NEW RULES FOR ACTIONS AND APPEALS IN THE DISTRICT COURT ADMINISTRATIVE AND DISCIPLINARY DIVISION

New Rules and a Practice Direction will come into effect on 1 March 2009 relating to all actions and appeals commenced in the Administrative and Disciplinary Division of the Court on and after that date.

These amendments are the:

- *District Court Civil Rules* 2006 (Amendment No. 6)
- *District Court (Criminal and Miscellaneous) Rules* 1992 (Amendment No. 7) and
- *District Court Practice Directions* 2006 (Amendment No. 6)

The purpose of the change

The purpose of the amending Rules and the new Practice Direction is to streamline the number of rules that apply to this area and standardise them against the current court rules. They consequently allow for the application of the *District Court Civil Rules* 2006 (the "2006 Rules") to proceedings in the Administrative and Disciplinary Division.

It should be noted however that for all practical purposes the procedures to be followed under the new rules are similar to those that apply now to the old rules.

The background to the change

When the 2006 Rules came into effect on 1 September 2006 parts II and III of the *District Court Rules* 1992 (the 1992 Rules) were revoked. However they continued to apply for the purposes of any proceeding commenced or continued under part VI - proceedings in the Administrative and Disciplinary Division.

The effect of the change

Pursuant to the amending Rules, all actions and appeals commenced in the Administrative and Disciplinary Division as and from 1 March 2009 will be governed by the 2006 Rules,

although proceedings commenced prior to 1 March 2009 will continue to be governed by the 1992 Rules.

The following are features of the amending Rules:

DEFINITION OF "ACTION"

The definition of an "action" in 2006 Rule 4 is amended by a cross-reference to Rule 28 which defines the nature of an action.

> ie " An ***action*** is a proceeding in the Court (other than an appellate proceeding) in which a person (the ***plaintiff***) asks the Court to make a final determination of a justiciable issue or to exercise any other power vested in the Court… etc"

DEFINITION OF APPELLATE PROCEEDING

Under the 1992 Rules an "Appellate proceeding" excluded proceedings in the Administrative and Disciplinary Division. However the 2006 Rules will now define "Appellate proceeding" as

"(a) an appeal; or

(b) a reservation of a question of law arising in proceedings before a Master "

DEFINITION OF "JUDGMENT"

The definition of "judgment" in 2006 Rule 4 is expanded by adding "decision" to the definition.

> ie "judgment means a judgment, order or decision;"

INTRODUCTION OF THE NEW AMENDING RULES

2006 Rule 6 contains a new sub-rule which provides that the 2006 Rules apply, to the extent appropriate, to an action (including a complaint or application) or appeal commenced in the Administrative and Disciplinary Division of the Court.

TRANSITIONAL PROCEEDINGS

2006 Rule 7 which governs transitional proceedings is amended by the provision of a note to the effect that Part VI has been revoked, other than its continuing to apply for the purpose of completing proceedings already commenced in the Administrative and Disciplinary Division prior to 1 March 2009.

MASTERS' JURISDICTION

2006 Rule 15, which governs the jurisdiction of Masters of the Court, is amended by the addition of a new sub-rule 6. This provides that a Master can hear appeals only under the *Passenger Transport Act 1994* and the *Dog and Cat Management Act 1995*. This reflects similar provisions in the 1992 Rules.

HEADING TO CHAPTER 12A

The Heading to Chapter 12A of the 2006 Rules is amended to now read **"Chapter 12A - Applications to review proceedings**". The words "in minor civil actions" are deleted, so as to make it clear that Chapter 12A governs all review proceedings which come before it.

TIME LIMITS

Rule 279A of the 2006 Rules is amended by deleting sub-rule 1A which had set a time limit for the commencement for an application for review (being 21 days after the date of the judgment subject to the review).

The new sub-rule 1A makes that time limit subject to any other relevant law. This will allow for the case when a review may be governed by a statutory or other law which provides a different time limit for the commencement to the application.

APPLICATION OF CHAPTER 13

Rule 279B of the 2006 Rules is deleted. Consequently, Chapter 13 will ***no longer be*** applied to cases where appellate proceedings lay to the court.

NEW CHAPTER 12B - DISCIPLINARY PROCEEDINGS IN THE ADMINISTRATIVE AND DISCIPLINARY DIVISION OF THE COURT

Chapter 12B applies to the commencement of proceedings and adds a new Rule 279B. This imposes requirements concerning the:

- form of a complaint,
- particulars to be included,
- time limit for lodging, and
- personal service of the complaint.

It also provides that unless the court otherwise directs, a complainant may not rely on grounds not stated in the complaint.

The complaint lodged pursuant to the provisions of an Act ***must***:

- be in approved form,
- state in detail the particulars constituting the bases for the complaint, and subject to any relevant law,
- If the complaint is made under section 264 (4) of the Local Government Act 1999 it must be lodged within 12 months after the grounds of the complaint first arose.[see *District Court Civil Rules 2006 (Amendment No 8)*] In relation to complaints under other legislation no time limit is fixed.
- be served personally on the defendant.

<u>AMENDMENT OF RULE 284(2) – COMMENCEMENT OF APPEALS</u>

Rule 284(2) governs commencement of appeals. There is a new sub-rule 284(2)(e) (the present sub-rule (2)(e) becomes (2)(f)).

The amended Rule provides that if an appeal requires permission to appeal, it must include:

- a request for the necessary permission, or
- details of the permission granted, if permission was obtained previously ie when, and from whom, permission to appeal was obtained.

NEW RULE 285 - APPLICATIONS FOR PERMISSION TO APPEAL

A new Rule 285 is provided. Where an appeal requires the court's permission, the appellant may commence the appeal in the ordinary way and include in the notice of appeal a request for the necessary permission.

Alternatively, within 14 days after the date of the judgment against which the appellant seeks to appeal, the appellant may make a separate application to the court for permission to appeal.

If the appellant commences the appeal before obtaining permission to appeal, the appeal is conditional on permission to appeal being granted and if permission is refused it will lapse. If the appellant makes a separate application for permission to appeal to the court before filing a notice of appeal, the appellant must file with the application an affidavit setting out the grounds of the application.

AMENDMENT OF RULE 287 – NOTIFICATION OF AN APPEAL

Rule 287 relates to notification of an appeal. The 2006 Rule 287 is deleted and replaced. The amended Rule provides that an appellant must within 2 days after filing a notice of appeal notify all other parties to the appeal. If the appeal is from a tribunal, the office of the tribunal, is to be notified. If the appeal is from a decision of the Guardianship Board, the Public Advocate is to be notified. Notification of an appeal is to be given by serving a copy of the notice of appeal.

On receipt of a notice of appeal, the proper officer of the tribunal must, subject to any direction by the court, transmit to the District Court Registrar:

- all documents lodged with the tribunal in the relevant proceedings;

- a copy of any transcript of evidence of proceedings;
- any other evidentiary material relating to the proceedings in the custody of the tribunal; and
- a copy of the judgment, order, or decision subject to the appeal and of any reasons given for it.

The proper officer of the tribunal should comply with any reasonable request from the Registrar for transmission of these materials in electronic form.

If the appeal is from a decision of the Guardianship Board, the Registrar will give notice of the filing of an appeal to those persons whom the Guardianship Board identifies as persons who were given notice of the hearing before the Board or who were given an opportunity to make submissions at the hearing before the Board.

AMENDMENT OF RULE 289 – APPEAL NOTICES

This Rule relates to amendment of the appeal notices. The definition of “appeal notice” as amended means an application for permission to appeal or a notice of appeal or a notice of a cross appeal or a notice of contention.

AMENDMENT OF RULE 290 - POWERS OF COURT INCIDENTAL TO APPEAL

A new sub-rule 1(a) is inserted to Rule 290. This provides that subject to any other relevant law the court may extend the time for commencing the appeal or taking any step in the appeal.

AMENDMENT OF RULE 292 - GOVERNING HEARING OF APPEAL

A new sub-rule 1 is inserted to Rule 292. This provides that, subject to any other relevant law, an appeal is to be by way of re-hearing.

AMENDMENT OF RULE 293 - DISCONTINUANCE OF AN APPEAL

This amendment inserts new sub-rules 3 and 4 to Rule 293 relating to discontinuance of appeals. These provide that an appellant must as soon as practicable after filing a notice of discontinuance, give a copy of the notice to all other parties to the appeal, and if the appeal is from a tribunal, to the proper office of the tribunal.

Subject to any other relevant law, an appellant discontinuing an appeal is liable to the other parties to the appeal for the costs arising from the appeal.

AMENDMENT OF RULE 297 – DELIVERY OF SUMMARY OF ARGUMENT

This amendment relates to a summary of argument. A new sub-rule 1 is inserted to Rule 297 providing that subject to any direction given by a Judge or Master, each party must deliver to the court a summary of the party's argument in the court.

AMENDMENT OF RULE 297(3)(b) – CONTENT OF SUMMARY OF ARGUMENT

This amendment to Rule 297 (3)(b) relates to the requirement for a summary of argument to identify any relevant passage and the reasons for judgment if the error was alleged to be in the reasoning of the Judicial Officer of first instance. The definition is widened by deleting the words "the Judicial Officer" so as to provide for pointing out errors in the reasons for judgment of a multi member tribunal.

AMENDMENT OF RULE 298 - CASE BOOKS

A new sub-rule 1 is inserted to Rule 298. This provides that subject to any direction given by a Judge or Master, the party responsible for the carriage of appellate proceedings must prepare a case book and lodge the case book at the Registry within the time prescribed by the relevant Practice Direction.

FACILITATIVE AMENDMENT

The *District Court Criminal and Miscellaneous Rules* 1992 (Amendment No.7) formally revoke part VI of the 1992 Rules. They provide, however, that notwithstanding the revocation

those Rules will continue for the purpose of completing proceedings commenced in the Administrative and Disciplinary Division prior to 1 March 2009.

These amending Rules also insert a new Rule IV – (2)(6) which provides that an appeal to the court pursuant to s 57 of the *Child Sex Offender's Registration Act* 2006 is to be governed by the 2006 Rules.

AMENDMENT TO PRACTICE DIRECTIONS AND FORMS

A new Practice Direction - 2006 (Amendment No. 6) has been signed by the Chief Judge. It will take effect as of 1 March 2009. It provides for amendments to the forms.

There is a new Form 1A which comprises a front sheet for Administrative and Disciplinary Division matters.

A new Form 2A provides a new form of summons for use in the Administrative and Disciplinary Division.

A new Form 7 replaces the former Form 7. It provides the forms for a Notice of Address for Service by a defendant, a Notice of Acting by a solicitor and a Notice of Acting in person.

A new Form 29 Notice of Appeal is provided.

A new Form 29A Notification of Appeal from a decision of the Guardianship Board is provided.

A new Form 29B Notice of Address for Service on an appeal from a decision of the Guardianship Board is provided.

The 1992 and 2006 Rules as amended, and the Practice Direction and Forms, will be posted to the court website www.courts.sa.gov.au for the assistance of the profession.

Ian Phillips

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