Rules and the General Civil Supplementary Rules, these Supplementary Rules prevail insofar as they operate.
- (9) Unless the Court otherwise orders, if a proceeding is transferred from the Fast Track Stream to the Ordinary Stream or vice versa—
 - (a) the rules applicable to the proceeding at the time a formal offer of settlement is made govern the validity and meaning of that offer; and
 - (b) the rules applicable at the time of acceptance of a formal offer of settlement or at trial, as the case may be, govern the costs consequences of the making of a formal offer of settlement and of any acceptance or non-acceptance of it.
- (10) Subject to paragraphs (8) and (9), the General Civil Supplementary Rules apply to proceedings in the Fast Track Stream.

Chapter 2—Establishment of streams

Part 1—Establishment of streams

[No supplementary rule]

Part 2—Entry into and designation of streams

6— Entry of proceedings into appropriate stream

- (1) When—
 - (a) a party files a notice of election into the Fast Track Stream under rule 10 of the Rules; or
 - (b) the Court orders that a proceeding be transferred into the Fast Track Stream under rule 12 of the Rules; or
 - (c) the Court orders that a proceeding be transferred out of the Fast Track Stream under rule 13 of the Rules;

the Registrar of the Court is to assign the proceedings accordingly.

Chapter 3—Entry into and transfer between streams

Part 1—Election into Fast Track Stream

7—Election of party

The approved form of a notice of election into the Fast Track Stream under rule 10 of the Rules is FTS 1.

Part 2—Discretionary transfer between streams

8—Criteria for discretionary transfer

- (1) When considering whether a proceeding is straight forward so as to be suitable to proceed in the Fast Track Stream, the following factors will typically be considered—
 - (a) number of parties;
 - (b) type of dispute and nature of cause of action;
 - (c) complexity of the facts and/or law;
 - (d) need for complex or controversial interlocutory steps;
 - (e) whether expert evidence is likely to be adduced at trial, number of experts and complexity of expert evidence;
 - (f) number of lay witnesses and complexity of lay evidence;
 - (g) likely length of trial;
 - (h) readiness of parties for trial;
 - (i) compliance with applicable pre-action protocols;
 - (j) any special reasons for expediency;
 - (k) any other relevant consideration.

- (2) When considering whether it will be unfair to a party for a matter to proceed in the Fast Track Stream, the following factors will typically be considered—
 - (a) amount of the claim or claims;
 - (b) readiness of parties for trial;
 - (c) likely costs incurred and recoverable on success;
 - (d) circumstances of the parties;
 - (e) any other relevant consideration.

Chapter 4—Elements of action at first instance

[No supplementary rule]

Chapter 5—Pre-trial procedures

Part 1—Preliminary hearing

9—Preliminary hearing

A preliminary hearing in the District and Supreme Courts will be conducted by a Judge or a Master depending on the nature of the application and judicial availability.

Part 2—Initial Hearing

10—Initial Hearing

- (1) As a general rule, the date fixed for the Initial Hearing will be approximately four weeks after a defence or affidavit in lieu of defence is filed or after the date on which the proceeding was transferred into the Fast Track Stream, whichever is later. In urgent cases, the Registrar will list the Initial Hearing to be heard earlier.
- (2) An Initial Hearing in the District and Supreme Courts will generally be conducted by a Judge.
- (3) The Court expects that the solicitor with principal conduct of the proceeding or, if counsel is briefed in the proceeding, counsel will attend at the Initial Hearing.
- (4) The matters to be considered at the Initial Hearing will typically include—
 - (a) inquiring into the steps taken to explore the possibility of settlement and what steps should be taken to explore, or further explore, the possibility of settlement;
 - (b) the desirability of the parties attending a mediation;
 - (c) identifying the real issues in dispute;
 - (d) determining whether there should be split trials (dividing liability from quantum, issue from issue or claim from counterclaim or third party claim);

- (e) reviewing the estimated trial length;
 - (f) reviewing whether it is appropriate for the proceeding to remain in the Fast Track Stream and determining whether it should be transferred to a different stream;
 - (g) reviewing whether it is appropriate that the proceeding remain in the Court and determining whether it should be transferred to a different court;
 - (h) on the application of any party, determining whether the Low, Mid or High Fast Track Scale of costs is to apply to the proceeding;
 - (i) inquiring whether any potential trial Judge or Magistrate is disqualified;
 - (j) making orders for discovery or disclosure of documents in addition to preliminary disclosure if and to the extent appropriate;
 - (k) giving directions for written evidence (witness statements, affidavits or summaries) if and to the extent appropriate;
 - (l) giving directions for expert reports where applicable;
 - (m) if appropriate, making directions restricting expert evidence to be adduced by the parties and/or appointing a single independent expert at the parties' expense;
 - (n) hearing and determining any interlocutory application or other pre-trial matter;
 - (o) fixing a date for hearing and determination of any interlocutory application or other pre-trial matter.
 - (p) fixing the date for the Pre-Trial Hearing;
 - (q) fixing the trial date or trial week, as the case may be (taking into account the time reasonably required for the parties to be ready for trial).
- (5) If one party at the Initial Hearing seeks referral of the proceeding to mediation, it may be expected that ordinarily an order will be made requiring the parties to mediate.

Part 3—Pre-Trial Hearing

11—Pre-Trial Hearing

- (1) As a general rule, the date fixed for the Pre-Trial Hearing will be approximately four weeks before the scheduled commencement of trial.
- (2) The Court expects that counsel (whether barrister or solicitor) who is to conduct the trial will attend at the Pre-Trial Hearing.
- (3) The matters to be considered at the Pre-Trial Hearing will typically include—
 - (a) inquiring into the steps taken to explore the possibility of settlement and what steps, if any, should be taken to further explore the possibility of settlement;
 - (b) reviewing whether the parties have complied with applicable timetables;

- (c) identifying the real issues in dispute;
- (d) confirming that the proceeding is ready for trial and the estimated trial length;
- (e) confirming that the proceeding should remain in the Fast Track Stream;
- (f) giving any pre-trial directions which may be required or appropriate.

Chapter 6—Settlement offers

Part 1—Offers of settlement

12—Offers of settlement

- (1) The approved form of a formal offer of settlement under rule 25 of the Rules is FTS 2A or FTS 2B.
- (2) The approved form of withdrawal of a formal offer of settlement under rule 25 of the Rules is FTS 3.

13—Acceptance of offer

The approved form of acceptance of a formal offer of settlement under rule 26 of the Rules is FTS 4A or 4B.

Chapter 7—Trial

14—Reasons for judgment

Parties should expect that reasons for judgment will be concise and will ordinarily be confined to—

- (a) brief reference to significant background or uncontested matters;
- (b) credibility findings in respect of significant witnesses whose credit is challenged with brief reasons;
- (c) findings on contested issues of fact with brief reasons;
- (d) conclusions on contested issues of law; and
- (e) where relief is granted, the relief granted and brief reasons for it.

Chapter 8—Costs

Part 1—Court’s discretion as to costs

15—Relevant Stages

The Relevant Stages of a proceeding for the purpose of costs are as follows—

- (a) stage 1 – from institution of action to and including Initial Hearing;
- (b) stage 2 – from completion of Initial Hearing to commencement of trial incorporating—

- (i) stage 2A – from stage 1 to half way between Initial Hearing and Pre-Trial Hearing;
- (ii) stage 2B – from stage 2A to and including Pre-Trial Hearing;
- (iii) stage 2C – from stage 2B to commencement of trial;
- (c) stage 3 – trial and judgment incorporating—
 - (i) stage 3A – first day of trial;
 - (ii) stage 3B – second day of trial;
 - (iii) stage 3C – third day of trial.

16—Costs scales

- (1) The Fast Track Ordinary Scale is contained in table 1 of Schedule 1.
- (2) The Fast Track Elevated Scale is contained in table 2 of Schedule 1.

Chapter 9—Appeals

17—Fast Track Appeal Scale

The Fast Track Appeal Scale is contained in table 3 of Schedule 1.

Schedule 1 — Fast Track Scales of Costs

- (1) For the purposes of the cost scales in this Schedule—
 - (a) when costs are awarded in favour of a successful plaintiff, cross claimant or third party claimant, the *quantum* of the claim is the total amount or value of the principal relief granted in favour of the plaintiff or cross claimant or third party claimant;
 - (b) when the defendant to a claim, cross action or third party action is successful, the *quantum* of the claim, cross action or third party action is the total amount or value of the principal relief claimed against that defendant;
 - (c) when there is both a claim by a successful party and an unsuccessful cross action against that party, the *quantum* of the proceedings is the total of the amount referred to in (a) and the amount referred to in (b).
- (2) For the purposes of this Schedule, *principal relief* means the principal relief awarded or claimed (as the case may be) disregarding interest since instituting the action, cross action or third party action (as the case may be) and disregarding costs.
- (3) For the purposes of this Schedule, *professional costs* encompass costs on account of all professional fees charged by solicitors and counsel for work performed in connection with the proceedings together with all photocopying, communications and like charges.
- (4) When professional costs are recoverable in accordance with the Fast Track Scale of Costs, the successful party is also entitled to recover disbursements reasonably incurred in the proceeding, including court fees, witness fees and other external disbursements. However, unless the trial Judge or Magistrate otherwise orders, a party cannot recover disbursements for more than one expert witness and cannot recover more than \$3,000 for disbursements paid to an expert witness.
- (5) When—
 - (a) a proceeding settles by acceptance of a formal offer of settlement under rule 26 of the Rules during stage 2 and it is necessary to determine the costs payable by one party to the other under the terms of settlement up to that stage of the proceedings; or
 - (b) a proceeding does not settle due to the rejection of a formal offer of settlement filed during stage 2 and a party is entitled under rule 27 of the Rules to an order of the Court for costs on the Fast Track Ordinary Scale up to the stage reached 14 days after the formal offer of settlement was filed and to costs on the Fast Track Elevated Scale thereafter;

the costs payable under (a) and the costs payable on the Fast Track Ordinary Scale under (b) are to be calculated according to whether the proceeding was in stage 2A, stage 2B or stage 2C at the relevant time on the basis that one third of the costs in table 1 is attributable to stage 2A, one third to stage 2B and one third to stage 2C.

Example—

If the case is the subject of the Fast Track Ordinary Mid Scale and it settles part way through stage 2A by the acceptance of a formal offer made part way through stage 2A and the terms of the offer included that the offeror's costs of

action were payable for the period up to acceptance of the offer, the offeror is entitled to costs in the “mid” column table 1 for stage 1 and one third of the figure in the “mid” column for stage 2.

- (6) For the purposes of table 3, a proceeding will be classified on appeal as Low, Mid or High according to its classification in the court at first instance.
- (7) If the quantum of the judgment or claim (as the case may be) is less than \$63,000, the costs are calculated at the percentage of the quantum shown in table 1 or table 2 with the quantum rounded to the nearest \$1,000.

Table 1 - Fast Track Ordinary Scale (Professional Costs)

Quantum \$63,000 or more

NUMBER	STAGE	Low	Mid	High
1	Institution to Initial Hearing	\$4,500	\$5,625	\$6,750
2	Up to commencement of trial	\$4,500	\$5,625	\$6,750
3A	First day of trial	\$3,000	\$3,750	\$4,500
3B	Second day of trial	\$3,000	\$3,750	\$4,500
3C	Third day of trial	\$3,000	\$3,750	\$4,500

Quantum less than \$63,000*

NUMBER	STAGE	Low	Mid	High
1	Institution to Initial Hearing	7.2% of quantum	9% of quantum	10.8% of quantum
2	Up to commencement of trial	7.2% of quantum	9% of quantum	10.8% of quantum
3A	First day of trial	4.8% of quantum	6% of quantum	7.2% of quantum
3B	Second day of trial	4.8% of quantum	6% of quantum	7.2% of quantum
3C	Third day of trial	4.8% of quantum	6% of quantum	7.2% of quantum

* Quantum rounded to nearest \$1,000

Table 2 - Fast Track Elevated Scale (Professional Costs)**Quantum \$63,000 or more**

NUMBER	STAGE	Low	Mid	High
1	Institution to Initial Hearing	\$6,000	\$7,500	\$9,000
2	Up to commencement of trial	\$6,000	\$7,500	\$9,000
3A	First day of trial	\$4,000	\$5,000	\$6,000
3B	Second day of trial	\$4,000	\$5,000	\$6,000
3C	Third day of trial	\$4,000	\$5,000	\$6,000

Quantum less than \$63,000*

NUMBER	STAGE	Low	Mid	High
1	Institution to Initial Hearing	9.6% of quantum	12% of quantum	14.4% of quantum
2	Up to commencement of trial	9.6% of quantum	12% of quantum	14.4% of quantum
3A	First day of trial	6.4% of quantum	8% of quantum	9.6% of quantum
3B	Second day of trial	6.4% of quantum	8% of quantum	9.6% of quantum
3C	Third day of trial	6.4% of quantum	8% of quantum	9.6% of quantum

* Quantum rounded to nearest \$1,000

Table 3 – Fast Track Appeal Scale (Professional Costs)

	Low	Mid	High
Appeal against an interlocutory judgment	\$1,500	\$1,500	\$1,500
Appeal against a final judgment	\$4,000	\$5,000	\$6,000

Schedule 2 — Approved Forms

[Action heading]

Rule 10

Form FTS 1

Election into Fast Track Stream

ELECTION INTO FAST TRACK STREAM

The *(role of party)*, *(name of party)* ELECTS pursuant to rule 10 that this proceeding be instituted in/transferred into *(strike out whichever is inapplicable)* the Fast Track Stream.

It is CERTIFIED that, in my reasonable opinion:

- (a) the combined quantum of the claim and of any counterclaim does not exceed \$250,000; and
- (b) the trial of the proceeding is not expected to take more than three days.

Dated 20.....

(signed)

Solicitor for the *(role and name of party)*

(OR)

(where self represented, role and name of party)

Rule 25

Form FTS 2A

Formal Offer of Settlement (Judgment Offer)

FORMAL OFFER OF SETTLEMENT (JUDGMENT OFFER)

The *(role of party)*, *(name of party)* **OFFERS** pursuant to rule 25 to settle the proceedings *(or if a particular claim in the proceeding, specify claim)* as follows:

(insert terms of judgment except as to costs which would be entered if offer is accepted)

(insert terms of offer as to costs)

(insert any conditions subject to which the offer is made)

(insert any other matter permitted by rule 25)

(signed)

Solicitor for the *(role and name of party)*

(OR)

(where self represented, role and name of party)

To:

(role and name of other party/parties to the proceeding)

Rule 25

Form FTS 2B

Formal Offer of Settlement (Contract Offer)

FORMAL OFFER OF SETTLEMENT (CONTRACT OFFER)

The *(role of party)*, *(name of party)* **OFFERS** pursuant to rule 25 to settle the proceedings *(or if a particular claim in the proceedings, specify claim)* as follows:

(insert terms of contract on all matters except costs which will arise if offer is accepted)

(insert terms of contract as to costs which will arise if offer is accepted)

(insert any conditions subject to which offer is made)

(insert any other matter permitted by rule 25)

(signed)

Solicitor for the *(role and name of party)*

(OR)

(where self represented, role and name of party)

To:

(role and name of other party/parties to the proceeding)

Rule 25

Form FTS 3

Withdrawal of Formal Offer of Settlement

WITHDRAWAL OF FORMAL OFFER OF SETTLEMENT

The *(role of party)*, *(name of party)* WITHDRAWS pursuant to rule 25 the offer filed on *(date)*.

(signed)

Solicitor for the *(role and name of party)*

(OR)

(where self represented, role and name of party)

To:

(role and name of other party/parties to the proceeding)

Rule 26

Form FTS 4A

Acceptance of Offer (Judgment Offer)

ACCEPTANCE OF OFFER (JUDGMENT OFFER)

The *(role of party)*, *(name of party)* **ACCEPTS** pursuant to rule 26 the offer made by the *(role of party)*, *(name of party)* filed on *(date)* and consents to judgment in terms of that offer.

(signed)

Solicitor for the *(role and name of party)*

(OR)

(where self represented, role and name of party)

To:

(role and name of other party/parties to the proceeding)

Rule 26

Form FTS 4B

Acceptance of Offer (Contract Offer)

ACCEPTANCE OF OFFER (CONTRACT OFFER)

The *(role of party)*, *(name of party)* **ACCEPTS** pursuant to rule 26 the offer made by the *(role of party)*, *(name of party)* filed on *(date)* and acknowledges that a contract has come into existence in terms of the offer.

(signed)

Solicitor for the *(role and name of party)*

(OR)

(where self represented, role and name of party)

To:

(role and name of other party/parties to the proceeding)

Rule 34

Form FTS 5

Election for Fast Track Mid/High Scale

ELECTION FOR FAST TRACK MID/HIGH SCALE

The *(role of party), (name of party)* **ELECTS** under rule 34 that the Fast Track Mid/High *(strike out whichever is inapplicable)* Scale of Costs applies to this proceeding.

Dated 20.....

(signed)Solicitor for the *(role and name of party)**(OR)**(where self represented, role and name of party)*

SOUTH AUSTRALIA

DISTRICT COURT SPECIAL APPLICATIONS RULES 2014

By virtue and in pursuance of Section 51 of the *District Court Act 1991* and all other enabling powers, we, Geoffrey Louis Muecke, Chief Judge, and Rauf Soulio and Paul Vincent Slattery, Judges of the District Court of South Australia, make the following Rules of Court.

Contents

Chapter 1—Preliminary

- Part 1—Formal provisions
 - 1—Citation
 - 2—Commencement
- Part 2—Interpretation
 - 3—Interpretation
- Part 3—Application of rules
 - 4—Application of rules
 - 5—Application of District Court Civil Rules
- Part 4—Repeal and transitional provision
 - 6—Note- there is no rule 6- see rule 3A
 - 7—Transitional provision

Chapter 2—General procedural rules

- 8—Power of court to control procedure
- 9—Supplementary rules
- 10—Filing and retention of documents
- 11—Confidential material
- 12—Provision of search warrants

Chapter 3—Private applications

- Part 1—Introduction
 - 13—Application of Chapter
- Part 2—Application
 - 14—Originating application
 - 15—Email or facsimile application
 - 16—Telephone application

Part 3—Documents in support of application

17—Documents in support of application

Part 4—Hearing and determination

18—Hearing and determination of application

Chapter 4—Note- there is no Chapter 4 - see rule 3A

19—Note- there is no rule 19 – see rule 3A.

20—Note- there is no rule 20 – see rule 3A.

21—Note- there is no rule 21 – see rule 3A.

22—Note- there is no rule 22 – see rule 3A.

23—Note- there is no rule 23 – see rule 3A.

Chapter 5—Serious and organised crime applications

Part 1—Declared organisations

24—Note- there is no rule 24 – see rule 3A.

25—Note- there is no rule 25 – see rule 3A.

26—Note- there is no rule 26 – see rule 3A.

27—Note- there is no rule 27 – see rule 3A.

28—Note- there is no rule 28 – see rule 3A.

29—Note- there is no rule 29 – see rule 3A.

30—Note- there is no rule 30 – see rule 3A.

31—Note- there is no rule 31 – see rule 3A.

32—Note- there is no rule 32 – see rule 3A.

33—Note- there is no rule 33 – see rule 3A.

34—Note- there is no rule 34 – see rule 3A.

35—Note- there is no rule 35 – see rule 3A.

36—Note- there is no rule 36 – see rule 3A.

Part 2—Unexplained wealth orders

37—Application for unexplained wealth order

38—Directions

Chapter 6—Note- there is no Chapter 6 - see rule 3A

39—Note- there is no rule 39 – see rule 3A.

40—Note- there is no rule 40 – see rule 3A.

41—Note- there is no rule 41 – see rule 3A.

42—Note- there is no rule 42 – see rule 3A.

43—Note- there is no rule 43 – see rule 3A.

44—Note- there is no rule 44 – see rule 3A.

45—Note- there is no rule 45 – see rule 3A.

46—Note- there is no rule 46 – see rule 3A.

47—Note- there is no rule 47 – see rule 3A.

48—Note- there is no rule 48 – see rule 3A.

49—Note- there is no rule 49 – see rule 3A.

50—Note- there is no rule 50 – see rule 3A.

Chapter 7—Enforcement applications

Part 1—Introduction

- 51—Interpretation
- 52—Application of Chapter
- 53—Commencement of proceeding
- 54—Directions

Part 2—Giving evidence or production of documents

- 55—Application
- 56—Order

Part 3—Aid of unexplained wealth order

- 57—Application for enforcement of unexplained wealth order
- 58—Application for restraining order
- 59—Objection when restraining order made without notice
- 60—Application to revoke or vary restraining order

Part 4—Contempt

- 61—Note- there is no rule 61 – see rule 3A.

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

These Rules may be cited as the *District Court Special Applications Rules 2014*.

2—Commencement

These Rules commence on 1 October 2014.

Part 2—Interpretation

3—Interpretation

(1) In these Rules, unless the contrary intention appears, terms defined by the *District Court Civil Rules 2006* have the meaning defined by those Rules.

(2) In these Rules, unless the contrary intention appears—

Court means the *District Court* of South Australia;

General Civil Rules means the *District Court Civil Rules 2006*;

Police Commissioner means the Commissioner of Police within the meaning of section 2(1) of the *Terrorism (Police Powers) Act 2005* or of the *Police Act 1998* as the meaning requires;

relevant authority means the Police Commissioner or such other person as is referred to in section 3(3) of the *Terrorism (Police Powers) Act 2005*;

Registrar means the Registrar of the Court or any other officer or employee of the Court to whom the Registrar delegates functions to be performed by the Registrar under these Rules;

search warrant means a warrant under section 16 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*; section 29 of the *Australian Crime Commission (South Australia) Act 2004* or section 22 of the *Australian Crime Commission Act 2002 (Cth)*;

Supplementary Rules — see rule 9.

warrant means a search warrant or surveillance warrant;

without notice means without serving or advising another party or other person of an application to be made to the Court.

3A—Numbering of rules

It is intended that the numbering of these rules is to match (so far as possible) the numbering of the *Supreme Court Special Applications Rules 2014* (and thus, if any of the *Supreme Court Special Applications Rules 2014* is inapplicable in the District Court, there will be a gap in the sequential numbering of these rules)

Note-

There is no equivalent to this rule in the *Supreme Court Special Applications Rules 2014*.

Part 3—Application of rules

4—Application of rules

These Rules apply to proceedings under the following Acts—

- (a) the *Australian Crime Commission (South Australia) Act 2004*;
- (b) the *Australian Crime Commission Act 2002 (Cth)*;
- (c) **Note-** there is no subrule (c) – see rule 3A;
- (d) **Note-** there is no subrule (d) – see rule 3A;
- (e) **Note-** there is no subrule (e) – see rule 3A;
- (f) **Note-** there is no subrule (f) – see rule 3A;
- (g) the *Serious and Organised Crime (Unexplained Wealth) Act 2009*;
- (h) the *Terrorism (Police Powers) Act 2005*;
- (i) **Note-** there is no subrule (i) – see rule 3A;
- (j) **Note-** there is no subrule (j) – see rule 3A.

5—Application of District Court Civil Rules

- (1) Unless the Court otherwise directs and subject to subrules (3) and (4), Chapters 1 to 4 of the General Civil Rules apply to proceedings in the Court under these Rules.
- (2) Unless the Court otherwise directs and subject to subrules (3) and (4), the General Civil Rules apply to proceedings in the Court under Chapters 5 to 7 of these Rules.
- (3) To the extent of any inconsistency between these Rules and the General Civil Rules, these Rules prevail.
- (4) Unless the Court otherwise directs, the rules in the General Civil Rules relating to pre-trial disclosure of documents, notices to admit, pre-trial questions and listing for trial do not apply to proceedings under Chapters 5 to 7 of these Rules.
- (5) Unless the Court otherwise directs, proceedings under Chapters 5 to 7 of these Rules are to proceed on affidavit rather than pleadings.

Part 4—Repeal and transitional provision

6—Note- there is no rule 6– see rule 3A

7—Transitional provision

- (1) Unless the Court otherwise directs, these Rules apply to—
 - (a) proceedings commenced on or after the commencement date; and
 - (b) steps taken or required to be taken or matters occurring on or after the commencement date in proceedings commenced before the commencement date.

- (2) The Court may, if it thinks fit, direct that these Rules, or the Rules in force before these Rules were made, apply to a transitional proceeding or a particular step or matter in a transitional proceeding.
- (3) The repeal of the Rules referred to in rule 6 does not affect—
 - (a) the validity of any order made, or step taken under a repealed rule or step under an order made under it; or
 - (b) the admissibility of evidence obtained as a result of a step taken under a repealed rule or an order made under it.

Chapter 2—General procedural rules

8—Power of court to control procedure

- (1) The Court may, on its own initiative or on application by a party, give directions about the procedure to be followed in a particular proceeding.
- (2) A direction may be given under this rule—
 - (a) when these Rules do not address or address fully a procedural matter that arises in a proceeding; or
 - (b) to resolve uncertainty about the correct procedure to be adopted; or
 - (c) to achieve procedural fairness in the circumstances of a particular case; or
 - (d) to expedite the hearing or determination of a particular case or to avoid unnecessary delay or expense.
- (3) A direction may be given under this rule irrespective of whether it involves some departure from these Rules or the established procedures of the Court.
- (4) A direction may be given under this rule superseding an earlier direction but a step taken in a proceeding in accordance with a direction that has been superseded is to be regarded as validly taken.

9—Supplementary rules

- (1) It is intended that the Court make supplementary rules necessary or convenient for the regulation of proceedings in the Court (the *Supplementary Rules*).
- (2) In particular, it is intended that the Supplementary Rules may—
 - (a) supplement these Rules;
 - (b) modify these Rules in respect of a particular category of proceedings;
 - (c) give directions as to practices to be followed;
 - (d) prescribe approved forms.

10—Filing and retention of documents

- (1) Unless the Court otherwise orders, documents provided to or created by the Court in proceedings governed by Chapter 3 of these Rules are not to be filed or kept as records of the Court in the manner of court records kept under Chapter 4 of the General Civil Rules.
- (2) All envelopes required by these Rules to be sealed—
 - (a) are to be kept in a secure repository by the Registrar for the period written on the face of the envelope by the Judge who heard the relevant application and, if no period is written, for five years from the date on which the Registrar receives the envelope;
 - (b) are not to be opened except in accordance with an order of a Judge; and
 - (c) upon expiry of the period specified in paragraph (a), or at any time if directed by a Judge, the Registrar may return the envelope and its contents to the applicant or other person who lodged them with the Court or destroy them.

11—Confidential material

- (1) In any proceeding under these Rules, if a party intends to seek orders to preserve confidentiality of any material, the party is to file an affidavit in a sealed envelope, marked with a notation that it is not to be opened except by direction of a Judge, setting out—
 - (a) the orders with respect to confidentiality sought; and
 - (b) the circumstances relied upon for seeking the order.
- (2) In any proceeding under these Rules, the Court may if it thinks fit—
 - (a) give directions to maintain the confidentiality of any material;
 - (b) receive evidence and hear argument about any material in private in the absence of the other parties to the proceeding and their representatives.

12—Provision of search warrants

A person executing a search warrant issued under these Rules must, unless it is not reasonably practical to do so—

- (a) show the warrant to the occupier of a place or to the owner or driver of a vehicle, as the case may be, to which the warrant applies; or
- (b) on request, provide a copy of the warrant to that person.

Chapter 3—Private applications

Part 1—Introduction

13—Application of Chapter

This Chapter applies to—

- (a) applications for a search warrant under section 22 of the *Australian Crime Commission Act 2002* (Cth), section 29 of the *Australian Crime Commission (South Australia) Act 2004*, or section 16 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*;
- (b) **Note-** there is no subrule (b) - see rule 3A;
- (c) applications for a monitoring order under section 14 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*; and
- (d) applications to confirm a special powers authorisation or special area declaration under section 3 or 13 of the *Terrorism (Police Powers) Act 2005*;
- (e) **Note-** there is no subrule (e) – see rule 3A;
- (f) **Note-** there is no subrule (f) – see rule 3A;
- (g) **Note-** there is no subrule (g) – see rule 3A; and
- (h) **Note-** there is no subrule (h) – see rule 3A.

Part 2—Application

14—Originating application

- (1) Subject to rules 15 and 16, an application or disclosure to which this Chapter applies is to be made in person to a Judge in private and initiated by originating application.
- (2) **Note-** there is no subrule (2) – see rule 3A.
- (3) Any other application to which this Chapter applies is to be—
 - (a) in accordance with the relevant statutory provision; and
 - (b) in an approved form.
- (4) **Note-** there is no subrule4– see rule 3A.
- (5) The applicant is to notify the Registrar orally that an application is to be made and of the general nature of the application.
- (6) The Registrar will appoint a time for hearing the application by a Judge.
- (7) The Registrar will make arrangements with the applicant for delivery to the Registrar in advance of the hearing of the originating application and documents in support of the application in an envelope marked “Strictly Confidential. Application under the [name] Act. Not to be opened other than by Judgeor pursuant to the order of the Chief Judge”.

- (8) The Registrar will deliver the sealed envelope personally to the Judge. The documents are not to be filed or lodged in the Registry and the proceeding is not to be entered in the records of the Court.

15—Email or facsimile application

- (1) This rule applies to—
 - (a) **Note-** there is no subrule (a) – see rule 3A;
 - (b) **Note-** there is no subrule (b) – see rule 3A;
 - (c) a facsimile application under section 3(5) or (6) of the *Terrorism (Police Powers) Act 2005* for confirmation that the relevant authority has or had proper grounds for issuing a special powers authorisation.
- (2) The applicant is to notify the Registrar orally that an application is to be made and of the general nature of the application and to ascertain an email address or facsimile number, as the case may be, to which the documents may be sent.
- (3) The applicant is to send to the Registrar at the designated email address or facsimile number an originating application using the appropriate form prescribed by rule 14(2) or (3) together with the supporting documents required by rule 17. The documents are not to be filed or lodged in the Registry and the proceeding is not to be entered in the records of the Court.
- (4) **Note-** there is no subrule (4) – see rule 3A.
- (5) The Registrar will appoint a time for a Judge to hear the application as soon as practicable.
- (6) The Registrar will place the application and documents in support of the application in an envelope marked “Strictly Confidential. Application under the [name] Act. Not to be opened other than by Judge or pursuant to the order of the Chief Judge”.
- (7) The Registrar will deliver the sealed envelope personally to the Judge. The documents are not to be filed or lodged in the Registry and the proceeding is not to be entered in the records of the Court.
- (8) The applicant is to be available to speak to the Judge by telephone and is to provide such further information as is required by the Judge.
- (9) The Judge may require the applicant to provide a further affidavit deposing to the additional information but may issue the warrant on the applicant’s undertaking to provide that affidavit.
- (10) If the applicant has undertaken to provide a further affidavit, the applicant is, as soon as practicable after issue of the warrant, to deliver to the Judge an affidavit verifying the additional information.

16—Telephone application

- (1) This rule applies to a telephone application under—
 - (a) section 23 of the *Australian Crime Commission Act 2002* (Cth), section 30 of the *Australian Crime Commission (South Australia) Act 2004*, or section 16(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for the issue of a warrant; or

- (b) section 3(5) or (6) of the *Terrorism (Police Powers) Act 2005* for confirmation that the relevant authority has or had proper grounds to issue a special powers authorisation.
- (2) Before making the application, the applicant is to prepare the form of the proposed warrant or special powers authorisation.

Note—

Section 30(2) of the *Australian Crime Commission (South Australia) Act 2004* and section 23 of the *Australian Crime Commission Act 2002* (Cth) require the applicant to prepare an affidavit setting out the grounds on which the warrant is sought before making the application.

- (3) The applicant is to notify the Registrar orally that an application is to be made and of the general nature of the application.
- (4) The Registrar will appoint a time for hearing the application by a Judge as soon as practicable.
- (5) At the hearing, the applicant is to inform the Judge of—
 - (a) the matters required by rule 17 to be addressed by a supporting affidavit;
 - (a) the circumstances giving rise to the urgency of the application; and
 - (b) the proposed terms of the warrant or the special powers authorisation as the case may be.
- (6) The applicant is to undertake to provide an affidavit verifying the facts referred to in subrule (5) and the documents that would have accompanied the application had it been a written application.
- (7) The applicant is to provide such further information as may be required by the Judge.
- (8) The Judge may require the applicant to provide an affidavit deposing to the additional information or to undertake to provide such an affidavit.
- (9) The applicant is as soon as practicable after issue of the warrant to deliver to the Judge an affidavit verifying the facts referred to in subrule (5), exhibiting the documents that would have accompanied the application had it been a written application and, if required, deposing to the additional information referred to in subrule (8). The affidavit is not to be filed or lodged in the Registry and the proceeding is not to be entered in the records of the Court.

Part 3—Documents in support of application

17—Documents in support of application

- (1) An application under rule 14 or 15 is to be accompanied by an affidavit verifying—
 - (a) the grounds of the application;
 - (b) any relevant matters required by the relevant legislation or any applicable regulations to be verified by affidavit or to be established to the satisfaction of or taken into account by the Judge; and

- (c) in the case of an email or facsimile application when permitted by the relevant legislation, the circumstances giving rise to the urgency of the application.
- (2) When it is not practicable to obtain an affidavit from a witness who is able to speak of his or her own knowledge, an affidavit may contain statements that the witness reasonably believes to be true if the witness also states the grounds of the belief.
- (3) There is to be exhibited to the supporting affidavit—
 - (a) **Note-** there is no subrule (a) – see rule 3A;
 - (b) in the case of an application under section 3(5) or (6) of the *Terrorism (Police Powers) Act 2005* for confirmation that the relevant authority had or has proper grounds to issue a special powers authorisation, a copy of the issued or proposed special powers authorisation referred to in regulation 4(2)(c)(i) of the *Terrorism (Police Powers) Regulations 2006*;
 - (c) in the case of an application under section 13(3) of the *Terrorism (Police Powers) Act 2005* for confirmation that issuing a special area declaration by the Police Commissioner is appropriate in the circumstances, a copy of the proposed special area declaration referred to in regulation 5(1)(b) of the *Terrorism (Police Powers) Regulations 2006*;
 - (d) **Note-** there is no subrule (d) – see rule 3A.
- (4) An application under rule 14 or 15 is to be accompanied by—
 - (a) in the case of an application for a warrant—two copies, together with the number of copies needed for service, of the proposed warrant; or
 - (b) in the case of any other application—minutes of order.

Part 4—Hearing and determination

18—Hearing and determination of application

- (1) The hearing of an application under this Chapter will be conducted in private. The Judge may give directions concerning any other persons being present or taking a transcript or record of the proceeding.
- (2) The applicant is to provide such further information as may be required by the Judge.
- (3) Upon hearing an application for a warrant, the Judge will—
 - (a) inform the applicant of the Judge’s decision; and
 - (b) if satisfied of the matters required by the relevant legislation, any applicable regulations and these Rules and that it is appropriate to issue the warrant—
 - (i) inform the applicant of the grounds on which the Judge relies for the issue of the warrant and of the terms of the warrant;
 - (ii) sign the warrant and indicate on the warrant the date and time when the warrant is issued;

- (iii) arrange for the Court seal to be affixed to the warrant; and
 - (c) if so satisfied, arrange for a copy of the warrant to be provided to the applicant—
 - (i) when the application is made in person—in person;
 - (ii) when the application is made by facsimile—by facsimile or, if an email address is available, by email;
 - (iii) when the application is made by telephone or email—by email.
- (4) **Note-** there is no subrule (4) – see rule 3A.
- (5) Upon hearing an application for confirmation that the relevant authority had or has proper grounds to issue a special powers authorisation or that the issue of a special area declaration by the Police Commissioner is appropriate in the circumstance, the Judge will—
 - (a) inform the applicant of the Judge’s decision; and
 - (b) if satisfied of the matters required by the relevant legislation, any applicable regulations and these Rules, confirm that the relevant authority had or has proper grounds to issue a special powers authorisation or that the issue of a special area declaration by the Police Commissioner is appropriate in the circumstances.
- (6) Upon hearing any other application under this Chapter, the Judge will—
 - (a) inform the applicant of the Judge’s decision; and
 - (b) if satisfied of the matters required by the relevant legislation, any applicable regulations and these Rules and that it is appropriate to make the order sought—
 - (i) inform the applicant of the grounds on which the Judge relies for making the order and the terms of the order;
 - (ii) draw up the order if necessary and arrange for the Court seal to be affixed to the order; and
 - (iii) arrange for a copy of the order to be provided to the applicant in person.
- (7) **Note-** there is no subrule (7) – see rule 3A.
- (8) The Judge may give any consequential directions to give effect to any decision or order and to ensure the confidentiality of the proceeding as the Judge thinks fit.
- (9) After the hearing and determination of an application under this rule, the application, affidavit, warrant issued or order made and any other documents relating to the application will be placed in an envelope that will be sealed and marked by the Judge “Not to be opened without the permission of a Judge”. The documents are otherwise to be dealt with in accordance with such directions as are given by the Court to ensure that they remain confidential.

Chapter 4—Note- there is no Chapter 4 - see rule 3A

19—Note- there is no rule 19 – see rule 3A.

20—Note- there is no rule 20 – see rule 3A.

21—Note- there is no rule 21 – see rule 3A.

22—Note- there is no rule 22 – see rule 3A.

23—Note- there is no rule 23 – see rule 3A.

Chapter 5—Serious and organised crime applications

Part 1—Declared organisations

24—Note- there is no rule 24 – see rule 3A.

25—Note- there is no rule 25 – see rule 3A.

26—Note- there is no rule 26 – see rule 3A.

27—Note- there is no rule 27 – see rule 3A.

28—Note- there is no rule 28 – see rule 3A.

29—Note- there is no rule 29 – see rule 3A.

30—Note- there is no rule 30 – see rule 3A.

31—Note- there is no rule 31 – see rule 3A.

32—Note- there is no rule 32 – see rule 3A.

33—Note- there is no rule 33 – see rule 3A.

34—Note- there is no rule 34 – see rule 3A.

35—Note- there is no rule 35 – see rule 3A.

36—Note- there is no rule 36 – see rule 3A.

Part 2—Unexplained wealth orders

37—Application for unexplained wealth order

- (1) An application under section 9(1) of the *Serious and Organized Crime (Unexplained Wealth) Act 2009* for an unexplained wealth order in relation to a person is to be made by originating application in an approved form.
- (2) The application is to name as defendant the subject of the application.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the order sought; and
 - (c) short grounds of the application.
- (4) The application is to be accompanied by an affidavit—
 - (a) exhibiting the authorisation by the Director to make the application.
 - (b) identifying the components of the defendant's wealth to which the application relates; and
 - (c) verifying the detailed grounds of the application.

- (5) The application and accompanying affidavit are to be served on the defendant, the Police Commissioner and such other persons as the Court directs.

Note- There is no equivalent to this rule in the *Supreme Court Rules of Special Applications 2014*.

38—Directions

On an application to which this Part applies, the Court may give directions relating to—

- (a) joinder of any additional party;
- (b) service of an application or order on a party or any other person;
- (c) the matter proceeding in the absence of a party if satisfied that the party cannot be found or if the party fails to appear after being given reasonable notice of the application;
- (d) any other matter.

Note- There is no equivalent to this rule in the *Supreme Court Rules of Special Applications 2014*.

Chapter 6—Note- there is no Chapter 6 - see rule 3A

39—Note- there is no rule 39 – see rule 3A.

40—Note- there is no rule 40 – see rule 3A.

41—Note- there is no rule 41 – see rule 3A.

42—Note- there is no rule 42 – see rule 3A.

43—Note- there is no rule 43 – see rule 3A.

44—Note- there is no rule 44 – see rule 3A.

45—Note- there is no rule 45 – see rule 3A.

46—Note- there is no rule 46 – see rule 3A.

47—Note- there is no rule 47 – see rule 3A.

48—Note- there is no rule 48 – see rule 3A.

49—Note- there is no rule 49 – see rule 3A.

50—Note- there is no rule 50 – see rule 3A.

Chapter 7—Enforcement applications

Part 1—Introduction

51—Interpretation

In this Chapter –

examiner means an examiner within the meaning of section 46B(1) of the *Australian Crime Commission Act 2002* (Cth).

52—Application of Chapter

This Chapter applies to—

- (a) applications under section 15(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for an order to give evidence or produce documents or materials;
- (b) applications under section 19(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for enforcement of an unexplained wealth order;
- (c) applications under section 20 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* to make, vary or revoke a restraining order;
- (d) **Note-** there is no subrule (d) – see rule 3A.
- (e) **Note-** there is no subrule (e) – see rule 3A.

53—Commencement of proceeding

- (1) Subject to subrule (2), an application to which this Chapter refers is, if a proceeding has not been started in the Court in relation to an investigation, to be made by originating application.
- (2) An application in relation to an investigation may, if a proceeding has been started in the Court in relation to the investigation, be made by interlocutory application.

54—Directions

On an application to which this Chapter applies, the Court may give directions relating to—

- (a) joinder of any additional party;
- (b) service of an application or order on a party or any other person;
- (c) the matter proceeding in the absence of a party if satisfied that the party cannot be found or if the party fails to appear after being given reasonable notice of the application;
- (d) any other matter.

Part 2—Giving evidence or production of documents

55—Application

- (1) An application by the Police Commissioner under section 15(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for an order that a person give evidence or produce documents or materials is to be made by originating application in an approved form.
- (2) The application is to name as defendant the person in respect of whom the order is sought.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the order sought; and
 - (c) short grounds of the application.
- (4) The application is to be accompanied by an affidavit verifying the detailed grounds of the application.

Note—

Section 15(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the affidavit to specify how the evidence, documents or materials to which the application relates are relevant to identifying, tracing, locating or valuing a person's wealth.

- (5) Unless the Court otherwise directs, the application is to be served on the defendant before it is heard.
- (6) If the Court makes an order without notice, the defendant may, within 5 business days of service of the order or such other period as the Court may fix, apply to the Court by interlocutory summons to set aside or vary the order.

56—Order

- (1) The Court may order that a person give oral or affidavit evidence to the Court on relevant questions.
- (2) The Court may order that a person produce before the Court relevant materials.
- (3) The Court may direct that evidence be given or materials be produced before a Judge, Master or the Registrar.
- (4) In this rule, *relevant questions* and *relevant materials* mean questions or documents or materials, as the case may be, relevant under section 15(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.

Note 1—

Section 15(3) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Police Commissioner to ensure that a copy of the order is served on the defendant, in accordance with any directions of the Court, and that the defendant is advised that the order was made under section 15 of the Act.

Note 2—

Section 15(5) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* empowers the Court to make an order that the Crown pay the defendant's legal costs in connection with complying with the order (which may be costs as between solicitor and client) or costs as determined by the Court.

Part 3—Aid of unexplained wealth order

57—Application for enforcement of unexplained wealth order

- (1) An application by the Police Commissioner under section 19(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* to declare property to be property of a person for the purpose of the *Enforcement of Judgments Act 1991* is to be made by originating application in an approved form.
- (2) The application is to name as defendant—
 - (a) the subject of the relevant unexplained wealth order;
 - (b) any person whom the Police Commissioner has reason to believe may have an interest in the property; and
 - (c) any other person who is a necessary party.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the order sought; and
 - (c) short grounds of the application.
- (4) The application is to be accompanied by an affidavit verifying the detailed grounds of the application including the evidence relied on for the contention that particular property is subject to the effective control of the person the subject of the relevant unexplained wealth order.

Note 1—

Section 19(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Court to be satisfied that particular property is subject to the effective control of the person the subject of the relevant unexplained wealth order.

Note 2—

Section 19(3) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Police Commissioner, on applying for an order, to give written notice of the application to the person who is subject to the unexplained wealth order, any person whom the Police Commissioner has reason to believe may have an interest in the property and any other persons who should, in the opinion of the Court, be given notice of the application.

58—Application for restraining order

- (1) An application by the Police Commissioner under section 20(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for a restraining order is to be made by originating application in an approved form.
- (2) The application is to name as defendant—
 - (a) the person who has an interest in the property the disposal of which or the use of safe custody facilities in respect of which is sought to be prevented;
 - (b) the person whose transactions involving safe custody facilities are sought to be prevented;
 - (c) the person who has custody of the property including, in the case of an application to prevent specified kinds of transactions involving safe custody facilities, the relevant deposit holder; and
 - (d) any other person who is a necessary party.

- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the property the disposal of which is sought to be restrained or the subject of transactions involving safe custody facilities which are sought to be prevented;
 - (c) the order sought; and
 - (d) short grounds of the application.
- (4) The application is to be accompanied by an affidavit—
 - (a) exhibiting the unexplained wealth order or deposing to facts relating to the prospect of an unexplained wealth order being made;
 - (b) verifying the detailed grounds of the application; and
 - (c) identifying and giving details of—
 - (i) all persons who have or may have an interest in the property the disposal of which is sought to be prevented;
 - (ii) when applicable, all persons who would otherwise have a legal entitlement to enter into the transactions involving safe custody facilities sought to be prevented;
 - (iii) all persons who have custody of the property;
 - (iv) when applicable, the relevant deposit holder; and
 - (v) any other persons to whom notice of the application should be given.

Note—

Section 20(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Court to be satisfied that the order is reasonably necessary to ensure payment of an amount that is, or may become, payable under an unexplained wealth order and that the application for the order be accompanied by an affidavit setting out matters that would justify such a finding.

- (5) The application may, if the Court thinks fit, be heard without notice.

59—Objection when restraining order made without notice

- (1) A notice of objection under section 24 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* to a restraining order made without notice is to be made by interlocutory application in an approved form in the proceeding instituted under rule 58.

Note—

Section 24(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires a notice of objection to be lodged within 14 calendar days of service of the restraining order or such longer period as the Court may allow.

- (2) Any application for an extension of time in which to lodge a notice of objection is to be made in the same interlocutory application comprising the notice of objection.
- (3) The application is to be supported by an affidavit verifying the detailed grounds of the objection.

Note—

Section 24(3) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires that the Police Commissioner be served by registered post at least 7 calendar days before the day appointed for hearing the notice.

60—Application to revoke or vary restraining order

- (1) An application under section 25(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* to revoke or vary a restraining order is to be made by interlocutory application in the proceeding instituted under rule 58.
- (2) If permission to make the application is required, it is to be made in the same interlocutory application.
- (3) The application is to be supported by an affidavit verifying the detailed grounds on which the application is made and, when applicable, the grounds on which permission is sought.

Part 4—Contempt

61—Note- there is no rule 61 – see rule 3A.

Dated 16 September 2014

G L Muecke
Chief Judge

R Soulio
Judge

P V Slattery
Judge

SOUTH AUSTRALIA

**DISTRICT COURT SPECIAL APPLICATIONS SUPPLEMENTARY
RULES 2014**

By virtue and in pursuance of Section 51 of the *District Court Act 1991* and all other enabling powers, we, Geoffrey Louis Muecke, Chief Judge, and Rauf Soulio and Paul Vincent Slattery, Judges of the District Court of South Australia, make the following Rules of Court.

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

These Supplementary Rules may be cited as the *District Court Special Applications Supplementary Rules 2014*.

2—Commencement

These Supplementary Rules commence on 1 October 2014.

Chapter 2—General Procedural Rules

3—Approved forms

The forms contained in the Schedule to these Supplementary Rules are approved forms for the purposes shown.

Dated 16 September 2014

G L Muecke
Chief Judge

R Soulio
Judge

P V Slattery
Judge

South Australia
District Court Special Applications
Supplementary Rules 2014

SCHEDULE—APPROVED FORMS

THE SCHEDULE – APPROVED FORMS**Index of Forms**

Form SA1	Originating application for search warrant	1
Form SA2	Originating application for monitoring order	4
Form SA3	Originating application for confirmation of special powers authorisation	6
Form SA4	Originating application for confirmation of special area declaration	9
Form SA5	<i>Inapplicable in the District Court</i>	11
Form SA6	<i>Inapplicable in the District Court</i>	12
Form SA8	<i>Inapplicable in the District Court</i>	14
Form SA9	Warrant for search and seizure	15
Form SA10	<i>Inapplicable in the District Court</i>	17
Form SA11	<i>Inapplicable in the District Court</i>	18
Form SA12	<i>Inapplicable in the District Court</i>	19
Form SA13	<i>Inapplicable in the District Court</i>	20
Form SA14	Originating application for unexplained wealth order	21
Form SA15	<i>Inapplicable in the District Court</i>	24
Form SA16	<i>Inapplicable in the District Court</i>	25
Form SA17	<i>Inapplicable in the District Court</i>	26
Form SA18	<i>Inapplicable in the District Court</i>	27
Form SA19	Originating application for giving evidence or production of documents	28
Form SA20	Originating application to declare property of a person	31
Form SA21	Originating application for restraining order	34
Form SA22	Notice of Objection	37
Form SA23	<i>Inapplicable in the District Court</i>	39

Rule 14(3)

Form SA1

Originating application for search warrant

ORIGINATING APPLICATION FOR SEARCH WARRANT

Serious and Organised Crime (Unexplained Wealth) Act 2009 s 16
Australian Crime Commission (South Australia) Act 2004 s 29
Australian Crime Commission Act 2002 (Cth) s 22

The plaintiff (*name of plaintiff*) applies for the relief set out in this application.

The Court will hear this application at a time and place to be advised.

Application

1. The plaintiff is
 - the Commissioner of Police
 - an eligible person within the meaning of the *Australian Crime Commission Act 2002 (Cth)*
 (*delete whichever is inapplicable*).

2. The plaintiff applies for issue of a warrant under
 - section 16 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*
 - section 29 of the *Australian Crime Commission (South Australia) Act 2004*
 - section 22 of the *Australian Crime Commission Act 2002 (Cth)*
 (*delete whichever is inapplicable*).

3. The plaintiff applies for a warrant for the purposes of an investigation by (*insert body*) into

.....

.....

 (*set out details of the investigation*).

- 4. The plaintiff applies for a warrant authorising
.....
.....
(set out details of the authorisation sought).

- 5. The plaintiff seeks to be able to exercise the warrant during the following hours
of the day or night...../at any time of the day or night *(delete
whichever is inapplicable).*

- 6. The plaintiff applies for a warrant on the following grounds:
.....
.....
.....
.....
*(set out grounds on which the warrant is reasonably required for the purpose of
the investigation).*

- 7. The detailed grounds are set out and verified in the accompanying affidavit.

- 8. The urgent circumstances making it appropriate for the application to be made
by email/facsimile *(delete whichever is inapplicable)* are
.....
.....
(to be completed only in relation to applications made by email or facsimile).

- 9. The plaintiff proposes that the Court retain the documents associated with this
application for at leastyears before returning them to the plaintiff or
destroying them.

Order sought

The Plaintiff seeks the following orders:

(set out briefly but specifically the orders sought).

Accompanying documents

This application must be accompanied by an affidavit setting out and verifying the matters set out in and exhibiting the documents referred to in rule 17 of the *District Court Special Applications Rules 2014*.

Plaintiff's address

The Plaintiff's address for contact is:

Place:

Email:

The Plaintiff's address is (*place of business*).

Service on the Defendant

It is not intended to serve this application on the Defendant.

Date:

Signed by (*full name*)

Commissioner of Police

Eligible person within the meaning of the
Australian Crime Commission Act 2002 (Cth).

(*delete whichever is inapplicable*)

Rule 14(3)

Form SA2

Originating application for monitoring order

ORIGINATING APPLICATION FOR MONITORING ORDER

Serious and Organised Crime (Unexplained Wealth) Act 2009 s 14

The plaintiff (*name of plaintiff*) the Commissioner of Police applies for the relief set out in this application.

The Court will hear this application at a time and place to be advised.

Application

1. The plaintiff is the Commissioner of Police.
2. The plaintiff applies for a monitoring order under section 14 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.
3. The plaintiff applies for a monitoring order on the following grounds:
(set out short grounds upon which the order is reasonably required for the purpose of the investigation).
.....
.....
.....
.....
4. The detailed grounds are set out and verified in the accompanying affidavit.
5. The plaintiff proposes that the Court retain the documents associated with this application for at leastyears before returning them to the plaintiff or destroying them.

Order sought

The Plaintiff seeks the following orders:

(set out briefly but specifically the orders sought).

Accompanying documents

This application must be accompanied by an affidavit setting out and verifying the matters set out in and exhibiting the documents referred to in rule 17 of the *District Court Special Applications Rules 2014*.

Plaintiff's address

The Plaintiff's address for contact is:

Place:

Email:

The Plaintiff's address is (*place of business*).

Service on the Defendant

It is not intended to serve this application on the Defendant.

Date:

Signed by (*full name*)

Commissioner of Police

Rule 14(3)

Form SA3 Originating application for confirmation of special powers authorisation

**ORIGINATING APPLICATION FOR CONFIRMATION OF SPECIAL
POWERS AUTHORISATION**

Terrorism (Police Powers) Act 2005 s 3 and s 19

The plaintiff (*name of plaintiff*) applies for the relief set out in this application.

The Court will hear this application at a time and place to be advised.

Application

1. The plaintiff is (*insert rank*) acting in accordance with section 3 of the *Terrorism (Police Powers) Act 2005*.

2. (*delete if inapplicable*)
 - The Commissioner
 - The Deputy Commissioner
 - An Assistant Commissioner

(*delete whichever is inapplicable*)
is/are or was/were (*delete whichever is inapplicable*) unavailable to issue the special powers authorisation that the plaintiff proposes to issue/has issued (*delete whichever is inapplicable*) under section 3 of the *Terrorism (Police Powers) Act 2005*.

3. The plaintiff proposes to issue/has issued (*delete whichever is inapplicable*) a special powers authorisation under section 3 of the *Terrorism (Police Powers) Act 2005*.

4. The plaintiff applies for confirmation that the plaintiff has/had (*delete whichever is inapplicable*) proper grounds for issuing the special powers authorisation under section 3(1)/(2) (*delete whichever is inapplicable*) of the *Terrorism (Police Powers) Act 2005*.

5. (*delete if inapplicable*) The plaintiff believes that
 - (a) a terrorist act is imminent, whether in or outside this State and

- (b) the exercise of powers under the Act will substantially assist in the prevention of the terrorist act

on the following grounds:

.....

(set out the grounds upon which the relevant beliefs are held).

6. *(delete if inapplicable)* The plaintiff believes that

- (a) a terrorist act is being or has been committed, whether in or outside this State and
- (b) the exercise of powers under the Act will substantially assist in the investigation of the terrorist act

on the following grounds:

.....

(set out the grounds upon which the relevant beliefs are held).

7. *(delete if inapplicable)* The plaintiff was satisfied that it was necessary to issue the authorisation without confirmation because of the urgency of the circumstances, namely

.....

(set out the grounds of urgency).

8. The grounds set out in this application are verified in the accompanying affidavit, which exhibits the proposed *(delete if inapplicable)* special powers authorisation.

9 *(delete if inapplicable)* The circumstances of urgency making it appropriate for the application to be made by email/facsimile *(delete whichever is inapplicable)* are

.....

.....

.....

.....

10. The plaintiff proposes that the Court retain the documents associated with this application for at leastyears before returning them to the plaintiff or destroying them.

Order sought

The Plaintiff seeks the following orders:
(set out briefly but specifically the orders sought).

Accompanying documents

This application must be accompanied by an affidavit setting out and verifying the matters set out in and exhibiting the documents referred to in rule 17 of the *District Court Special Applications Rules 2014*.

Plaintiff's address

The Plaintiff's address for contact is:
 Place:
 Email:
 The Plaintiff's address is *(place of business)*.

Service on the Defendant

It is not intended to serve this application on the Defendant.

Date:

 Signed by *(full name)*
(insert position and rank)

Rule 14(3)

Form SA4

Originating application for confirmation of special area declaration

**ORIGINATING APPLICATION FOR CONFIRMATION OF SPECIAL
AREA DECLARATION***Terrorism (Police Powers) Act 2005 s 13 and 19*

The plaintiff (*name of plaintiff*) the Commissioner of Police applies for the relief set out in this application.

The Court will hear this application at a time and place to be advised.

Application

1. The plaintiff is the Commissioner of Police acting in accordance with section 13 of the *Terrorism (Police Powers) Act 2005*.
2. The plaintiff proposes to issue a special area declaration under section 13 of the *Terrorism (Police Powers) Act 2005*.
3. The plaintiff applies for confirmation that issuing the special area declaration is appropriate in the circumstances under section 13(3) of the *Terrorism (Police Powers) Act 2005*.
4. The plaintiff is satisfied that:
 - (a) the area is:
 - the site of an airport, train station, bus station, tram station or ship or ferry terminal
 - the site of a special event
 - an area that is a public area where persons gather in large numbers

(delete whichever is inapplicable)
 - and
 - (b) the declaration is required because of the nature of the site or area and the risk of occurrence of a terrorist acton the following grounds:

.....
.....
.....
.....

(set out the grounds upon which the relevant beliefs are held).

- 5. The grounds set out in this application are verified in the accompanying affidavit, which exhibits the proposed special area declaration.
- 6. The plaintiff proposes that the Court retain the documents associated with this application for at leastyears before returning them to the plaintiff or destroying them.

Order sought

The Plaintiff seeks the following orders:

(set out briefly but specifically the orders sought)

Accompanying documents

This application must be accompanied by an affidavit setting out and verifying the matters set out in and exhibiting the documents referred to in rule 17 of the *District Court Special Applications Rules 2014*.

Plaintiff's address

The Plaintiff's address for contact is:

Place:

Email:

The Plaintiff's address is *(place of business)*.

Service on the Defendant

It is not intended to serve this application on the Defendant.

Date:

Signed by *(full name)*

Commissioner of Police

Form SA5 Inapplicable in the District Court

Form SA6 Inapplicable in the District Court

Form SA7 Inapplicable in the District Court

Form SA8 Inapplicable in the District Court

Rule 18(5)

Form SA9

Warrant for search and seizure

WARRANT FOR SEARCH AND SEIZURE

Serious and Organised Crime (Unexplained Wealth) Act 2009 s 16
Australian Crime Commission (South Australia) Act 2004 s 29
Australian Crime Commission Act 2002 (Cth) s 22

1. On an application made on *(insert date)* by:

- the Commissioner of Police
- an eligible person within the meaning of the *Australian Crime Commission Act 2002 (Cth)*

(delete whichever is inapplicable),

I, a Judge of the District Court of South Australia, am satisfied that there are proper grounds for the issue of a warrant under

- section 16 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*
- section 29 of the *Australian Crime Commission (South Australia) Act 2004*
- section 22 of the *Australian Crime Commission Act 2002 (Cth)*

(delete whichever is inapplicable).

2. This warrant authorises *(insert name and position)*

- to enter and search *(set out details of private place and/or private vehicle)*
- to seize *(set out details)*
- to search *(set out details)* and to seize *(set out details)*
- to enter *(set out details)*, search *(set out details)* and seize *(set out details)*

(delete whichever is inapplicable).

.....
 (Judge of the District Court)

Date:

Note—

The Act under which the warrant is issued prescribes the powers that may be exercised under the warrant.

Form SA10 Inapplicable in the District Court

Form SA11 Inapplicable in the District Court

Form SA12 Inapplicable in the District Court

Form SA13 Inapplicable in the District Court

Rule 37(1)

Form SA14

Originating application for unexplained wealth order

ORIGINATING APPLICATION FOR UNEXPLAINED WEALTH ORDER*Serious and Organised Crime (Unexplained Wealth) Act 2009 s 9(1)*TO THE DEFENDANT (*name*) of (*address*).

The plaintiff, the Crown Solicitor on the authority of the Director of Public Prosecutions, applies for the relief set out in this Application.

Action required

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence.

You must file a Notice of Address for Service (form 16 or 17 in the General Supplementary Rules) in the Registry before attending Court or taking any other steps in the proceeding. If you do not have a solicitor, you may attend personally at a Registry to do this. A list of the Registry addresses may be obtained through the website of the Courts Administration Authority (www.courts.sa.gov.au) or by telephoning the Registry of the Court (8204 0289).

The application will be heard before in the District Court of South Australia at the Sir Samuel Way Building, Victoria Square, Adelaide on at or so soon afterwards as the business of the Court allows.

The courtroom in which the application will be heard will be published:

- on the Courts Administration Authority website the day before;
- in the Advertiser on the day; and
- on the notice board at the Sir Samuel Way Building.

The Court ordered that the time for serving this application be abridged to (*Court to insert date, if applicable*).

Application

1. The plaintiff is the Crown Solicitor.
2. The plaintiff applies for an unexplained wealth order under section 9(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.
3. The short grounds on which the order is sought are:

.....

.....

.....

.....

(set out the short grounds on which the order is sought).

4. The detailed grounds on which the order is sought are set out in the accompanying affidavit.

Order sought

The Plaintiff seeks the following orders:

(set out briefly but specifically the orders sought).

Accompanying documents

This application must be accompanied by an affidavit setting out and verifying the detailed grounds of the application.

Plaintiff's address

The Plaintiff's address for service is:

Place:

Email:

The Plaintiff's address is *(place of business)*.

Service on the Defendant

It is intended to serve this application on the Defendant.

Date:

Signed by (*full name*)

Crown Solicitor

Form SA15 Inapplicable in the District Court

Form SA16 Inapplicable in the District Court

Form SA17 Inapplicable in the District Court

Form SA18 Inapplicable in the District Court

Rule 55(1)

Form SA19 Originating application for giving evidence or production of documents

**ORIGINATING APPLICATION FOR GIVING EVIDENCE OR
PRODUCTION OF DOCUMENTS***Serious and Organised Crime (Unexplained Wealth) Act 2009 s 15(1)*TO THE DEFENDANT (*name*) of (*address*).

The plaintiff (*name of plaintiff*), the Commissioner of Police, applies for the relief set out in this Application.

Action required

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence.

You must file a Notice of Address for Service (form 16 or 17 in the General Supplementary Rules) in the Registry before attending Court or taking any other steps in the proceeding. If you do not have a solicitor, you may attend personally at a Registry to do this. A list of the Registry addresses may be obtained through the website of the Courts Administration Authority (www.courts.sa.gov.au) or by telephoning the Registry of the Court (8204 0289).

The application will be heard before in the District Court at the Sir Samuel Way Building, Victoria Square, Adelaide on at or so soon afterwards as the business of the Court allows.

The courtroom in which the application will be heard will be published:

- on the Courts Administration Authority website the day before;
- in the Advertiser on the day; and
- on the notice board at the Sir Samuel Way Building.

The Court ordered that the time for serving this application be abridged to (*Court to insert date, if applicable*).

Application

1. The plaintiff is the Commissioner of Police.

2. The plaintiff applies for an order requiring the defendant to
 - give oral/affidavit *(delete whichever is inapplicable)* evidence on questions;
 - produce documents or other materials;*(delete whichever is inapplicable)*
 to the Court relevant to identifying, tracing, locating or valuing the wealth of *(set out full name of person)* under section 15 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.

3. The short grounds on which the order is sought are:

.....

.....

.....

.....

(set out the short grounds on which the order is sought).

4. The detailed grounds on which the order is sought are set out in the accompanying affidavit.

Order sought

The Plaintiff seeks the following orders:
(set out briefly but specifically the orders sought).

Accompanying documents

This application must be accompanied by an affidavit setting out and verifying the detailed grounds of the application.

Plaintiff's address

The Plaintiff's address for service is:
Place:
Email:
The Plaintiff's address is *(place of business)*.

Service on the Defendant

It is intended to serve this application on the Defendant.

Date:

Signed by (*full name*)

Commissioner of Police

Rule 57(1)

Form SA20

Originating application to declare property of a person

ORIGINATING APPLICATION TO DECLARE PROPERTY OF A PERSON*Serious and Organised Crime (Unexplained Wealth) Act 2009 s 19(2)*TO THE DEFENDANT (*name*) of (*address*).

The plaintiff (*name of plaintiff*), the Commissioner of Police, applies for the relief set out in this Application.

Action required

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence.

You must file a Notice of Address for Service (form 16 or 17 in the General Supplementary Rules) in the Registry before attending Court or taking any other steps in the proceeding. If you do not have a solicitor, you may attend personally at a Registry to do this. A list of the Registry addresses may be obtained through the website of the Courts Administration Authority (www.courts.sa.gov.au) or by telephoning the Registry of the Court (8204 0289).

The application will be heard before in the District Court at the Sir Samuel Way Building, Victoria Square, Adelaide on at or so soon afterwards as the business of the Court allows.

The courtroom in which the application will be heard will be published:

- on the Courts Administration Authority website the day before;
- in the Advertiser on the day; and
- on the notice board at the Sir Samuel Way Building.

The Court ordered that the time for serving this application be abridged to (*Court to insert date, if applicable*).

Application

- 1. The plaintiff is the Commissioner of Police.

- 2. The plaintiff applies for an order under section 19(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* declaring that the following property is subject to the effective control of the defendant and is taken to be the defendant’s property for the purpose of the *Enforcement of Judgments Act 1991*:

(set out full details of the property).

- 3. The short grounds on which the order is sought are:

.....

(set out the short grounds on which the order is sought).

- 4. The detailed grounds on which the order is sought are set out in the accompanying affidavit.

Order sought

The Plaintiff seeks the following orders:

(set out briefly but specifically the orders sought).

Accompanying documents

This application must be accompanied by an affidavit setting out and verifying the detailed grounds of the application.

Plaintiff’s address

The Plaintiff’s address for service is:

Place:

Email:

The Plaintiff’s address is *(place of business)*.

Service on the Defendant

It is intended to serve this application on the Defendant.

Date:

Signed by (*full name*)

Commissioner of Police

Rule 58(1)

Form SA21

Originating application for restraining order

ORIGINATING APPLICATION FOR RESTRAINING ORDER*Serious and Organised Crime (Unexplained Wealth) Act 2009 s 20(1)*TO THE DEFENDANT (*name*) of (*address*).

The plaintiff (*name of plaintiff*), the Commissioner of Police, applies for the relief set out in this Application.

Action required

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, the Court may make orders in your absence.

You must file a Notice of Address for Service (form 16 or 17 in the General Supplementary Rules) in the Registry before attending Court or taking any other steps in the proceeding. If you do not have a solicitor, you may attend personally at a Registry to do this. A list of the Registry addresses may be obtained through the website of the Courts Administration Authority (www.courts.sa.gov.au) or by telephoning the Registry of the Court (8204 0289).

The application will be heard before in the District Court at the Sir Samuel Way Building, Victoria Square, Adelaide on at or so soon afterwards as the business of the Court allows.

The courtroom in which the application will be heard will be published:

- on the Courts Administration Authority website the day before;
- in the Advertiser on the day; and
- on the notice board at the Sir Samuel Way Building.

The Court ordered that the time for serving this application be abridged to (*Court to insert date, if applicable*).

Application

1. The plaintiff is the Commissioner of Police.
2. The plaintiff applies for an order under section 20(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* preventing
 - the disposal of specified property
 - specified kinds of transactions involving safe custody facilities
 (*delete whichever is inapplicable*).
3. (*delete if inapplicable*) The property the disposal of which is sought to be restrained is (*set out details of property*).
4. (*delete if inapplicable*) The transactions involving safe custody facilities sought to be prevented are (*set out details of transactions and safe custody facilities*).
5. The short grounds on which the order is sought are:

.....

.....

.....

.....

(*set out the short grounds on which the order is sought*).
6. The detailed grounds on which the order is sought are set out in the accompanying affidavit.

Order sought

The Plaintiff seeks the following orders:

(*set out briefly but specifically the orders sought*).

Accompanying documents

This application must be accompanied by an affidavit setting out and verifying the detailed grounds of the application.

Plaintiff's address

The Plaintiff's address for service is:

Place:

Email:

The Plaintiff's address is (*place of business*).

Service on the Defendant

(*select one of these three options and delete the others*)

It is intended to serve this application on all Defendants.

It is intended to serve this application on the following Defendants:

(*name of each defendant on whom application is to be served*).

It is not intended to serve this application on any Defendant.

Date:

Signed by (*full name*)

Commissioner of Police

Rule 59

Form SA22

Notice of objection – restraining order

NOTICE OF OBJECTION - RESTRAINING ORDER

Serious and Organised Crime (Unexplained Wealth) Act 2009 s 24

TO THE PLAINTIFF (*name*).

The defendant (*name*) applies for the following orders or directions:

Application

1. On (*insert date*) the Court made a restraining order under the *Serious and Organised Crime (Unexplained Wealth) Act 2009* in respect of the defendant.

2. The defendant objects to the order/the following parts of the order (*delete whichever is inapplicable*).

.....
.....

(*if the objection is to particular parts of the order, identify those parts*).

3. The grounds of objection are:
.....
.....
.....
.....

(*set out grounds fully and in detail*)

4. The defendant relies on the following affidavit in support of the objection:
.....
.....

(*identify affidavit*).

5. (*delete if inapplicable*) The defendant seeks an extension of time in which to lodge a notice of objection on the grounds set out in the accompanying affidavit.

Endorsements

Application made pursuant to section 24 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* and rule 59 of the *District Court Special Applications Rules 2014*.

You will be notified separately of the time and place of the hearing of the application.

Date:

.....
Signed by (*name*)

Defendant/Solicitor for the defendant (*delete
whichever is inapplicable*)

Note—

1. Section 24(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the grounds of objection to be stated fully and in detail in the notice of objection

Form SA23 Inapplicable in the District Court