

South Australia

Land and Valuation Division Rules 2014

The Land and Valuation Divisional Rules 2014, dated 25th August 2014 that came into operation on 1st October 2014 (*Government Gazette* 11 September 2014, p. 4367) have been varied by Supreme Court rules dated:

		<i>Gazette</i>	<i>Date of operation</i>
#1	25 September 2015	15 October 2015, p. 4602	1 December 2015

By virtue and in pursuance of Section 62H of the *Supreme Court Act 1935* and all other enabling powers, we, the Judges of the Land and Valuation Court being a division of the Supreme Court of South Australia, make the following Land and Valuation Division Rules 2014.

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History of Amendment

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

These Rules may be cited as the *Land and Valuation Division Rules 2014*.

2—Commencement

These Rules commence on 1 October 2014.

Part 2—Objects

3—Objects

The objects of these Rules are—

- (a) to establish orderly procedures for the just, efficient and timely resolution of land and valuation disputes;
- (b) to facilitate and encourage the resolution of land and valuation disputes by agreement between the parties; and
- (c) to minimise the cost of land and valuation litigation to the litigants and to the State.

Part 3—Interpretation

4—Interpretation

- (1) In these Rules, unless the contrary intention appears, a term defined in the Supreme Court Civil Rules 2006 has the meaning defined by those Rules.
- (2) In these Rules, unless the contrary intention appears—

acquisition action means—

 - (a) an application for an order for the compulsory acquisition of an interest in land or any other thing under—
 - (i) section 24(3) of the *Coast Protection Act 1972*;
 - (ii) section 28(3) of the *Land Acquisition Act 1969*;
 - (iii) section 62A(1) of the *Mining Act 1971*; or
 - (iv) any other statutory provision in respect of which jurisdiction is vested in the Court;
 - (b) an application for determination whether a claimant is entitled to compensation or of the amount of compensation in respect of an acquisition or proposed acquisition under—
 - (i) section 15(4) of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*;
 - (ii) section 25(2) of the *Coast Protection Act 1972*;

- (iii) section 38(6) of the *Crown Land Management Act 2009*;
 - (iv) section 41(3) of the *Crown Land Management Act 2009*;
 - (v) section 30B(2) of the *Highways Act 1926*;
 - (vi) section 20(4) of the *Historic Shipwrecks Act 1981*;
 - (vii) section 15(6) of the *Land Acquisition Act 1969*;
 - (viii) section 29(2) of the *Land Acquisition Act 1969*;
 - (ix) section 210(3) of the *Local Government Act 1999*;
 - (x) section 62A(2) of the *Mining Act 1971*;
 - (xi) clause 6(4)(c) of the Schedule to the *Pastoral Land Management and Conservation Act 1989*;
 - (xii) section 39(2) of the *Pastoral Land Management and Conservation Act 1989*;
 - (xiii) section 31(1)(b) or section 32(3) of the *Roads (Opening and Closing) Act 1991*;
 - (xiv) any other statutory provision in respect of which jurisdiction is vested in the Court;
- (c) a reference of a question into Court under section 23C of the *Land Acquisition Act 1969*;
 - (d) an application for valuation of an object or record and an order vesting title in the Minister under section 31 of the *Aboriginal Heritage Act 1988*;
 - (e) an application for an order of ejectment or payment of rent under section 24(2) of the *Land Acquisition Act 1969*; or
 - (f) an application for an extension of the period for acquisition of land under section 15(4a)(b) of the *Land Acquisition Act 1969*;

boundary action means—

- (a) an application in respect of an encroachment under section 4 of the *Encroachments Act 1944*;
- (b) an application for determination of the true boundary of an allotment under section 10 of the *Encroachments Act 1944*;
- (c) an appeal against an administrative decision of the Surveyor-General approving a plan under section 51(8) of the *Survey Act 1992*; or
- (d) any other action involving the boundary of an allotment of land in respect of which jurisdiction is vested in the Court;

Court means the Land and Valuation Court constituted under Part 3A of the *Supreme Court Act 1935* being the Land and Valuation Division of the Supreme Court;

expert report notice to admit— see rule 32(1);

expert report notice of response— see rule 33(1);

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

lodgment action means—

- (a) the payment of monies into Court under section 23A(3) of the *Land Acquisition Act 1969*; or
- (b) the filing of an agreement for compensation in the Court under section 23B(1) of the *Land Acquisition Act 1969*;

valuation action means a statutory appeal against an administrative decision by—

- (a) the Minister, Valuer-General or Ministerial review panel under section 67(1) of the *Crown Land Management Act 2009*;
- (b) the Minister on the attribution of use of land under section 9(4) of the *Emergencies Services Funding Act 1998*;
- (c) a Council on the attribution of use of land under section 156(12) of the *Local Government Act 1999*;
- (d) a valuer on a valuation of land under section 169(15) of the *Local Government Act 1999*;
- (e) the Valuer-General or a land valuer under section 56 of the *Pastoral Land Management and Conservation Act 1989*;
- (f) the Minister on assessment of value under section 43(10) of the *Petroleum and Geothermal Energy Act 2000*;
- (g) the Valuer-General or a land valuer under section 25C of the *Valuation of Land Act 1971*; or
- (h) any other person in respect of which jurisdiction is vested in the Court.

Part 4—Application of Rules

5—Application of Rules

- (1) These Rules apply to proceedings in the Court.
- (2) Subject to subrule (3), the General Civil Rules apply to proceedings in the Court.
- (3) To the extent of any inconsistency between these Rules and the General Civil Rules, these Rules prevail.
- (4) These Rules follow the Chapter, Part and Division headings of the General Civil Rules.

Part 5—Repeal and transitional provisions

6—Repeal

The *Land and Valuation Division Rules 1978* are repealed.

7—Transitional provision

- (1) Unless the Court otherwise directs, these Rules apply to—
 - (a) proceedings commenced on or after the commencement date; and

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

Chapter 2—General procedural rules and allocation of Court business

Part 1—Public access to hearings

[no specific rules]

Part 2—Court’s control of procedure

8—Power of Court to control procedure

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

9—Supplementary Rules

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

Part 3—Enforcement of procedural obligations

[no specific rules]

Part 4—Distribution of Court’s business

Division 1—General

[no specific rules]

Division 2—Jurisdiction of Masters

10—Jurisdiction of Masters

- (1) Subject to this rule, a Master may exercise the same jurisdiction as a Judge of the Court.
- (2) An interlocutory proceeding may be heard and determined by a Master.
- (3) An application for payment out of monies paid into Court may be heard and determined by a Master.
- (4) The trial of an action can only be heard and determined by a Master if—
 - (a) a Judge of the Court directs that it is to be heard and determined by a Master; or
 - (b) all parties consent to trial by a Master.

Part 5—Representation

[no specific rules]

Chapter 3—Elements of action at first instance

Part 1—Nature of action

[no specific rules]

Part 2—Proceedings in anticipation of action

Division 1—Investigation

[no specific rules]

Division 2—Offers of settlement before action

11—Offers of settlement before action

- (1) Subject to subrule (2), rule 33 of the General Civil Rules does not apply to a proceeding in the Court.
- (2) Rule 33 of the General Civil Rules applies to a boundary action (whether or not based on a monetary claim) other than—
 - (a) an action in which urgent relief is sought; or
 - (b) an action brought in circumstances where the plaintiff—
 - (i) reasonably believes there is a risk that the defendant will take action to remove assets from the jurisdiction; and
 - (ii) intends to seek an injunction to prevent the defendant from removing assets from the jurisdiction; or
 - (c) an action excluded from the application of this subrule by direction of the Court.

Part 3—Commencement of action

Division 1—How action is commenced

Subdivision 1—Acquisition and boundary actions

12—Application of this Subdivision

This Subdivision applies to acquisition and boundary actions in the Court.

13—Acquisition action

The summons in an acquisition action is to identify—

- (a) the nature of the action;
- (b) the land or other subject matter of the action;
- (c) the statutory provision under which the claimed entitlement to the order sought arises;
- (d) the statutory provision giving to the Court jurisdiction to hear and determine the action;

- (e) the name, address and interest of persons known to have or to claim an interest in the land or other subject matter of the action; and
- (f) the principal relief sought.

14—Boundary action

The summons in a boundary action is to identify—

- (a) the nature of the action;
- (b) the land the subject of the action;
- (c) the statutory provision under which the action is brought;
- (d) in the case of an appeal against an administrative decision, the administrative decision the subject of the appeal;
- (e) the statutory provision giving to the Court jurisdiction to hear and determine the action; and
- (f) the principal relief sought.

15—Pleading

- (1) The summons in an action is to be accompanied by a statement of claim and not an affidavit in lieu of a pleading.
- (2) Unless the Court otherwise directs, actions will proceed on pleadings and not affidavits in lieu of pleadings.

[Note inserted by Land and Valuation Division Rules 2014 (Amendment No. 1)]

Note—

The Supplementary Rules permit an application for an order of ejectment or payment of rent under section 24(2) of the *Land Acquisition Act 1969* to be supported by an affidavit instead of a statement of claim.

Subdivision 2—Lodgment actions

16—Payment in proceeding

- (1) The summons accompanying a payment of monies into Court under section 23A(3) of the *Land Acquisition Act 1969* is to identify—
 - (a) the nature of the proceeding as being a payment of monies into Court under section 23A(3) of the *Land Acquisition Act 1969*;
 - (b) the land in respect of which the monies are paid into Court;
 - (c) the amount of monies paid into Court; and
 - (d) the name, address and interest of persons known to have or to claim an interest in the land.
- (2) The summons is to annex a copy of the notice of acquisition published in the Gazette under section 16 of the *Land Acquisition Act 1969*.
- (3) The summons is not required to be accompanied by a pleading or affidavit.
- (4) If agreement about compensation is reached by the negotiating parties in respect of the land before payment out, the agreement or the documents evidencing the agreement are to be exhibited to an affidavit filed in the proceeding.

- (5) An application for payment out of the monies paid into Court under section 26 of the *Land Acquisition Act 1969* is to be made by interlocutory application supported by an affidavit deposing to and exhibiting such consents as may be required and a search copy of the Certificate of Title immediately before the acquisition.

17—Compensation agreement proceeding

- (1) The summons in respect of an agreement for compensation filed under section 23B(1) of the *Land Acquisition Act 1969* is to identify—
 - (a) the nature of the proceeding as being the lodgment of an agreement for compensation under section 23B(1) of the *Land Acquisition Act 1969*;
 - (b) the land in respect of which the compensation agreement was made; and
 - (c) the name, address and interest of persons known to have or to claim a proprietary interest in the land.
- (2) The summons is to annex a copy of the agreement or the documents evidencing the agreement for compensation.
- (3) The summons is not required to be accompanied by a pleading or affidavit.
- (4) An application for orders to give effect to the agreement under section 23B(2) of the *Land Acquisition Act 1969* is to be made by interlocutory application.

Subdivision 3—Valuation appeals

18—Valuation appeal

- (1) A valuation appeal is to be instituted by a notice of appeal in an approved form.
- (2) The notice of appeal is to identify—
 - (a) the valuation decision the subject of the appeal;
 - (b) the land or other subject matter of the disputed valuation;
 - (c) the statutory provision under which the appeal is brought;
 - (d) the orders sought;
 - (e) the grounds of appeal; and
 - (f) if an extension of time in which to appeal is sought—the grounds for the extension of time.

Part 4—Service of originating process

Division 1—General

19—Service of originating process

- (1) A summons governed by Subdivision 1 of Division 1 of Part 3 of Chapter 3 is to be served upon the defendant and such other persons as are directed by the Court.

- (2) A summons governed by Subdivision 2 of Division 1 of Part 3 of Chapter 3 is to be served upon each person who, to the knowledge of the plaintiff, has or claims an interest in the land but is not required to be served personally.

Chapter 4—Documents and service

Part 1—Documents

Division 1—Approved forms

20—Approved forms

- (1) It is intended that approved forms be promulgated in the form of a schedule to the Supplementary Rules.
- (2) On promulgation of a form, it is to be published on the Supreme Court’s website.

Division 2—Filing of documents in Court

21—Form of documents for filing in Court

- (1) A document to be filed in the Court is to be in an approved form.
- (2) The Court may, in a particular action, give directions—
 - (a) about the form in which documents are to be filed in the Court; and
 - (b) imposing additional requirements about the filing or form of documents.

Part 2—Service

[no specific rules]

Chapter 5—Parties and pleadings

Part 1—Parties and non-party participation

Division 1—Parties generally

22—Actions generally

- (1) The plaintiff in an acquisition action—
 - (a) if not the registered proprietor of the land or legal owner of the thing which is the subject matter of the action—is to name that owner as defendant;
 - (b) may name as additional defendants other persons known to have or to claim an interest in the land or other things the subject of the action but, unless the Court otherwise directs, is not obliged to do so.
- (3) The plaintiff in a boundary action is to name as defendant the person against whom the principal relief is sought.

23—Lodgment action

- (1) A plaintiff paying monies into Court under rule 16 is to name as defendants all persons known to have or to claim an interest in the land.
- (2) A plaintiff filing an agreement for compensation under rule 17—
 - (a) is to name as defendants any other party to the agreement; and
 - (b) may name as additional defendants other persons known to have or to claim an interest in the land but, unless the Court otherwise directs, is not obliged to do so.

24—Valuation appeal

The plaintiff in a valuation appeal is to name as respondent the body that has the interest in defending the administrative decision the subject of the appeal.

Part 2—Defining issues

Division 1—Formal definition of basis of parties' respective cases

25—Acquisition action

- (1) This rule applies to the extent that an action comprises or includes an acquisition action.
- (2) When the plaintiff seeks an order for acquisition, the pleadings are to address separately and distinctly the question whether there should be an acquisition from any question of the entitlement to or amount of compensation.
- (3) If there is an issue whether the plaintiff or defendant has any entitlement to compensation, the pleadings are to address separately and distinctly the question of entitlement to compensation from any question of the amount of compensation.

- (4) If the question whether there is to be an acquisition, whether a party has an entitlement to compensation or the amount of compensation has been decided in whole or part by agreement between the parties, a party relying on the agreement is to –
 - (a) refer in the party’s pleading to the agreement and its effect; and
 - (b) not refer in the pleading to the facts giving rise to the question to the extent it has been resolved by the agreement except as necessary to describe the effect of the agreement.
- (5) When the amount of compensation or rent is in dispute, a party’s pleading is to identify each head of claim for compensation and the amount alleged to be appropriate under each head.
- (6) When the amount of compensation or rent is in dispute, the plaintiff is to file with the summons and statement of claim a report by a valuer or other appropriate expert identifying the expert’s opinion as to amounts relevant to compensation.

26—Boundary action

- (1) This rule applies to the extent that an action comprises or includes a boundary action.
- (2) The statement of claim is to annex a plan showing the relevant land and any relevant boundaries.
- (3) When the action comprises or includes a claim under section 4 or section 10 of the Encroachments Act 1944 or an appeal under section 51(8) of the Survey Act 1992, the plaintiff is to file with the summons and statement of claim a report by a surveyor or other appropriate expert identifying the expert’s opinion concerning the location of the relevant legal boundaries, physical boundaries and any alleged encroachment.

27—Lodgment action

Unless the Court otherwise orders, no pleadings are to be filed in a lodgment action.

28—Valuation appeal

- (1) This rule applies to a valuation appeal.
- (2) The notice of appeal is to identify the administrative decision the subject of the appeal.
- (3) The notice of appeal is to identify the grounds upon which it is contended that the administrative decision the subject of the appeal is erroneous.
- (2) The appellant is to file with the notice of appeal a statement of facts, issues and contentions in an approved form.
- (4) The statement of facts, issues and contentions is to set out briefly—
 - (a) the decision and the subject matter of the decision;
 - (b) the essential facts, if any, relied on that were not accepted by the decision maker;
 - (c) the essential issues raised on the appeal;

- (d) the appellant's contention on each issue;
 - (e) what is contended to be the proper value of the land or thing the subject of the valuation; and
 - (f) the grounds for any application for an extension of time.
- (5) The statement of facts, issues and contentions is to annex a copy of—
- (a) the decision and any reasons given by the decision maker;
 - (b) any formal submission by the appellant to the decision maker the subject of the decision; and
 - (c) an expert report by a valuer addressing the valuation of the land or thing the subject of the decision.
- (6) The appellant is, within two business days after filing a notice of appeal, to serve a copy of the notice of appeal and statement of facts, issues and contentions on all parties to the appeal.

29—Response

- (1) The respondent is to file and serve a notice of address for service in accordance with Chapter 4 of the General Civil Rules.
- (2) Within 28 calendar days of service of the notice of appeal, the respondent is to file and serve a response to the statement of facts, issues and contentions in an approved form.
- (3) The response to statement of facts, issues and contentions is to set out briefly—
 - (a) a response to any contested essential facts on which the appellant relies;
 - (b) the essential issues raised by the appellant on the appeal and any additional essential issues raised by the respondent on the appeal;
 - (c) the respondent's contention on each issue identified by the appellant and respondent;
 - (d) if an extension of time in which to appeal is sought, the ground of opposition if any.
- (4) The response to the statement of facts, issues and contention is to annex a copy of any expert report by a valuer addressing the value of the land or thing obtained by the respondent.

Chapter 6—Case management

Part 1—Duty of parties

[no specific rules]

Part 2—Assignment of special classification to action

[no specific rules]

Part 3—Court’s powers to manage and control litigation

[no specific rules]

Part 4—Listing of actions for trial

30—Proceeding to trial

- (1) The Court may at any time fix the trial date or the date at which a trial date will be fixed.
- (2) The Court may fix a trial date or trial listing date under subrule (1) even though, when the Court makes that order, the action is not ready for trial.
- (3) When the Court makes an order under subrule (1), it is the responsibility of the parties to ensure that the action is ready for trial at the fixed trial date or the trial listing date, as the case may be.
- (4) If an action will not be ready for trial at the fixed trial date or trial listing date, as the case may be, a party becoming aware of that fact is, as soon as practicable, to file and serve an application under rule 131 of the General Civil Rules seeking appropriate orders from the Court.

Chapter 7—Pre-trial procedures

Part 1—Initial steps

31—Application of General Civil Rules

- (1) Subject to subrules (2) and (3), Part 1 of Chapter 7 of the General Civil Rules is excluded.
- (2) Rules 128 and 129 of the General Civil Rules apply to all actions in the Court except lodgment actions.
- (3) The Court may direct that all or part of Part 1 of Chapter 7 of the General Civil Rules apply to a specific action in the Court.

Part 2—Interlocutory steps generally

Division 1—Litigation plan

32—Application of General Civil Rules

- (1) Subject to subrule (2), Division 1 of Part 2 of Chapter 7 of the General Civil Rules is excluded.
- (2) The Court may direct that all or part of Division 1 of Part 2 of Chapter 7 of the General Civil Rules apply to a specific action in the Court.

Part 3—Disclosure and production of documents

[no specific rules]

Part 4—Non-party disclosure

[no specific rules]

Part 5—Gathering of evidentiary material

[no specific rules]

Part 6—Pre-trial examination by written questions

[no specific rules]

Part 7—Medical examinations

[no specific rules]

Part 8—Admissions

33—Notice to admit matters in expert reports

- (1) A party may, with the permission of the Court, give notice to another party (an expert report notice to admit) asking the other party to admit—

- (a) all facts identified in an expert report by the expert as being true or as being assumptions of fact assumed by the expert to be true;
 - (b) the authenticity, relevance and admissibility of all documents annexed to an expert report; and/or
 - (c) the truth of statements contained in all documents annexed to an expert report.
- (2) An expert report notice to admit is given by—
- (a) filing the notice in the Court; and
 - (b) serving the notice on the party asked to make the admission.

34—Response to notice to admit

- (1) A party to whom an expert report notice to admit is addressed (the *respondent*) is, within 14 calendar days after the notice is given or a longer time agreed by the parties or allowed by the Court, to give a notice (an *expert report notice of response*) responding to the notice to admit—
- (a) by admitting the assertion; or
 - (b) by—
 - (i) denying the assertion and stating the grounds of the denial; or
 - (ii) stating that the respondent is not in a position to admit or deny the assertion and explaining why the respondent is not in a position to do so; or
 - (iii) claiming privilege or some other proper ground for refusing to respond to the assertion.
- (2) If the respondent fails to respond to an assertion in an expert report notice to admit as required by subrule (1), the respondent is taken to have admitted the assertion.
- (3) An expert report notice of response is given by—
- (a) filing the notice in the Court; and
 - (b) serving the notice on the party who gave the expert report notice to admit.

35—Applications and orders

- (1) The Court may, on application made within 21 calendar days after an expert report notice of response is given—
- (a) order the respondent to give a further and better expert report notice of response within the time allowed by the Court; or
 - (b) if satisfied that the respondent has denied or failed to admit an assertion without adequate reason for doing so—determine the issue raised by the assertion in advance of the trial.
- (2) If a party unreasonably denies or fails to admit an assertion, the Court will, unless there is good reason for not doing so, order the party to pay costs arising from the denial or failure.

- (3) If a party unreasonably asks another party for an admission, the Court will, unless there is good reason for not doing so, order that party to pay the costs arising from the request.

Part 9—Notice of evidence to be introduced at trial

Division 1—Notice generally

[no specific rules]

Division 2—Expert reports

36—Application of this Division

This Division applies to every action in the Court other than a lodgment action.

37—Disclosure of instructions to expert

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

Part 10—Evidence

[no specific rules]

Part 11—Offers of settlement

[no specific rules]

Part 12—Suitors fund

[no specific rules]

Part 13—Power to stay or dismiss proceedings

[no specific rules]

Part 14—Security for costs

[no specific rules]

Chapter 8—Special kinds of action

Part 1—Application of general rules

[no specific rules]

Part 2—Actions in defence of liberty

[no specific rules]

Part 3—Actions for judicial review

[no specific rules]

Part 4—Interpleader actions

38—Lodgment action

A payment of monies into Court under section 23A(3) of the *Land Acquisition Act 1969* is to be dealt with, so far as practicable, under rule 202 of the General Civil Rules.

Chapter 9—Trial

[no specific rules]

Chapter 10—Alternative dispute resolution

[no specific rules]

Chapter 11—Judgment

[no specific rules]

Chapter 12—Costs

[no specific rules]

Chapter 13—Appellate proceedings

[no specific rules]

Chapter 14—Contempt of Court

[no specific rules]

Chapter 15—Statutory proceedings

[no specific rules]

Chapter 16—Sheriff’s duties

[no specific rules]

Chapter 17—Legal practitioners

[no specific rules]

History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
15(2) Note	ins am01	1 December 2015