

RULES OF THE WARDEN'S COURT

At the Executive Council Office at Adelaide, 15 January 2002

PURSUANT to the *Mining Act 1971* and with the advice and consent of the Executive Council, I make the following Rules.

MARJORIE JACKSON-NELSON, Governor

PURSUANT to section 10AA(2) of the *Subordinate Legislation Act 1978*, I certify that, in my opinion, it is necessary or appropriate that the following Rules come into operation as set out below.

WAYNE MATTHEW, Minister for Minerals and Energy

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Citation
2. Commencement
3. Interpretation

PART 2 GENERAL PROCEDURE

4. Failure to comply with Rules
5. Court may dispense with observance of certain Rules
6. Commencement of action
7. Procedure on receipt of plaint note
8. Practice on hearing of suit
9. Adjournments
10. Representation at proceedings
11. Particulars
12. Survey
13. Extract from Mining Register

PART 3 SPECIAL APPLICATIONS

14. Objection by owner to entry by mining operator
15. Objection by owner to use of declared equipment
16. Application for amalgamation or suspension of working conditions
17. Objection to application for amalgamation or suspension of working conditions

PART 4 MISCELLANEOUS

18. Contempt of Court
19. Summons
20. Service
21. Fees
22. Record of Warden's order or decision
23. Seal
24. Enforcement of orders

SCHEDULE 1

SCHEDULE 2

**PART 1
PRELIMINARY****Citation**

1. These Rules may be cited as the *Warden's Court Rules 2001*.

Commencement

2. These Rules come into operation on the day on which they are made.

Interpretation

3. (1) In these Rules, unless a contrary intention appears—

"Act" means the *Mining Act 1971*;

"Court" means the Warden's Court;

"Registrar" means the Registrar of the Court;

"regulations" means the regulations made under the Act and for the time being in force;

"suit" includes application or objection.

(2) Nothing in these Rules may be construed to diminish or take away any power or authority conferred on the Court or a Warden by an Act.

(3) These Rules must be construed, interpreted and applied, to the fullest extent that their context will allow, in a manner that will best ensure the attainment of the following objects:

- (a) the simplification of practice and procedure;
- (b) the identification and clarification of material issues between the parties;
- (c) the saving of expense; and
- (d) the expeditious disposal of the business of the Court.

PART 2
GENERAL PROCEDURE

Failure to comply with Rules

4. (1) Subject to any statutory requirements, non-compliance with any one or more of these Rules does not, unless the Court directs, render void the proceedings to which the Rule or Rules relates or relate.

(2) However, those proceedings may be set aside wholly or in part as irregular, or amended, or otherwise dealt with in such manner, on such terms (if any), as the Court deems just.

Court may dispense with observance of certain Rules

5. If reasonable cause exists the Court may, at any stage of any proceedings, and subject to any statutory requirements, dispense with the observance of any Rule that relates to or governs powers that the Court may exercise of its own motion.

Commencement of action

6. (1) A suit is commenced by lodging a plaint note in the form set out in schedule 1.

(2) A plaint note may be drawn up by or under the direction of a Warden in any case where the Warden considers it appropriate to do so.

Procedure on receipt of plaint note

7. (1) On the receipt of a plaint note, the Court must conduct a preliminary examination for the purpose of—

- (a) making any necessary interlocutory orders; and
- (b) setting a closing date for the lodgement with the Registrar of any objection to an application; and
- (c) fixing the day, hour and place of the hearing; and
- (d) such other matters as may be appropriate in the particular action.

(2) The Court must, at least 7 days before the day on which a hearing is to take place, cause a copy of the plaint note to be given or sent by post to the defendant and to all persons who may be affected by the proceedings together with notice of the time and place of the hearing.

(3) On an application for an injunction whether ancillary to another remedy claimed or not, the Court may, where reasonable cause exists, dispense with any Rule relating to the service of proceedings and may give to the applicant such direction as to service or the time for effecting service as the circumstances of the matter may require.

Practice on hearing of suit

8. (1) Subject to these Rules, the practice generally on the hearing of a suit must, as far as practicable, conform to the practice of a court of summary jurisdiction.

(2) The Court may, at any stage of a hearing, direct or allow any departure from the practice that appears to it to be desirable having regard to the nature of the case and the circumstances generally.

(3) The Court at its discretion may, in appropriate circumstances, direct that any matter be heard *ex parte*.

(4) The Court at its discretion may, in appropriate circumstances, permit evidence to be given by affidavit.

(5) The Court may, if it thinks it just, hear concurrently two or more complaints if they arise out of the same set of circumstances.

Adjournments

9. The Court may adjourn the hearing of a suit to any other time or place, and may, either at the original hearing or at any adjournment, proceed in the absence of any party.

Representation at proceedings

10. A party to proceedings is entitled to be represented at the hearing of those proceedings by legal counsel or, with leave of the Court, by another person.

Particulars

11. The Court may, at any stage of any proceedings, order any party to provide another party with particulars or further and better particulars.

Survey

12. (1) The Court may, if satisfied a survey is necessary—

- (a) for the prevention or rectification of differences as to the boundaries of land included in any mining tenement; or
- (b) for securing a proper definition of any area included in any mining tenement; or
- (c) in connection with any complaint before the Court,

give to the holder of the mining tenement a notice in writing that a survey is required to be made of the land included in the tenement.

(2) The holder of the mining tenement must, within the time specified by the Court, furnish to the Court a detailed plan of the land in question.

(3) The Court may require that the plan be prepared by a surveyor licensed under the *Survey Act 1992*, at the expense of the holder of the mining tenement, and may require the licensed surveyor to furnish a report on all matters incidental to preparation of the plan.

Extract from Mining Register

13. The Court may at any time during the course of any proceedings require the Mining Registrar to produce an extract from the Mining Register to the Court and the Court may take judicial notice of its contents.

PART 3
SPECIAL APPLICATIONS

Objection by owner to entry by mining operator

14. A notice of objection lodged by an owner pursuant to section 58A(3) of the Act must—

- (a) include full particulars of the objection;
- (b) have annexed to it—
 - (i) a copy of the written notice given to the owner by the mining operator pursuant to section 58(1) of the Act; and
 - (ii) a supporting affidavit as to the relevant facts; and
- (c) be lodged with the Registrar.

Objection by owner to use of declared equipment

15. A notice of objection lodged by an owner pursuant to section 59(3) of the Act must—

- (a) include full particulars of the objection;
- (b) have annexed to it—
 - (i) a copy of the written notice given to the owner by the mining operator pursuant to section 59(2) of the Act; and
 - (ii) a supporting affidavit as to the relevant facts; and
- (c) be lodged with the Registrar.

Application for amalgamation or suspension of working conditions

16. (1) An application for amalgamation or suspension of working conditions pursuant to the regulations must contain particulars of the persons who may be affected by the relevant order.

(2) On receipt of an application for amalgamation or suspension of working conditions, notice of the application must be publicly displayed in the office of the Registrar and in the offices of the Mining Registrar.

(3) The Court may give notice of the application to any person who may be affected by an order made by the Court on the application or may, by notice to the applicant, direct that notice of the application be published in a newspaper or in such other manner as the Court may direct.

Objection to application for amalgamation or suspension of working conditions

17. (1) An objection to an application for amalgamation or suspension of working conditions must be made within 7 days of the publication of the notice of application or within such longer period as the Court may allow in the circumstances of the particular case.

(2) On receipt of an objection, the Court must give to all persons who may be affected by the application notice of—

- (a) the hearing of the application; and
- (b) the particulars of any objection.

**PART 4
MISCELLANEOUS**

Contempt of Court

18. Sections 45 and 46 of the *Magistrates Court Act 1991* apply, with such modifications as may be necessary, with respect to any suit which is or has been before the Court.

Summons

19. (1) A summons to defendants issued by the Court will be in the appropriate form set out in schedule 1.

(2) A summons to witnesses issued by the Court will be in the appropriate form set out in schedule 1.

Service

20. (1) Service of a document may be effected by serving the document on the solicitor of a party.

(2) If the solicitor for a party is a member of, or entitled to use, a document exchange, entitling the solicitor to the exclusive use of a box or receptacle for the deposit and collection of documents, any document of the kind referred to in subrule (1) may be left in the box or receptacle.

(3) In the event of a document being left in a box or receptacle of the kind referred to in subrule (2), that document will be taken to have been served at the address for service of the party represented by the solicitor entitled to use of the box or receptacle on the day following the day on which the document was left in the box.

Fees

21. The fees set out in schedule 2 are charged in respect of the matters referred to in the schedule.

Record of Warden's order or decision

22. (1) A Warden's order or decision need not be formally drawn up unless the Warden otherwise directs.

(2) However, the Warden must maintain a Warden's book in which a record is kept of all decisions and orders of the Court.

(3) Record of an order or decision in the Warden's book is conclusive evidence of the order or decision.

Seal

23. The Court will have such seals as are necessary for the transaction of its business (and may use such seals as it thinks appropriate).

Enforcement of orders

24. (1) The provisions of the *Enforcement of Judgments Act 1991* apply in respect of an order of the Court as if the order were an order of the District Court or Magistrates Court (as appropriate).

(2) On receipt of an affidavit from a person seeking to enforce an order of the Court setting out full particulars of the order sought to be enforced, the Warden must—

- (a) in the case of an order for payment of a monetary amount in excess of \$30 000, transmit the order to the Registrar of the District Court;
- (b) in the case of any other order, transmit the order to the Registrar of the Magistrates Court nearest to the place at which the Court made the order,

and proceedings may then be taken on the order, or any other action taken, as if it were a judgement or order of the Court to which it has been transmitted.

(3) In this Rule, "order" includes injunction.

SCHEDULE 1

Form No. 1

SOUTH AUSTRALIA

MINING ACT 1971

PLAINT NOTE

..... of

complains of of

objects to.....

makes application for.....

and says:

1. That (*etc*).....
.....
.....

2. That (*etc*).....
.....
.....

(Describe the subject matter of complaint/objection/application in paragraphs)

The complainant seeks (*state relief sought*) or such other relief as may be just:

The amount of any pecuniary claim is \$

Dated day of 20.....

Signature.....

Form No. 2
SOUTH AUSTRALIA
MINING ACT 1971
SUMMONS TO DEFENDANT(S)

Plaint No

To *(insert names of all defendants)* of.....
.....

You are summoned to appear before me, or some other warden, at
on theday of20ato'clock
in the noon to answer the plaint of *(insert names, addresses, and occupations of all the complainants)* by
which plaint the complainant seeks *(insert nature of plaint)*.....
.....
.....
.....

You may have a summons to compel the attendance of any witness or for the production of any books or documents, by
applying at my office.

Bring this summons with you when you come to my office.

Given under my hand this day of 20
.....Warden

Form No. 3
SOUTH AUSTRALIA
MINING ACT 1971
SUMMONS TO WITNESS

Plaint No

Toof.....
.....of.....

has made a complaint/lodged an objection/filed an application by which he/she seeks (insert nature of complaint/objection/application).....

I, the undersigned Warden, am satisfied that you are likely to give material evidence or to have in your possession or power certain articles required for the purposes of evidence on behalf of the complainant (or defendant). You are therefore summoned to appear at on the day of 20 at the hour of o'clock in the noon before the Court to give evidence concerning the matter of the complaint/objection/application (or/and) to produce to the Court all books, plans, papers, documents, articles, goods and things likely to be material evidence on the hearing of the complaint/objection/application, and especially

(NOTE: Section 65 of the Mining Act 1971 provides: (1a) Subject to subsection (1b) of this section, if any person—

- (a) who has been served with a summons to attend before the Court neglects or fails to appear in obedience to the summons;
(b) who has been served with a summons to produce any books, papers or documents neglects or fails to comply with the summons;
(c)
(d)

he shall be guilty of a contempt of the Warden's Court.)

Dated the day of 20

..... Warden

**SCHEDULE 2
FEES**

1. Taking out a plaint seeking forfeiture of a mining tenement or a determination in accordance with the provisions of section 67(1) of the Act.....\$46.00
2. Taking out a plaint (all other matters).....\$18.00

MME 01/0059 CS

R. DENNIS, Clerk of the Council