

SOUTH AUSTRALIA

DISTRICT COURT SPECIAL APPLICATIONS RULES 2014

The District Court Special Applications Rules 2014, dated 16 September 2014, come into operation on 1st October 2014 (*Government Gazette* 19 September 2014, p. 5457) have been varied by District Court rules dated:

	<i>Gazette</i>	<i>Date of operation</i>
#1	22 November 2017	28 November 2017, p. 4773
		18 December 2017

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

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History of Amendment

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

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

2—Commencement

These Rules commence on 1 October 2014.

Part 2—Interpretation

3—Interpretation

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

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

Court means the *District Court* of South Australia;

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

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

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

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

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

Supplementary Rules — see rule 9.

warrant means a search warrant or surveillance warrant;

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

3A—Numbering of rules

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

Note-

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

Part 3—Application of rules

4—Application of rules

These Rules apply to proceedings under the following Acts—

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

5—Application of District Court Civil Rules

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

Part 4—Repeal and transitional provision

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

7—Transitional provision

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

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

Chapter 2—General procedural rules

8—Power of court to control procedure

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

9—Supplementary rules

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

10—Filing and retention of documents

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

- (c) upon expiry of the period specified in paragraph (a), or at any time if directed by a Judge, the Registrar may return the envelope and its contents to the applicant or other person who lodged them with the Court or destroy them.

11—Confidential material

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

12—Provision of search warrants

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

[paragraph 12(a) amended by District Court Special Applications Rules 2014 (Amendment No. 1)]

- (a) show the warrant to the occupier of a place or to the owner or driver of a vehicle, as the case may be, to which the warrant applies; and

[paragraph 12(b) amended by District Court Special Applications Rules 2014 (Amendment No. 1)]

- (b) offer to provide a copy of the warrant to that person and on request, provide a copy of the warrant to that person.

Chapter 3—Private applications

Part 1—Introduction

13—Application of Chapter

This Chapter applies to—

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

Part 2—Application

14—Originating application

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

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

15—Email or facsimile application

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

16—Telephone application

- (1) This rule applies to a telephone application under—
 - (a) section 23 of the *Australian Crime Commission Act 2002* (Cth), section 30 of the *Australian Crime Commission (South Australia) Act 2004*, or

section 16(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for the issue of a warrant; or

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

Note—

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

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

Part 3—Documents in support of application

17—Documents in support of application

- (1) An application under rule 14 or 15 is to be accompanied by an affidavit verifying—
 - (a) the grounds of the application;

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

Part 4—Hearing and determination

18—Hearing and determination of application

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

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

The documents are otherwise to be dealt with in accordance with such directions as are given by the Court to ensure that they remain confidential.

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

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

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

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

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

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

Chapter 5—Serious and organised crime applications

Part 1—Declared organisations

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 2—Unexplained wealth orders

37—Application for unexplained wealth order

- (1) An application under section 9(1) of the *Serious and Organized Crime (Unexplained Wealth) Act 2009* for an unexplained wealth order in relation to a person is to be made by originating application in an approved form.
- (2) The application is to name as defendant the subject of the application.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the order sought; and
 - (c) short grounds of the application.
- (4) The application is to be accompanied by an affidavit—
 - (a) exhibiting the authorisation by the Director to make the application.
 - (b) identifying the components of the defendant’s wealth to which the application relates; and
 - (c) verifying the detailed grounds of the application.

- (5) The application and accompanying affidavit are to be served on the defendant, the Police Commissioner and such other persons as the Court directs.

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

38—Directions

On an application to which this Part applies, the Court may give directions relating to—

- (a) joinder of any additional party;
- (b) service of an application or order on a party or any other person;
- (c) the matter proceeding in the absence of a party if satisfied that the party cannot be found or if the party fails to appear after being given reasonable notice of the application;
- (d) any other matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 7—Enforcement applications

Part 1—Introduction

51—Interpretation

In this Chapter –

examiner means an examiner within the meaning of section 46B(1) of the *Australian Crime Commission Act 2002* (Cth).

52—Application of Chapter

This Chapter applies to—

- (a) applications under section 15(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for an order to give evidence or produce documents or materials;
- (b) applications under section 19(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for enforcement of an unexplained wealth order;
- (c) applications under section 20 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* to make, vary or revoke a restraining order;
- (d) **Note-** there is no subrule (d) – see rule 3A.
- (e) **Note-** there is no subrule (e) – see rule 3A.

53—Commencement of proceeding

- (1) Subject to subrule (2), an application to which this Chapter refers is, if a proceeding has not been started in the Court in relation to an investigation, to be made by originating application.
- (2) An application in relation to an investigation may, if a proceeding has been started in the Court in relation to the investigation, be made by interlocutory application.

54—Directions

On an application to which this Chapter applies, the Court may give directions relating to—

- (a) joinder of any additional party;
- (b) service of an application or order on a party or any other person;
- (c) the matter proceeding in the absence of a party if satisfied that the party cannot be found or if the party fails to appear after being given reasonable notice of the application;
- (d) any other matter.

Part 2—Giving evidence or production of documents

55—Application

- (1) An application by the Police Commissioner under section 15(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for an order that a person give evidence or produce documents or materials is to be made by originating application in an approved form.
- (2) The application is to name as defendant the person in respect of whom the order is sought.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the order sought; and
 - (c) short grounds of the application.
- (4) The application is to be accompanied by an affidavit verifying the detailed grounds of the application.

Note—

Section 15(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the affidavit to specify how the evidence, documents or materials to which the application relates are relevant to identifying, tracing, locating or valuing a person's wealth.

- (5) Unless the Court otherwise directs, the application is to be served on the defendant before it is heard.
- (6) If the Court makes an order without notice, the defendant may, within 5 business days of service of the order or such other period as the Court may fix, apply to the Court by interlocutory summons to set aside or vary the order.

56—Order

- (1) The Court may order that a person give oral or affidavit evidence to the Court on relevant questions.
- (2) The Court may order that a person produce before the Court relevant materials.
- (3) The Court may direct that evidence be given or materials be produced before a Judge, Master or the Registrar.
- (4) In this rule, *relevant questions* and *relevant materials* mean questions or documents or materials, as the case may be, relevant under section 15(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.

Note 1—

Section 15(3) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Police Commissioner to ensure that a copy of the order is served on the defendant, in accordance with any directions of the Court, and that the defendant is advised that the order was made under section 15 of the Act.

Note 2—

Section 15(5) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* empowers the Court to make an order that the Crown pay the defendant's legal costs in connection with complying with the order (which may be costs as between solicitor and client) or costs as determined by the Court.

Part 3—Aid of unexplained wealth order

57—Application for enforcement of unexplained wealth order

- (1) An application by the Police Commissioner under section 19(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* to declare property to be property of a person for the purpose of the *Enforcement of Judgments Act 1991* is to be made by originating application in an approved form.
- (2) The application is to name as defendant—
 - (a) the subject of the relevant unexplained wealth order;
 - (b) any person whom the Police Commissioner has reason to believe may have an interest in the property; and
 - (c) any other person who is a necessary party.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the order sought; and
 - (c) short grounds of the application.
- (4) The application is to be accompanied by an affidavit verifying the detailed grounds of the application including the evidence relied on for the contention that particular property is subject to the effective control of the person the subject of the relevant unexplained wealth order.

Note 1—

Section 19(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Court to be satisfied that particular property is subject to the effective control of the person the subject of the relevant unexplained wealth order.

Note 2—

Section 19(3) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Police Commissioner, on applying for an order, to give written notice of the application to the person who is subject to the unexplained wealth order, any person whom the Police Commissioner has reason to believe may have an interest in the property and any other persons who should, in the opinion of the Court, be given notice of the application.

58—Application for restraining order

- (1) An application by the Police Commissioner under section 20(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for a restraining order is to be made by originating application in an approved form.
- (2) The application is to name as defendant—

- (a) the person who has an interest in the property the disposal of which or the use of safe custody facilities in respect of which is sought to be prevented;
 - (b) the person whose transactions involving safe custody facilities are sought to be prevented;
 - (c) the person who has custody of the property including, in the case of an application to prevent specified kinds of transactions involving safe custody facilities, the relevant deposit holder; and
 - (d) any other person who is a necessary party.
- (3) The application is to identify—
- (a) the nature of the application;
 - (b) the property the disposal of which is sought to be restrained or the subject of transactions involving safe custody facilities which are sought to be prevented;
 - (c) the order sought; and
 - (d) short grounds of the application.
- (4) The application is to be accompanied by an affidavit—
- (a) exhibiting the unexplained wealth order or deposing to facts relating to the prospect of an unexplained wealth order being made;
 - (b) verifying the detailed grounds of the application; and
 - (c) identifying and giving details of—
 - (i) all persons who have or may have an interest in the property the disposal of which is sought to be prevented;
 - (ii) when applicable, all persons who would otherwise have a legal entitlement to enter into the transactions involving safe custody facilities sought to be prevented;
 - (iii) all persons who have custody of the property;
 - (iv) when applicable, the relevant deposit holder; and
 - (v) any other persons to whom notice of the application should be given.

Note—

Section 20(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Court to be satisfied that the order is reasonably necessary to ensure payment of an amount that is, or may become, payable under an unexplained wealth order and that the application for the order be accompanied by an affidavit setting out matters that would justify such a finding.

- (5) The application may, if the Court thinks fit, be heard without notice.

59—Objection when restraining order made without notice

- (1) A notice of objection under section 24 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* to a restraining order made without notice is to be made by interlocutory application in an approved form in the proceeding instituted under rule 58.

Note—

Section 24(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires a notice of objection to be lodged within 14 calendar days of service of the restraining order or such longer period as the Court may allow.

- (2) Any application for an extension of time in which to lodge a notice of objection is to be made in the same interlocutory application comprising the notice of objection.
- (3) The application is to be supported by an affidavit verifying the detailed grounds of the objection.

Note—

Section 24(3) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires that the Police Commissioner be served by registered post at least 7 calendar days before the day appointed for hearing the notice.

60—Application to revoke or vary restraining order

- (1) An application under section 25(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* to revoke or vary a restraining order is to be made by interlocutory application in the proceeding instituted under rule 58.
- (2) If permission to make the application is required, it is to be made in the same interlocutory application.
- (3) The application is to be supported by an affidavit verifying the detailed grounds on which the application is made and, when applicable, the grounds on which permission is sought.

Part 4—Contempt

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

History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
12(a)	am am01	18 December 2017
12(b)	am am01	18 December 2017