

MAGISTRATES COURT RULES 1992

(Amendment 85)

being

Magistrates Court of South Australia Rules as amended by

Amendment No 1 to the Magistrates Court Rules (Gov Gaz 7 January 1993 p 106)
Amendment No 2 to the Magistrates Court Rules (Gov Gaz 18 March 1993 p 1010)
Amendment No 3 to the Magistrates Court Rules (Gov Gaz 29 March 1994 p 822) [1]
Amendment No 4 to the Magistrates Court Rules (Gov Gaz 19 May 1994 p 1238)
Amendment No 5 to the Magistrates Court Rules (Gov Gaz 28 July 1994 p 190) [2]
Amendment No 6 to the Magistrates Court Rules (Gov Gaz 7 September 1995 p 695)
Amendment No 7 to the Magistrates Court Rules (Gov Gaz 28 September 1995 p 862)
Amendment No 8 to the Magistrates Court Rules (Gov Gaz 21 March 1996 p 1695)
Amendment No 9 to the Magistrates Court Rules (Gov Gaz 12 December 1996 p 1881)
Amendment No 10 to the Magistrates Court Rules (Gov Gaz 10 April 1997 p 1485)
Amendment No 11 to the Magistrates Court Rules (Gov Gaz 29 May 1997 p 2722)
Amendment No 12 to the Magistrates Court Rules (Gov Gaz 12 February 1998 p 899)
Amendment No 13 to the Magistrates Court Rules (Gov Gaz 23 April 1998 p 1952) [3]
Amendment No 14 to the Magistrates Court Rules (Gov Gaz 11 March 1999 p 1355) [4]
Amendment No 15 to the Magistrates Court Rules (Gov Gaz 8 July 1999 p 208) [5]
Amendment No 16 to the Magistrates Court Rules (Gov Gaz 24 February 2000 p 1126) [6]
Amendment No 17 to the Magistrates Court Rules (Gov Gaz 6 April 2000 p 2038)
Amendment No 18 to the Magistrates Court Rules (Gov Gaz 1 June 2000 p 2900)
Amendment No 19 to the Magistrates Court Rules (Gov Gaz 8 March 2001 p 869)
Amendment No 20 to the Magistrates Court Rules (Gov Gaz 11 September 2003, p 3510)
Amendment No 21 to the Magistrates Court Rules (Gov Gaz 6 May 2004 p 1216)
Amendment No 22 to the Magistrates Court Rules (Gov Gaz 5 August 2004, p 2759 [7]
Amendment No 23 to the Magistrates Court Rules (Gov Gaz 31 March 2005, p 732)
Amendment No 24 to the Magistrates Court Rules (Gov Gaz 2 March 2006, p 824)
Amendment No 25 to the Magistrates Court Rules (Gov Gaz 1 December 2005, p 4055)
Amendment No 26 to the Magistrates Court Rules (Gov Gaz 4 May, 2006 p 1199)
Amendment No 27 to the Magistrates Court Rules (Gov Gaz 1 March 2007 p 643) [8]
Amendment No 28 to the Magistrates Court Rules (Gov Gaz 31 May 2007 p2192)
Amendment No 29 to the Magistrates Court Rules (Gov Gaz 17 April 2008 p 1328)
Amendment No 30 to the Magistrates Court Rules (Gov Gaz 22 May 2008 p 1712)
Amendment No 31 to the Magistrates Court Rules (Gov Gaz 24 July 2008 p 3451)
Amendment No 32 to the Magistrates Court Rules (Gov Gaz 25 September 2008 p4561) [9]
Amendment No 33 to the Magistrates Court Rules (Gov Gaz 8 January 2009 p 63)
Amendment No 34 to the Magistrates Court Rules (Gov Gaz 23 December 2009 p 6448)
Amendment No 35 to the Magistrates Court Rules (Gov Gaz 15 July 2010 p 3466)
Amendment No 36 to the Magistrates Court Rules (Gov Gaz 7 October 2010 p 5034)
Amendment No 37 to the Magistrates Court Rules (Gov Gaz 11 November 2010 p 5297)
Addendum to Amendment No 36 to the Magistrates Court Rules (Gov Gaz 9 December 2010 p 5644)
Addendum to Amendment No 37 to the Magistrates Court Rules (Gov Gaz 9 December 2010 p 5645)
Amendment No 38 to the Magistrates Court Rules (Gov Gaz 14 November 2011 p 4498)
Amendment No 39 to the Magistrates Court Rules (Gov Gaz 3 November 2011 p 4405)
Amendment No 40 to the Magistrates Court Rules (Gov Gaz 3 November 2011 p 4410)
Amendment No 41 to the Magistrates Court Rules (Gov Gaz 17 November 2011 p 4573) [10]
Amendment No 42 to the Magistrates Court Rules (Gov Gaz 10 May 2012 p 1650)
Amendment No 43 to the Magistrates Court Rules (Gov Gaz 15 November 2012 p 5138)
Amendment No 44 to the Magistrates Court Rules (Gov Gaz 27 June 2013 p 2842)
Amendment No 45 to the Magistrates Court Rules (Gov Gaz 9 January 2014 p 58)
Amendment No 46 to the Magistrates Court Rules (Gov Gaz 23 January 2014 p 320)
Amendment No 47 to the Magistrates Court Rules (Gov Gaz 10 April 2014 p 1483)

Amendment No 48 to the Magistrates Court Rules (Gov Gaz 17 April 2014 p 1512)
Amendment No 49 to the Magistrates Court Rules (Gov Gaz 31 July 2014 p 3702)
Amendment No 50 to the Magistrates Court Rules (Gov Gaz 29 August 2014 p 4223)
Amendment No 51 to the Magistrates Court Rules (Gov Gaz 23 October 2014 p 6162)
Amendment No 52 to the Magistrates Court Rules (Gov Gaz 4 December 2014 p 6584)
Amendment No 53 to the Magistrates Court Rules (Gov Gaz 26 February 2015 p 832)
Amendment No 54 to the Magistrates Court Rules (Gov Gaz 17 September 2015 p 4281)
Amendment No 55 to the Magistrates Court Rules (Gov Gaz 28 January 2016 p 238)
Amendment No 56 to the Magistrates Court Rules (Gov Gaz 3 March 2016 p 826)
Amendment No 57 to the Magistrates Court Rules (Gov Gaz 28 July 2016 p 3048)
Amendment No 58 to the Magistrates Court Rules (Gov Gaz 25 August 2016 p 3400)
Amendment No 59 to the Magistrates Court Rules (Gov Gaz 24 November 2016 p 4473)
Amendment No 60 to the Magistrates Court Rules (Gov Gaz 11 April 2017 p 1064)
Amendment No 61 to the Magistrates Court Rules (Gov Gaz 27 June 2017 p 2574)
Amendment No 62 to the Magistrates Court Rules (Gov Gaz 29 August 2017 p 3828)
Amendment No 63 to the Magistrates Court Rules (Gov Gaz 4 October 2017 p 4246)
Amendment No 64 to the Magistrates Court Rules (Gov Gaz 14 November 2017 p 4585)[11]
Amendment No 65 to the Magistrates Court Rules (Gov Gaz 13 February 2018 p 807)[12]
Amendment No 66 to the Magistrates Court Rules (Gov Gaz 26 April 2018 p 1433 and Gov Gaz 30 April 2018 p 1494 (Corrigendum))[13]
Amendment No 67 to the Magistrates Court Rules (Gov Gaz 14 June 2018 p 2163)
Amendment No 68 to the Magistrates Court Rules (Gov Gaz 5 October 2018 p 3753)
Amendment No 69 to the Magistrates Court Rules (Gov Gaz 20 December 2018 p 4379)
Amendment No 70 to the Magistrates Court Rules (Gov Gaz 14 March 2019 p 867)
Amendment No 71 to the Magistrates Court Rules (Gov Gaz 2 May 2019 p 1218)
Amendment No 72 to the Magistrates Court Rules (Gov Gaz 2 May 2019 p 1221) [16]
Amendment No 73 to the Magistrates Court Rules (Gov Gaz 23 May 2019 p 1419)
Amendment No 74 to the Magistrates Court Rules (Gov Gaz 20 June 2019 p 2219) [14]
Amendment No 75 to the Magistrates Court Rules (Gov Gaz 4 July 2019 p 2618)
Amendment No 76 to the Magistrates Court Rules (Gov Gaz 8 August 2019 p 2949 and Gov Gaz 13 August 2019 p 2958 (Republished))[15]
Amendment No 77 to the Magistrates Court Rules (Gov Gaz 22 August 2019 p 3111)
Amendment No 78 to the Magistrates Court Rules (Gov Gaz 29 August 2019 p 3158) [17]
Amendment No 79 to the Magistrates Court Rules (Gov Gaz 19 September 2019 p 3331)
Amendment No 80 to the Magistrates Court Rules (Gov Gaz 12 December 2019 p 4297)
Amendment No 81 to the Magistrates Court Rules (Gov Gaz 27 March 2020 p 614)
Amendment No 82 to the Magistrates Court Rules (Gov Gaz 2 April 2020 p 666)
Amendment No 83 to the Magistrates Court Rules (Gov Gaz 9 April 2020 p 738)
Amendment No 84 to the Magistrates Court Rules (Gov Gaz 6 August 2020 p 4421)
Amendment No 85 to the Magistrates Court Rules (Gov Gaz 17 September 2020 p 4627) [18]

[1] Came into effect 1 April 1994.

[2] Came into effect 1 August 1994.

[3] Came into effect 4 May 1998.

[4] Came into effect 6 April 1999.

[5] Came into effect 25 July 1999.

[6] Came into effect 6 March 2000.

[7] Paragraphs 7 to 10 came into effect 1 January 2005

[8] Came into effect 1 March 2007.

[9] Rule 54 came into effect on the date of commencement of the *Prevention of Cruelty to Animals (Animal Welfare) Act 2008*.

[10] Came into effect 9 December 2011.

[11] Came into effect 25 November 2017.

[12] Came into effect 5 March 2018

[13] Came into effect 30 April 2018

[14] Came into effect 1 July 2019

[15] Came into effect 8 August 2019

[16] Came into effect 1 September 2019.

[17] Came into effect 1 September 2019.

[18] Came into effect 1 October 2020.

PURSUANT to section 49 of the *Magistrates Court Act 1991* and all other enabling powers, We the undersigned do hereby make the following rules:

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1.00 CITATION AND COMMENCEMENT

1.01 These Rules may be cited as the *Magistrates Court Rules 1992*.

1.02 These Rules shall be divided into the following Sections -

Section A Rules of General Application

Section B Rules Relating to the Criminal Jurisdiction

1.03 These Rules take effect on the 6th day of July 1992.

SECTION A - Rules of General Application

2.00 DEFINITIONS

2.01 In this Section "the Act" means the *Magistrates Court Act 1991*.

2.02 In these Rules 'Prosecuting Authority' means informant.

3.00 SEAL

3.01 The Court shall have a seal bearing the name of the Court.

3.02 The seal of a Registry shall be in the custody of the Registrar.

3.03 The seal of the Court shall be fixed on such process or orders issued out of the Court as the Chief Magistrate shall direct.

3.04 The Chief Magistrate may direct that documents, or classes of documents, issued from the Court may be authenticated by specified electronic means rather than having the seal physically affixed.

4.00 STATUTORY JURISDICTION

4.01 The jurisdiction conferred on the Court by a Statute other than the Act is assigned to that Division of the Court designated in the Rules.

4.02 Where a Statute provides for jurisdiction to vest in a Court of Summary Jurisdiction that jurisdiction shall vest in the Criminal Division.

4.03 Where a Statute provides for jurisdiction to vest in a Local Court of limited jurisdiction that jurisdiction shall vest in the Civil (General Claims) Division,

4.04 The jurisdiction conferred on the Court by the *Criminal Assets Confiscation Act 2005*, other than section 221, shall vest in the appropriate Civil Division of the Court.

4.05 The jurisdiction conferred on the Court by the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*, shall vest in the Criminal Division of the Court.

4.06 The jurisdiction conferred on the Court by the *Serious and Organised Crime (Control) Act 2008*, shall vest in the Civil (General Claims) Division of the Court.

4.07 The jurisdiction conferred on the Court by the *Intervention Orders (Prevention of Abuse) Act 2009*, shall vest in the Criminal Division of the Court.

4.08 The jurisdiction conferred on the Court by sections 66D and 66E of the *Summary Offences Act 1953*, shall vest in the Civil (General Claims) Division of the Court.

4.09 The jurisdiction conferred on the Court by the *Births, Deaths and Marriages Registration Act 1996* shall vest in the Civil (General Claims) Division of the Court.

4.10 The jurisdiction conferred on the Court by the *Marriage Act 1961* (Cth), shall vest in the Civil (General Claims) Division of the Court.

4.11 The jurisdiction conferred on a Magistrate by the *Spent Convictions Act 2009*, shall vest in the Criminal Division of the Court.

4.12 The jurisdiction conferred on the Court by the *Criminal Law (Sentencing) Act 1988* ss 70K(11), 70P(6), 70U(1), 70U(10), must vest in the Criminal Division of the Court.

4.13 The jurisdiction conferred on the Court by the *Expiation of Offences Act 1996* s 14 must vest in the Criminal Division of the Court.

4.14 The jurisdiction conferred on the Court by the *Child Sex Offenders Registration Act 2006* ss 66JA, 66JC, 66JE, 66JG, vests in the Criminal Division of the Court

4.15 The jurisdiction conferred on the Court by the *Work Health and Safety Act 2012* s 167 must vest in the Criminal Division of the Court.

4.16 The jurisdiction conferred on the Court by the *South Australian Public Health Act 2011* s 47 must vest in the Criminal Division of the Court.

4.17 The jurisdiction conferred on the Court by s 35 of the *Housing Improvement Act 2016* shall vest in the Civil (General Claims) Division of the Court.

4.18 The jurisdiction conferred on the Court by Part 4, Division 6 of the *Ageing and Adult Safeguarding Act 1995* shall vest in the Criminal Division of the Court.

5.00 FORMS – COMPLIANCE

5.01 It is sufficient compliance with these Rules, as to the form of any document, if the document is substantially in accordance with the Form.

5.02 Any number of forms may be incorporated in the one document.

6.00 AUTHORISATION

6.01 An authorisation under s 22(2) of the Act shall comply with Form 27.

SECTION B - Rules relating to the Criminal Jurisdiction

Note: Amendment 65 includes amendments made in response to the *Summary Procedure (Service) Amendment Act 2017*. The relevant rules will be amended as the Court's IT infrastructure is upgraded.

7.00 DEFINITIONS

7.01 In this Section "the Act" means the *Criminal Procedure Act 1921* unless otherwise provided.

7.02 In this Section 'electronic filing' means filing by electronic means by a method approved by the Chief Magistrate.

7.03 **public authority** means—

- (a) any instrumentality or agency of the Crown in right of the State or the Commonwealth; or
- (b) the Corporate Affairs Commission; or
- (c) a municipal or district council; or
- (d) any county board or local board of health; or
- (e) any body declared by proclamation to be a public authority;

7.04 **public officer** means—

- (a) any police officer, any member of the Australian Federal Police or any other officer or employee of the State or the Commonwealth; or
- (b) any officer or employee of a public authority.

8.00 CASEFLOW MANAGEMENT

8.01 These Rules are made for the purpose of establishing orderly procedures for the conduct of litigation in the Court and of promoting the just and efficient determination of such litigation. They are not intended to defeat the determination of litigation according to the merits of the case of litigants who are genuinely endeavouring to comply with the procedures of the Court, and are to be interpreted and applied with the above purpose in view.

8.02 With the object of -

- (a) promoting the just determination of litigation;
- (b) disposing efficiently of the business of the Court;
- (c) maximising the efficient use of available judicial and administrative resources; and
- (d) facilitating the timely disposal of business at a cost affordable by the parties;

proceedings in the Court will be managed and supervised in accordance with a system of positive caseflow management. These Rules are to be construed and applied and the processes and procedures of the Court conducted so as best to ensure the attainment of the above objects.

8.03 The practice, procedure and processes of the Court shall have as their goal the elimination of any lapse of time from the date of initiation of proceedings to their final determination beyond that reasonably required for the identification of the factual and legal issues bona fide in dispute between the parties and the preparation of the case for trial or other disposition.

8.04 To these ends -

- (a) Parties to proceedings are required to be ready to proceed to trial by the date of the hearing at which a trial date is set.
- (b) Parties must fully comply with Rule 26.
- (c) A trial date which has been fixed will not be postponed unless the justice of the case, assessed having regard to the obligations of the parties pursuant to paragraph (a) hereof, so requires.

8.05 In the event that any application is made at trial to amend the information, application, particulars or other process the Court may, if the amendment would cause the postponement or adjournment of the trial, refuse such application, if it sees fit, in order to protect the integrity of the caseflow management system and to implement the Court's requirement that trials proceed at the time appointed for trial, notwithstanding that any injustice to the opposing party might have been avoided by an order for costs adjournment or otherwise.

8.06 The Court may from time to time establish and publish time performance standards for the various stages of proceedings before it as may be necessary and desirable for the most efficient disposal of its business and to this end may establish and promulgate case listing tracks on a differential basis by written practice direction. All proceedings thereafter shall be in accordance with such standards.

8.07 The Court may, at any time, of its own motion on notice to the parties review the progress of proceedings and make such orders or give such directions to lead to their efficient and timely disposal and make such orders concerning time defaults committed by any party as it may consider just and expedient.

9.00 STANDARDS

9.01 The Court pursuant to rules may establish and publish standards with respect to any aspect of the legal process.

9A.00 FILING AND SERVICE

9A.01 The Registrar must endorse the Court copy of the document showing the date of service by the Registrar.

9A.02 The records of the Registrar may be accepted as proof of service of a document by the Registrar.

9A.03 In any other case, service may be proved by completing the proof of service certificate on the relevant form.

9A.04 A form filed by electronic filing will be deemed to be filed on the day when it is accepted for filing by the Courts Administration Authority.

9B.00 FILING OF DOCUMENTS BY PROSECUTING AUTHORITIES

9B.01 An information or document filed by a prosecuting authority during a declared major emergency under section 23(1) of the *Emergency Management Act 2004* must be filed with the Court by email.

9B.02 An information or document may be filed with the Court by email by a prosecuting authority when a major emergency has not been declared under 23(1) of the *Emergency Management Act 2004*.

9B.03 An information or document is filed with the Court by email if –

- (a) it is sent as an attachment in a PDF or Word format to the central positional mailbox provided to the prosecuting authority; and
- (b) the subject line of the email indicates the location of the Court at which the document is to be filed.

9B.04 When an information or document is emailed on a day or time when the Registry is closed, the information or document will be deemed to have been received at 9.00am on the next day when the Registry is open.

9B.05 A prosecuting authority may be required to provide a physical copy of any document filed by email at the request of the Court.

10.00 WITNESSES - *Magistrates Court Act*

10.01 A summons to witness must be in Form 11.

10.01A An order pursuant to s 20 of the *Magistrates Court Act 1991* for the issue of the summons to a witness or for the issue of a warrant for the arrest of a witness shall be made by a Magistrate.

10.02 A summons to witness must be served personally at least 7 days before the return date.

10.03 Service of a summons to witness may be proved by affidavit or certificate as provided by the Act.

10.04 A warrant to arrest pursuant to Section 20 of the *Magistrates Court Act 1991* must be in Form 12.

10.05 A notice or warrant pursuant to Section 23 of the *Magistrates Court Act 1991* must be in Forms 13 and 14 respectively.

10.06 The Court may require an applicant under Section 20(1) of the *Magistrates Court Act* to tender appropriate travelling and sustenance expenses to the person to whom the summons is to issue. The Court may also order the applicant to pay any other reasonable expenses incurred in meeting the requirements of a witness in complying with a summons including the cost of producing evidentiary material to the court.

10.07 Where a person fails to comply with a summons under Section 20(1) of the *Magistrates Court Act 1991*, the Court may decline to issue a warrant to have that person arrested and brought before the Court, where at the time of the service of the summons there was not tendered to the person, appropriate travelling and/or sustenance expenses and/or other reasonable expenses to compensate the person for the expense of complying with the summons.

10.08 A witness summons that is vexatious, oppressive or an abuse of process may be set aside by the Court on application by a party or person with sufficient interest. The Court may set aside the witness summons in whole or in part, or grant other relief in respect of it.

10.09 Where an application is made to set aside a witness summons, the Court may direct that notice be given to all parties to the proceedings.

10.10 Unless a summons specifically requires a person to produce the original, the addressee may produce a copy of any document required in a format that can be accessed by the Court.

10.11 The seal of the relevant registry of the Court shall be placed on a summons to a witness or warrant for the arrest of a witness.

10A.00 VULNERABLE WITNESSES

10A.01 An Application for Special Arrangements for a vulnerable witness made pursuant to section 13A of the *Evidence Act 1929*, shall comply with Form 80.

10A.02 A Notice of Objection shall comply with Form 81.

10A.03 Subject to any Act and these Rules, on the filing of an application under Rule 10A.01, the Registrar must fix a date, time and place for the hearing of the application and give at least 21 days notice of the hearing by providing a copy of the application to the person(s) nominated by the applicant to be the person(s) to be served.

11.00 CHALLENGE TO CLASSIFICATION OF OFFENCE.

11.01 A challenge pursuant to section 5(8) of the Act must be made and determined before the matter is given a trial date.

12.00 INFORMATION

12.01 An information shall be reduced to writing and comply with Form 1.

12.02 The informant in person may lay an information by stating the matter of information to a witness who must be a Registrar, Deputy Registrar or Justice of the Peace.

12.03 The information when reduced to writing must be –

- (i) signed by the informant, and
- (ii) signed and dated by the witness.

12.04 A "public authority" or "public officer" or a legal practitioner may lay an information in writing on signing and dating it without appearing before a witness.

12.05 Where an information is laid by a police officer in the execution of his or her duty the information and proceedings thereon may be entitled "Police v".

12.06 Where an information is laid by a "public authority" the information and proceedings thereon may be entitled "(Name of public authority) v.....".

12.07 An information, other than an information filed under Rule 28, must be filed in the Court within seven days of being laid unless not practicable.

12.08 An information shall state as to each charge whether it is a major indictable, minor indictable or summary offence.

12.09 A copy of the information and any applicable apprehension report shall be given to the defendant at or before the time of the first Court appearance.

12.10 An information shall comply with Rule 15.03.

12.11 An information for contempt of Court may be laid by a judicial officer or the Principal Registrar as provided for in Rule 12.04.

12.12 It shall be sufficient signature under rule 12.04 for a "public authority", a "public officer" or a legal practitioner to cause a facsimile of their signature to be affixed to the information.

12.13 Where an information containing indictable charges is laid by a prosecuting authority other than SA Police, the prosecuting authority must provide the documents outlined in s 105(1) of the Act to the defendant at or before the defendant's first appearance.

12.14 A prosecuting agency must note against any count on an Information whether it is a charge that may be a 'prescribed offence' under section 5 of the *Child Safety (Prohibited Persons) Act 2016*; a 'presumptive disqualification offence' under section 26A of the *Child Safety (Prohibited Persons) Act 2016*; or a 'qualifying offence' under section 44 of the *Children and Young People (Safety) Act 2017*.

12.15 If the prosecuting agency becomes aware after an Information is filed that a charge may be a 'prescribed offence' under section 5 of the *Child Safety (Prohibited Persons) Act 2016*; a 'presumptive disqualification offence' under section 26A of the *Child Safety (Prohibited Persons) Act 2016*; or a 'qualifying offence' per section 44 of the *Children and Young People (Safety) Act 2017*, the prosecution is to file an amended Information that includes a note against any count that is considered to be an offence listed under this rule.

13.00 PLEA OF GUILTY WITHOUT APPEARANCE - SUMMARY OFFENCE

13.01 An information and summons under s 57A of the Act shall comply with Form 3.

13.02 A written notice of intention to plead guilty must be served personally or by post on the Registrar at least 5 clear days before the date of appearance in the summons and at the address stated therein.

13.03 A written notice of intention to plead guilty must be signed before a justice of the peace for any State or Territory of the Commonwealth or a solicitor duly admitted and entitled to practise as such in any State or Territory of the Commonwealth or a police officer of any such State or Territory.

13.04 Where a defendant nominates to plead not guilty, the Registrar must serve the defendant personally or by post with a notice of a time and place that the Court will hear the charge. A notice under this rule must comply with Form 35.

13.05 A failure of the defendant to provide further submissions relating to penalty on the prescribed form does not constitute a failure to comply with these rules.

13.06 Where a defendant returns a form pleading guilty pursuant to r 13.02 and does not appear in Court pursuant to s 57A(3) of the Act, the Court may deal with the defendant pursuant to sections 62B and 62C of the Act.

14.00 ENFORCEMENT OF MONETARY AMOUNTS

Orders to Exclude Property from Sale or Direct Proceeds of Sale

14.01 An application to oppose the seizure and sale of assets pursuant to s 36(15) of the *Fines Enforcement and Debt Recovery 2017* must comply with Form 58.

14.02 An affidavit complying with Form 115 must be filed with the application.

14.03 If available, a copy of the Written Determination made by the Chief Recovery Officer and a copy of the notice listing the property seized must accompany the application.

14.04 The Registrar must serve a copy of the application and all accompanying documentation on the Chief Recovery Officer within one working day. It will be sufficient service for the purpose of this rule if the Chief Recovery Officer is notified in writing, electronically, by telephone, email or facsimile.

14.05 The Registrar must serve a copy of the application and all accompanying documentation on the debtor or alleged offender, if they are not the applicant. Service may be effected:

- (a) Personally;
- (b) By post; or
- (c) By email, if the address has been confirmed.

14.06 If the Court is satisfied that all reasonable efforts have been made to effect service on the debtor or alleged offender, but those efforts have failed, the Court may hear and determine the application.

14.07 The application must be listed for first mention as soon as practicable.

14.08 The Chief Recovery Officer must be present at the hearing.

14.09 Pending hearing the application, any seized property, the subject of the application, must not be disposed of, but held at such place and in such a manner as the Chief Recovery Officer directs.

14.10 An Order pursuant to section 36(15) of the Act must comply with Form 59.

Order to Release a Seized and Clamped or Impounded Vehicle

14.11 An application to release a seized and clamped or impounded vehicle pursuant to section 42(6) of the *Fines Enforcement and Debt Recovery Act 2017* must comply with Form 60.

14.12 An affidavit complying with Form 115 must be filed with the application.

14.13 If available, a copy of the Written Determination to clamp or impound and any Notice of Disposal made by the Chief Recovery Officer must accompany the application.

14.14 The Registrar must serve a copy of the application and all accompanying documentation on the Chief Recovery Officer within one working day. It will be sufficient service for the purpose of this rule if the Chief Recovery Officer is notified in writing, electronically, by telephone, email or facsimile.

14.15 The Registrar must also serve a copy of the application and all accompanying documentation on:

- (a) the debtor or alleged offender,
- (b) the interested parties identified on Form 60; and
- (c) the registered owner of the vehicle, if they are not the debtor, alleged offender or the applicant.

14.16 Service on any party, other than the applicant and the Chief Recovery Officer may be effected:

- (a) Personally;
- (b) By post; or
- (c) By email, if the address has been confirmed.

14.17 If the Court is satisfied that all reasonable efforts have been made to effect service on a party to the application, but those efforts have failed, the Court may hear and determine the application.

14.18 The application must be listed for first mention as soon as practicable.

14.19 The Chief Recovery Officer is required to search and, on the first mention date, notify the Court of any other interested parties to the application.

14.20 The Registrar must serve a copy of the application and all accompanying documentation on the interested parties identified by the Chief Recovery Officer.

14.21 The Chief Recovery Officer must be present at the hearing.

14.22 Pending hearing the application, any seized property, the subject of the application, must not be disposed of, but held at such place and in such a manner as the Chief Recovery Officer directs.

14.23 An order for the release of a seized and clamped or impounded vehicle must comply with Form 61.

Orders for Community Service and/or Completion of an Approved Treatment Program

14.24 An application for a community service order and/or an order for completion of an approved treatment program pursuant to section 46(1) of the *Fines Enforcement and Debt Recovery Act 2017* must comply with Form 56.

14.25 An outline of the financial circumstances of the debtor or alleged offender must be filed with the application.

14.26 It is sufficient for the Chief Recovery Officer to file Form 56 and an outline of the debtor or alleged offender's financial circumstances by electronic filing.

14.27 The Chief Recovery Officer must serve a copy of the application on the debtor or alleged offender.

14.28 For the purpose of r 14.27, service of the application may be effected:

- (a) Personally;
- (b) By post; or
- (c) By email, if the address has been confirmed.

14.29 The Chief Recovery Officer must be present at the hearing.

14.30 An order for community service and/or the completion of an approved treatment program must not be made in the absence of the debtor or alleged offender.

14.31 An order for community service and/or the completion of an approved treatment program must comply with Form 62.

Order Revoking Community Service and/or an Approved Treatment Program

14.32 An application to revoke a community service and/or an order for the completion of an approved treatment program pursuant to section 46(11) of the *Fines Enforcement and Debt Recovery Act 2017* must comply with Form 57.

14.33 An outline of the financial circumstances of the debtor or alleged offender must be filed with the application.

14.34 It is sufficient for the Chief Recovery Officer to file Form 57 and an outline of the debtor or alleged offender's financial circumstances by electronic filing.

14.35 The Chief Recovery Officer must serve a copy of the application and hearing details on the debtor or alleged offender.

14.36 For the purpose of r 14.34, service of the application may be effected:

- (a) Personally;
- (b) By post; or
- (c) By email, if the address has been confirmed.

14.37 The Chief Recovery Officer must be present at the hearing and provide the following details:

- (a) the amount of the original monetary amount;
- (b) the amount of the monetary amount paid;
- (c) the number of hours of community service performed;
- (d) the amount of time spent in an approved treatment program and the reduction of the monetary amount thereby; and
- (e) the amount of the monetary amount outstanding.

14.38 So long as the debtor or alleged offender has been served, the Court can revoke a community service order and/or an order for the completion of an approved treatment program in the absence of the debtor or alleged offender.

14.39 Where a community service order and/or an order for the completion of an approved treatment program is revoked, an order to restore the monetary amount must comply with Form 63.

15.00 NOTICE BY PROSECUTION OR COURT BEFORE IMPOSITION OF PENALTY

15.01 When the Court is contemplating making an order that a defendant be disqualified from holding or obtaining a driver's licence and notice is required pursuant to section 62C(2) or section 27C(3) of the Act, the notice shall comply with Form 15.

15.02 A notice pursuant to section 62C(2) or section 27C(3) of the Act, other than a notice to which Rule 15.01 applies, shall comply with Form 16.

15.03 Where an informant seeks an order in the nature of forfeiture, compensation, additional penalty or destruction, the information must so state.

15.04 A summons under section 168 (2) of the *Road Traffic Act 1961*, shall comply with Form 15A.

15.05 A notice under section 27C(5) or section 62B(8) of the Act must comply with Form 18.

16.00 PROOF OF PREVIOUS CONVICTIONS

16.01 A notice under section 62D of the Act shall comply with Form 17.

17.00 APPLICATION TO SET ASIDE

17.01 An application under section 76A of the Act shall comply with Form 19 or be in a form that appears on the reverse of Forms No 15 or 18.

17.02 A copy of the application shall be served on the other party.

17.03 Service and proof thereof shall be effected as for notices.

17.04 Upon the filing of the application the Registrar shall notify the parties of a hearing date and time.

18.00 INTERVENTION ORDERS, FOREIGN RESTRAINING ORDERS AND CONSEQUENTIAL ORDERS UNDER THE *INTERVENTION ORDERS (PREVENTION OF ABUSE) ACT 2009*.

18.01A In this rule:

“private application” means an application for an Intervention Order that is made by a proposed protected person.

“police/third party application” means an application for an Intervention Order that is not a private application.

18.01 Where a police officer issues an interim intervention order he or she must:

- a. state on the interim intervention order her or his identification and rank, the identification of the police officer of or above the rank of sergeant who authorised the issue of the order (if he or she is not of that rank) and the relevant Apprehension Report (AP) number; and
- b. record in writing the factual matters that were the grounds for issuing the order and provide a copy of those grounds to the defendant at the time of serving the interim order and as soon as practicable to the Commissioner of Police must give a copy of them to the Principal Registrar together with a copy or details of the Interim Intervention Order and details of the addresses and date of birth of the protected persons and the defendant, and
- c. at the first return date at Court of the interim intervention order advise the Court of any relevant orders or agreements under the *Family Law Act 1975 (Cth)*, *Children and Young People (Safety) Act 2017* and other matters under section 20(3) of the *Intervention Orders (Prevention of Abuse) Act 2009*, and
- d. arrange for relevant witnesses to be available for oral examination by the court to provide evidence to establish the factual matters that were the

grounds for issuing the order or provide affidavit evidence of those factual matters, and

- e. apply to the court prior to the hearing for any protected person who is available to give evidence to do so by audio visual link or other suitable means and the evidence shall then be heard in accordance with any direction of the court.

18.02 Where the Commissioner of Police revokes an interim intervention order issued by a police officer they must advise the Principal Registrar prior to the first return date with the reference number.

18.03 At the first return of an interim intervention order issued by a police officer:

- (a) the Court will hear evidence about the factual matters that were the grounds for granting the order and must record the evidence and where possible keep an audio visual record so that it can be available to the Court in later hearings;
- (b) subject to any order of the Court to the contrary, if the defendant contests any factual matter, or the issuing of a final order, any evidence given at the first return will be treated as evidence in chief, and further evidence in chief of the witness(es), cross examination and other evidence on behalf of the applicant or the defendant will be adjourned to a later date to be fixed by the Court.

18.04 Except as provided by r 18.04B, a police/third party application must comply with Form 28. The Form 28 Annexure must accompany the application and contain the following details of the protected person(s):

- (a) the person's full name;
- (b) address;
- (c) telephone number;
- (d) email address; and
- (e) preferred method of notification.

18.04A A private application must comply with Form 28AA. The Form 28AA Annexure must accompany the application and contain the following details of the protected person(s):

- (a) the person's full name;
- (b) address;
- (c) telephone number;
- (d) email address; and
- (e) preferred method of notification.

18.04B A police/third party application may be made on a Form 28AA if it is made on behalf of a proposed protected person under ss 20(1)(b) or 20(2)(b) of the *Intervention Orders (Prevention of Abuse) Act 2009* by a person who lives at the same address as the proposed protected person.

18.04C The Form 28 Annexure or Form 28AA Annexure must be stored electronically, separately from the hard file and any hardcopy of the document must be subsequently destroyed.

18.05 An application to the Court for an Intervention Order must be supported by evidence which may consist of an affidavit in Form 45 or oral evidence in person or by video link. The Court must record the evidence and where possible keep an audio-visual record so that it can be available to the Court in later hearings.

18.05AA An application to the Court for the making of an Intervention Order made by a police officer may also be supported by recorded evidence if permitted by the Court at an *ex parte* hearing or another hearing. Any such recorded evidence must be provided to the Court on a USB device delivered in a sealed envelope marked with the following identifying details: court file number or apprehension report number, the name of the defendant and witness and the date the recording was made.

18.05A Where the applicant intends to apply for evidence to be received by video link it must notify the Registrar not later than the day before the first hearing.

18.06 An Interim Intervention Order must comply with Form 29.

18.07 A Final Intervention Order must comply with Form 30.

18.08 An application for variation or revocation of an Intervention Order made by someone other than a person protected under the Order must comply with a Form 31 and must be served personally. The application must be accompanied by the Form 31 Annexure, however the annexure must not be served with the application for variation or revocation.

18.08A An application for variation or revocation of an Intervention Order made by a person protected under the Order must comply with a Form 31AA and must be served personally. The application must be accompanied by the Form 31AA Annexure, however the annexure must not be served with the application for variation or revocation. An application to the Court for the variation of an Intervention Order by a police officer may also be supported by recorded evidence upon application to the Court. Any such recorded evidence must be provided to the Court on a USB device delivered in a sealed envelope marked with the following identifying details: court file number or apprehension report number, the name of the defendant and witness and the date the recording was made.

18.08AB An application for an interim variation of a final Intervention Order made by a police officer must comply with a Form 31AB. The application must be accompanied by the Form 31AB Annexure. The annexure must not be served on or provided to a defendant subject to the final Intervention Order. The police applicant may appear in person. A police applicant may also be permitted to appear by telephone to make an application. If such an application is made, compliance with Form 31AB must be made within 8 days after the application. An application to the Court for the interim variation of an Intervention Order by a police officer may also be supported by recorded evidence upon application to the Court. Any such recorded

evidence must be provided to the Court on a USB device delivered in a sealed envelope marked with the following identifying details: court file number or apprehension report number, the name of the defendant and witness and the date the recording was made.

18.08B The Form 31 Annexure, Form 31AA Annexure and Form 31AB Annexure, containing the contact details of the protected person(s), must be stored electronically, separately from the hard file and any hardcopy of the document must be subsequently destroyed.

18.09 An order of variation or revocation of an Intervention Order must comply with Form 46.

18.09A An order for interim variation of a final order made by a police officer must comply with Form 46AA.

18.10 A Problem Gambling Order and any variation of it must comply with Form 36.

18.11 Notice of a Problem Gambling Attachment Order must comply with Form 37.

18.12 Notice of intention to assign a Tenancy must comply with Form 38.

18.13 A Tenancy Order and any variation of it must comply with Form 39.

18.14 An application to vary or revoke a Problem Gambling Order must comply with Form 40.

18.15 A request to register a Foreign Intervention Order or Foreign Restraining Order must comply with Form 41 and may be listed before a Magistrate. The applicant may appear in person or by telephone or file an affidavit explaining why the order should be registered and any reasons to support a request that it not be served. The Magistrate when ordering registration of the order must specify whether it is to be served or not.

18.15A The Form 41 Annexure, containing the contact details of the applicant, must accompany Form 41. The Form 41 Annexure must be stored electronically, separately from the hard file and any hardcopy of the document must be subsequently destroyed.

18.16 A notice of registration of a Foreign Intervention Order must comply with form 42.

18.17 Any Interim Intervention Order, other than an Interim Intervention Order issued by a police officer, or Intervention Order that is served on or provided to a defendant must be served with a multilingual notice in Form 43.

18.18 An application by a police officer to extend the time of permitted detention under Section 34 or Section 35 of the *Intervention Orders (Prevention of Abuse) Act 2009* must comply with Form 44.

18.19 A Magistrate may accept an application to make an order by telephone or other electronic means and it shall proceed and be recorded as the Magistrate

directs. The applicant must first establish to the Magistrate why particular urgency exists and why the matter cannot be dealt with by any other method contemplated by the *Intervention Orders (Prevention of Abuse) Act 2009*. The Magistrate must reduce any order made to writing, forward a copy to the applicant and the Principal Registrar as soon as possible and ensure it is entered into the Court record on the next business day.

18.20 An applicant who seeks permission to apply for an intervention order on behalf of a person to be protected must file the proposed application with a request that a magistrate give leave for it to be accepted and the application for permission shall be dealt with in accordance with the directions of the magistrate.

18.21 Where an applicant for an intervention order intends to apply for a tenancy order the applicant must seek directions of the court in relation to service of form 38 on the Landlord, the existing tenants and assignees.

18.22 Unless the court orders otherwise, where any aspect of an Intervention Order involving domestic abuse is contested, after no more than one adjournment it must be set for a pretrial conference, at which on the first occasion the matter must resolve, or be set for trial.

18.23 An applicant for an Intervention Order must investigate whether there are circumstances that may require the court to make special arrangements for the taking of the evidence of a witness and if there are, when the trial date is set, apply to the court to make special arrangements. Where a witness suffers from a physical or mental disability the court may require the applicant to obtain professional advice on how best to facilitate the taking of evidence from the witness and to minimise the witness's embarrassment or distress.

18.24 Where a defendant who is not represented by a lawyer contests the granting of an Intervention Order or any of its terms and wishes to ask questions of a person against whom it is alleged he or she has committed or might commit an act of abuse or a relevant child the defendant must submit the proposed questions in writing to the court before the time appointed for the hearing of that evidence. The court may give directions to permit further questions to be submitted as the hearing progresses.

18.25 There is no rule 18.25

18.26 The seal of the relevant registry of the Court shall be placed on orders and notices made under the *Intervention Orders (Prevention of Abuse) Act 2009*.

18.27 Where a form in a matter under the *Intervention Orders (Prevention of Abuse) Act 2009* is to be served on a defendant the address details of the protected person (including a protected person who is an applicant) are not to be included in any form that is served unless the address forms part of the order.

18.28 Where the applicant for an Intervention Order is not a police officer and the allegation is not domestic abuse the court at the earliest possible date must provide the opportunity for an assessment as to whether mediation is appropriate in accordance with s 21(4)(a).

18.29 A defendant and/or a defendant's solicitor is entitled, upon request, to be provided with a copy of the audio recording and/or transcript of any audio or audio visual recording of evidence given by a protected person at a preliminary hearing or at trial in relation to an application or an order made by the Court pursuant to the *Intervention Orders (Prevention of Abuse) Act 2009*. The defendant and/or defendant's solicitor is entitled to view an audio visual recording under the supervision of the Registrar.

Nationally Recognised Domestic Violence Orders

18.30 An application for a declaration that a domestic violence order is a recognised domestic violence order pursuant to s 29ZE of the *Intervention Orders (Prevention of Abuse) Act 2009* must comply with Form 46A.

18.31 The Form 46A Annexure containing the contact details of the protected person(s) must be stored electronically, separately from the hard file and any hardcopy of the document must be subsequently destroyed.

18.32 Where the Court makes a declaration pursuant to s 29ZD(1) of the *Intervention Orders (Prevention of Abuse) Act 2009*, a notice of the declaration must comply with Form 46B.

18.33 Where the Court makes a declaration pursuant to s 29ZD(1) of the *Intervention Orders (Prevention of Abuse) Act 2009*, the Principal Registrar must, as soon as practicable, notify the prescribed public sector agencies of the declaration.

18.34 Where the Court varies or revokes a nationally recognised domestic violence order that was issued interstate, or declares an interstate domestic violence order to be a recognised domestic violence order, the Principal Registrar must, as soon as practicable, notify the Court in which the order was made of the variation, revocation or declaration.

18.35 A certificate issued pursuant to s 29W(1) of the *Intervention Orders (Prevention of Abuse) Act 2009* must comply with Form 45A.

18A.00 CHILD PROTECTION RESTRAINING ORDERS AND PAEDOPHILE RESTRAINING ORDERS UNDER THE *CRIMINAL PROCEDURE ACT 1921*.

18A.01 An application for a Restraining Order pursuant to s 99AA shall comply with Form 28A.

18A.02 A summons to a defendant on an application for a Restraining Order pursuant to s 99AA shall comply with Form 29A.

18A.03 An application for a Restraining Order pursuant to s 99AAC shall comply with Form 28B.

18A.04 A summons to a defendant on an application for a Restraining Order pursuant to s 99AAC shall comply with Form 29B.

18A.05 A Restraining Order made ex parte pursuant to ss 99AA and 99C(2) of the Act and summons to a defendant shall comply with Form 31A and a final Restraining Order pursuant to s 99AA(1) shall comply with Form 31C.

18A.06 A Restraining Order made ex parte pursuant to ss 99AAC and 99C(2) of the Act and summons to a defendant shall comply with Form 31B and a final Restraining Order pursuant to s 99AAC(2) shall comply with Form 31D.

18A.07 An application pursuant to s 99F (1) to vary or revoke a restraining order shall comply with Form 32.

18A.08 A defendant seeking leave to make such an application shall also file an affidavit setting out details of the substantial change in the relevant circumstances since the order was made or last varied. The Registrar shall serve a copy of the application for leave and affidavit on the original applicant by post directed to the original applicant's last known address. Should leave to make an application to vary or revoke a restraining order be granted, the Form 32 filed shall be treated as the application to vary the order and served with the affidavit. The hearing of the application shall be adjourned to enable the Registrar to serve a copy of the Form 32 on the person or persons for whose benefit the order was made (if they are not the original applicant) by pre-paid post directed to their last known address.

18A.09 An application by an original applicant or a person for whose benefit the order was made, shall be served by the Registrar on the defendant, the applicant and the person or persons for whose benefit the original order was made (if not the applicant), by post directed to their last known address.

18A.10 An order varying a Restraining Order shall comply with Form 33.

18A.11 An order revoking a Restraining Order shall comply with Form 34.

18AA.00 INTERVENTION ORDERS UNDER THE *BAIL ACT 1985*

18AA.01 An intervention order made under s 23A of the *Bail Act 1985* must comply with Form 29AA and must be served on the defendant in accordance with s 21 of the *Intervention Orders (Prevention of Abuse) Act 2009*.

18AA.02 Unless the Court orders otherwise, an intervention order made under s 23A of the *Bail Act 1985* is an interim intervention order.

18AAA.00 INTERVENTION ORDERS UNDER THE *SENTENCING ACT 2017*

18AAA.01 An intervention order made under s 28 of the *Sentencing Act 2017* must comply with Form 30 and must be served on the defendant in accordance with s 23(5a) of the *Intervention Orders (Prevention of Abuse) Act 2009*.

18B.00 *CHILD SEX OFFENDERS REGISTRATION ACT 2006*

18B.01 An application pursuant to Section 9 (1a) of the *Child Sex Offenders Registration Act 2006* must comply with Form 23. A copy of the paedophile restraining order relating to the application must also be attached.

18B.02 An application pursuant to section 15A (5) of the *Child Sex Offenders Registration Act 2006* must comply with Form 23.

18B.03 An application pursuant to section 15A (7) of the *Child Sex Offenders Registration Act 2006* must comply with Form 23.

19.00 ELECTION FOR TRIAL IN SUPERIOR COURT

19.01 The form of election provided pursuant to s 105(1)(d) of the Act shall comply with Form 8.

19.02 The defendant shall be provided with a form of election—

(a) where the defendant is served with a summons, at the time of service of the summons;

(b) in any other case when the defendant first appears before the Court.

19.03 An election is made by filing a copy of the information to which the election relates with duly completed form of election annexed thereto.

19.04 An election must be made no later than the defendant's second appearance in the Court.

19.05 Where the defendant elects for trial in a superior court, all of the rules regarding committal proceedings will apply.

19.06 The Registrar shall notify the prosecutor of the filing of an election.

19.07 If an election is made it must be made with respect to all the charges in the information unless the Court orders otherwise.

19.08 Except for sub-rule 19.07 this Rule does not apply to an election made pursuant to s 115(3)(b)(ii) of the Act.

19A.00 PRE-COMMITTAL

19A.01 The preliminary brief required to be filed by SA Police pursuant to s 106(1)(c)(ii) of the Act shall where possible be filed through the e-briefs portal. If the preliminary brief is unable to be filed electronically, it must be filed in triplicate.

19A.02 An application for a pre-committal subpoena pursuant to s 107 of the Act must comply with Form 11.

19A.03 SA Police may file the preliminary brief in duplicate, but only if SA Police have provided a copy of the preliminary brief to the Office of the Director of Public Prosecutions prior to filing under this rule.

20.00 COMMITTAL PROCEEDINGS

20.01 For the purposes of s 106(1)(e) of the Act, the Director of Public Prosecutions must notify

(a) the Court; and

(b) either defence counsel (if known) or, if practicable, the defendant

in writing as to whether a charge determination has been made no later than two working days prior to the defendant's second appearance.

20.02 A notice filed pursuant to s 112(1) or s 112(2) of the Act must be filed in the Court no later than 5 working days prior to the date appointed for the answer charge hearing.

20.03 The committal brief required to be filed by the prosecutor pursuant to s 111 of the Act shall be where possible filed through the e-briefs portal and shall be accompanied by a document:

(a) containing the names of the witnesses providing each statement; and

(b) identifying exhibits and other evidentiary material.

Material that is sensitive or in relation to which privilege is claimed need not be filed through the e-briefs portal.

If the committal brief and accompanying document are unable to be filed electronically, they must be filed in triplicate.

20.04 SA Police may file the committal brief and the accompanying document in duplicate, but only if SA Police have provided a copy of the committal brief and accompanying document to the Office of the Director of Public Prosecutions prior to filing under this rule.

21.00 CALLING MATTER ON FOR GUILTY PLEA

21.01 A defendant seeking to have their matter called on for the purpose of entering a guilty plea must notify the Court using Form 9B within the period of 4 weeks after the committal appearance pursuant to s 110(3) of the Act.

21.02 A defendant otherwise seeking to have their matter called on for the purposes of entering a plea of guilty must notify the Court in writing.

21.03 If the Court receives a notification pursuant to this rule, the Registrar must notify the prosecution and the defendant as to the date and time fixed for the hearing.

22.00 WRITTEN PLEA OF GUILTY WHERE INFORMATION LAID

22.01 A written plea pursuant to section 113(1)(a) of the Act shall comply with Form 9.

22.02 A written plea can only be made if it is a plea of guilty to all charges.

22.03 The defendant shall be provided with the form at the time the defendant is provided with a copy of the information.

22.04 The Form shall be signed by the defendant in the presence of a solicitor who shall certify that the defendant has had legal advice before signing the form.

22.05 A defendant who provides a written plea pursuant to this rule must indicate on Form 9 whether they seek to be excused from personally attending on the next hearing date. If a defendant does so indicate, they must file Form 9 at least 14 days before the next hearing date.

22.06 Immediately upon receipt of a duly completed Form 9, the Registrar shall provide a copy to the prosecutor.

22.07 A prosecutor who receives a copy of a duly completed Form 9 pursuant to rule 22.06 must indicate on the Form 9 whether they consent to the defendant's non-attendance at the next hearing and must return the completed Form 9 to the Registrar as soon as practicable.

22.08 Upon receipt of a duly completed Form 9 in accordance with rule 22.07, the Registrar must place the form before a Magistrate for their approval. The Registrar must inform the defendant and the prosecutor of the Magistrate's decision and, if approval is given for the defendant to be excused, the Registrar must ensure that the court file is endorsed to this effect.

22.09 Unless advised to the contrary, a defendant who has provided a duly completed Form 9 pursuant to this rule is not excused from attending court on the next hearing date.

22.10 Where a defendant is excused from attending pursuant to rule 22.08, they must be represented at court on the next hearing date by a legal practitioner.

22.11 A defendant who does not appear after duly pleading guilty in writing shall be informed of the outcome by the Registrar by service on the defendant or the defendant's representative of a notice which shall comply with Form 20.

22A.00 ADMISSION AND CONSENT TO SENTENCE OF MAJOR INDICTABLE OFFENCE IN MAGISTRATES COURT

22A.01 An admission by a defendant of a charge of a major indictable offence and the consent of both the defendant and the Director of Public Prosecutions pursuant to s 116(1) of the Act must comply with Form 9A.

22A.02 Once completed, the form must be lodged with the Court either at the time the defendant appears before the Court or when the defendant returns a written plea admitting the charge.

23.00 NOTICE UPON COMMITTAL

23.01 The written statement referred to in s 115(4) of the Act shall, in the case of an information being prosecuted by the Director of Public Prosecutions of South Australia, comply with Form 21A.

23.02 The written statement referred to in s 115(4) of the Act shall, in the case of an information being prosecuted by the Director of Public Prosecutions for the Commonwealth, comply with Form 21B.

24.00 PROCEDURAL PROVISIONS

24.01 The following provisions of the *Criminal Law Consolidation Act 1935* apply (with necessary adaptations and modifications) to the trial or sentencing of a person charged with a minor indictable offence :

Sections 19B(3), 19B(4a), 19B(5), 25

24.02 The following provisions of the *Criminal Procedure Act 1921* apply (with necessary adaptations and modifications) to the trial or sentencing of a person charged with a minor indictable offence:

Sections 128(2)-(4), 133, 140

25.00 ORDER OF COMMITTAL

25.01 An order of committal for trial or sentence shall comply with Form 10.

25.02 A Warrant remanding a defendant for trial or sentence to a superior Court under s 113 of the Act or s 9(7) of the *Magistrates Court Act 1991* shall comply with Form 7.

26.00 PRE-TRIAL PREPARATION

26.01 Prior to any matter being listed for summary trial the parties must have ascertained the precise matters in issue both as to fact (in detail) and law so as to :

- (a) fully explore the possibility of disposing of the charge other than by way of trial;
- (b) enable the duration of the hearing to be estimated as accurately as possible,
- (c) determine what evidence if any may be proved by affidavit;
- (d) facilitate the course of the trial,

and shall inform the Court as to each of the above.

26.02 To the extent necessary to comply with this Rule the parties must confer fully and frankly.

26.03 Prior to a matter being set down for hearing the defence must give notice to the prosecution if evidence of alibi may be called. The notice must give details of the proposed evidence including the name and address of the witnesses.

26.04 Insufficient compliance with this Rule must be taken into account on the question of costs.

26.05 To ensure compliance with Rule 8 and this Rule the Court may on notice to the parties require that they attend a pre-trial conference.

26.06 A pre-trial conference:

- (a) shall be attended by counsel briefed to appear at the trial (or, if the attendance of any party's counsel is not practicable, by that party's solicitor);
- (b) shall not be open to the public unless the Court directs to the contrary;
- (c) may be presided over by such person as the Court may nominate.

26.07 Nothing said by or on behalf of a defendant at a pre-trial conference and no failure by a defendant or a defendant's representative to answer a question at a pre-trial conference shall be used in any subsequent trial or shall be made the subject of any comment at that trial.

26.08 Where in the course of any criminal proceedings:

- (a) a person seeks separate trials of different charges alleged against him or her in the same information;
- (b) a person seeks a separate trial from that of another person and charged in the same information;

- (c) a party desires to make an application which, if granted, would have the effect of postponing or delaying a trial which has been listed for hearing;
- (d) a Magistrate directs that a written application should be made,

the application shall be made by issuing and serving an application in Form 23.

26.09 Where an application is made under Rule 26.08 it shall state:

- (a) the order or orders sought;
- (b) sufficient particulars of the grounds relied upon to enable any other party to have proper notice of whether the calling of evidence will be necessary in order to resolve the issues raised;
- (c) the nature of any question of law sought to be raised.

26.10 An application under Rule 26.08 shall be filed and served on all other parties not less than 14 days prior to the date fixed for the hearing of the trial in such proceedings.

26.11 Subject to any Act and these Rules, on the filing of an application under Rule 26.08, the Registrar must fix a date, time and place for the hearing of the application and give at least 21 days notice of the hearing by providing a copy of the application to the person(s) nominated by the applicant to be the person(s) to be served.

26.12 Where a date for trial has already been fixed, the Registrar may endorse the application that it is to be heard by the trial Magistrate at or immediately prior to the commencement of the trial.

26.13 Where a party seeks to adduce evidence to establish a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue under s 34P of the *Evidence Act 1929*, a Notice of Intention must be filed with the Court and service on all other parties to the proceedings:

- (a) in the case of a Notice by the Prosecuting Authority, in compliance with Form 102A, within 21 days following the date on which the proceedings are fixed for trial; and
- (b) in the case of a Defendant, in compliance with Form 102B, at least 21 days before the trial date.

26.14 Where a party intends to object to the admission of proposed evidence of discreditable conduct, a written Notice of Objection, in compliance with Form 102C, must be filed with the Court and served on all other parties to the proceedings:

- (a) in the case of an objection to evidence proposed by the Prosecuting Authority, no later than 28 days after the filing of the Prosecuting Authority's Notice;
- (b) in the case of an objection to evidence proposed by a Defendant, at least 7 days before the listed trial date.

26.15 The Court may vary the time within which any Notice under this rule may be filed and served.

26.16 If a party seeks to rely upon a recorded interview, pursuant to s 13BB of the *Evidence Act 1929*, they must disclose and serve an electronic copy on all other parties not less than 7 days before the pre-trial conference. An electronic copy of the transcript of the recording must be disclosed and served not less than 14 days before the trial. A recorded interview provided pursuant to s 13BB must be provided to the Court on a USB device delivered in a sealed envelope marked with the following identifying details: court file number or apprehension report number, the name of the defendant and witness, and the date the recording was made.

26A.00 PROTECTION OF IDENTITY OF ALLEGED VICTIMS OF SEXUAL OFFENCES IN COMMITTAL PROCEEDINGS

26A.01 The following Rule applies to committal proceedings for sexual offences. For the purposes of this Rule, a sexual offence includes any offence involving a sexual act or an attempt to commit a sexual act.

26A.02 The name of the alleged victim shall not be read aloud in Court. The alleged victim can be referred to as 'another person' or by other suitable non identifying language.

27.00 SUMMONS TO DEFENDANT

27.01 Unless otherwise provided a summons to a defendant must be in hardcopy in triplicate and shall comply with Form 2, Form 3, or Form 5 as the case may require.

27A.00 POLICE ISSUED SUMMONSES

27A.01 A summons to a defendant to attend the Magistrates Court in relation to a summary offence may be issued by a member of SA Police acting in the execution of his or her duty.

27A.02 A summons issued by a member of SA Police must be in triplicate and comply with Form 4A. The summons must be completed by the issuing member of SA Police. The copies of the summons must be distributed as follows:

- (a) one copy must be retained by SA Police; and
- (b) one copy must be personally served on the defendant; and
- (c) one copy must be filed in the Court no later than 10 working days prior to the hearing date on the summons.

27A.03 An information complying with rule 12 relating to the offence(s) listed in the summons and a Certificate of Service must be filed at the same time as the copy of the summons in the Court.

27A.04 The hearing date and location on the summons will be selected by SA Police from a set of dates and locations that have been provided by the Registrar to SA Police. The hearing date selected will be no less than 1 month and no more than 4 months from the date of issue of the summons, or if the Court will not be sitting at that location with that period, the next sitting date of the Court.

27A.05 Any summons purportedly issued with a hearing date and location that has not been provided by the Registrar will be void and of no effect.

27A.06 The number of summonses issued by SA Police bearing the same hearing date and location must not be more than 20.

27A.07 The number of summonses issued by SA Police bearing the same hearing date and location must not be more than 10 during a declared major emergency under section 23(1) of the *Emergency Management Act 2004*.

28.00 POLICE DISQUALIFICATION

28.01 Where a member of the police force gives a person a notice of immediate licence disqualification under section 45D(2) or 47IAA(2) of the *Road Traffic Act 1961* and has made a determination pursuant to section 45D(6) or 47IAA(7a)(a), then if an information is laid, it must be filed in the court within a reasonable time. The information must note the fact that a notice of immediate licence disqualification or suspension has been given and include the relevant notice 'I' number.

28.02 An application to have the disqualification or suspension lifted or reduced under section 47IAB shall comply with Form 79. An application to have the disqualification or suspension lifted under section 45E shall comply with Form 79A.

28.03 Once an application to have the disqualification or suspension lifted or reduced is filed it shall be listed for a directions hearing before a magistrate immediately. If no magistrate is available in the registry where it is filed the directions hearing may be heard by a magistrate by telephone.

28.04 The registrar must advise the criminal justice section of SAPOL who deal with matters in the registry when and where the directions hearing will be heard but if the police do not attend the directions hearing it may be heard in the absence of the police.

28.05 At the directions hearing the magistrate may appoint a time and place for hearing the application and give directions as to the service of the application and notice of hearing and other matters.

28.06 Service on the criminal justice section of SAPOL who deal with matters in the registry where the application will be heard shall be deemed to be service on the Commissioner of Police.

28.07 Once the Commissioner of Police is served with an application, an apprehension report detailing the police case must be available at the hearing of the application.

28.08 When hearing an application the court may take any failure to provide an information or an apprehension report into account in assessing the merits of the application.

28A.00 WHEEL CLAMPING; SEIZURE OF MOTOR VEHICLE

28A.01. In this Rule "the Act" means the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*.

28A.02. An application made pursuant to s 7, s 12 or s 21 of the Act shall comply with Form 83.

28A.03. An order to extend a clamping period or to impound or forfeit a motor vehicle shall comply with Form 84.

28A.04. An order for relief shall comply with Form 85.

28A.05. An application for a warrant to seize a motor vehicle pursuant to s 17 must comply with Form 86.

28A.06. A warrant to seize a motor vehicle must comply with Form 87.

28A.07. A warrant to seize a motor vehicle after a telephone application must comply with Form 88.

28A.08. A duplicate warrant made pursuant to s 17(6)(f) must comply with Form 89.

28A.09. An application made under this Act and notice of the hearing date must be served by the Registrar on all the registered owners of the motor vehicle, anyone who holds a registered security interest in respect of the motor vehicle under the *Personal Property Securities Act 2009* (Cth) and any person known to the prosecution or credit provider who claims ownership of the motor vehicle or who is likely to suffer financial or physical hardship as a result of the making of the order.

28A.10. If an application for relief is made by a credit provider, the application and notice of the hearing date must also be served by the Registrar on the Commissioner of Police (if the motor vehicle is clamped or impounded under Part 2) or the Sheriff (if the motor vehicle is impounded or has been forfeited under Part 3).

29.00 APPLICATIONS

29.01 The jurisdiction of the Court pursuant to section 10 of the *Magistrates Court Act 1991* may be invoked on application complying with Form 23 and supported by an affidavit with Form 115.

29.02 An application may be served and service thereof proved in the same manner as for a summons.

29.03 If the Court is satisfied that:

- (i) an application has been duly served, and
 - (ii) the respondent does not appear at any hearing thereof,
- the Court may hear and determine the application in the absence of the respondent.

29.04 An application to quash or stay proceeding (including an application made on the grounds of an abuse of process) must be filed and served 14 days prior to the date set for trial.

29.05 The applicant must serve a copy of the application and supporting affidavit on the interested parties and file a proof of service of the application prior to the hearing.

29B.00 PRELIMINARY HEARINGS

29B.01 When in the course of any criminal proceedings:

- (a) a person charged with an offence set for trial seeks separate trials of different charges alleged against him in the same information;
- (b) a person charged with an offence set for trial seeks a separate trial from that of another person charged with an offence set for trial and charged in the same information;
- (c) a party seeks to raise any question relating to the admissibility of evidence or any other question of law affecting the conduct of the trial prior to the opening of the case for the prosecution or the calling of witnesses;
- (d) a party desires to make application which, if granted would have the effect of postponing or delaying a trial which has been listed for hearing;
- (e) a party seeks admission of evidence in the form of an audio-visual record under s 13BA of the *Evidence Act 1929*;
- (f) a party seeks admission of evidence in the form of an audio record or audio-visual record made by a police officer under s 13BB of the *Evidence Act 1929*;
- (g) a party seeks an order for communication assistance for a witness under s 14A of the *Evidence Act 1929*;
- (h) a close relative of the accused seeks an exemption from giving evidence under s 21 of the *Evidence Act 1929*;

- (i) a party desires to make some other application which cannot be reasonably made without notice to the other party or parties; or
- (j) a Magistrate directs that a written application should be made;

the application is to be made by issuing and serving an application using Form 23.

29B.02 When an application is made under Rule 29B.01 it is to state:

- (a) the order or orders sought;
- (b) sufficient particulars of the grounds relied upon to enable each other party to consider whether evidence will be necessary in order to resolve the issues raised;
- (c) the nature of any question of law sought to be raised.

29B.03 An application under Rule 29B.01 is to be filed and served on all other parties not less than 14 days prior to the date fixed for the hearing of the trial in such proceedings.

29B.04 No question or matter of a kind referred to in Rule 29B.01 is to be raised at the trial of the proceedings unless an application has been made in accordance with Rule 29B.00 or unless the Magistrate considers that there are circumstances which justify waiving compliance with the Rule.

29B.05 A written application for the admission of evidence in the form of an audio-visual record under s 13BA of the *Evidence Act 1929* must be supported by an affidavit.

29D.00 Pre-Trial Special Hearings

29D.01 An application for a pre-trial special hearing under s 12AB of the *Evidence Act 1929* must:

- (a) be made by filing and serving an application in Form 23;
- (b) be filed and served at least 21 days prior to the matter being listed for trial; and
- (c) be supported by an affidavit.

29D.02 A notice objecting to a pre-trial special hearing must be made on a Form 23A and must be filed and served within 14 days of the objecting party being served with the application for a pre-trial special hearing.

30.00 CONTACT INFORMATION

30.01 An address for personal service and the telephone number of the party filing or serving a document must appear on the document unless the Court, a Registrar or Deputy Registrar directs otherwise.

31.00 CONTEMPT – WARRANT

31.01 A Warrant of Commitment for contempt under section 46 of the *Magistrates Court Act 1991* shall comply with Form 24.

32.00 LEGAL REPRESENTATION

32.01 The legal representative of a party to proceedings must inform the Court of that status and of any change therein as soon as practicable.

33.00 PROCEEDINGS BROUGHT FORWARD

33.01 Notwithstanding that proceedings are listed for a future date and time the Court may of its own motion or on the application of a party bring the proceedings forward.

34.00 SUBSTANTIATION ON OATH

34.01 Where it is necessary for an information to be substantiated on oath or affirmation before a warrant to arrest can issue it is not necessary that the substantiation be by the informant.

35.00 AFFIDAVIT EVIDENCE

35.01 In any proceedings before the Court unless the Court directs otherwise any matter may be proved by affidavit without the necessity of calling oral evidence unless the other party objects.

35.02 The party intending to rely on the affidavit must serve the other party with a copy thereof at least 21 days before the hearing together with a copy of this Rule.

35.03 The party upon whom the affidavit is served may object by notice in writing (giving detailed reasons therefore) to the party intending to rely on it at least 10 days before the hearing.

35.04 Service of the affidavit or notice may be effected by post either on the party or the party's legal representative.

35.05 The manner of service must be endorsed on a copy of the affidavit or notice.

35.06 The Court may order costs against a party unreasonably objecting to the use of an affidavit.

35.07 The Court may if it is not satisfied that a genuine dispute exists between the parties or that compliance with the rules of evidence might involve unreasonable expense or delay direct that certain evidence be given by way of affidavit.

35.08 Where any proceedings before the Court or a Registrar may be dealt with, without notice to any other party, any matter may be proved by affidavit filed in the registry without service on any other party.

36.00 PRACTICE AND PROCEDURE

36.01 Subject to these Rules the practice and procedure of the Court in its Criminal Division shall be that which pertained immediately prior to the commencement of the *Justices Amendment Act 1991*.

36.02 The Court may direct that any person or persons may attend any hearing by means of a video link or telephone.

36.03 In deciding whether to conduct a court in the manner described in Rule 36.02, the judicial officer constituting the court shall have regard to:

- (a) the nature of the proceedings;
- (b) the day, or time of day at which they are being conducted;
- (c) the location of the various parties;
- (d) the urgency of the matter before the court;
- (e) the cost and inconvenience in having the person attend before the court;
- (f) the health of the person wishing to appear by telephone or video link, or the effect on their health if they were required to attend before the court;
- (g) the attitude of the parties to the matter being dealt with in that way; and
- (h) any other matter that the court thinks is relevant.

36.04 A hearing conducted in accordance with Rule 36.02

- (a) shall be deemed to have taken place at the place at which the judicial officer constituting the court is, unless the judicial officer orders otherwise; and
- (b) need not be open to the public.

37.00 ELECTRONIC RECORDS

37.01 The Registrar may keep the record of the Court in an electronic form.

37.02 A minute or memorandum of a conviction or order required to be made by section 70 of the Act may be made, recorded, authenticated and maintained in an electronic form.

38.00 FORMS

38.01 Forms not provided for herein may be prepared at the direction of the Court or by the Registrar on behalf of the Court.

38.02 The party instituting a proceeding or process shall prepare the requisite form and shall provide such number of copies thereof as the Registrar directs.

38.03 Forms under the following sections of the Act shall comply with the corresponding forms set out hereunder:

Sections 58 and 104(b)(i)	Warrant of Apprehension	Form 6
Sections 59,104 and 120(2)	Warrant of Remand	Form 7

39.00 ENFORCEMENT OF ORDER AGAINST BODY CORPORATE

39.01 A request for the registration of an Order to which section 188 of the Act applies shall comply with Form 25.

39.02 Upon registration, such an Order may be enforced as if it were an order of a Court in South Australia

40.00 RELIEF FROM COMPLIANCE WITH RULES

40.01 The Court may relieve any party from compliance with the Rules if the justice of the case requires it and on such terms as the Court orders.

41.00 SENTENCING ACT 2017

41.01 In this rule 'the Act' means the *Sentencing Act 2017*.

41.02 The powers of the Court must be exercised by a magistrate in:

- (a) proceedings under s 115(3) of the Act where failure to comply with a community service order is disputed.
- (b) applications under s 116 of the Act.

41.03 Where a court

- (a) orders that a defendant enter into a bond, extends or varies a bond in any way, pursuant to the provisions of the Act; or
- (b) orders that a defendant enters into a recognisance or undertaking of any kind, or extends or varies a recognisance or undertaking of any kind;

the bond, recognisance, or undertaking may be entered into, varied or extended before a Registrar or Justice of the Peace.

41.03A Where a defendant is required to acknowledge the terms of a Community Service Order, a Home Detention Order or an Intensive Correction Order, the order may be acknowledged, varied or extended before a Registrar or Justice of the Peace.

41.03B Where a defendant is required to acknowledge the terms of a Part 8A licence, the licence may be acknowledged, varied or extended before a Registrar, Justice of the Peace or a mental health worker.

- 41.04 (a) A person wishing to furnish the Court with a victim impact statement pursuant to s 14 of the Act shall provide such statement in writing either to the Director of Public Prosecutions (the DPP), or to the Officer in Charge of Prosecution Services of South Australia Police (SAPOL) whoever shall have the conduct of the prosecution.
- (b) A copy of the statement shall be provided to the presiding magistrate upon the defendant pleading guilty to, or being found guilty of, the offence or offences to which the statement relates.
 - (c) The presiding magistrate after consideration may appoint the time at which the statement will be read to the Court and may refuse to postpone the reading of the statement if the resulting delay would be unreasonable in the circumstances.
 - (d) If the person providing the statement is not in the Court when the presiding magistrate gives directions pursuant to sub-rule 41.04(c), the DPP or SAPOL shall advise the person of the time fixed by the Court for the reading of the statement.
 - (e) Subject to sub-rule 41.04(f), the person making the statement may amend it at any time prior to the time at which it is read to the Court.
 - (f) The presiding magistrate may direct that irrelevant material in the statement not be read out to the Court.
 - (g) A person who has furnished a statement in accordance with s 14(1) of the Act may at any time withdraw the statement as a victim impact statement provided pursuant to that section in which event the statement will not be read out to the Court.

(h) A statement which is withdrawn pursuant to sub-rule 41.04(g) may be furnished to the court by the prosecutor pursuant to s 13 of the Act.

41.05 A warrant for commitment made under this Act shall comply with Form S1, except for a warrant for commitment for non-compliance with a non-pecuniary order, which shall instead comply with Form S2.

41.06 Forms under the following sections of the Act shall comply with the corresponding Forms set out hereunder:

Section 25	Notice of Community Service Order	Form S3
Section 47(3), (7)	Application to Fix or Extend a Non-Parole Period	Form S22
Section 71(1)	Home Detention Order	Form S5
Section 73(5)(a)	Summons	Form S6
Section 73(5)(b), (7)	Warrant of Apprehension	Form S7
Section 81(1)	Intensive Correction Order	Form S8
Section 83(5)(a)	Summons	Form S9
Section 85(5)(b), (7)	Warrant of Apprehension	Form S10
Section 96	Suspended Sentence Bond	Form S11
Section 97	Good Behaviour Bond	Form S12
Section 97, 100	Guarantee of Good Behaviour Bond	Form S13
Section 103	Application to Vary or Revoke a Condition of Bond or to Discharge Bond	Form S14
Section 110(2)	Application to Vary a Community Service Order	Form S15
Section 113(1)(a)(i)	Summons	Form S16
Section 113(1)(a)(ii)	Warrant of Apprehension	Form S17
Section 115(3)(a)	Notice to Show Cause	Form S18
Section 115(3)(b)	Warrant of Arrest	Form S19
Section 113(2), 115(4)	Warrant of Arrest	Form S20
Section 125	Certificate for Victim of Identity Theft	Form S21

41.07 In accordance with s 32(3) of the Act a copy of a List of Additional Charges, as filed in the Court, must be given to the defendant by the prosecutor.

41.08 The Registrar must serve a copy of an Application to Vary a Community Service Order on the Minister for Police, Emergency Services and Correctional Services and the person subject to the Community Service Order.

41.09 An application for a summons under s 113 of the Act, must be accompanied by a copy of the signed bond relating to the application.

42.00 BAIL ACT 1985

42.01 In this rule "the Act" means the *Bail Act 1985*.

42.02 A warrant of arrest under s 18(1)(a) of the Act shall comply with Form 6.

42A.00 DOG AND CAT MANAGEMENT ACT 1995

42A.01 An application pursuant to sections 47(4) or 59 of the *Dog and Cat Management Act 1995* shall be made in the Criminal Division of the Court.

43.00 AFFIDAVITS

43.01 An affidavit must be in accordance with Form 115.

43.02 In this rule the jurat is called "the witnessing clause".

43.03 The body of an affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject matter.

43.04 An affidavit used in interlocutory proceedings may contain statements based on information received and believed by the person making the affidavit to be true with the sources and the grounds thereof.

43.05 Except as provided by sub-rule 43.04, or unless the Court otherwise orders, an affidavit shall contain only such facts as the person making the affidavit is able of his or her own knowledge to prove.

43.06 Where an affidavit is made by two or more persons, it shall have the full name of each person stated in the witnessing clause, or if sworn separately in separate witnessing clauses.

43.07 Where an affidavit is filed on behalf of a corporate party which does not have a solicitor acting for it, the affidavit shall be sworn by a director, secretary or other person duly authorised by the body corporate to make the affidavit on its behalf.

43.08 Where it appears to the witness before whom an affidavit is sworn that the person is illiterate or blind, that witness shall certify in or below the witnessing clause that at the time the affidavit was sworn -

- (a) the affidavit was read to the person making the affidavit; and
- (b) the person making the affidavit seemed to understand the affidavit.

43.09 Where it appears to the witness before whom an affidavit is sworn that the person is by reason of physical incapacity incapable of signing the affidavit, the person shall certify in or below the witnessing clause that-

- (a) the affidavit was read by or to the person making the affidavit
- (b) the person making the affidavit seemed to understand the affidavit; and
- (c) that the person making the affidavit swore the affidavit.

43.10 Where an affidavit is made by a person who does not have an adequate command of the English language -

- (a) the affidavit and the oath or affirmation to be taken shall be translated to the person making the affidavit by an interpreter into a language which the person making the affidavit understands; and
- (b) the interpreter in writing state his/her full name and shall certify in or below the witnessing clause that paragraph (a) has been complied with.

43.11 Where an affidavit is made by:-

- (a) an illiterate or blind person;
- (b) a person making the affidavit who by reason of physical incapacity is incapable of signing the affidavit; or
- (c) a person who does not have an adequate command of the English language,

and the certificate required by sub-rule 43.08, 43.09 or 43.10 has not been provided, the affidavit may not be used unless the Court is satisfied that the affidavit was read or translated to the person making the affidavit, as the case requires, and the person making the affidavit seemed to understand it.

43.12 Subject to sub-rule 43.14, each page of an affidavit shall be signed and dated by the person making the affidavit and the witness before whom it is sworn.

43.13 Subject to sub-rule 43.14, alterations, interlineations or erasures in an affidavit shall be initialled by the person making the affidavit and the witness before it is sworn.

43.14 It shall not be necessary for a person making the affidavit who is physically incapable of signing the affidavit to do so, or to initial alterations, interlineations or

erasures but the witness before whom the affidavit is sworn shall initial alterations interlineations or erasures.

43.15 A document to be used in conjunction with an affidavit may be annexed and not exhibited.

43.16 An annexure or exhibit to an affidavit shall bear an endorsement, signed by the witness before whom the affidavit is sworn, that identifies the annexure as the particular annexure referred to in the affidavit.

43.17 An affidavit may, unless the court otherwise orders, be received in evidence notwithstanding any irregularity in form.

43.18 The Court may, at any stage of proceedings, order to be struck out any matter in an affidavit which -

- (a) is unnecessary, irrelevant, prolix, scandalous or argumentative; or
- (b) sets out opinions other than opinions of persons properly qualified to give them.

43.19 An affidavit may be sworn within South Australia before a Registrar, a Deputy Registrar, a Notary Public, a commissioner for taking affidavits in the Supreme Court, a Justice of the Peace for this State, a commissioned officer of the South Australian Police Force, an Officer-in-Charge of a Police Station of, or above, the rank of Sergeant or as permitted by the *Evidence (Affidavits) Act 1928*.

43.20 An affidavit may be sworn outside South Australia before any of the persons specified in section 66 of the *Evidence Act 1929*.

44.00 PRACTICE DIRECTIONS

44.01 The Chief Magistrate may issue, vary or revoke a Practice Direction and the practice and procedure of the Court, subject to these Rules, must be in conformity with any Practice Direction.

44.02 The Principal Registrar and each Registrar of the Court must maintain registers of all Practice Directions.

45.00 CUSTODY OF RECORDS

45.01 The Registrar has the custody of all records and proceedings of the Court and of all evidentiary material filed with, or submitted to the Court.

45.02 Subject to an order of the Court, the Registrar has custody of all exhibits until the expiration of any relevant appeal or review period. Following the expiration of any such period, the Registrar shall return the exhibit to the person who produced the exhibit, or the solicitor for the party tendering the exhibit. The person to whose custody any exhibit is returned shall be liable for any costs incurred by the Registrar in returning the exhibit.

45.03 In the event that the Registrar is unable to return an exhibit in accordance with sub-rule 45.02, the Court may make any order as it thinks fit for the custody or disposal of the exhibit.

45.04 The Registrar may keep a record of proceedings of the Court in electronic form.

46.00 VIDEOLINKS

46.01 In this rule 'the Act' means the *Evidence Act 1929*.

46.02 The court may receive evidence or submissions from a person not physically present in the courtroom by means of an audio visual link or an audio link in accordance with section 59IQ of the Act.

46.03 Subject to section 59IQ(5) of the Act, the personal attendance of a defendant who is in custody prior to trial is not required where facilities exist for dealing with the proceedings by audio visual link.

46.04 Audio visual link facilities used pursuant to this Rule must be operated in a manner which ensures two way audio and visual communication between the court room and the person in custody.

46.05 Facilities must be available for private audio communication between a person in custody and the person's representative at the Court in accordance with section 59IR of the Act.

46.06 No person shall, by any means, listen to, intercept or record any such private communications.

46.07 Should a party in proceedings to which this Rule applies wish to be brought to the courtroom, notice of not less than 2 working days must be given to the Court.

46.08 If audio visual link facilities fail in the course of proceedings, the Court may adjourn the proceedings and may make such other order as is appropriate in the circumstances as if a person present in the room in which the audio visual link facilities are located were in the presence of the Court.

47.00 REFUSAL TO REVOKE ENFORCEMENT DETERMINATION: SECTION 23 FINES ENFORCEMENT AND DEBT RECOVERY ACT 2017

47.01 An application to review a decision of the Chief Recovery Officer to refuse to revoke an enforcement determination pursuant to section 22 of the *Fines Enforcement and Debt Recovery Act 2017* must comply with Form 55.

47.02 An affidavit complying with Form 115 must be filed with the application.

47.03 If available, a copy of the application to Chief Recovery Officer for revocation of the Enforcement Determination, the decision of the Chief Recovery Officer refusing the application and the expiration notice must accompany the application.

47.04 The Registrar must serve a copy of the application and all accompanying documentation on the Chief Recovery Officer and the issuing authority.

47.05 If the application does not include the documents referred to in Rule 47.03 upon service of the application the Chief Recovery Officer should file the documents no later than 7 days before the hearing.

47.06 Where the issuing authority or the Chief Recovery Officer wishes to oppose the application, they must file and serve a Notice of Intention no later than 7 days before the hearing, and appear at the hearing.

47.07 The issuing authority or Chief Recovery Officer is not required to attend the hearing if the applicant has not applied for a review of the enforcement determination with the Chief Recovery Officer pursuant to section 22 of the *Fines Enforcement and Debt Recovery Act 2017* on the grounds specified in section 22(10)(b) or 22(10)(c) of the *Fines Enforcement and Debt Recovery Act 2017*.

47.08 If the issuing authority or Chief Recovery Officer does not attend the hearing pursuant to rule 47.07, it must file an affidavit complying with Form 115 outlining the reasons for its non-attendance.

47.09 It will be sufficient service for the purpose of this rule if the Chief Recovery Officer and the issuing authority are notified in writing, electronically, by telephone, email or facsimile.

48.00 ORDER FOR THE ATTENDANCE OF A PRISONER AT COURT

48.01 An order pursuant to section 28 (2) of the *Correctional Services Act 1982* shall comply with Form 13.

49.00 CRIMINAL LAW (FORENSIC PROCEDURES) ACT 2007

49.01 The applicant for a warrant under section 29 of the *Criminal Law (Forensic Procedures) Act 2007* must file a copy of the application for the procedure, the order authorising the procedure, and if it was an order of special urgency made under section 18, a note of the time when it was made, the direction under section 29(1) and an affidavit giving details of the identity of the suspect or offender, the notification of the direction given to the suspect or offender and the failure(s) to comply with the direction.

49.02 A Warrant issued under section 29(3) shall comply with Form 74 and must have the order authorising the forensic procedure attached to it.

49A.00 WARRANT – ROAD TRAFFIC ACT 1961

49A.01 An application for a warrant made pursuant to section 41B of the *Road Traffic Act* shall comply with Form 90.

49A.02 A warrant issued pursuant to section 41B shall comply with Form 91.

49A.03 A duplicate warrant made pursuant to regulation 10(4)(e) of the *Road Traffic (Miscellaneous) Regulations 2014* shall comply with Form 92.

49A.04 When filing an application for a warrant, the applicant must also file with the court an affidavit verifying the grounds for the application.

49A.05 When an application for the issue of a warrant is made by facsimile, the applicant must send an affidavit verifying the grounds for the application with the application form.

49A.06 If a warrant is issued after an application by telephone or facsimile, the warrant, or a copy of the warrant, the duplicate warrant (if applicable) and the affidavit must be filed in the Court on the next working day. The relevant court registry shall be that closest to the location of the premises which are the subject of the warrant. Should this not be practicable, it shall be that to which the Magistrate is assigned.

50.00 CRIMINAL LAW CONSOLIDATION ACT, PART 8A – MENTAL IMPAIRMENT PROVISIONS

50.01 An order for the detention of a person pursuant to section 269O or 269U of the *Criminal Law Consolidation Act 1935* shall comply with Form 73.

50.02 An application pursuant to s 269ND or s 269P(1) must comply with Form 23.

51.00 COSTS

51.01 Subject to these Rules, the provisions of any Act, or to an order of the Court, a successful party in an action is entitled to costs against an unsuccessful party.

51.02 For the purpose of this Rule a successful party includes a party who instigates proceedings that are admitted by plea of guilty, and a party who defends proceedings that are withdrawn or dismissed as a result of no evidence being tendered.

51.03 Subject to any order of the court to the contrary, the scale of costs set out in the first schedule shall apply.

52.00 PAYMENT OF ADVISORS, ELDERS AND EXPERTS

52.01 The Court may appoint such cultural advisors, Aboriginal elders and experts within any field as it sees fit to advise it in the conduct of its work and pay them in accordance with rates determined by the Principal Registrar from time to time.

53.00 NATIONAL ELECTRICITY LAW AND NATIONAL GAS LAW

53.01 An application for a search warrant issued pursuant to section 21 of the National Electricity Law or section 35 of the National Gas Law shall comply with Form 93.

53.02 A search warrant shall comply with Form 94.

53.03 An application for extension of period of retention made pursuant to section 26 of the National Electricity Law or section 40 of the National Gas Law shall comply with Form 95.

54.00 ANIMAL WELFARE ACT 1985

54.01 An application for a warrant issued pursuant to Part 2 shall comply with Form 52.

54.02 A warrant issued pursuant to Part 2 shall comply with Form 53.

54.03 A duplicate warrant shall comply with Form 54.

55.00 FORTIFICATION REMOVAL ORDERS

55.01 An application for a fortification removal order shall comply with Form 23.

55.02 A fortification removal order issued pursuant to section 74BB of the *Summary Offences Act 1953* shall comply with Form 75.

55.03 A notice of objection pursuant to section 74BE shall comply with Form 76.

55.04 A withdrawal notice lodged pursuant to section 74BH shall comply with Form 77.

55.05 When filing an application for an order, the applicant must also file with the court an affidavit verifying the grounds for the application.

55.06 The application form must be served by the Registrar on the occupier/s and owner/s of the premises which are the subject of the application unless the applicant can show sufficient grounds why notice should not be given. Such grounds must be included in the affidavit accompanying the application form and the application form must state that the applicant seeks leave of the court for notice not to be served.

55.07 If necessary, the court may conduct a hearing in private to determine whether notice of the application should be given to any other party.

56.00 RAIL SAFETY NATIONAL LAW (SOUTH AUSTRALIA) ACT 2012

56.01 An application for a search warrant issued pursuant to Paragraph 150 of the Schedule—Rail Safety National Law of the *Rail Safety National Law (South Australia) Act 2012* must comply with Form 96.

56.02 A search warrant must comply with Form 97.

56.03 A duplicate warrant must comply with Form 98.

57.00 FIREARMS PROHIBITION ORDERS

57.01 A firearms prohibition order made pursuant to s 66 of the *Firearms Act 2015* or s 180 of the *Criminal Procedure Act 1921* must comply with Form 99.

57.02 When the court makes a firearms prohibition order, the Registrar must as soon as practicable, but not later than 4pm on the following working day, cause a copy of the order to be served electronically on the Registrar of Firearms.

57A.00 FIREARMS ACT 2015

57A.01 An application pursuant to ss 59(2), 63 or 66(3)(b) of the *Firearms Act 2015* must comply with Form 23.

58.00 CRIMINAL INVESTIGATION (COVERT OPERATIONS) ACT 2009

58.01 In the rule 'the Act' means the *Criminal Investigation (Covert Operations) Act 2009*.

58.02 An application pursuant to section 40(1) of the Act shall comply with Form 100.

58.03 A suppression order issued pursuant to section 40(6) of the Act shall comply with Form 101.

59.00 CORRECTIONAL SERVICES ACT 1982

59.01 An application for a warrant issued pursuant to Section 76 or 76A of the *Correctional Services Act 1982* must comply with Form 103.

59.02 A warrant must comply with Form 104.

59.03 An order upon notification pursuant to Section 76B must comply with Form 105.

60.00 NON-ASSOCIATION AND PLACE RESTRICTION ORDERS

60.01 An Interim Non-Association or Place Restriction Order pursuant to Section 80(2) of the *Criminal Procedure Act 1921* must comply with Form 106.

60.02 A Non-Association or Place Restriction Order must comply with Form 107.

60.03 Where service is required under Section 81, the Order must be served by a police officer.

60.04 Applications for the variation or revocation of an order pursuant to Section 82 must comply with Form 108.

60.05 An Order for variation or revocation of a Non-Association or Place Restriction Order must comply with a Form 108A.

61.00 SPENT CONVICTIONS ACT 2009

61.01 An application for a spent conviction order pursuant to section 8A of the *Spent Convictions Act 2009* or an application for an exemption order pursuant to section 13A of the *Spent Convictions Act 2009* must comply with Form 110 and a National Police Check must be attached. Only a National Police Check processed within 6 months before the date of filing a spent conviction order application or exemption order application will be accepted.

61.02 A spent convictions order or exemption order must comply with Form 111.

61.03 The Registrar must serve a copy of the application on the Attorney-General and the Commissioner of Police at least 4 weeks before the hearing date.

61.05 Where an application for an exemption order relates to Clause 7 of Schedule 1, the Registrar must also serve a copy of the application on the Minister for Human Services at least 4 weeks before the hearing date.

61.06 No parties are required to attend the chambers hearing unless:

- (a) The Attorney-General, the Commissioner of Police or another Minister wishes to intervene in the proceedings; or
- (b) The qualified Magistrate requires the applicant to attend.

61.07 Where the Attorney-General, the Commissioner of Police or another Minister wishes to intervene they must notify the applicant and the Registrar in writing 7 days before the hearing date.

61.08 Where a qualified Magistrate requires the attendance of the applicant, the Registrar must notify the potential parties at least 7 days before the hearing date.

62.00 HEAVY VEHICLE NATIONAL LAW (SOUTH AUSTRALIA) ACT 2013

62.01 An application for a warrant made pursuant to clause 506 of the Schedule of the *Heavy Vehicle National Law (South Australia) Act 2013* must comply with Form 112.

62.02 A search warrant issued pursuant to clause 507 of the Schedule must comply with Form 113.

62.03 A duplicate search warrant made pursuant to clause 508(5) of the Schedule must comply with Form 114.

63.00 RECORDING EVENTS IN COURT

63.01 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.

63.02 Rule 63.01 does not apply to Courts Administration Authority staff acting in the course of their office or employment.

63.03 Despite rule 63.01:

- (a) a party to a proceeding which is being heard by the Court, a legal practitioner, law clerk, student or a 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 proceedings for the sole purpose of verifying notes and for no other purpose.

63.03a A party to proceedings must seek leave of the Court prior to using an electronic device.

63.04 Any record made in court permitted by this Rule must:

- (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceedings;
- (b) not interfere with the Court's sound system or other technology; and
- (c) not generate sound or require speaking into a device.

63.05 Any audio recording made by a member of the media under rule 63.03(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.

63.06 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.

63.07 For the purpose of this Rule, 'electronic note' means a text based note.

64.00 ELECTRONIC COMMUNICATIONS IN COURT

64.01 Subject to this rule and to any contrary direction of the Court, communication by means of an electronic device to and from a court room during the conduct of proceedings is not permitted.

64.02 Rule 64.01 does not apply to Courts Administration Authority staff acting in the course of their office or employment.

64.03 Despite rule 64.01 and subject to rules 64.04 and 64.05, a party to a proceeding which is being heard by the Court, a legal practitioner or a bona fide member of the media may communicate by means of an electronic device to and from a court room during the conduct of proceedings.

64.04 Any electronic communication permitted by this Rule must:

- (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceedings;
- (b) not interfere with the Court's sound system or other technology; and
- (c) not generate sound or require speaking into a device.

64.05 A communication of evidence adduced or a submission made in proceedings, 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.

64.06 For the purpose of this rule, 'electronic device' means any device capable of transmitting and/or receiving information, audio, video or other matter (including, cellular phones, computers, personal digital assistants, digital or analogue audio and/or visual cameras or similar devices).

65.00 CONTROLLED SUBSTANCES ACT 1984

65.01 An application pursuant to s 30ZL, s 30ZM or s 33T of the *Controlled Substances Act 1984* must comply with Form 23.

66.00 MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) NATIONAL LAW (APPLICATION) ACT 2013

66.01 An application for a warrant made pursuant to Schedule 1 Clause 135 (1) of the *Marine Safety (Domestic Commercial Vessel) National Law (Application) Act 2013* must comply with Form 116.

66.02 A search warrant must comply with Form 117.

66.03 A duplicate search warrant must comply with Form 118.

67.00 CONTROL ORDERS UNDER THE CHILD SEX OFFENDERS REGISTRATION ACT 2006

67.01 An application for a Control Order or a Interim Control Order pursuant to Part 5C of the *Child Sex Offenders Registration Act 2006* must comply with Form 47.

67.02 The Commissioner of Police must serve a copy of the application on the registrable offender personally.

67.03 An Interim Control Order must comply with Form 48.

67.04 A Control Order must comply with Form 49.

67.05 An application for variation or revocation of a Control Order or Interim Control Order must comply with Form 50. The application must be personally served on the respondent to it.

67.06 An Order for variation or revocation of a Control Order or Interim Control Order must comply with Form 51.

67.07 An application to extend a period of detention pursuant to section 66JG(3) may be made by telephone.

68.00 BURIAL AND CREMATION ACT 2013

68.01 An application for a warrant made pursuant to section 59 of the *Burial and Cremation Act 2013* must comply with Form 119.

68.02 A warrant must comply with Form 120.

68.03 A warrant will cease to have effect no later than 48 hours after it has been executed by the Magistrate.

69.00 FEES

69.01 The fees payable in relation to an action or proceeding in the Court are the fees prescribed in the *Magistrates Court (Fees) Regulations 2004*, *Sheriff's Regulations 2005* and any other relevant Act or Regulations under which an action is commenced.

69.02 An application for the remission or reduction of a fee must be made to the Registrar on oath or by affirmation in Form 123 and the Registrar must maintain a copy of the application separately from the file of the action or proceeding.

69.03 Where proper cause exists, the Registrar may, by notice in writing served on a person or party, impose conditions in respect of the mode or time of payment of a fee by that person or party.

69.04 Payment of a fee may be ordered by the Court, and the Registrar may enforce the order pursuant to these Rules.

70.00 CO-OPERATIVES NATIONAL LAW (SOUTH AUSTRALIA) ACT 2013

70.01 An application for a warrant made pursuant to section 504 or 505 of the *Co-operatives National Law* must comply with Form 121.

70.02 A search warrant must comply with Form 122.

71.00 ELECTORAL ACT 1985

71.01 An application for a warrant made pursuant to section 130ZZB (16) of the *Electoral Act 1985* must comply with Form 124.

71.02 A warrant issued pursuant to section 130ZZB (17) of the *Electoral Act 1985* must comply with Form 125.

72.00 CRIMINAL LAW (HIGH RISK OFFENDERS) ACT 2015

72.01 An application for the apprehension and detention of a person pursuant to s 11(6)(b) of the *Criminal Law (High Risk Offenders) Act 2015*, for the purpose of bringing that person before the Parole Board where he or she fails to appear before the Parole Board in compliance with a summons, must comply with Form 126.

72.02 A warrant for the apprehension and detention of a person, issued pursuant to s 11(7) of the *Criminal Law (High Risk Offenders) Act 2015*, must comply with Form 127.

72.03 An application for the arrest of a person by a member of the Parole Board (other than the presiding member or deputy presiding member) or a police officer pursuant to s 15(2)(b)(ii) or s 15(3)(b) of the *Criminal Law (High Risk Offenders) Act 2015* respectively, must comply with Form 128. The application must set out the member or police officer's reasonable grounds for suspecting that the person subject to a supervision order may have breached a condition of the order.

72.04 An arrest warrant issued pursuant to s 15(6) of the *Criminal Law (High Risk Offenders) Act 2015* must comply with Form 129.

73.00 WORK HEALTH AND SAFETY ACT 2012

73.01 An application for a search warrant made pursuant to s 167 of the *Work Health and Safety Act 2012* must comply with Form 130.

73.02 A search warrant under s 167 of the *Work Health and Safety Act 2012* must comply with Form 131.

74.00 SOUTH AUSTRALIAN PUBLIC HEALTH ACT 2011

74.01 An application for a warrant made pursuant to s 47(3)(a) of the *South Australian Public Health Act 2011* must comply with Form 132.

74.02 A warrant under s 47(3)(a) of the *South Australian Public Health Act 2011* must comply with Form 133.

74.03 A warrant will cease to have effect no later than 14 days after it has been executed by the Magistrate.

74.04 An application under section 77(8a) of the *South Australian Public Health Act 2011* may be filed with the Court by email.

74.05 An application under section 77(8a) of the *South Australian Public Health Act 2011* is filed with the Court by email if –

- (a) it is sent as an attachment in a PDF or Word format to the central positional mailbox provided to the applicant; and
- (b) the subject line of the email indicates the location of the Court at which the document is to be filed.

74.06 When an application under section 77(8a) of the *South Australian Public Health Act 2011* is emailed on a day or time when the Registry is closed, the application will be deemed to have been received at the time it is received in the positional mailbox.

75.00 TATTOOING INDUSTRY CONTROL ACT 2015

75.01 An application for a warrant made pursuant to s 19 of the *Tattooing Industry Control Act 2015* must comply with Form 134.

75.02 A warrant under s 19 of the *Tattooing Industry Control Act 2015* must comply with Form 135.

75.03 A warrant issued under s 19 of the *Tattooing Industry Control Act 2015* will cease to have effect no later than 7 days after it is issued by the Magistrate.

76.00 HOUSING IMPROVEMENT ACT 2016

76.01 An application for a warrant made pursuant to s 11(4)(a) of the *Housing Improvement Act 2016* must comply with Form 140.

76.02 A warrant under s 11(4)(a) of the *Housing Improvement Act 2016* must comply with Form 141.

76.03 A warrant issued under s 11(4)(a) of the *Housing Improvement Act 2016* will cease to have effect no later than 7 days after it is issued by the Magistrate.

77.00 CRIMINAL ASSETS CONFISCATION ACT 2005

77.01 An application pursuant to s 59A of the *Criminal Assets Confiscation Act 2005* shall comply with Form 23.

77.02 An affidavit complying with Form 115 must be filed with the application.

77.03 A copy of the Declaration of the Deemed Forfeiture Order obtained by the Director of Public Prosecutions must also be filed with the application, if available.

77.04 Where practicable, the application will be listed before the Criminal Magistrate who imposed the conviction for the conviction offence.

77.05 If the Director of Public Prosecutions wishes to contest the application, it must file and serve on the applicant a copy of the Declaration of the Deemed Forfeiture Order, if it has not already been filed by the applicant.

78.00 TERRORISM (POLICE POWERS) ACT 2005: SECTION 27C

78.01 An application pursuant to s 27C for a transcript of evidence and a record of outcome must be made in writing to the Court.

78.02 The application must include the relevant court file number, the parties' names, and the date and time of the proceedings.

78.03 An application of the transcript of evidence and a record of outcome must be determined, where practicable, by the same Magistrate who made the initial order under s 27C(1).

79.00 AGEING AND ADULT SAFEGUARING ACT 1995

79.01 An application made pursuant to s 31(1) of the *Ageing and Adult Safeguarding Act 1995* must comply with Form 143.

79.02 When filing an application, the applicant must also file with the Court an affidavit verifying the grounds for the application.

79.03 An Interim Order must comply with Form 144.

79.04 A Final Order must comply with Form 145.

79.05 An application to vary or revoke an order pursuant to s 33(3) of the *Ageing and Adult Safeguarding Act 1995* must comply with Form 146.

79.05 When filing an application to vary or revoke an order, the applicant must also file with the Court an affidavit verifying the grounds for the application.

79.06 If a Final Order is varied, the Final Order as varied must comply with Form 145A.

Schedule 1

Magistrates Court Criminal Scale of Costs

Effective from 19 September 2019

Notes:

- 1 This cost scale is intended for use in making orders as between party and party.
- 2 The fees set out in item 1 and 2 are intended to cover all necessary attendances and preparatory work for a trial (other than attendance at a pre-trial conference). Where an attendance is unnecessary as a result of default by one or other party, an order should be sought and made at that hearing. The fee set out in item 4 or 5 should be used for that purpose.

No.	Item	Represented by solicitor	Represented by non-legally qualified person
1	Instructions, including all preparation for trial and attendances up to, but not including attendance at a Pre-Trial Conference	\$1100	\$280
2	All aspects not otherwise specified from Pre-Trial Conference to Trial, including proofing witnesses, advice or evidence and law (solicitor and counsel) and delivering brief to counsel.	\$1100	\$200
3	Attendance at pre-trial conference	\$300	\$75
4	Attendance at hearing (see note 2 above)	\$110	\$35
5	Attendance where detailed argument is necessary (see note 2 above)	\$200	\$45
6	Arranging attendance of witnesses (including issue and service of summons if necessary) - per witness	\$100	
	Counsel fees		
7	Fee on brief, to include attendance for plea or withdrawal (if separate counsel briefed)	\$1000	\$250
8	Each day	\$1500	\$375

Witness fees	
Professional scientific or other expert witnesses per day	\$1000 or such amount ordered by the Court
Other adult person per day	\$360
Persons under 18 years of age per day	\$150
Travel expenses	Where the witness is normally resident more than 50 km from the trial Court at the rate of 85 cents per km or the least expensive return air fare whichever is the lesser or the cheapest combination of both.
Accommodation expenses	In the discretion of the taxing officer where the witness is required to be absent from his or her normal place of residence overnight for accommodation and sustenance per night \$290 or such larger amounts allowed by the Court at the time of or before judgment.
Photocopying	65 cents per page
ISD calls	The actual cost.
Expert Reports	\$1000 or such other amount ordered by the Court
Other	All Court fees, search fees, and other fees and payments to the extent to which they have been properly and reasonably incurred and paid; but excluding the usual and incidental expenses and overheads of a legal practice and in particular excluding postage, telephone charges (non STD) and courier expenses.

NOTE :

- A. If a witness is released before or is required to first attend after the luncheon break on any day, half a day will be allowed.
- B. Fees for non-legally qualified people are for attendances only.
- C. The costs allowed in this scale do not include Goods and Services Tax (GST) which is to be added except in the following circumstances:

The GST should not be included in a claim for costs in a party/party Bill of Costs if the receiving party is able to obtain an input tax credit for a proportion of GST only, only the portion which is not eligible for credit should be claimed in the party/party bill.

APPENDIX

Legislative History

Table of Contents replaced by amendment No.3 (1.4.94), pl.2 replaced by amendment No. 9 (12.12.96), pl.5

Heading before Rule 2 amended by amendment No. 19 (8 March 2001), pl. 3

Rule 2.02 inserted by amendment No. 42 (10 May 2012), pl. 1650

Rule 3.01 replaced by amendment No. 19 (8 March 2001), pl.4

Rules 3.03 and 3.04 inserted by amendment No. 19 (8 March 2001), pl.5

Rule 4.04 inserted by amendment No. 11 (29.5.97), pl.1; replaced by amendment No. 26 (4.5.06)

Rule 4.05 inserted by amendment No. 29 (17.4.08)

Rule 4.07 inserted by amendment No. 43 (15 November 2012), p.5138

Rule 4.08 inserted by amendment No. 43 (15 November 2012), p.5138

Rule 4.09 inserted by amendment No. 43 (15 November 2012), p.5138

Rule 4.10 inserted by amendment No. 43 (15 November 2012), p.5138

Rule 4.11 inserted by amendment No. 44 (27 June 2013), p. 2842

Rule 4.12 inserted by amendment No. 46 (23 January 2014), p. 320

Rule 4.13 inserted by amendment No. 46 (23 January 2014), p. 320

Rule 4.14 inserted by amendment No. 51 (23 October 2014), p. 6162

Rule 4.18 inserted by amendment No. 85 (17 September 2020), p. 4627

Heading before Rule 7 amended by amendment No. 19 (8 March 2001), pl.6

Heading to Rule 7 amended by amendment No. 19 (8 March 2001), pl.7

Rule 7.01 amended by amendment No.2 (18.3.93), pl.1

Rule 7.02 inserted by amendment No. 46 (23 January 2014), p. 320

Rule 8.08 deleted by amendment 54 (17 September 2015)

Rule 9A.00 inserted by amendment No. 46 (23 January 2014), p. 320

Rule 9B.00 inserted by amendment No. 81 (27.03.20, p. 614)

Rule 10 deleted and replaced by amendment No. 44 (27 June 2013), p. 2842

Rule 10.02 deleted and replaced by amendment No. 45 (9 January 2014), p. 58

Rule 10.06 amended by amendment No.6 (7.9.95), pl.1; replaced by amendment No. 22 (5.8.04), pl. 4

Rule 10.07 added by amendment No.6 (7.9.95), pl.2

Rule 10.10 inserted by amendment No. 45 (9 January 2014), p. 58

Rule 12 replaced by amendment No 20 (11.9.03), pl 3

Rule 12.07 replaced by amendment No. 25 (1.12.05)

Rule 12.11 added by amendment No. 23 (31.3.05), pl 3

Rule 12.14 inserted by amendment No. 74 (20.06.19) p. 2219

Rule 12.14 deleted and replaced by amendment No. 75 (04.07.19) p. 2618.

Rule 12.15 inserted by amendment No. 74 (20.06.19) p. 2219

Rule 12.15 deleted and replaced by amendment No. 75 (4.07.19) p. 2618.

Rule 14 deleted and replaced by amendment No. 46 (23 January 2014), p. 320

Rule 14.01 amended by amendment No.3 (1.4.94), pl.3

Rule 15 replaced by amendment No.3 (1.4.94), pl.4

Rule 15.03 replaced by amendment No. 31 (24.7.08)

Rule 15.04 inserted by amendment No. 31 (24.7.08)

Rule 15.05 inserted by amendment No. 46 (23 January 2014), p. 320

Rule 17.01 amended by amendment No.3 (1.4.94), pl.5

Rule 18 replaced by amendment No.3 (1.4.94), pl.6, replaced by amendment No.5 (1.8.94), pl.3, replaced by amendment No.7 (30.10.95), pl.1, replaced by amendment No. 35 (15.7.10), replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18.01 deleted and replaced by amendment No. 35 (15.7.10), pl 3466, replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573; replaced by amendment No. 43 (15 November 2012), p.5138

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Rule 18.05A replaced by amendment No. 44 (27 June 2013), p. 2842

Rule 18.06 deleted and replaced by amendment No. 35 (15.7.10), pl 3466, replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18.07 deleted and replaced by amendment No. 35 (15.7.10), pl 3466, replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18.08 deleted and replaced by amendment No 47 (10.4.14), p 1483, replaced by amendment No. 22 (5.8.04), pl 5; deleted and replaced by amendment No. 35 (15.7.10), pl 3467), replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18.08A inserted by amendment No 47 (10.4.14), p 1483.

Rule 18.08B inserted by amendment No 47 (10.4.14), p 1483.

Rule 18.09 replaced by amendment No. 22 (5.8.04), pl 5; deleted and replaced by amendment No. 35 (15.7.10), pl 3467), replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18.10 replaced by amendment No. 22 (5.8.04), pl 5; deleted and replaced by amendment No. 35 (15.7.10), pl 3467), replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18.11 deleted and replaced by amendment No. 35 (15.7.10), pl 3467, replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18.12 deleted and replaced by amendment No. 35 (15.7.10), pl 3467, replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18A.06 Replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18A.07 Replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18A.08 replaced by amendment No. 22 (5.8.04), pl 6, replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573; replaced by amendment No. 43 (15 November 2012), p.5138

Rule 18A.09 replaced by amendment No. 22 (5.8.04), pl 6, replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18A.10 replaced by amendment No. 22 (5.8.04), pl 6, replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18A.11 Replaced by amendment No. 38 (14.11.11), pl. 4498, replaced by amendment No. 41 (17.11.11), pl. 4573

Rule 18A.12 Replaced by amendment No. 38 (14.11.11), pl. 4498, deleted by amendment No. 41 (17.11.11), pl. 4573

Rule 18A.13 Replaced by amendment No. 38 (14.11.11), pl. 4498, deleted by amendment No. 41 (17.11.11), pl. 4573

Rule 18AA.00 inserted by amendment 54 (17 September 2015)

Rule 18AAA.00 inserted by amendment 54 (17 September 2015)

Rule 18B inserted by amendment No 47 (10.4.14), p 1483.

Rule 19.10 amended by amendment No 20 (11.9.03), pl 4

Rule 19.11 added by amendment No 23 (31.3.05), pl 4

Rule 20.01 replaced by amendment No. 27 (1.3.07)

Rule 20.02 replaced by amendment No.12 (12.2.98), pl.1

Rule 20.03 replaced by amendment No.5 (1.8.94), pl.5

Rule 20.04 inserted by amendment No.1 (7.1.93), pl.1

Rule 21 replaced by amendment No.1 (7.1.93), pl.2

Rule 21.03 replaced by amendment No.3 (1.4.94), pl.7

Rule 21.08 replaced by amendment No.6 (7.9.95), pl.3

Rule 22.06 amended by amendment No.3 (1.4.94), pl.8

Rule 22A.00 inserted by amendment No. 44 (27 June 2013), p. 2842

Rule 23 amended by amendment No.9 (12.12.96); p.1881

Rule 23 replaced by amendment No. 27 (1.3.07)

Rule 24.00 deleted and replaced by amendment No. 52 (4 December 2014 p. 6584)

Rule 24.01 amended by amendment No 20 (11.9.03), pl 5, deleted and replaced by amendment No. 52 (4 December 2014, p. 6584)

Rule 25 added by amendment No.3 (1.4.94), pl.9

Rule 26.06 deleted and replaced by amendment No. 35 (15.7.10), p. 3468

Rules 26.07 – 26.12 inserted by amendment No 31 (24.7.08)

Rule 26.13 deleted and replaced by amendment No 47 (10.4.14), p 1483, inserted by amendment No. 42 (10 May 2012), pl. 1650

Rule 26.14 inserted by amendment No. 42 (10 May 2012), pl. 1650

Rule 26.15 inserted by amendment No. 42 (10 May 2012), pl. 1650

Rule 27.01 replaced by amendment No.1 (7.1.93), pl.3

Rule 27A.04 deleted and replacement by amendment No. 83 (9.04.20, p. 738).

Rule 27A.04 deleted and replaced by amendment No.84 (6.08.20, p. 4221).

Rule 27A.07 inserted by amendment No. 83 (9.04.20, p. 738).

Rule 28 repealed by amendment No. 22 (5.8.04, but to take effect from 1.1.05) pl. 7; inserted by amendment No. 25 (1.12.05)

Rule 28.01 deleted by amendment No. 36 (7 October 2010, p 5034)

Rule 28.05 deleted by amendment No. 36 (7 October 2010, p 5034)

Rule 28.07 deleted by amendment No. 36 (7 October 2010, p 5034)

Rule 28A inserted by amendment No. 29 (17.4.08)

Rule 29A.00 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29A.01 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29A.02 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29A.03 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29B.00 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29B.01 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29B.02 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29B.03 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29B.04 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29C.00 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29C.01 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 29C.02 inserted by amendment No. 52 (4 December 2014, p6584)

Rule 35.08 inserted by amendment No.5 (1.8.94), pl.6

Rules 36.02, 36.03 and 36.04 inserted by amendment No. 19 (8 March 2001), pl.8

Rule 37 deleted and replaced by amendment No. 19 (8 March 2001), pl.9

Rule 38.03 replaced by amendment No.3 (1.4.94), pl.10

Rule 41 inserted by amendment No.1 (7.1.93), pl.4

Rule 41.02(i) deleted by amendment No. 19 (8 March 2001), pl.12

Rule 41.03 inserted by amendment No.3 (1.4.94), pl.11

Rule 41.04 added by amendment No.7 (9.10.95), pl.2; deleted and replaced by amendment No. 19 (8 March 2001), pl.13

Rule 41.05 deleted by amendment No. 19 (8 March 2001), pl.13

Rule 41.06 inserted by amendment No.14 (11.3.99), p

Rules 41.07 and 41.08 inserted by amendment No. 24 (2.3.2006)

Rule 42 inserted by amendment No.1 (7.1.93), pl.4; replaced by amendment No.3 (1.4.94), pl.12

Rule 43 inserted by amendment No.2 (18.3.93), pl.2; replaced by amendment No.3 (1.4.94), pl.13

Rule 43.01 deleted and replaced by amendment No. 45 (9 January 2014), p. 58

Rule 43.03A inserted by amendment No. 84 (6.08.20, p. 4221)

Rule 43.03B inserted by amendment No. 84 (6.08.20, p. 4221)

Rule 43.12 deleted and replaced by amendment No. 54 (17 September 2015)

Rule 43.19 amended by amendment No.6 (7.9.95), pl.4

Rule 44 inserted by amendment No.2 (18.3.93), pl.2; replaced by amendment No.3 (1.4.94), pl.14

Rule 45 inserted by amendment No.2 (18.3.93), pl.2; replaced by amendment No.3 (1.4.94), pl.15

Rule 45.01 amended by amendment No. 42 (10 May 2012), pl. 1650

Rule 45.02 amended by amendment No. 42 (10 May 2012), pl. 1650

Rule 45.03 amended by amendment No. 42 (10 May 2012), pl. 1650

Rule 45.04 amended by amendment No. 42 (10 May 2012), pl. 1650 Rule 46.00 added by amendment No.7 (9.10.95), pl.3; deleted and replaced by amendment No. 35 (15.7.10), pl 3468

Rule 46.01 deleted and replaced by amendment No. 35 (15.7.10), pl 3468

Rule 46.02 deleted and replaced by amendment No. 35 (15.7.10), pl 3468

Rule 46.03 deleted and replaced by amendment No. 35 (15.7.10), pl 3468

Rule 46.04 deleted and replaced by amendment No. 35 (15.7.10), pl 3468

Rule 46.05 deleted and replaced by amendment No. 35 (15.7.10), pl 3469

Rule 46.06 deleted and replaced by amendment No. 35 (15.7.10), pl 3469

Rule 46.07 deleted and replaced by amendment No. 35 (15.7.10), pl 3469

Rule 46.08 deleted and replaced by amendment No. 35 (15.7.10), pl 3469

Rule 47 inserted by amendment No. 9 (12.12.96), pl. 6; amended by amendment No. 13 (23.4.98), deleted and replaced by amendment No. 46 (23 January 2014), p. 320

Rule 47.05 replaced by amendment No. 49 (31.7.14) p 3702

Rule 47.08 - 47.10 added by amendment No 20 (11.9.03), pl 6

Rule 48 added by amendment No. 10 (10.4.97), pl.3; Repealed and replaced by amendment No. 22 (5.8.04, but to take effect from 1.1.05) pl. 8

Rule 48.01 replaced by amendment No. 43 (15 November 2012), p.5138

Rule 49.01 replaced by amendment No. 32 (25.9.08), pl 4561

Rule 49.02 replaced by amendment No. 32 (25.9.08), pl 4561

Rule 49.03 added by amendment No 20 (11.9.03), pl 7

Rule 49A added by amendment No. 30 (22.5.08)

Rule 50.00 added by amendment No. 18 (1.6.00)

Rule 51.00 added by amendment No 21 (6 May 2004)

Rule 52.00 added by amendment No. 32 (25.09.08), pl 4561

Rule 52.01 added by amendment No. 32 (25.09.08), pl 4561

Rule 53 added by amendment No. 32 (25.09.08), pl 4561

Rule 53.01 added by amendment No. 32 (25.09.08), pl 4561

Rule 53.02 added by amendment No. 32 (25.09.08), pl 4561

Rule 53.02 added by amendment No. 32 (25.09.08), pl 4561

Rule 54.00 added by amendment No. 32 (25.09.08), pl 4561

Rule 54.01 added by amendment No. 32 (25.09.08), pl 4561

Rule 54.02 added by amendment No. 32 (25.09.08), pl 4561

Rule 54.03 added by amendment No. 32 (25.09.08), pl 4561

Rule 55.00 added by amendment No. 33 (8.01.09), pl 63

Rule 55.01 added by amendment No. 33 (8.01.09), pl 63

Rule 55.02 added by amendment No. 33 (8.01.09), pl 63
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Rule 55.04 added by amendment No. 33 (8.01.09), pl 63
Rule 55.05 added by amendment No. 33 (8.01.09), pl 63
Rule 55.06 added by amendment No. 33 (8.01.09), pl 63
Rule 55.07 added by amendment No. 33 (8.01.09), pl 63
Rule 56.00 added by amendment No. 33 (8.01.09), pl 63, replaced by amendment No. 44 (27 June 2013), p. 2842
Rule 56.01 added by amendment No. 33 (8.01.09), pl 63
Rule 56.02 added by amendment No. 33 (8.01.09), pl 63
Rule 56.03 added by amendment No. 33 (8.01.09), pl 63
Rule 56.04 added by amendment No. 33 (8.01.09), pl 63
Rule 57.00 added by amendment No. 33 (8.01.09), pl 63
Rule 57.A00 inserted by amendment No. 48 (17.04.14), p 1512
Rule 57.01 added by amendment No. 33 (8.01.09), pl 63
Rule 57.02 added by amendment No. 33 (8.01.09), pl 63
Rule 58.00 added by amendment No. 35 (15.7.10), pl 3469
Rule 58.01 added by amendment No. 35 (15.7.10), pl 3469
Rule 58.02 added by amendment No. 35 (15.7.10), pl 3469
Rule 58.03 added by amendment No. 35 (15.7.10), pl 3469
Rule 59 added by amendment No. 44 (27 June 2013), p. 2842
Rule 60 added by amendment No. 44 (27 June 2013), p. 2842
Rule 60.05 inserted by amendment 54 (17 September 2015)
Rule 61 deleted and replaced by amendment No 47 (10.4.14), p 1483, added by amendment No. 44 (27 June 2013), p. 2842
Rule 61.01 deleted and replaced by amendment No. 48 (17.04.14), p 1512
Rule 61.02 – 61.08 inserted by amendment No. 49 (31.7.14) p 3702
Rule 62 inserted by amendment No. 45 (9 January 2014), p. 58
Rule 63 inserted by amendment No. 45 (9 January 2014), p. 58; heading inserted by amendment 54 (17 September 2015)
Rule 63 (3a) inserted by amendment No. 49 (31.7.14) p 3702
Rule 63 (7) inserted by amendment No. 49 (31.7.14) p 3702
Rule 64 inserted by amendment No. 45 (9 January 2014), p. 58; heading inserted by amendment 54 (17 September 2015)
Rule 65 inserted by amendment No. 48 (17.04.14), p. 1512
Rule 66 inserted by amendment No. 48 (17.04.14), p. 1512
Rule 67.00 inserted by amendment No. 51 (23.10.14), p. 6162
Rule 67.01 inserted by amendment No. 51 (23.10.14), p. 6162
Rule 67.02 inserted by amendment No. 51 (23.10.14), p. 6162
Rule 67.03 inserted by amendment No. 51 (23.10.14), p. 6162

Rule 67.04 inserted by amendment No. 51 (23.10.14), p. 6162; and deleted by amendment No. 76 (08.08.19), p. 2949

Rule 67.05 inserted by amendment No. 51 (23.10.14), p. 6162

Rule 67.06 inserted by amendment No. 51 (23.10.14), p. 6162

Rule 67.07 inserted by amendment No. 51 (23.10.14), p. 6162

Rule 69 inserted by amendment 54 (17 September 2015)

Rule 70 inserted by amendment 54 (17 September 2015)

Rule 74.04 inserted by amendment No. 82 (2.04.20, p. 666).

Rule 74.05 inserted by amendment No. 82 (2.04.20, p. 666).

Rule 74.06 inserted by amendment No. 82 (2.04.20, p. 666).

Rule 79.00 inserted by amendment No. 85 (17 September 2020), p. 4627

Schedule 1 added by amendment No 21 (6 May 2004); replaced by amendment No 29 (17.4.08); replaced by amendment No 31 (24.7.08); replaced by amendment No. 35 (15.07.10); replaced by amendment No. 36 (7.10.10)