

# South Australia

## Supreme Court Civil Supplementary Rules 2014

The Supreme Court Civil Supplementary Rules 2014, dated 2nd September 2014 that came into operation on 1st October 2014 (*Government Gazette* 11 September 2014, p. 4502) have been varied by Supreme Court rules dated:

		<i>Gazette</i>	<i>Date of operation</i>
# 1	29 September 2014	9 October 2014, p. 6094	9 October 2014
#2	29 June 2015	30 July 2015, p. 3672	1 September 2015
#3	16 September 2015	1 October 2015, p. 4492	1 October 2015
#4	29 September 2015	29 October 2015, p. 4729	1 December 2015
#5	29 February 2016	14 April 2016, p. 1172	1 May 2016
#6	27 June 2016	4 August 2016, p. 3118	1 September 2016
#7	2 September 2016	22 September 2016, p. 3823	1 October 2016
#8	30 October 2017	28 November 2017, p 4793	1 December 2017
#9	28 May 2018	7 June 2018, p. 2124	7 June 2018
#10	7 November 2018	15 November 2018, p. 3972	1 December 2018
#11	Only applicable to Schedule 3 – Approved Forms		
#12	29 March 2019	18 April 2019, p. 1080	1 May 2019
#13	<b>2 October 2019</b>	<b>24 October 2019, p. 3577</b>	<b>1 November 2019</b>

By virtue and in pursuance of Section 72 of the *Supreme Court Act 1935* and all other enabling powers, we, Judges of the Supreme Court of South Australia, make the following Supreme Court Civil Supplementary Rules 2014.

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## **Schedule 1—Scale of costs up to 30 June 2011**

## **Schedule 2—Scale of costs from 1 July 2011**

## **History of Amendment**

## **Schedule 3—Approved Forms – see separate file**

# Chapter 1—Preliminary

## Part 1—Formal provisions

### 1—Citation

- (1) These Rules may be cited as the *Supreme Court Civil Supplementary Rules 2014*.
- (2) These Supplementary Rules supplement and modify the *Supreme Court Civil Rules 2006*.
- (3) These Supplementary Rules follow the Chapter, Part and Division headings of the *Supreme Court Civil Rules 2006*.

### 2—Commencement

These Supplementary Rules commence on 1 October 2014.

## Part 2—Objects

### 3—Objects

The objects of these Supplementary Rules are to—

- (a) regulate civil proceedings in the Court;
- (b) supplement the Rules;
- (c) modify the Rules in respect of a particular category of proceedings;
- (d) prescribe scales of costs;
- (e) prescribe the rate of interest that accrues on judgments;
- (f) prescribe approved forms.

## Part 3—Interpretation

### 4—Interpretation

- (1) Unless the contrary intention appears, expressions in these Supplementary Rules have the same meanings as in the Rules.
- (2) In these Supplementary Rules, unless the contrary intention appears—  
*construction dispute* – see supplementary rule 10;  
*FDN* means the file document number allocated to a document when it is filed in the Court;  
*Liquidated Debt Claim* means—
  - (a) a claim that is liquidated; or
  - (b) an unliquidated claim for property damage the cost of which has been paid by the plaintiff and an invoice for which is attached to the statement of claim;*medical negligence dispute* – see supplementary rule 10;  
*Registrar* means the Registrar and includes a Deputy Registrar and any other officer or employee of the Court performing functions delegated by the Registrar or under the Registrar’s supervision;

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

*the Supplementary Rules* means the *Supreme Court Civil Supplementary Rules 2014*.

- (3) Unless the contrary intention appears, rule 5 of the Rules applies to the calculation of time under these Supplementary Rules.

## **Part 4—Application of rules**

### **5—Application of rules**

These Supplementary Rules apply to actions governed by the Rules.

## **Part 5—Repeal and transitional provisions**

### **6—Repeal and transitional provision**

- (1) Unless the Court otherwise directs, these Supplementary 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) All practice directions made before 1 October 2014 are superseded by these Supplementary Rules.
- (3) Unless the Court otherwise directs, Chapter 3 Part 2 applies only to actions commenced on or after 1 January 2015.
- (4) The Court may give directions about which rule is to apply to a transitional proceeding or a particular step in a transitional proceeding.

## **Chapter 2—General procedural rules and allocation of Court business**

### **Part 1—Public access to hearings**

*[no supplementary rules]*

### **Part 2—Court's control of procedure**

*[no supplementary rules]*

### **Part 3—Enforcement of procedural obligations**

*[no supplementary rules]*

### **Part 4—Distribution of Court's business**

*[no supplementary rules]*

#### **Division 1—General**

*[no supplementary rules]*

#### **Division 2—Jurisdiction of Masters**

*[no supplementary rules]*

#### **Division 3—Administrative functions**

*[no supplementary rules]*

#### **Division 4—Minor judicial functions**

*[no supplementary rules]*

#### **Division 5—Directions and review**

*[no supplementary rules]*

### **Part 5—Representation**

#### **Division 1—General principles of representation**

*[no supplementary rules]*

#### **Division 2—Solicitors**

##### **7—Solicitor acting for party**

- (1) A notice of acting and address for service under rule 23(1)(b) of the Rules is to be in form 16.
- (2) A notice of acting and address for service under rule 23(2)(b) of the Rules is to be in form 16.

(3) A notice of acting in person by a party under rule 23(2)(a) of the Rules is to be in form 17.

**Division 3—Representation of company**

*[no supplementary rules]*

## Chapter 3—Elements of action at first instance

### Part 1—Nature of action

[no supplementary rules]

### Part 2—Proceedings in anticipation of action

#### Division 1—Investigation

[no supplementary rules]

#### Division 2—Offers of settlement before action

##### Subdivision 1—Introduction

##### 8—Application

Construction disputes and medical negligence disputes are excluded from rule 33 of the Rules and are governed instead by this Division.

##### 9—Objectives

The objectives of this Division are to—

- (a) encourage parties to resolve a claim before commencing proceedings;
- (b) enable litigation, if unavoidable, to proceed on a reasonable timetable, at a proportionate cost and on narrowed issues; and
- (c) involve insurers at an early stage.

##### 10—Definitions

In this Division—

*claimant* means the person intended to be plaintiff if a proceeding is instituted;

*cost estimate* means an estimate in form 2;

*construction dispute* means a building, construction or engineering dispute involving a monetary claim or otherwise and includes a professional negligence claim against a construction expert and a negligence claim against a certifying authority;

*construction expert* means a building, construction or engineering expert and includes an architect, engineer, quantity surveyor and building consultant;

*medical negligence dispute* means a claim against a medical expert or hospital for negligence, whether for breach of contract or breach of duty of care;

*respondent* means the person intended to be defendant if a proceeding is instituted or that person's insurer.

##### 11—Excusal from compliance

- (1) A party is excused from complying with the relevant subdivision before commencing an action if—
  - (a) urgent relief is to be sought in an action;

- (b) a freezing order is to be sought in an action; or
  - (c) a claim is about to become time-barred or adversely affected by passage of time, and complying with Subdivision 2 or 3 as applicable would prejudice the claimant.
- (2) If the respondent fails to send a letter of response in breach of supplementary rule 18 or 26 or fails to attend a pre-action meeting in breach of supplementary rule 20 or 27, the claimant is excused from further compliance with the relevant subdivision before commencing an action.

**Note—**

In these events, supplementary rule 31(3) entitles a party to file an interlocutory application for directions as to what procedure should be taken in lieu of compliance with the relevant subdivision.

## **12—Proportionality**

- (1) This Division is not to be used as a tactical device to secure advantage for one party, delay the commencement of proceedings or generate avoidable costs.
- (2) The extent of the steps required to be taken under this Division that would not otherwise be undertaken is to be limited so that the time and costs incurred are proportionate to the amount or value in dispute.
- (3) It is likely to be disproportionate for a party, in compliance with this Division, to incur more than 5% of the estimated cost of a fully contested litigation including trial.
- (4) The Court may take into account the extent of the parties' compliance with this Division when giving directions for the management of proceedings and when making orders about who should pay costs.
- (5) The Court will expect the parties to have complied with this Division. The Court may ask the parties to explain what steps were taken to comply before commencement of the action. If a party fails to comply, the Court will ask that party to explain the non-compliance.
- (6) When considering compliance, the Court will—
  - (a) be concerned with substantial compliance and not minor departures;
  - (b) not regard minor departures as exempting the other party from compliance;
  - (c) take into account the need for proportionality; and
  - (d) take into account any unavoidable urgency.

## **13—Time periods**

When a time period is prescribed by Subdivision 2 or 3, the time period may be altered by the consent of all parties.

## **14—Costs of compliance**

The costs incurred by the parties in compliance with Subdivision 2 or 3 as applicable will be treated as costs incurred in the conduct of litigation of issues arising from the letters of claim and response, but not insofar as such costs relate to issues not subsequently litigated.

## **15—Use of communications and documents exchanged**

The communications between the parties and documents created by the parties in compliance with this Division—

- (a) are required to be disclosed to the Court when required by this Division or when an order is made by the Court for such disclosure for the purpose of making procedural directions or costs orders;
- (b) are not to be disclosed to the Court at trial or at the hearing of a substantive issue.

## **Subdivision 2—Construction disputes**

### **16—Application**

- (1) This Subdivision applies to all construction disputes in respect of which an action is subsequently commenced in the Court.
- (2) A claimant is not required to comply with this Subdivision if—
  - (a) the proposed action is to enforce a binding determination enforceable between the parties as such, including (without limitation) a decision of an adjudicator under section 22 of the *Building and Construction Industry (Security of Payment) Act 2009* or an arbitrator under section 35 of the *Commercial Arbitration Act 2011*;
  - (b) the proposed action is for payment of a claimed amount under section 15(2)(a)(i) of the *Building and Construction Industry (Security of Payment) Act 2009*; or
  - (c) the dispute has been or will be the subject of a dispute resolution procedure to similar effect to that prescribed by this Subdivision.

### **17—Letter of claim**

- (1) Before commencing an action, the claimant or the claimant’s solicitor is to send to the respondent or the respondent’s insurer a letter of claim.
- (2) The letter of claim is to—
  - (a) give the full name and address of the claimant;
  - (b) give the full name and address of each proposed defendant;
  - (c) identify the basis on which the claims are made, including the principal contractual term and/or statutory provision relied on;
  - (d) identify the nature of each separate claim and brief facts supporting each claim;
  - (e) identify the nature and extent of the relief claimed—if damages are claimed, a breakdown showing how the damages are quantified; if a liquidated sum is claimed, how it is calculated; if an extension of time is claimed, the period claimed and basis for the extension claim;
  - (f) attach a copy of any report obtained from an expert on whose evidence the claimant intends to rely;



- (g) estimate the total costs likely to be incurred by the claimant in a contested trial;
- (h) make an offer to resolve the dispute; and
- (i) propose a date and venue for the pre-action meeting (referred to in supplementary rule 20) if the offer is not accepted.

## **18—Letter of response**

- (1) Within 21 calendar days after receipt of the letter of claim, if the respondent does not accept the offer, the respondent is to send a letter of response.
- (2) The letter of response is to—
  - (a) identify the basis of any dispute concerning the contractual or statutory basis of the claims;
  - (b) identify which claims are accepted and which are rejected, and, if rejected, the basis of the rejection including any dispute as to the factual basis relied on by the claimant;
  - (c) identify any special defence to a claim, including the expiration of a relevant time limit or the making of a binding decision in relation to the claim;
  - (d) if a claim is accepted in whole or in part, identify whether the damages, amounts claimed or extensions of time claimed are accepted or rejected, and, if rejected, the basis of the rejection;
  - (e) if contributory negligence is alleged against the claimant, summarise the facts relied on;
  - (f) if the respondent intends to make a counterclaim, give the information required by supplementary rule 17 to be given in a letter of claim;
  - (g) attach a copy of any report obtained from an expert on whose evidence the proposed defendant intends to rely;
  - (h) estimate the total costs likely to be incurred by the proposed defendant in a contested trial;
  - (i) make an offer to resolve the dispute; and
  - (j) respond to the date and venue for the proposed pre-action meeting if the counter offer is not accepted.
- (3) If a respondent intends to object to all or part of the claimant’s claim on the ground that—
  - (a) the Court lacks jurisdiction;
  - (b) the matter is required to be referred to arbitration or determined otherwise than by action in the Court;
  - (c) a step is required to be taken before the institution of a proceeding; or
  - (d) the proposed defendant named in the letter of claim is the wrong defendant,
 the respondent is to identify the parts of the claim to which the objection relates, set out the ground relied on, and, when applicable, identify the correct defendant (if known).
- (4) A failure to make an objection will not prejudice the proposed defendant’s right to do so in a subsequent action, but the Court may take such failure into account on the issue of costs at any stage of the action.

## 19—Claimant’s response to notice of intended counterclaim

The claimant is to provide a response to any notice of intended counterclaim by the respondent within 14 calendar days after receipt of the letter of response.

## 20—Pre-action meeting

- (1) If the dispute has not been resolved, within 30 calendar days after receipt of the letter of response or of the claimant’s letter of response to an intended counterclaim (whichever is later), the parties are to meet to—
  - (a) identify the main issues in dispute and identify the primary cause of disagreement in respect of each issue;
  - (b) consider whether, and if so how, the issues might be resolved without recourse to litigation; and
  - (c) consider, if litigation is unavoidable, what steps should be taken to ensure that it is conducted as expeditiously and efficiently as possible in accordance with the overriding objectives prescribed in rules 10 and 113 to 116 of the Rules.

In some circumstances, it may be necessary to convene more than one meeting.

- (2) During the meeting, the lawyers for the parties are to endeavour to reach a consensus in the presence of the parties as to the likely legal cost and time scale of litigation and any appropriate alternative dispute resolution procedure.
- (3) If the parties or their solicitors anticipate difficulty in achieving the aims of the pre-action meeting, the parties should consider appointing at their joint cost an independent person to chair the meeting. In the interests of proportionality of cost, such independent person should not ordinarily be expected to do any extensive reading or preparation before the meeting.
- (4) The meeting should be attended by—
  - (a) each party or a representative of the party (including an insurer) having authority to resolve the dispute;
  - (b) a lawyer for each party (if one has been instructed); and
  - (c) when a claim is made or defended on behalf of some other party (such as, for example, a claim made by a main contractor pursuant to a contractual obligation to pass on subcontractor claims), the party on whose behalf the claim is made or defended and/or that party’s lawyer.
- (5) In respect of each issue in dispute, or the dispute as a whole, the parties should consider whether some form of alternative dispute resolution would be more suitable than litigation, and if so, endeavour to agree which form to adopt.
- (6) If the parties are unable to agree on a means of resolving the dispute other than by litigation, they are to use their best endeavours to agree—
  - (a) if expert evidence is likely to be required—how the relevant issues are to be defined and how expert evidence is to be dealt with including whether a joint expert might be appointed, and if so, who that should be;
  - (b) the extent of disclosure of documents with a view to saving costs; and
  - (c) the conduct of the litigation with the aim of minimising cost and delay.

## **21—Institution of action**

If the parties do not resolve the dispute at the pre-action meeting, any party may institute an action in accordance with supplementary rule 29.

## **Subdivision 3—Medical negligence disputes**

### **22—Application**

This Subdivision applies to all medical negligence disputes in respect of which an action is subsequently commenced in the Court.

### **23—Notice of potential claim**

- (1) The claimant is to send to the potential defendant or the defendant's insurer written notice of potential claim as soon as reasonably practicable after the claimant becomes aware that the claimant has been adversely affected by an act or omission by the potential defendant and there is a reasonable prospect that the potential defendant acted negligently.
- (2) The notice of potential claim is to—
  - (a) give the full name, address, date of birth and occupation of the claimant;
  - (b) give the full name and address of the potential defendant;
  - (c) identify the date and occasion of the allegedly negligent act or omission;
  - (d) identify the act or omission that may have been negligent and the essence of why it may have been negligent;
  - (e) briefly describe the adverse effects that may have been caused by the act or omission of the potential defendant and the claimant's current condition;
  - (f) briefly outline the causal link between the posited negligence and the adverse effects including what the outcome would have been absent negligence;
  - (g) identify whether the claimant has returned to work, and if not, when that is likely;
  - (h) identify whether the claimant is continuing to receive treatment and, if so, its nature;
  - (i) attach a copy of any report obtained from an expert on whose evidence the claimant intends to rely;
  - (j) identify any medical records required from the potential defendant; and
  - (k) identify any other records held by other providers that may be relevant.

### **24—Notice of response**

- (1) The respondent is to send to the claimant an interim response, so far as possible, to the notice of claim within 28 calendar days and a full response within 60 calendar days after receipt of the notice of claim.
- (2) The full notice of response is to—
  - (a) give the respondent's contact details;
  - (b) provide a copy of requested medical records (with an invoice for copying);
  - (c) if the records are incomplete, explain why and if the records are extensive and further information is required to identify the relevant records, identify what further information is required;

- (d) if liability is accepted, make suggestions for resolving the claim and/or a request for further information;
- (e) if liability is denied, explain why it is denied including any alternative explanation for what happened or caused any adverse effects;
- (f) attach a copy of any report obtained from an expert on whose evidence the respondent intends to rely; and
- (g) make suggestions for next steps, for example further investigations, obtaining expert evidence, meeting/negotiations, alternative dispute resolution or invitation to issue proceedings.

## **25—Letter of claim**

- (1) Before commencing an action, the claimant is to send to the respondent or the respondent’s insurer a letter of claim.
- (2) The letter of claim is to—
  - (a) give the full name, address, date of birth and occupation of the claimant;
  - (b) give the full name and address of the proposed defendant;
  - (c) identify the date and occasion of the allegedly negligent act or omission;
  - (d) identify the allegedly negligent act or omission and why it was negligent;
  - (e) identify the adverse effects allegedly caused by the potential defendant’s act or omission;
  - (f) identify any other relevant treatment undergone by the claimant under the advice of or administered by other potential defendants;
  - (g) identify the causal link between the alleged negligence and the adverse effects including what the outcome would have been absent negligence;
  - (h) identify the claimant’s past and current condition and prognosis as a result of the alleged negligence;
  - (i) identify whether the claimant has returned to work, and if not, when or if that is likely;
  - (j) identify whether the claimant is continuing to receive treatment and, if so, its nature;
  - (k) identify whether the claimant requires assistance with personal, domestic or other care and, if so, its extent;
  - (l) set out the amount sought for each head of damage;
  - (m) identify any allowance for risks or contingencies;
  - (n) describe the clinical records considered and any other relevant supporting documents;
  - (o) attach a copy of any report obtained from an expert on whose evidence the claimant intends to rely;
  - (p) attach any supporting quantum documents;
  - (q) attach a completed cost estimate in form 2;
  - (r) make an offer to resolve the dispute; and

- (s) propose an alternative dispute resolution process and timetable if the offer is not accepted.

## **26—Letter of response**

- (1) Within 30 calendar days after receipt of the letter of claim, if the respondent does not accept the offer, the respondent is to send a letter of response.
- (2) The letter of response is to—
  - (a) identify the basis of any dispute about the date or occasion on which the allegedly negligent act or omission occurred;
  - (b) identify the basis of any dispute about the act or omission the subject of the allegation of negligence;
  - (c) respond to each allegation of negligence explaining when applicable why it is denied;
  - (d) respond to the allegation of causation explaining when applicable why it is denied including any alternative explanation for what happened;
  - (e) identify the factual and legal basis of any defence relied upon including informed consent;
  - (f) identify specific areas of dispute in relation to quantum;
  - (g) describe the clinical records considered and any other relevant supporting documents;
  - (h) attach a copy of any report obtained from an expert on whose evidence the respondent intends to rely;
  - (i) attach a completed cost estimate in form 2;
  - (j) make a counter offer to resolve the dispute; and
  - (k) respond to the proposed alternative dispute resolution process and timetable if the counter offer is not accepted.

## **27—Alternative dispute resolution**

- (1) If the dispute has not been resolved and the parties agree on alternative dispute resolution involving an independent third party, the parties are to attend alternative dispute resolution within 60 calendar days after the date of the letter of response.
- (2) If the parties cannot agree on the form and details of alternative dispute resolution, they are to attend a pre-action meeting as set out in supplementary rule 20 within 30 calendar days after the date of the letter of response.

## **28—Institution of action**

If the parties do not resolve the dispute at the alternative dispute resolution or pre-action meeting, the claimant may institute an action in accordance with supplementary rule 29.

## **Subdivision 4—Procedure on institution of action**

### **29—Institution of action**

- (1) When an action to which this Division applies is commenced, the plaintiff is to file a memorandum concerning compliance in form 3 stating that—

- (a) the parties have substantially complied with this Division; or
  - (b) the plaintiff has substantially complied with this Division to the extent able but the defendant has not; or
  - (c) the plaintiff has commenced the action without substantially complying with this Division due to urgency under supplementary rule 11; or
  - (d) the plaintiff has not substantially complied with this Division.
- (2) When an action to which this Division applies is commenced, the plaintiff is to file with the memorandum a copy of the letter of claim and letter of response. These documents will be filed in a suppressed file.

### **30—Procedure when substantial compliance**

- (1) When there has been substantial compliance with this Division, rules 130 to 130B of the Rules do not apply to the action.
- (2) Such an action will proceed directly to a directions hearing without the need for a settlement conference.
- (3) Despite paragraph (2), the Court may if it thinks fit direct that the parties attend a settlement conference.

### **31—Procedure when not substantial compliance**

- (1) When for any reason there has not been substantial compliance with this Division (due to default by a party or because a plaintiff was excused from compliance under supplementary rule 11 or otherwise), the provisions of this rule apply.
- (2) Unless the parties unanimously agree or the Court otherwise directs, rules 130 to 130B of the Rules apply to the action.
- (3) A party not in default (including a plaintiff excused from compliance) may apply for directions under rule 126 of the Rules.
- (4) Unless the Court otherwise directs, any such application is to be made by a plaintiff within 5 business days after commencement of the action and by a defendant within 5 business days after being served with the originating process.
- (5) If a defendant files an application under paragraph (3) within 5 business days after being served with the originating process on the ground of default by the plaintiff, the defendant is not required to file a defence until directions are given on the application.
- (6) Upon receipt of an application for directions under this rule, the Registrar will convene a preliminary hearing to consider what directions, if any, should be given for steps to be taken in lieu of compliance with this Division.

### **32—Preliminary hearing**

- (1) At a preliminary hearing if convened, the Court will consider the consequences of any non-compliance with this Division.
- (2) The Court may have regard to the contents of the suppressed file and to information provided by the parties or required by the Court to be provided concerning non-compliance.
- (3) If the plaintiff was excused under supplementary rule 11 from compliance with Subdivision 2 or 3 as applicable, the Court may give such directions as it thinks fit as to steps to be

taken by the parties in lieu thereof, which may include a stay of the action pending the taking of those steps.

- (4) If the plaintiff failed to comply substantially with Subdivision 2 or 3 as applicable—
  - (a) the Court may stay the action and/or give such directions as it thinks fit as to steps to be taken by the parties in lieu of compliance with the relevant subdivision;
  - (b) unless there is good reason not to do so, the Court will order that the plaintiff pay the other parties' costs incurred due to the failure by the plaintiff to comply, which will usually be fixed by the Court in a lump sum and may be determined on an indemnity basis;
  - (c) unless it would stultify the action, the Court will order that the costs be payable immediately.
- (5) If the defendant failed to comply substantially with Subdivision 2 or 3 as applicable—
  - (a) the Court may stay the action and/or give such directions as it thinks fit as to steps to be taken by the parties in lieu of compliance with the relevant subdivision;
  - (b) unless there is good reason not to do so, the Court will order that the defendant pay the other parties' costs incurred due to the failure by the defendant to comply, which will usually be fixed by the Court in a lump sum and may be determined on an indemnity basis;
  - (c) unless it would stultify the defence, the Court will order that the costs be payable immediately.

### **33—Initial directions hearing**

- (1) If no preliminary hearing is convened, at the initial directions hearing, on application by a party, the Court will consider the consequences of any default in compliance with this Division.
- (2) The Court may have regard to the contents of the suppressed file and to information provided by the parties or required by the Court to be provided concerning non-compliance.
- (3) If a plaintiff failed to comply substantially with Subdivision 2 or 3 as applicable—
  - (a) unless there is good reason not to do so, the Court will order that the plaintiff pay the other parties' costs incurred due to the default by the plaintiff, which will usually be fixed by the Court in a lump sum and may be determined on an indemnity basis;
  - (b) unless it would stultify the action, the Court will order that the costs be payable immediately.
- (4) If a defendant failed to comply substantially with Subdivision 2 or 3 as applicable—
  - (a) unless there is good reason not to do so, the Court will order that the defendant pay the other parties' costs incurred due to the default by the defendant, which will usually be fixed by the Court in a lump sum and may be determined on an indemnity basis;
  - (b) unless it would stultify the defence, the Court will order that the costs be payable immediately.
- (5) The Court will take into account the steps taken by the parties before institution of the action when giving directions for the progress of the action.

- (6) If a party does not allege default in compliance with this Division by another party at or before the initial directions hearing, the Court will not subsequently apply sanctions against the defaulting party unless the complying party was not aware of the default or its consequences.

### **34—Subsequent remedial orders and sanctions for non-compliance**

- (1) If non-compliance with this Division or its consequence becomes apparent after the initial directions hearing, the Court may make remedial orders and/or impose sanctions for the non-compliance if the non-compliance was substantial and has a substantial prejudicial effect upon another party.

**Example—**

Failure to disclose an expert report, documents or information required by this Division to be disclosed.

- (2) The remedial orders or sanctions that the Court may impose include—
  - (a) directing a defaulting party to take steps to remedy the default;
  - (b) staying the action;
  - (c) making an order that the defaulting party pay the costs of another party incurred due to the default, which may be on an indemnity basis and payable immediately.

## **Part 3—Commencement of action**

### **Division 1—How action is commenced**

#### **35—Commencement of primary action**

- (1) A summons under rule 34(3) of the Rules when there is a defendant is to be in form 4.
- (2) A summons under rule 34(3) of the Rules when there is no defendant is to be in form 5.
- (3) A summons under rule 34(3) of the Rules when there is to be a hearing date listed is to be in form 6.

#### **36—Commencement of cross action**

- (1) A cross action by counterclaim under rule 35(2) of the Rules is to be in form 8 accompanied by a counterclaim in form 20.
- (2) A cross action by contribution claim under rule 35(2) of the Rules is to be in form 21.

#### **37—Commencement of third party action**

[rule 37 amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 5)]

A third party action under rule 36(3) of the Rules is to be in form 9 accompanied by a statement of claim in form 20.

#### **38—Actions that are in part cross actions and in part third party actions**

[rule 38 amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 5)]

A cross action against existing and new parties under rule 37(1) of the Rules is to be in form 9A accompanied by a counterclaim in form 20.



## **Part 4—Service of originating process**

### **Division 1—General**

*[no supplementary rules]*

### **Division 2—Service outside Australia**

#### **39—Service of originating process outside Australia**

*[rule 39 amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]*

Notice of a summons to be served outside Australia under rule 40(D) of the Rules is to be in form 10.

### **Division 3—Service through diplomatic channel or by transmission to foreign government**

#### **40—Documents to be lodged with the Court**

- (1) A request by a party for service of a document on a person in a foreign country through the diplomatic channel or by transmission to a foreign government in accordance with a convention under rule 41AF of the Rules is to be in form 11.
- (2) A request by the Chief Justice for transmission of a document to a foreign government for service in accordance with a convention under rule 41AF of the Rules is to be in form 12.

### **Division 4—Service under the Hague Convention**

*[no supplementary rules]*

#### **Subdivision 1—Preliminary**

*[no supplementary rules]*

#### **Subdivision 2—Service abroad of local judicial documents**

##### **41—Application for request for service abroad**

- (1) A request for service abroad under rule 41D(2)(a) of the Rules is to be in form 13.
- (2) A summary of the document to be served abroad under rule 41D(2)(c) of the Rules is to be in form 14.

##### **42—Procedure on receipt of certificate of service**

A certificate of service under rule 41F(2)(a) of the Rules is to be in form 13.

#### **Subdivision 3—Default judgment following service abroad of initiating process**

*[no supplementary rules]*

#### **Subdivision 4—Local service of foreign judicial documents**

##### **43—Request for service**

A request for service in this jurisdiction under rule 41M(2) of the Rules is to be in form 15.

##### **44—Affidavit as to service**

A certificate of service under rule 41P(4)(a) of the Rules is to be in form 15.

*[no supplementary rules]*

# Chapter 4—Documents and service

## Part 1—Documents

### Division 1—Approved forms

#### 45—Approved forms

- (1) The forms in Schedule 3 to these Supplementary Rules are approved forms.
- (2) Unless these Supplementary Rules otherwise provide, every document filed or lodged with the Court is to have a front sheet in form 1. The text of the document itself is to start on a fresh page.
- (3) Unless these Supplementary Rules otherwise provide, the action heading contained in form 1, without the balance of the form below the names of the parties, is to be used on all documents in respect of which a front sheet is not required or appropriate.
- (4) When there are numerous parties with the same role in the action such that it is not convenient to include all names of the parties on the front sheet, the name of the first party with that role may be included on the front sheet together with the words “and Others” and the names of the others shown in a schedule to the document.

#### Example

If there are 15 plaintiffs, the front sheet might show “John Smith and Others” and a separate schedule list the names of the other 14 plaintiffs.

### Division 2—Filing of documents in Court

#### 46—Form of documents for filing in Court

- (1) Unless these Supplementary Rules otherwise provide or the Registrar otherwise directs, a document prepared for filing or lodgment in the Court is to—
  - (a) be in the English language;
  - (b) be on A4 size white bond paper;
  - (c) be paginated;
  - (d) be typed or printed so as to be completely legible in no less than size 12 font except for quotations and footnotes which may be in size 10 font;
  - (e) have margins of 4 centimetres to the left and 2 centimetres to the right;
  - (f) have one and a half spacing between lines (unless the document is to be settled by the Court, in which case double spacing is to be used);
  - (g) have double spacing between paragraphs;
  - (h) have figures and amounts of money expressed in numerals and not in words; and
  - (i) have any erasures or handwritten additions authenticated.
- (2) Unless the Court otherwise directs, a document prepared for filing in Court is to be typed or printed—
  - (a) on a single side of the page if it is an original affidavit or statutory declaration (including the exhibits to an affidavit or annexures to a statutory declaration); and

- (b) otherwise, on both sides of the page.
- (3) Unless the Court otherwise directs, a document prepared for lodging in Court for use as a working copy by a Judge or Master is to be typed or printed—
  - (a) on a single side of the page for trial books (rule 121 of the Rules);
  - (b) on a single side of the page for the working copy of the tender books (although the exhibit copy may, at the option of the party preparing the tender books, be copied on both sides of the page) (supplementary rule 164);
  - (c) on both sides of the page for case books for appellate proceedings (rule 298 of the Rules).
- (4) If the Registrar is satisfied that a self-represented litigant is unable to comply with any of the above requirements, the Registrar may accept a document for filing, provided that it is legible and able to be filed conveniently.
- (5) When there is substantial non-compliance with this supplementary rule, the Registrar may refuse to accept a document for filing.

#### **47—Consecutive numbering of filed documents**

- (1) When a party files more than one version of a pleading or amends a pleading in an action, each version after the first is to be consecutively numbered so as to be entitled Second, Third, Fourth, etc Statement of Claim/Defence/Reply, as the case may be. Terms such as ‘Amended’, ‘Further’, ‘Revised’ or the like are not to appear in the title.

**Example—**

If a Statement of Claim is being amended for the third time, the document should be entitled ‘Fourth Statement of Claim’.

- (2) When a party files more than one interlocutory application in an action, each interlocutory application after the first is to be consecutively numbered so as to be entitled Second, Third, Fourth, etc Interlocutory Application of the Plaintiff/Defendant/Third Party, as the case may be.
- (3) When a party files more than one affidavit from the same deponent in an action, each affidavit after the first is to be consecutively numbered so as to be entitled the Second, Third, Fourth, etc Affidavit of that deponent, as the case may be.
- (4) When a party files more than one affidavit from the same deponent in an action, the numbering of the exhibits in a later affidavit is to be consecutive to those in the previous affidavit or affidavits.

#### **48—Original of affidavit**

- (1) An affidavit filed or produced in Court is to be an original bearing the original signature of the deponent and not a copy. A lawyer filing or producing an affidavit to the Court impliedly undertakes to the Court that the signatures on the documents are originals and not copies.
- (2) In a case of urgency when it is impracticable for a lawyer to obtain the original of the affidavit before a hearing, the lawyer may swear an affidavit exhibiting a copy of that affidavit. A lawyer swearing such an affidavit impliedly undertakes to the Court that the lawyer will file the original of the affidavit immediately upon receipt.

## **49—Form of affidavit**

- (1) An affidavit is to state that the deponent is speaking of his or her own knowledge as required by rule 162(2) of the Rules.
- (2) If it is sought to make a statement of belief under an exception to rule 162(2) of the Rules, the deponent is to depose to the source and grounds of each statement of belief. A statement to the effect, “I know the facts deposed herein from my own knowledge except where otherwise appears”, without properly identifying the sources and grounds of information and belief, is unacceptable.
- (3) The address of a deponent in an affidavit may be a business address provided it is a place where the deponent may usually be found during normal working hours.
- (4) Each page of an affidavit is to be signed by the deponent and the witness and dated.

### **Note—**

An affidavit filed in lieu of a pleading under rule 96 of the Rules is required by supplementary rule 72 to contain a reference to this fact in its title.

[subrule 49(5) inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

- (5) The jurat of an affidavit must –
  - (a) be signed by all deponents;
  - (b) be completed and signed by the person before whom the affidavit was sworn whose name and qualification must be printed beneath his or her signature;
  - (c) contain the full address of the person before whom the affidavit was sworn; and
  - (d) follow immediately on from the text and not be put on a separate page.

## **50—Exhibits to affidavit**

- (1) An affidavit (including an affidavit of service) that refers to a document already on the court file or part of the court record in an action or a related action is not to exhibit that document but is to describe the document by reference to its FDN and action number or another indication where it is to be found on the court file. The object of this supplementary rule is that a document should appear only once on a court file or set of related court files.
- (2) Unless a lawyer forms the view that there is good reason not to, documents comprising a sequence of correspondence between the same or related persons and other documents comprising a sequence of a similar kind are to be made a single exhibit instead of being marked as separate exhibits.

## **51—Binding of affidavit with exhibits**

- (1) If an affidavit with exhibits—
  - (a) comprises 50 or more pages (including the body of the affidavit and its exhibits but excluding front sheets); or
  - (b) includes 5 or more exhibits,the exhibits are to be bound together into a volume or volumes with or separate from the body of the affidavit.
- (2) In respect of an affidavit to which paragraph (1) applies—

- (a) each volume is to be paginated and contain an index showing the page at which each exhibit commences;
  - (b) each exhibit is to be clearly marked with its exhibit designation and tagged so that its commencement can be seen without opening the volume;
  - (c) the binding is to be of an appropriate size and allow the volume to lie flat when opened at any page;
  - (d) each volume (with any binding) is to be no more than 3 centimetres thick;
  - (e) the authorised person before whom the affidavit is made is to make a single certification that exhibits in the bundle are the exhibits produced by the deponent when making the affidavit;
  - (f) the certification is to be made on the front sheet of the volume of exhibits and, if there is more than one volume, is to be reproduced and included as a front sheet on each volume together with an index of the exhibit numbers contained in each volume.
- (3) A party may file an affidavit comprising less than 50 pages or including less than 5 exhibits in the manner required by paragraphs (1) and (2), but is not obliged to do so.

## **52—Form of list of authorities**

- (1) A list of authorities is to contain—
- (a) the full heading of the action;
  - (b) the anticipated date of hearing;
  - (c) the names or name of the Judges, Judge or Master who will hear the case (if known).
- (2) A list of authorities is to be divided into two parts—
- (a) PART I to be headed “Authorities to be Read” is to contain the authorities from which counsel will or may read passages to the Court;
  - (b) PART II to be headed “Authorities to be Referred To” is to contain the authorities that are relied upon but from which counsel does not expect to read.

## **53—Citations in list of authorities**

- (1) When a case is reported in an authorised series of reports such as the South Australian State Reports, Commonwealth Law Reports, Federal Court Reports, the English authorised reports (The Law Reports) or in a series of reports containing only decisions of a State or Territory Supreme Court, the citation of the case in those reports is to be used. In addition, the medium neutral citation, when available, is to be provided for all cases, whether reported or not.

[subrule 53(2) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 4)]

- (2) Each authority in a list of authorities provided by email is to be hyperlinked to a page from which the authority in HyperText Markup Language (*HTML*), Rich Text Format (*RTF*), Portable Document Format (*PDF*), Signed Portable Document (*PDF/A*) or other comparable format can be accessed.

[subrule 53(3) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 4)]

- (3) If alternatives are available, except as to reports sourced from Austlii a searchable format of the authority is to be preferred over a non-searchable format. In the case of reports provided by Thomson Reuters (eg CLR, SASR or NSWLR) or LexisNexis (eg VR), the

link is to be to the HTML version (and not the PDF version) of the authorised report. In the case of reports sourced from Austlii (the medium neutral version), the link is to be directly to either the RTF version or the PDF/A version of the report (if available and at the option of the person lodging the list of authorities).

- (4) If an online authorised series of reports is available to the party delivering the list of authorities, the hyperlink is to be to the report of the case in that series as well as to a freely available medium neutral version of the case (if available).
- (5) If hyperlinking is not possible because, for example, an electronic report of the authority is not available, the authority is to be marked in the list with the words “hyperlinking unavailable”.
- (6) If a hyperlink comprises more than 75 characters, parties should use a hyperlink shortening service such as <http://goo.gl>, <http://bit.ly> or <http://tinyurl.com> to shorten the hyperlink to a manageable length.
- (7) In all cases, the hyperlink provided is to be in addition to, and not in place of, a citation in conformity with paragraph (1).

#### **54—Electronic delivery of summary of argument etc**

- (1) When a summary of argument, list of authorities, chronology or summary of evidence and facts is to be provided for a hearing, it is to be lodged with the Court by email in accordance with the following paragraphs of this supplementary rule.
- (2) When the matter is to be heard by a single Judge or Master, the email is to be sent with the subject line required by paragraph (3)—
  - (a) to the chambers email address of the Judge or Master who is to hear the matter (see the link to the Supreme Court on the Courts Administration Authority website (<http://www.courts.sa.gov.au>);
  - (b) if and only if the identity of the Judge or Master is not known—to [submissions@courts.sa.gov.au](mailto:submissions@courts.sa.gov.au)
- (3) When the matter is to be heard by the Full Court, the email is to be sent to [submissions@courts.sa.gov.au](mailto:submissions@courts.sa.gov.au) with a subject line that contains the action number and the names of the parties only.

**Example—**

Action no SCCIV-2014-123                      *Jones v Bloggs*

- (4) Authorities are not to be provided as an attachment to the email.
- (5) In every case, a copy of the documents lodged by email with the Court is to be sent simultaneously by email on each other party.
- (6) If an email address for another party is not known and cannot reasonably be ascertained, a hard copy of the document is to be served on the other party no later than 5.00 pm on the same day as the document is emailed to the Court.

#### **55—Civil Registry**

- (1) The Registry is open for business from 9.30 am to 4.30 pm each day except on Saturdays, Sundays, Public Holidays and the Christmas vacation, which comprises the calendar days between Christmas Day and New Year’s Day.

- (2) If it is sought to file or lodge a document or arrange for an urgent hearing when the Registry is not open for business, the party is to phone the after hours business number of the Registry ((08) 8204 0289). The number will provide the current contact details of the rostered on call officer. If that officer is satisfied about the urgency of the request, he or she will arrange for the opening of the Registry and/or for a special hearing.
- (3) Other than with the prior permission of the Judge, no lawyer or party is to contact a Judge to seek an urgent hearing.
- (4) Unless the Rules or these Supplementary Rules otherwise provide or the Court otherwise directs, a party to an action may inspect or obtain copies of documents held on the Court file for that action by an informal request to the Registry.

**Exception—**

Rule 179 of the Rules imposes special requirements for the inspection and copying of documents produced pursuant to a subpoena.

- (5) When the permission of the Court is required by a member of the public to inspect or obtain a copy of a court record, permission may be sought by letter or email to the Registrar without notice to any party or person interested.

### **Division 3—Amendment**

*[no supplementary rules]*

## **Part 2—Service**

### **Division 1—Address for service**

#### **56—Address for service**

- (1) A notice of address for service under rule 59(3) of the Rules is to be in form 16 or 17 as applicable.
- (2) A notice of change of address for service under rule 59(4) of the Rules is to be in form 16 or 17 as applicable.

### **Division 2—Service of documents related to action**

*[no supplementary rules]*

### **Division 3—Service on certain parties**

*[no supplementary rules]*

### **Division 4—Cases where personal service required**

*[no supplementary rules]*

### **Division 5—Non-personal service**

*[no supplementary rules]*

### **Division 6—Presumptive service**

*[no supplementary rules]*



## **Division 7—Miscellaneous**

*[no supplementary rules]*

### **Part 3—Hearings generally**

#### **57—Addressing Judges and Masters**

- (1) In Court—
  - (a) the Chief Justice of the Court is to be addressed and referred to by the title Chief Justice, eg “Chief Justice Smith” and as “Your/His/Her Honour”;
  - (b) a Judge of the Court is to be addressed and referred to by the title Justice, eg “Justice Brown” and as “Your/His/Her Honour”;
  - (c) a Master is to be addressed as “Judge”, “Your Honour” or “Master” in an interlocutory hearing;
  - (d) a Master is to be addressed as “Your Honour” in a trial.
- (2) In documents filed or used in the Court and in correspondence—
  - (a) a Judge of the Court is to be referred to as “The Honourable Chief Justice....” or “The Honourable Justice....” as the case may be;
  - (b) a Master is to be referred to as “Judge...., Master of the Supreme Court”.

#### **58—Barrister’s attire**

- (1) The dress of a barrister appearing in court is to be black court coat or bar jacket, white jabot and gown (silk for Queen’s Counsel and Senior Counsel and stuff for junior counsel), dark trousers for men and dark skirt or trousers for women. As an alternative to the jabot, white bands may be worn with white shirt and winged collar.

[subrule 58(2) deleted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (2) \*\*\*\*\*
- (3) Barrister’s attire is not required for directions hearings or for any other matter not heard in open court.
- (4) A barrister’s attire is at all times to be in a clean and neat condition.

#### **59—Noting of appearances of counsel and solicitors**

The counsel or solicitor appearing in a case listed before the Court is to inform the Judge’s associate before the hearing of his or her name, the party for whom he or she appears and, when applicable, the name of his or her instructing solicitor.

#### **60—Interpreters in court**

- (1) An interpreting service to the Court is provided by the Interpreting and Translation Centre, a branch of the Office of Multicultural & Ethnic Affairs.
- (2) The service provides interpreting facilities during court hearings for parties in civil proceedings and witnesses giving evidence.
- (3) The service does not provide interpreters for lawyers taking instructions from clients or for parties to communicate with their lawyers.

- (4) A lawyer or party if self-represented is to notify the listing section of the Court of the requirement for interpreting services at an interlocutory hearing or trial at the earliest possible time after the need arises to allow the maximum possible time for arrangements to be made.

### **61—Summary of argument and list of authorities**

Unless the Court otherwise directs or these Supplementary Rules otherwise provide, when a summary of argument or list of authorities is to be provided for a hearing, it is to be provided—

- (a) by the moving party at least 4 clear business days before the hearing; and
- (b) by the responding party at least 2 clear business days before the hearing.

### **62—Copies of authorities**

- (1) The Court discourages the provision of hard copies of authorities readily available in the Supreme Court library or available electronically.
- (2) Unless the client consents or the Court so directs, the cost of copying such authorities is not to be charged to the client. The cost will not be recoverable as an item of party and party costs except when, before the hearing, the Court has authorised the handing up of the copies.
- (3) Notwithstanding paragraph (1), if a party proposes to rely on an authority not contained in the list of authorities, the party should provide a hard copy to the Court and to the other parties.
- (4) Unless the client consents or the Court so directs, the cost of copying such authorities is not to be charged to the client. The cost will not be recoverable as an item of party and party costs.
- (5) Only in exceptional cases should a hard copy of an authority in Part II of the list of authorities be provided to the Court.

### **63—Information for reporters**

- (1) A party is to give a copy of any list of authorities, or summary of argument when there is no list of authorities, to the reporters in court before commencement of the hearing to ensure the reporters have the correct details for any authority cited during the hearing.
- (2) A party calling a witness is to give the name of the witness to the reporters in court before the witness is called.

### **64—Record of proceedings**

- (1) As soon as practicable after a judicial officer has pronounced an order or direction, its contents are to be entered into the Court’s computer system.
- (2) A hard copy as signed by the judicial officer or some person delegated by the judicial officer for that purpose is to be placed onto a hard copy court file.

## **Chapter 5—Parties and pleadings**

### **Part 1—Parties and non-party participation**

*[no supplementary rules]*

#### **Division 1—Parties generally**

*[no supplementary rules]*

### **Part 2—Defining issues**

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

#### **65—Pleadings generally**

A pleading is to be divided into four parts.

- (a) In the case only of a claim (including a statement of claim, counterclaim, contribution claim and third party claim), an Introduction is to summarise the claim in no more than 50 words and to list the causes of action relied on.
- (b) Part 1 is to address those matters (including background and elements of a cause of action) expected to be uncontroversial.

**Examples—**

- (1) The existence and relevant terms of a contract when the real issue is breach.
- (2) The incorporation of a corporate plaintiff.
- (c) Part 2 is to address the basis of each cause of action, the material facts or matters on which each cause of action is based, and when applicable any preliminary issue or special defence, insofar as each matter is not addressed in Part 1.
- (d) Part 3 is to address the remedies and any ancillary remedies sought.

#### **66—Statement of claim**

A statement of claim under rules 91, 98 and 99 of the Rules is to be in form 18.

#### **67—Counterclaim**

- (1) A counterclaim under rules 91, 98 and 99 of the Rules is to be in form 8 accompanied by a form 20.
- (2) A counterclaim may repeat in the appropriate Part matters pleaded in the statement of claim or the defence in the primary action.

[subrule 67(3) inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 2)]

- (3) When a counterclaim is in the same document as the defence pursuant to rule 35(4), the defendant is to file a document in form 8 accompanied by a document combining forms 19 and 20.

#### **68—Contribution claim**

- (1) A contribution claim under rules 91, 98 and 99 of the Rules is to be in form 21.

- (2) A contribution claim may repeat in the appropriate Part matters pleaded in the statement of claim in the primary action or in an earlier generation secondary action.

**Examples—**

- (1) The contribution claim by a defendant might repeat in Part 1 facts pleaded by the plaintiff in the statement of claim in the primary action.
- (2) The contribution claim by a third party might repeat in Part 1 facts pleaded by the defendant in the statement of claim in the secondary action against the third party.
- (3) The contribution claim by the second defendant might repeat in Part 1 facts pleaded by the first defendant against the second defendant in the contribution claim by the first defendant against the second defendant.

## **69—Third party claim**

[subrule 69(1) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 5)]

- (1) A third party claim under rules 91 and 98 of the Rules is to be in form 9 accompanied by a statement of claim in form 20.
- (2) A third party claim may repeat in the appropriate Part matters pleaded in the statement of claim in the primary action or in an earlier generation secondary action.

## **69A—Combined counterclaim and third party claim**

[rule 69A inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 5)]

- (1) A combined counterclaim and third party claim under rules 38, 91 and 98 of the Rules is to be in form 9A accompanied by a statement of claim in form 20.
- (2) A combined counterclaim and third party claim may repeat in the appropriate Part matters pleaded in the statement of claim in the primary action or in an earlier generation secondary action.

## **70—Defence**

- (1) A defence under rules 92, 98 and 100 of the Rules is to be in form 19.
- (2) When the defendant pleads an additional matter not directly in response to a paragraph in the statement of claim, the matter is to be included in Part 1, Part 2 or Part 3 in accordance with supplementary rule 65.

## **71—Reply**

- (1) A reply under rules 94, 98 and 101 of the Rules is to be in form 22.
- (2) When the plaintiff pleads an additional matter not directly in response to a paragraph in the defence, the matter is to be included in Part 1, Part 2 or Part 3 in accordance with supplementary rule 65.

## **72—Affidavit in lieu of pleading**

When an affidavit is filed in lieu of a pleading under rule 96 of the Rules, the title of the affidavit is to include that the affidavit is in lieu of the type of pleading for which it is a substitute.

**Example—**

- (1) “Affidavit of John Smith in lieu of plaintiff’s statement of claim”.
- (2) “Affidavit of Richard Roe in lieu of first defendant’s defence”.

### **73—Certificate of lawyer**

- (1) The signature on the certificate under rule 98(1)(b)(i) of the Rules is to be that of an individual lawyer and not that of a firm or company. It is not necessary that the name or signature of any counsel who has settled the pleading appear on the certificate.
- (2) The name of the person who gives the certificate is to be clearly typed or printed alongside his or her signature.
- (3) A certificate under rule 98(1)(b)(i) of the Rules is in addition to any other certificate or signature required to appear on a pleading.
- (4) The Registry will not accept a pleading for filing that does not bear the necessary certificate under rule 98(1)(b)(i) of the Rules.

### **Division 2—General rules about pleadings**

#### **74—Liquidated Debt Claim**

- (1) When a plaintiff's claim is solely a Liquidated Debt Claim, the plaintiff may elect that the action proceed initially under this supplementary rule by filing in the Court a notice of election in form 23 (a *Liquidated Debt Claim Election*) with the originating process.
- (2) A Liquidated Debt Claim Election is to include a certification by the plaintiff's lawyer, or the plaintiff when self-represented, that in the reasonable opinion of the lawyer or party respectively the claim will be uncontested or is not genuinely contestable.
- (3) The plaintiff's statement of claim in an action in which a Liquidated Debt Claim Election has been filed is only required to plead sufficient facts to identify the liquidated debt claimed to enable the defendant to decide whether to contest it and to define any ultimate judgment for *res judicata* purposes.
- (4) If the defendant files a defence and the plaintiff does not within 21 calendar days after filing of the defence file an application for summary judgment, the plaintiff is to file and serve a pleading in compliance with the *Fast Track Rules 2014* within 49 calendar days after the filing of a notice of address for service and thereafter the action is to proceed under the *Fast Track Rules 2014* unless the Court otherwise directs.

### **Division 3—Cases where damages claimed for personal injury**

[no supplementary rules]

### **Part 3—Discontinuance of action or part of action**

#### **74A—Notice of discontinuance**

[rule 74A inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 2)]

- (1) A notice of discontinuance of an action, cross action or third party action under rule 107(1) is to be in form 23A.
- (2) A notice of discontinuance of a claim or defence under rule 107(2) is to be in form 23B.

### **Part 4—Transfer or removal of actions between courts**

[no supplementary rules]

## **Chapter 6—Case management**

### **Part 1—Duty of parties**

*[no supplementary rules]*

### **Part 2—Assignment of special classification to action**

#### **75—Assignment of special classification to action**

- (1) In considering whether a special classification under rule 115 of the Rules is appropriate, the Court will consider all the circumstances of the action, including—
  - (a) the subject matter;
  - (b) the amount or value in dispute;
  - (c) the potential length of trial;
  - (d) the number of documents likely to be required to be disclosed;
  - (e) the complexity of the issues involved;
  - (f) the urgency of the matter;
  - (g) whether it is a class action;
  - (h) whether expert evidence is to be led.
- (2) An action will usually be regarded as sufficiently complex to warrant a special classification if the estimated length of the hearing exceeds 15 days or if the case raises issues of particular complexity.

#### **76—Management of special classification action**

- (1) There is a panel of Judges who have the responsibility for managing cases in the special classification list.
- (2) Upon a special classification being assigned to an action, the action will be assigned to one of the Judges in the panel. That Judge will manage the action until it goes to trial, except when the Judge is unavailable due to leave, illness or other commitments.
- (3) The Judge responsible for an action will be assisted extensively by a Master who will be involved as much as is feasible.
- (4) Unless the Court otherwise directs, all interlocutory matters will proceed by way of directions hearings.
- (5) In the ordinary course, directions hearings will be brought on as frequently as necessary, commonly at 9.00 am. Regular directions hearings will not be expected to occupy more than 1 hour.

#### **77—Conduct of directions hearings**

- (1) Directions hearings will be conducted in accordance with rule 115 of the Rules, subject to the refinements in this supplementary rule or as directed by the Judge or Master.

- (2) The need to make an interlocutory application under rule 131 of the Rules will generally only arise if an order is sought against a non-party. Otherwise, parties should exchange a notice or suggested agenda (with a copy for the Judge’s associate or Master’s personal assistant) at least 2 clear business days before the date scheduled for a directions hearing, indicating what applications will be made and what orders will be sought, in each case specifying the FDN of documents to which reference will be made.
- (3) No affidavit is to be used on the hearing of an application for directions without the permission of the Court or in certain other limited circumstances.
- (4) On a directions hearing, the Court may inform itself on any matter without requiring formal proof.
- (5) If it is considered that an affidavit will assist the Court, the affidavit should be filed ahead of the directions hearing and before permission of the Court is granted.
- (6) The Court will ordinarily grant permission if—
  - (a) use of the affidavit would avoid unnecessary delay;
  - (b) it is anticipated that there will be a factual dispute; or
  - (c) the Court would otherwise be assisted by an affidavit.

## **78—Subject matter of directions hearings**

At directions hearings, depending on the stage of pre-trial preparation, attention will be given to some or all of the following matters—

- (a) pleadings—
  - (i) nature and extent;
  - (ii) timetable;
  - (iii) particulars;
  - (iv) third party proceedings;
- (b) disclosure of documents—
  - (i) scope and mode;
  - (ii) non-party disclosure;
  - (iii) phases;
  - (iv) timetable;
  - (v) inspection;
  - (vi) arrangement and numbering system;

- (c) experts—
  - (i) number;
  - (ii) timetable;
  - (iii) conference of experts;
  - (iv) order of evidence;
  - (v) concurrent evidence;
- (d) other interlocutory steps—
  - (i) notices to admit;
  - (ii) written answers to written questions;
  - (iii) any other matters;
- (e) alternative dispute resolution—
  - (i) nature;
  - (ii) timing;
  - (iii) arrangements;
- (f) pre-trial steps—
  - (i) final review of pleadings;
  - (ii) agreed facts;
  - (iii) orders under section 59J of the *Evidence Act 1929*;
  - (iv) written witness statements or affidavits;
  - (v) tender books;
  - (vi) trial of successive issues;
  - (vii) short form written or oral openings by all parties;
  - (viii) witness program;
  - (ix) views;
  - (x) trial length;
  - (xi) computer litigation support nature and extent; and
- (g) arrangement of trial dates.

### **79—Proceeding to trial—litigation plan**

- (1) Ordinarily, a litigation plan will be prepared in a special classification matter and the matter fixed for trial in accordance with rule 120 of the Rules.
- (2) The Court will fix a tentative trial date when interlocutory proceedings are sufficiently advanced for a reasonable estimate to be made of the length of pre-trial processes and the length of trial.



- (3) The Court is particularly concerned to obtain an accurate estimate of the likely length of trial. Parties may be requested to provide a schedule of the probable course of the trial including tender of documents, witnesses to be called and the estimated length of the witnesses' evidence and addresses.

## **Part 3—Court's powers to manage and control litigation**

### **Division 1—General powers of management and control**

#### **80—Partition proceedings**

An application for partition or sale of land or other property under Part 8 of the *Law of Property Act 1936* will be managed and heard by a Judge of the Land and Valuation Division.

### **Division 2—Urgent cases**

[*no supplementary rules*]

## **Part 4—Listing of actions for trial**

### **81—Certificate of readiness**

- (1) A certificate of readiness for trial under rule 120(4) or 120A(2) of the Rules is to be in form 24.
- (2) The party responsible for the carriage of the action is to send to the other parties a copy of the proposed certificate of readiness for trial within 21 calendar days after all interlocutory steps within the meaning of rule 125 of the Rules have been completed.
- (3) Each other party is to respond to the proposed certificate of readiness for trial within 5 business days after receipt by either confirming that the certificate is accurate and complete or returning the certificate with marked up changes.
- (4) The party responsible for the carriage of the action is to send to one of the other parties the final version of the certificate of readiness for trial as soon as practicable and in any event within 2 business days after receipt of the last of the responses from the other parties under paragraph (3).
- (5) Each other party is to sign the final version of the certificate of readiness for trial as soon as practicable and in any event within 2 business days after receipt and on forward it to another party yet to sign or return it to the party responsible for the carriage of the action.

### **82—Order that action proceed to trial**

- (1) File principals of all parties are expected to attend at the hearing of an application under rule 120A of the Rules that the action proceed to trial.
- (2) Upon an order that an action proceed to trial, a trial date will not usually be set but a listing conference will be convened to be conducted by the Registrar or his or her delegate.

### **83—Listing conference**

- (1) Before the listing conference, the parties are to formulate a realistic estimate of the length of trial and ascertain the availability of witnesses and counsel.

- (2) At the listing conference, the Registrar will set a date, usually not earlier than 6 weeks ahead (except when there is an order for urgent trial), for the commencement of the trial after taking into account as far as practicable availability of witnesses and counsel.
- (3) If a party fails to attend at the listing conference, the Registrar will usually fix a trial date in that party's absence.
- (4) Unless the Court otherwise orders, the costs of a listing conference will be costs in the cause.
- (5) Matters not ready to be listed at the listing conference will not be adjourned to a further listing conference unless there is very good reason, such as inability to ascertain availability of witnesses. If a matter is not ready to be listed at the listing conference, it will usually be returned to the Masters' list.
- (6) At most, there will only be one adjournment of a listing conference. If a matter has been given an adjourned listing conference and cannot be listed at the adjourned listing conference, it will be referred back to the Masters' list.

#### **84—Delivery of trial book**

- (1) All originating processes and pleadings for the primary and any secondary actions to be determined at the trial of the action are to be included in the trial book prepared under rule 121 of the Rules.
- (2) When an action has proceeded on affidavits in lieu of pleadings under rule 96 of the Rules, the affidavits standing in lieu of pleadings are to be included in the trial book.
- (3) Other than by direction of the Court or agreement of all parties, no affidavits, notices of address for service, superseded versions of pleadings, affidavits (subject to paragraph (2)), notices to admit, lists of documents or offers to consent to judgment are to be included in the trial book.
- (4) The trial book is to be paginated, indexed and bound.
- (5) Unless the Court otherwise orders or the Registrar otherwise directs, the trial book is to be copied on a single side of the page.

#### **Part 5—Inactive actions**

*[no supplementary rules]*

## **Chapter 7—Pre-trial procedures**

### **Part 1—Initial steps**

#### **Division 1—Introduction**

*[no supplementary rules]*

#### **Division 2—Compliance with pre-action requirements**

*[no supplementary rules]*

#### **Division 3—Initial documents**

*[no supplementary rules]*

#### **Division 4—Settlement conference**

##### **85—Settlement conference**

- (1) In actions for damages for personal injuries and actions between domestic partners relating to property, there is to be a settlement conference presided over by a judicial or administrative officer of the Court.

**Note—**

Rule 130B(2)(e) of the Rules empowers the Court to direct, on application by a party, that a settlement conference be presided over by an officer of the Court in any other type of action.

- (2) Unless the Court otherwise directs, in matters in which there is to be a settlement conference to be presided over by a judicial or administrative officer of the Court, the Registrar will fix a date for a settlement conference after the prescribed date.
- (3) As a general rule, the date fixed under paragraph (1) will be approximately 3 weeks after a defence or affidavit in lieu of defence is filed (and in fixing the date the Registrar may consider but is not bound by wishes expressed by a party).
- (4) Rule 130(3) to (5) of the Rules applies to a settlement conference convened under paragraph (2).

[subrule 85(5) inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 5)]

- (5) A judicial or administrative officer presiding over a settlement conference has power to make orders and give directions incidental to and for the purpose of the conference including power to adjourn the conference. However, parties and practitioners are to be ready to proceed on the date and at the time fixed for the conference. Ordinarily an action will proceed to trial as soon as practicable after the settlement conference, if unsuccessful, and adjournments will not be normally be granted in the exercise of the discretion of the presiding officer other than in exceptional circumstances.

#### **Division 5—Deferral of other interlocutory steps**

*[no supplementary rules]*

#### **Division 6—Preliminary hearing**

*[no supplementary rules]*

## Part 2—Interlocutory steps generally

### Division 1—Litigation plan

#### 86—Litigation plan

- (1) Unless the Court otherwise directs, a litigation plan is not required to be prepared in an action—
  - (a) in the Fast Track Stream governed by the *Fast Track Rules 2014*;
  - (b) for a Liquidated Debt Claim.
- (2) A litigation plan under rule 130G(3) of the Rules is to be in form 25 with such adaptations as the circumstances of the case require.
- (3) When there is no third party action in the proceeding—
  - (a) the plaintiff is to serve on all parties an electronic version of a draft litigation plan at least 7 clear business days before the initial directions hearing fixed under rule 130I of the Rules;
  - (b) the defendant or defendants to the primary action are to serve on all parties an amended electronic version of the draft litigation plan, marked up using track changes or another convenient form of marking up changes, at least 4 clear business days before the initial directions hearing, and when there is more than 1 defendant they are to serve a common draft litigation plan (which may incorporate differences between them);
  - (c) the plaintiff is to file and serve on all parties a final version of the litigation plan (which may incorporate differences between parties) at least 1 clear business day before the initial directions hearing.
- (4) When there is a third party action in the proceeding—
  - (a) the plaintiff is to serve on all parties an electronic version of a draft litigation plan at least 10 clear business days before the initial directions hearing fixed under rule 130G of the Rules;
  - (b) the defendant or defendants to the primary action are to serve on all parties an amended electronic version of the draft litigation plan, marked up using track changes or another convenient form of marking up changes, at least 7 clear business days before the initial directions hearing, and when there is more than 1 defendant they are to serve a common draft litigation plan (which may incorporate differences between them);
  - (c) the defendant or defendants to the third party action are to serve on all parties an amended electronic version of the draft litigation plan, marked up using track changes or another convenient form of marking up changes, at least 4 clear business days before the initial directions hearing, and when there is more than 1 defendant they are to serve a common draft litigation plan (which may incorporate differences between them);
  - (d) the plaintiff is to file and serve on all parties a final version of the litigation plan (which may incorporate differences between parties) at least 1 clear business day before the initial directions hearing.

## **Division 2—Directions hearing**

### **87—Location**

- (1) Unless the Court otherwise directs, all directions or other interlocutory hearings will be held in Adelaide.
- (2) If a party seeks to have an interlocutory hearing held elsewhere, a written request should be made to the Registrar stating whether the other parties agree. If there is no agreement of all parties to a different location, a Master will determine the location at an audiovisual hearing (see supplementary rule 89).
- (3) An interlocutory hearing will not be directed to be held other than in Adelaide unless an appropriate judicial officer is available to conduct a hearing in that place.
- (4) When appropriate an interlocutory hearing may be conducted as an audiovisual hearing (see supplementary rule 89).

### **88—Attendance**

- (1) When a lawyer appears as counsel on an interlocutory matter, his or her description as such in the order does not imply that the matter was fit for the attendance of counsel. Entitlement to counsel fees will be determined solely on whether the Judge or Master has certified the attendance as fit for counsel, which will be so indicated at the end of the order.
- (2) Subject to paragraph (3), a lawyer is to be in attendance at the listed time for an application. A telephone message or email that a lawyer is unable to attend upon a hearing is unacceptable. The commencement of a hearing before a Judge or Master will not be delayed because a lawyer is engaged before another Judge or Master. Commitments in lower Courts will not be accepted as a proper excuse for not attending at the appointed time.
- (3) Subject to paragraph (5)—
  - (a) a Judge or Master may see fit to delay the commencement of a hearing when—
    - (i) the time set for the commencement of an earlier hearing before a different Judge or Master was more than half an hour earlier; and
    - (ii) the lawyer reasonably expected that the earlier hearing would be completed within sufficient time to allow him or her to attend on time for the later hearing;

#### **Example—**

A Judge may delay a hearing due to commence at 10.00 am if the plaintiff's counsel is still in a directions hearing that was scheduled to commence at 9.00 am and expected to finish within half an hour.

- (b) when a lawyer appearing before a Master has an appointment before a Judge that the lawyer reasonably expected to be able to attend after completion of a hearing before a Master but is still before the Master when he or she is due before the Judge, the lawyer may request the Master to adjourn the application before the Master.
- (4) In any other circumstances, lawyers will be expected to arrange for another lawyer to attend on one or other of the applications.

- (5) When a lawyer expects not to be available for an appointment before a Judge or Master because of circumstances falling within paragraph (3), he or she is to ensure that the Judge's associate or Master's personal assistant is warned in advance of his or her difficulties.
- (6) If a lawyer does not make proper arrangements for representation at a hearing, thereby necessitating an application being adjourned, costs will ordinarily be ordered against the lawyer personally.

## **89—Audiovisual hearings**

- (1) When all parties to an application are represented by lawyers, it may be set down for an audiovisual hearing at the request of a party.
- (2) The lawyers for all parties are to be available to receive a telephone call or audio visual call from the Court at the time appointed for the hearing and for the next 30 minutes.
- (3) The judicial officer retains a discretion to adjourn an audiovisual hearing to a hearing in court when the lawyers are to attend.
- (4) When the Court cannot make contact with a lawyer at the time appointed for the hearing, the judicial officer may proceed with the hearing in the same way as if a party had not attended at a hearing in court.
- (5) When an application has been set down for an audiovisual hearing, any lawyer for a party is entitled to attend in person.
- (6) No person is to make a recording of an audiovisual hearing other than with the prior permission of the judicial officer conducting the hearing.
- (7) Unless the Court otherwise orders, the costs incurred by the Court in conducting an audiovisual hearing are to be paid by the party requesting that the hearing proceed as an audiovisual hearing.

## **Division 3—Interlocutory applications**

### **Subdivision 1—General**

## **90—Interlocutory applications**

- (1) When a party needs to apply for an interlocutory order that cannot conveniently and expeditiously be dealt with at a directions hearing for which a date has already been set, an interlocutory application under rule 131 of the Rules should be made and the Court will set the application down for hearing at the earliest opportunity.
- (2) An interlocutory application under rule 131(1) of the Rules is to be in form 26.
- (3) Unless the Rules or these Supplementary Rules otherwise provide or the Court or the Registrar otherwise directs, a party making an interlocutory application is to file a supporting affidavit with the application.
- (4) When a detailed order is sought, minutes of order are to be filed with the application.
- (5) Responding affidavits are to be filed at the earliest opportunity, but in any event no later than 12.00 noon on the day before the day fixed for the hearing of the application.
- (6) Failure to observe this supplementary rule may result in the application being adjourned with costs against the party at fault or his or her lawyer personally.

## **Subdivision 2—Determination without oral hearing**

### **91—Introduction**

The making and disposal of an application determined without hearing oral submissions under rule 132 of the Rules is the equivalent of conducting a matter in court. This means that—

- (a) the system is to be used only for issues requiring consideration and determination by a Master or Judge;
- (b) communications between the parties or their representatives in relation to confidential or sensitive matters are not to be released to the Court;
- (c) language and modes of address are to be the same as if the matter were being dealt with on a directions hearing;
- (d) undertakings given in an email communication by a party or a party’s lawyer to the Court or other parties are binding as if the undertakings were given in court; and
- (e) the rules of contempt apply.

### **92—Applications that may be dealt with electronically**

- (1) An electronic application can only be made when all parties involved have filed an address for service containing an email address.
- (2) Whether an application is to be dealt with electronically is in the discretion of the Court and will depend on—
  - (a) the nature and complexity of the issues to be resolved;
  - (b) the number of parties;
  - (c) the views of the parties;
  - (d) the nature and extent of any evidence required; and
  - (e) any urgency.
- (3) Examples of applications that will normally be accepted for electronic determination are—
  - (a) non-contentious *ex parte* applications, including applications for final relief;
  - (b) non-contentious party or non-party document disclosure or other interlocutory applications;
  - (c) non-contentious pleading amendment applications;
  - (d) non-contentious applications under the *Corporations Act*; for example, an extension of time to convene a second creditors’ meeting, approval of a settlement or to reinstate a deregistered company;
  - (e) consent judgments or orders of any type;
  - (f) applications for approval of compromises on behalf of persons under a disability;
  - (g) *ex parte* applications to renew a summons;
  - (h) applications for presumptive service;
  - (i) applications for an extension of time.
- (4) A consent order for the adjournment of set hearing dates is to be sought well before the hearing date. It should not be assumed that the Court will grant such an adjournment.

### **93—Form of electronic interlocutory application**

An electronic interlocutory application under rule 132 of the Rules is to be in form 27.

### **94—Minutes of order**

- (1) When the order will need to be sealed, draft minutes of order in Microsoft Word format are to be attached to the email.
- (2) When the order sought is lengthy or complicated, minutes of order should also be attached to the email.
- (3) In any other case, unless the Court so requests, minutes do not need to be attached to the email.

### **95—Initiation and termination of electronic processing**

- (1) A lawyer seeking electronic processing of an application is to send the application as an attachment to an email to the Registrar directed to—  
[supreme.efiling@courts.sa.gov.au](mailto:supreme.efiling@courts.sa.gov.au)
- (2) If a specific judicial officer is already seized of the proceeding, the email or electronic application is to identify that fact.
- (3) If the matter can be processed by the relevant judicial officer within 2 clear business days after the request, all relevant parties will be advised by email of the terms of any order made.
- (4) If the application cannot be dealt with within that time, the Court will advise the applicant by reply email in form 28 whether the application will be accepted and, if so, to which judicial officer it has been directed.
- (5) If the applicant does not receive a response to an electronic application within 2 business days after its transmission, the applicant should contact the Court to ascertain whether it was received.
- (6) The Court may terminate the use of electronic processing of a matter, or part of a matter, at any time at the request of a party or on its own initiative.

### **96—Notification of other parties**

- (1) When notice of an electronic application is to be given to another party, a copy of the electronic application is to be transmitted by email to that party simultaneously with its transmission to the Court.
- (2) All subsequent documents transmitted by email to the Court are to be simultaneously transmitted by email to each other party in the action. The date and time of each transmission will be permanently recorded in the relevant file.
- (3) Due service of, or notice to, a party of any proceeding or document filed in a proceeding will be deemed to be on the day on which it is transmitted to that party at the correct email address of the party if the transmission occurs before 4.30pm. Otherwise, it will be deemed to be served on the next business day.

### **97—Form and content of emails and attachments**

- (1) Related emails sent on behalf of parties to the Court are to be—
  - (a) relevant to the topic or discussion thread in relation to which they are sent;



- (b) brief and to the point; and
  - (c) timely.
- (2) All documents intended to be used and not already filed with the Court are to be attached to the transmitting email. Documents are to be sent and received using Simple Mail Transfer Protocol (*SMTP*).
  - (3) Unless these Supplementary Rules otherwise provide or the Registrar otherwise directs, any document transmitted to the Court is to utilise as a font Times New Roman or Arial, minimum size 12, and be in searchable Portable Document Format (*PDF*).
  - (4) Exhibits to an affidavit are to be scanned to convert them to a searchable PDF file.
  - (5) When an email refers to a document already filed with the Court, the email is to indicate the date of filing and, if known, the FDN and may attach to the email a copy of the filed document for ease of reference.
  - (6) If a document not already filed with the Court cannot be attached in electronic format, the email should indicate that and advise when such document will physically be filed in the Registry.
  - (7) In urgent matters, a document that is to be filed may be attached to an email with an undertaking in the email that it will be filed with the Court on the next business day.
  - (8) A copy document attached to an email is to have any ink signature, date or other addition to the original document typed into the document in square brackets, so that it may be read as a completed document.

## **98—Mode of use of email facility**

- (1) An email transmitted by a lawyer is to identify the name of the individual lawyer sending it and, when applicable, the separate email address of the lawyer.
- (2) An email and attached documents purporting to be sent by a lawyer will be deemed to—
  - (a) have been sent by the lawyer;
  - (b) be the responsibility of the lawyer; and
  - (c) have been authorised for transmission by the party on whose behalf they have been sent.
- (3) A lawyer transmitting a copy of a document not already filed with the Court will be deemed to accept personal responsibility for payment of any court filing or other fee attaching to the matter being dealt with electronically.

## **99—Directions**

The Registrar may give directions how a specific matter, or part of a matter, is to be processed. For example, directions may be given as to—

- (a) the topic or topics to be dealt with and in what manner;
- (b) who may participate;
- (c) the maximum size of emails and attachments; and
- (d) the maximum time in which emails (including replies) are to be sent to the Court.

## **100—Consent orders**

When a consent order or judgment is sought, the consent of all parties other than that of the applicant is to be furnished to the Court by—

- (a) the endorsement of consents on minutes of order lodged electronically;
- (b) an email to the Court from the lawyer for a party; or
- (c) such other means as are acceptable to the Court.

## **101—Adjournment of hearing**

- (1) When all interested parties consent to the adjournment of an interlocutory hearing listed before a Judge or Master, a party may seek the adjournment by email to the Judge’s associate or Master’s personal assistant at least 1 clear business day before the date listed for the hearing.
- (2) The consent to the adjournment by all interested parties may be evidenced by an email from each party stating the party’s consent.
- (3) As soon as practicable after receipt of the email, the Judge’s associate or Master’s personal assistant will by email inform the parties whether the adjournment is granted.
- (4) If no reply is received, the parties are to attend at the appointed time for the hearing.

## **102—Submissions and information**

- (1) An email transmitting an electronic application may attach brief submissions or representations to the judicial officer to whom the matter is assigned without a direction inviting this to be done.
- (2) If the Court desires further information or submissions, the parties will be advised by email of the nature of the further information or submissions sought and the date by which they are to be supplied.
- (3) If a request under paragraph (2) is not complied with in a timely manner, the Court may, in its discretion, set the matter down for hearing in a chamber list and inform the parties that attendance is required at the Court at a stipulated time.

## **103—Making of order**

- (1) Orders as to which a fiat only is required will be created by the Court and authenticated by the relevant judicial officer. A copy of the fiat will be transmitted electronically to the party or parties concerned.
- (2) Orders required to be sealed and entered will be settled “on screen” from the minutes sent to the Court, submitted electronically to the party or parties concerned for approval, and then hard copied and sealed and entered by the Registry. Any document hard copied will bear the FDN allocated to it as a means of cross-reference.
- (3) An email submitting settled minutes for approval of a party or parties will normally stipulate that, if no response is received from a party within 3 business days, that party will be deemed to have approved the settled minutes.
- (4) The Court may review the form of a settled and sealed order if satisfied that a party did not receive the settled minutes and that they do not properly reflect the intention of the judicial officer who made the order.

## **104—Conditions of use, privacy aspects and security**

- (1) By transmitting an electronic application to the Court in accordance with this Division, a lawyer represents to the Court that—
  - (a) the lawyer has made due enquiry and instructions received justify making the electronic application;
  - (b) if a copy of an affidavit not yet filed is attached to an email, the copy is a true copy of the original of the affidavit held by the transmitter and that the original has been duly sworn or affirmed; and
  - (c) the transmitter has taken all reasonable precautions to ensure that all material transmitted is virus free.
- (2) The information transmitted to the Court will not be disclosed to any other person not entitled by law to it. However, an email sent to the Court may be monitored by staff of the Courts Administration Authority to facilitate consideration of possible changes to its website, maintenance, or when email abuse is suspected.
- (3) A lawyer having a concern about security of information proposed to be transmitted to the Court should communicate the concern to the Registrar before the transmission and confer with the proper officer of the Court as to the concern.
- (4) The Court will take reasonable precautions to ensure that its transmissions are virus free. However, it is for lawyers to adopt their own virus protection strategies.

## **105—Costs**

- (1) Adjudicating officers determining costs in a matter will exercise their discretion to ensure that allowances made are fair and reasonable for work done. The avoidance of a need to attend at court will usually result in some reduction in costs incurred.
- (2) One factor taken into account in the adjudication of costs will be whether a matter that could have been processed as an electronic application was unnecessarily set down in a list requiring personal attendance at court.

# **Part 3—Disclosure and production of documents**

## **Division 1—General**

### **106—Introduction**

- (1) The Court has a strong preference for electronic disclosure, being the use of imaged documents, because of the increased functionality available with electronic images compared to paper copies and the relatively high cost of copying documents multiple times compared to the cost of converting them to images once.
- (2) The primary purpose of electronic disclosure is to minimise document management and technology costs and ensure that each party and the Court can use the same software to view all parties' documents.

### **107—Form of disclosure and production**

- (1) Subject to paragraphs (2) to (4), disclosure and production of documents is to be made in accordance with Division 2.

- (2) The parties may agree within 14 calendar days after the close of pleadings that Division 3 or Division 4 is to apply in lieu of Division 2.
- (3) Subject to complying with the time limits for disclosure of documents fixed by the Rules, these Supplementary Rules or by order of the Court, the parties may agree at any time to modify (by addition, removal or alteration) the provisions contained in the applicable Division of this Part for the purpose of meeting the circumstances of the particular case and facilitating the just, quick and efficient disclosure and production of documents.
- (4) The Court may at any time order that disclosure and production of documents is to be made in accordance with Division 3 or Division 4 or that the provisions of an applicable Division are to be modified in their application to a proceeding.

## **108—Cost**

It is the responsibility of each party to an action to bear the cost of complying with this Part (including producing and viewing electronic data) subject to any costs order ultimately made in the action.

## **Division 2— Electronic disclosure in basic form**

### **109—Introduction**

- (1) Subject to supplementary rule 107, this Division sets out the default requirements for electronic disclosure.
- (2) Subject to complying with the time limits for disclosure of documents fixed by the Rules, these Supplementary Rules or by order of the Court, the parties may agree to modify this Division in accordance with supplementary rule 107(3).

### **110—Document numbering and description**

- (1) Each disclosed document is to be identified by a unique document identification number (*Document ID*) in the format **SSS.NNNN** where—
  - (a) **SSS** is the party code comprising three alpha digits identifying a party to the proceeding (*Party Code*); and
  - (b) **NNNN** is the document number comprising a unique numeric number assigned to each document (not each page within each document) (*Document Number*).
- (2) The parties are to notify each other of the Party Code proposed to be used before commencing the disclosure process to ensure that each code is unique.
- (3) The numbers of the Document Number are to be consecutive and leading zeroes are to be used to result in a 4 digit structure from 0001 to 9999.
- (4) Each document is to be characterised as one of the following document types (*Document Types*)—
  - (a) Email;
  - (b) Letter;
  - (c) Other.
- (5) The document title (*Document Title*) for each document is to be described as follows—

- (a) for emails—the subject line of the email is to be used unless the subject line is not descriptive, in which case the title is to be objectively coded from the face of the document,
  - (b) for all other documents—the title is to be objectively coded from the face of the document (the title or subject line and/or description).
- (6) Attachments or enclosures to other documents (such as letters or emails) are not to be separately listed as individual documents, but are to be included as part of the primary document and included in the description of that primary document (as part of the Document Title).

### **111—Format of disclosed documents**

- (1) Each disclosed hard copy document is to be scanned into an electronic form as follows—
- (a) subject to paragraph (c), the image format is to be PDF and, whenever practicable, text searchable (using Optical Character Recognition (**OCR**));
  - (b) when a document contains colour, the document is required to be imaged as a colour document only if it will be of evidential significance to see colour in the document or if colour is required to make the document legible;
  - (c) when a document is not amenable to being saved as a PDF file, alternative appropriate files are JPEG or TIFF files.
- (2) Each disclosed electronic file (including an email) is to be saved in electronic form as follows—
- (a) subject to paragraph (b), the image format is to be PDF and, whenever practicable, text searchable by being rendered directly to PDF from its native format;
  - (b) when the file type is MS Excel, MS Access, MS PowerPoint, JPEG, TIFF or a file type not amenable to conversion to PDF, the file is to remain in its native format.

### **112—Structure and quality of disclosed documents**

- (1) The entirety of each document is to be contained within a single PDF file.
- (2) An individual PDF file is not to be excessive in size. If greater than 10 MB, all attempts are to be made to reduce the file size of the PDF file without losing quality of the image.
- (3) A PDF document is to be scanned at a minimum of 200 dots per inch (*dpi*). If a document is of poor quality, the dpi is to be increased to a minimum of 300 dpi.
- (4) All documents are to be rotated to the most practical reading view.
- (5) Portrait documents are to be stamped with the Document ID in the bottom right quadrant of the page. Landscape documents are to be stamped with the Document ID in the bottom right quadrant to ensure that, if the image is rotated 90 degrees anti-clockwise, the stamp will appear along the leading edge of the top right quadrant.

### **113—Image directory and file structure**

- (1) Each image file is to be in the format of the Document ID that is **SSS.NNNN.pdf**. Leading zeroes are to be used. If the image file is not in PDF format, the same file structure is to be used but the file extension “.pdf” will be different, for example “.jpeg”.

- (2) All image files for each party are to be saved in an electronic folder with the name “SSS” where SSS is the Party Code.

#### **114—List of documents**

- (1) All documents to be disclosed are to be described in a List of Documents under rule 136(2) of the Rules in form 29A.
- (2) The List of Documents is to be listed in order of Document ID.
- (3) The List of Documents is to include the following fields for each document—
  - (a) Document ID (in accordance with supplementary rule 110(1));
  - (b) Document Date in the format DD-MMM-YYYY where DD=day, MMM=month and YYYY=year, eg 11-Jan-2000;
  - (c) Document Type (in accordance with supplementary rule 110(4));
  - (d) Document Title (in accordance with supplementary rule 110(5));
  - (e) Author when applicable (includes people and organisations); and
  - (f) Recipient when applicable (includes people and organisations).
- (4) The List of Documents is to be filed in hard copy form and served on each other party in electronic PDF format and, whenever practicable, text searchable (using OCR).

#### **115—Technical format of documents to be provided to other parties**

- (1) Lists of Documents and disclosed documents are to be provided to each other party on a CD-ROM, DVD-ROM or portable USB hard drive.
- (2) The CD-ROM, DVD-ROM or USB hard drive is to include a label with the name of the proceeding, party name, disk/USB number, action number, date, description of data (eg “The Data & Documents for Schedule 1 Part 1”) and whether it is additional or replacement data.

#### **116—Updating or adding additional documents or pages**

- (1) If a page of a document needs to be inserted, deleted or replaced due to mistake or otherwise, the responsible party is to reissue a new CD-ROM, DVD-ROM or portable USB hard drive containing a fresh copy of all the disclosed documents (including the inserted, deleted or replaced page).
- (2) If an error is found in a disclosed document, the responsible party is to reissue a new CD-ROM, DVD-ROM or portable USB hard drive containing a fresh copy of all the disclosed documents (without the error).
- (3) An update is to be accompanied by a covering letter outlining the Document IDs and the information that has changed.
- (4) Amended documents or lists are to be provided in the same format as set out in this Division 2.

#### **117—Data security and virus responsibility**

- (1) It is the responsibility of the recipient of electronic data to test for viruses. A party producing data to another party is to take reasonable steps to ensure that the data is useable and is not infected by malicious software.

- (2) If data is found to be corrupted, infected or otherwise unusable, the producing party is, within 2 business days after receipt of a written request from a receiving party, to provide to the receiving party a copy of the data that is not corrupted, infected or otherwise unusable as the case may be.

## **118—Inspection of original documents**

Notwithstanding the requirements of this Division 2, each party to an action retains the right to view and copy original documents disclosed by another party to the action.

## **Division 3—Electronic disclosure in advanced form**

### **119—Introduction**

- (1) The purpose of this Division is to provide for an advanced form of electronic disclosure when—
  - (a) there will be a relatively large number of disclosed documents;
  - (b) it is desirable for each party to have an electronic database identifying each disclosed document; and/or
  - (c) it is anticipated that there will be an electronic trial.
- (2) Subject to complying with the time limits for disclosure of documents fixed by the Rules or these Supplementary Rules or by order of the Court, the parties may agree to modify this Division in accordance with supplementary rule 107(3).

### **120—Document numbering**

- (1) Each page of each document is to be identified by a unique document identification number (**Document ID**) in the format **ABC.BBB.FFF.PPPP** unless the parties agree or the Court directs otherwise.
- (2) A Document ID is to be unique because it is the sole means by which each document will be referenced. Document IDs are to be placed on each page of each document. The page number assigned to the first page of the document is also to be assigned as the Document ID for that document. Native electronic documents are to be assigned a single Document ID and individual page number labels are not required.
- (3) Each page of each document is to be numbered in the format **ABC.BBB.FFF.PPPP** (or **ABC.BBB.FFF.PPPP\_NNN** as required) where—
  - (a) **ABC** is the party code (**Party Code**) comprising three alphabetical digits identifying a party to the proceeding. The parties are to notify each other of the Party Code proposed to be used before commencing the disclosure process to ensure that each code is unique.
  - (b) **BBB** is a 3 digit sequential box number (**Box Number**). Leading zeros are to be used to result in a 3 digit structure from 001 to 999. If the documents are not physically stored in boxes, a virtual box number is to be used. The Box Number identifies a specific physical archive box or email mailbox or any other container or physical or virtual classification that is appropriate for the party to use.

- (c) **FFF** is a 3 digit sequential folder number (*Folder Number*). Leading zeros are to be used to result in a 3 digit structure from 001 to 999. For each box, the Folder Number is to start from 001. The Folder Number identifies a unique folder number allocated by each party in its own document collection. A party may allocate loose or unsorted documents, either hard copy or electronic, to one or more folders. This is acceptable provided that the originals of such documents are able to be promptly sourced for inspection if required. It may also identify an electronic folder (as part of a directory structure) or a folder within an email mailbox. The Folder Number may, when appropriate, correspond to the Box Number of any container in which the document is contained.
  - (d) **PPPP** is a 4 digit sequential page number (*Page Number*). Leading zeroes are to be used to result in a 4 digit structure from 0001 to 9999. This refers to each individual page within each folder. For native electronic documents, this number applies to the whole document irrespective of the number of pages within it. In such cases, it therefore operates as a Document Number rather than a Page Number because individual pages are not numbered.
  - (e) **NNN** is a 3 digit sequential number for inserted pages (*Inserted Pages*). Leading zeroes are to be used to result in a 3 digit structure from 001 to 999. If a page is missed in the numbering process and needs to be inserted, a 3 digit sequential number is to be used, eg “PPP.001.001.0010.001” is a page that has been inserted between pages 10 and 11 in folder 1 in box 1 for party PPP. This scheme assumes a minimal number of insertions will be made with a maximum of 999 pages being inserted between 2 pages. Inserting pages between inserted pages is not accommodated in this scheme in an effort to keep the document number to a reasonable length. If a page is not inserted, this field will not be used so most page numbers will only be 16 characters in length, eg “PPP.001.001.0010”.
- (4) Depending on the volume, format and structure of the material to be discovered, the parties may agree to use a different Document ID format. For example, for small document collections, parties may wish to omit the Box Number level; for larger collections, the Folder Number may be increased in length to 4 digits (FFFF). For larger collections, the Page Number may be increased to 5 (PPPPP) or 6 (PPPPPP) digits.

## 121—Format of disclosed documents

- (1) Each disclosed hard copy document is to be scanned into an electronic form as follows—
  - (a) subject to subparagraph (c), the image format is to be PDF and, whenever practicable, text searchable (using OCR);
  - (b) when a document contains colour, the document is required to be imaged as a colour document only if it will be of evidential significance to see colour in the document or if colour is required to make the document legible;
  - (c) when a document is not amenable to being saved as a PDF file, alternative appropriate files are JPEG or TIFF files.
- (2) Each disclosed electronic file (including an email) is to be saved in electronic form as follows—
  - (a) subject to subparagraph (b), the image format is to be PDF and, whenever practicable, text searchable by being rendered directly to PDF from its native format;



- (b) when the file type is MS Excel, MS Access, MS PowerPoint, JPEG, TIFF or a file type not amenable to conversion to PDF, the file is to remain in its native form.
- (3) PDF files are to be “FastWebView” (or equivalent) enabled.

## **122—Structure and quality of disclosed documents**

- (1) The entirety of each document is to be contained within a single PDF file.
- (2) An individual PDF file is not to be excessive in size. If greater than 10 MB, all attempts are to be made to reduce the file size of the PDF file without losing quality of the image.
- (3) A PDF document is to be scanned at a minimum of 200 dpi. If a document is of poor quality, the dpi is to be increased to a minimum of 300 dpi.
- (4) All documents are to be rotated to the most practical reading view.
- (5) Portrait documents are to be stamped with the Document ID in the bottom right quadrant of the page. Landscape documents are to be stamped with the Document ID in the bottom right quadrant to ensure that, if the image is rotated 90 degrees anti-clockwise, the stamp will appear along the leading edge of the top right quadrant.

## **123—Document delimiting and host/attachment determinations**

- (1) Documents are to be delimited—that is, host and attachments are to be identified so that documents are a host, attachment or unattached.
- (2) Each document that has attachments or documents embedded within it will be called the *Host Document*.
- (3) Each document that is attached to or embedded within another document will be called an *Attached Document*.
- (4) Host Documents and Attached Documents are jointly referred to as a *Document Group*.
- (5) In a Document Group, the Host Document will be immediately followed by each Attached Document in the order in which the Attached Documents are numbered in their Document ID.
- (6) A document that is not a Host or Attached Document will be considered an *Unattached Document*. If there is doubt whether two documents form a host and attachment, they will be delimited as Unattached.
- (7) If a Document is contained within a container (for example, a single ZIP file) attached to an email, the email is to be treated as the Host Document and the document in the container is to be treated as an Attached Document to that Host Document (that is, the Host Document will be the email and not the container within which the document is contained).
- (8) If the Document Group consists of a number of paper documents fastened together, the first document is to be treated as the Host Document and the remaining documents are to be treated as the Attached Documents within the Document Group unless those documents are not related, in which case each Document will be treated as a separate document without a Host Document.
- (9) Subject to paragraph (10), all hard copy documents are to be delimited as Host, Attached or Unattached as determined. If there is doubt whether a group of consecutive pages forms one document or several individual documents, the pages will be coded as individual documents.

- (10) Annexures, attachments and schedules that form part of—
  - (a) an agreement will not be delimited and coded as separate documents but will be considered part of the agreement;
  - (b) a report, financial report or annual report will not be coded as separate documents but will be considered part of the report; and
  - (c) annexures or exhibits to affidavits will not be coded as separate documents but will be considered part of the affidavit.
- (11) There will only be one level of attachments. All attachments to a Host (including attachments or embedded objects within other attachments) will be listed as being attached to the Host Document. For example, a host email (the parent) is sent attaching several emails (the children). One of these attached emails contains an attachment (a grandchild) – an MS Word document. All children and grandchildren would have the parent listed as the Host Document.

### **124—De-duplication**

- (1) When appropriate, each party will take reasonable steps to remove duplicated documents from the served material unless and to the extent that the parties agree otherwise.
- (2) It is acknowledged that there may be circumstances in which duplicates need to be identified, retained and served for evidential purposes.
- (3) De-duplication will be considered at a Document Group level. That is, Host Documents and their Attached Documents will be treated as duplicates if the entire Document Group to which they belong is duplicated elsewhere within the set of documents being disclosed. An Attached Document in a Document Group will not be treated as a duplicate merely because it is duplicated elsewhere as an individual standalone document that is not associated with another document group.
- (4) The parties may agree to conduct de-duplication through an alternative method such as custodian level where all electronic data referable to a particular entity will be compared with each other document in the data set referable to that entity or individual.
- (5) Parties are to ensure that any associated data regarding the original file path and file name of any duplicates identified and removed before disclosure are kept and available for inspection upon request.

### **125—Format of indexed data to be served**

- (1) The indexed data is to contain the information set out in supplementary rules 126 to 129.
- (2) Each party will produce indices of the disclosed documents in the described export format. The indexed data will be served in an Access mdb file named export.mdb that contains the 4 tables that make up the export format. The 4 tables are—
  - (a) export table;
  - (b) export extras table;
  - (c) parties table; and
  - (d) pages table.

## 126—Export Table

- (1) The export table contains the core field information for each document (*Export Table*). All other tables are to be linked to the Export Table by the Document ID field. The Export Table is to contain the following—
  - (a) Document ID—the page number on the first page of the document ABC.BBB.FFF.PPPP.
  - (b) Host Reference— if the document is an Attached Document, the Document ID ABC.BBB.FFF.PPPP of the Host Document is entered here.
  - (c) Document Date—the date of the document as it appears on the document in the format DD-MMM-YYYY where DD=day, MMM=month and YYYY=year, eg 11-Jan-2000.
    - (i) For electronic material, the Document Date is the last date from the document’s metadata. For electronic emails, the Document Date is the local time zone of the server when that email was sent or the received date. For electronic attachments, the Document Date is the last modified date or last saved date obtained from the metadata.
    - (ii) For hard copy material, the Document Date is the date appearing on the face of the document. This field is to be left blank if the document has no date, does not have a year or cannot be estimated. If the date can be estimated, the date is to be entered in the Document Date field and the Estimated Date field is to be marked “Yes”.
    - (iii) Date ranges are not to be used. If there is a document that covers a period of time, the earliest date is to be entered in the Document Date field and the Estimated Date field is to be marked “Yes”.
    - (iv) If the date is a partial date without a day or month, eg September 1997 or 1995, the missing day or month is to be assumed to be the first day of the month or year in question and the Estimated Date field is to be marked “Yes”, eg “01-Sep-1997” or “01-Jan-1995”.
    - (v) If a document contains what may be an original date as well as a subsequent date (possibly as a result of alterations being made to the document), the later date is to be taken as the document date and the Estimated Date field is to be marked “Yes”.
  - (d) Document Type— documents are to be categorised into one of the agreed document types defined by the parties (*Document Type*). The Document Types are to be agreed in accordance with the particular needs of the case and include— Agenda, Agreement, Annual Report, ASX Document, Board Papers, Court Document, Diary, Drawing, E-File, E-File Attachment, Email, Email Attachment, Fax, File Note, Financial Papers, Form, Graph, Invoice, Letter, Memorandum, Minutes, Newspaper Clipping, Receipt, Report, Transcript and Other. Additional Document Types may be agreed by the parties.
  - (e) Document Title— for all emails, the subject line is to be used except when the document is a court exhibit or MFI, in which case the court reference and title is to be used. For all email attachments, e-files and e-file attachments, the original file name is to be used. For all hard copy documents, the title is to be objectively coded from the face of the document (the title or subject line and/or description).

- (f) Levels—the level structure of the Document ID.

## 127—Export Extras Table

- (1) The export extras table contains additional fields to the core fields for each document (*Export Extras Table*). It is linked to the Export Table via the Document ID field. The Export Extras Table is to contain the following—
  - (a) Document ID—the page number on the first page of the document **ABC.BBB.FFF.PPPP**. This is to match the Document ID entry in the Export Table.
  - (b) Category—one of the following options identifying the data type is to be used—text, memo, bool, numb, date, pick, utext or umemo.
  - (c) Label—the name of the field.
  - (d) Value—the actual data as a text string.
  - (e) memoValue—to be used if data contained within the field is longer than 255 characters.
- (2) The Export Extras Table is to include—
  - (a) Privileged—this field indicates whether a claim of privilege is made over the document. The permissible values are—Yes, No or Part. This is a pick category.
  - (b) Privileged Basis—this field identifies the basis of privilege for each Privileged Document. The permissible values are—LPP (legal professional privilege); PSI (privilege against self-incrimination) or WPP (without prejudice privilege). This is a pick category. This field is required for a document marked as privileged or part privileged (Privileged = Yes or Part). This field may contain multiple entries for a single document.
  - (c) Reason for Redaction—denotes the reason for redaction. The permissible values are—Privilege and Confidential. This field may contain multiple entries for a single document. Parties are also to indicate the reason for redacting a particular section of a document on the image, eg by stamping the redacted section “redacted for confidentiality”. This is a pick category.
  - (d) Handwritten Note—for hard copy documents only, when part of the document is handwritten or contains handwritten annotations (other than a signature of a deponent on an affidavit), this field is to be marked “Yes”. This is a bool category.
  - (e) IsPlaceholder—for documents where a native file is included in addition to a placeholder document, this field is to be marked “Yes”. This is a bool category.
  - (f) MD5— for electronic files only (including emails), it records the MD5 Hash Algorithm for any electronic file provided. This is a text category.
  - (g) Source Path—for electronic files only (including emails), it records the original file path of the native electronic document (without the file name). This is a memo category.
  - (h) File Name—for electronic files only (including emails), it records the file name of the native electronic document including the file extension. This is a text category.
  - (i) Sent Date—for electronic emails only, it records the sent date/time of emails as extracted from the application metadata. This is a text category.

- (j) Created Date—for electronic files only (including emails), it records the created date/time of all native electronic documents as extracted from the metadata of those files if available. This is a text category.
- (k) Last Saved Date—for electronic files only (including emails), it records the last saved/modified date/time from the application metadata if available. This is a text category.
- (l) Last Modified Date—for electronic files only (including emails), it records the last modified date/time of all native electronic documents as extracted from the metadata of those files if available. This is a text category.

## 128—Parties Table

- (1) The parties table contains people and organisation information for each document, including “to” (addressees), “from” (authors), “cc” (copied to), “bcc” (blind copied to), “between” (parties) and “attendees” (present at meetings) (*Parties Table*). It is linked to the Export Table via the Document ID field.
- (2) The Parties Table is to contain the following—
  - (a) Document ID—the page number on the first page of the document ABC.BBB.FFF.PPPP. This is to match the Document ID entry in the Export Table.
  - (b) Correspondence Type—one of the following 6 options identifying the type of person is to be used, except that each of the following options is to be used to the extent available from the metadata of electronic documents—
    - (i) “From”—for authors;
    - (ii) “To”—for addressees;
    - (iii) “CC”—for addressees to whom the document was copied;
    - (iv) “BCC”—for addressees to whom the document was blind copied;
    - (v) “Between”—for parties to an agreement or other legal document (not correspondence); and
    - (vi) “Attendees”—for persons/organisations who attended the meeting.
  - (c) People—the person to whom the document relates in the format Last name and First initial only, eg “Jones L”. If the person is identified by title and not by name, the title is to be entered in this field, eg “General Manager”. If there is an organisation but no person, this field is to be left blank.
  - (d) Organisations—the organisation to which the document relates. The abbreviation for proprietary limited companies is to be “Pty Ltd” and the abbreviation for limited companies is to be “Ltd”. If the organisation is unknown, this field is to be left blank.
- (3) For electronic material, this information is to be solely sourced from the metadata of the file.
- (4) For hard copy material, this information is to be objectively coded from the face value of the document.
- (5) If there are multiple parties for a single document, there are to be multiple entries in this table for that document.

## 129—Pages Table

- (1) The pages table is used to describe the location of the PDFs (including placeholders) and native files (*Pages Table*). It is linked to the Export Table via the Document ID field. The Pages Table is to contain the following—
  - (a) Document ID—the page number on the first page of the document ABC.BBB.FFF.PPPP. This is to match the Document ID entry in the Export Table.
  - (b) Image File Name—all documents are to have a multipage PDF file named *ABC.BBB.FFF.PPPP.pdf*. If a page is inserted, the file name will be *ABC.BBB.FFF.PPPP\_NNN.pdf*. If a native file has been included, there will be two files— a placeholder PDF document (ABC.BBB.FFF.PPPP.pdf) and the native document (eg, ABC.BBB.FFF.PPPP.xls).
  - (c) Page Label—this is the filename minus the file extension (*ABC.BBB.FFF.PPPP*). If a page is inserted, the page label is to have a three digit suffix (ie *ABC.BBB.FFF.PPPP\_NNN*). For native files, the page label is to be “Native”.
  - (d) Page Num—this is used to sequence pages. For an entry when a placeholder document has been included, this is to be set as 1, and for the accompanying native file this is to be set as 2. For all other multi page text searchable PDF documents, this is to be set as 1.
  - (e) Num Pages—total number of pages of a multi-page text searchable PDF document. For native files, the Num Pages is to be set as 1.
- (2) Each image, native file or PDF is to have an entry in the Pages Table. If there is insufficient space for a page number label on an image, the electronic image of the page is, if possible, to be reduced in size to make room for the Page Number Label. Page Number Labels may also include machine readable barcodes.
- (3) The parties may apply Page Number Labels to paper documents when they contain relevant content, for example, folder covers, spines, separator sheets and dividers.
- (4) Adhesive notes are not normally to be labelled but are to be scanned in place on the page to which they were attached. If this cannot be done without obscuring text, the adhesive note is to be numbered as the page after the page to which it was attached and the page is to be scanned twice – first with and then without the adhesive note.

## 130—Image directory and file structure

- (1) The following media are to be in the described format—
  - (a) Data File Type and Format—Microsoft Access mdb file.
  - (b) File Composition—if a native file has been included, in addition a placeholder image is to be inserted stating that the user is to refer to the native file provided. The placeholder document is to be in the form of a multi-page text searchable PDF document. Both the placeholder and the native file will be allocated the same Document ID and will be referenced in the Pages Table.
  - (c) Image Type and Resolution—hard copy and electronic material converted to PDF documents are to be a minimum of 200 dpi. If a document is of poor quality, the dpi is to be increased to 300 dpi.
  - (d) Directory Structure and Naming Conventions—the directory structure and filename for each image file is to be in the format *ABC\BBB\FFF\PPPP\_NNN.pdf*, where—

- (i) ABC is the directory which is the 3 digit Party Code;
- (ii) BBB is a sub-directory which is the Box Number and leading zeroes are to be used to result in a 3 digit structure;
- (iii) FFF is a sub-directory which is the Folder Number and leading zeroes are to be used to result in a 3 digit structure;
- (iv) ABC.BBB.FFF.PPPP.pdf is the filename. Leading zeroes are to be used. If a page is inserted, the filename will be ABC.BBB.FFF.PPPP\_NNN.pdf. If a native file is inserted, the filename will be, for example, ABC.BBB.FFF.PPPP.xls

### **131—List of documents**

- (1) Subject to paragraphs (2) to (4), the indexed data is to be converted into a List of Documents under rule 136(2) of the Rules in form 29B.
- (2) The List of Documents is to be listed in order of Document ID.
- (3) The List of Documents is to include the following fields for each document—
  - (a) Document ID (in accordance with supplementary rule 120);
  - (b) Document Date in the format DD-MMM-YYYY where DD=Day, MMM=month, YYYY=Year, eg 11-Jan-2000;
  - (c) Host Reference (in accordance with Supplementary Rule 123);
  - (d) Document Type (in accordance with supplementary rule 126(1)(d));
  - (e) Document Title (in accordance with supplementary rule 126(1)(e));
  - (f) Author (when applicable, includes people and organisations); and
  - (g) Recipient (when applicable, includes people and organisations).
- (4) The List of Documents is to be filed in hard copy form and served on each other party in an electronic searchable PDF format and, whenever practicable, text searchable.

### **132—Technical format of documents to be provided to other parties**

- (1) Lists of Documents, index data and disclosed documents are to be provided to each other party on a CD-ROM, DVD-ROM or portable USB hard drive.
- (2) The CD-ROM, DVD-ROM or USB hard drive is to have a label with the name of the proceeding, party name, disk/USB number, action number, date, description of data (eg “The data & documents for Schedule 1 Part 1”) and whether it is additional or replacement data.

### **133—Updating or adding additional documents, pages or data**

- (1) If a page of a document or new data needs to be inserted, deleted or replaced due to a mistake or otherwise, the responsible party is to reissue a new CD-ROM, DVD-ROM or portable USB hard drive containing a fresh copy of all the disclosed documents or data (including the inserted, deleted or replaced page or data).

- (2) The responsible party is to reissue the entire record that has changed in the export format and the entire document is to be reissued in the appropriate directory structure. An electronic index of the changes made is to be prepared and delivered with the update.
- (3) An update is to be accompanied by a covering letter outlining the Document ID and the information that has changed.
- (4) Amended or supplementary data, documents or lists are to be provided in the same format as set out in this Division 3.

### **134—Data security and virus responsibility**

- (1) It is the responsibility of the recipient of electronic data to test for viruses. A party producing data to another party is to take reasonable steps to ensure that the data is useable and is not infected by malicious software.
- (2) If data is found to be corrupted, infected or otherwise unusable, the producing party is, within 2 business days after receipt of a written request from a receiving party, to provide to the receiving party a copy of the data that is not corrupted, infected or otherwise unusable as the case may be.

### **135—Inspection of original documents**

Notwithstanding the requirements of this Division 3, each party to an action retains the right to view and copy original documents disclosed by another party to the action.

## **Division 4—Non-electronic disclosure**

### **136—Introduction**

The parties may agree in accordance with supplementary rule 107(2) that disclosure and production of documents is not to proceed electronically or the Court may make an order for non-electronic disclosure under supplementary rule 107(4).

### **137—List of documents**

The list of documents under rule 136(2) of the Rules is to be in form 29C.

## **Division 5—Disclosure by categories or issues**

### **138—Disclosure by categories or issues**

- (1) Subject to rule 136(1)(b) and rule 139 of the Rules, and without limiting the ability of the parties under rule 138 of the Rules to reach some other agreement regulating disclosure of documents, the Court may order, or the parties may agree, that disclosure be made only of defined categories of documents or only by reference to specified issues.
- (2) If the Court orders or the parties agree that disclosure of documents is to be made only of defined categories of documents or only by reference to specified issues, the parties are, in the absence of further Court order or agreement, to make disclosure of documents under rule 136 of the Rules in accordance with the following provisions.
- (3) The plaintiff or other party having the carriage of the proceeding is to circulate a draft electronic list of the categories of documents or specified issues, as the case may be.
- (4) The parties are to use reasonable endeavours to agree on the list of categories or issues.



- (5) Any other party who does not agree to the draft list of categories or issues is to circulate an alternative draft electronic list showing marked up modifications to the original or previous draft list.
- (6) If the parties are unable to agree on the list of categories or issues, as the case may be, the Court may determine the content of the list or direct that disclosure not proceed by way of categories of documents or by reference to specified issues, as the case may be.
- (7) When a final list of categories or specified issues is agreed upon or ordered, each party is, subject to any contrary Court order or express agreement, to make disclosure of documents under rule 136 of the Rules by reference to the sole criterion whether a document falls within one of the listed categories or is directly relevant to one of the specified issues, as the case may be, and not by reference to the issues raised on the pleadings or affidavits in lieu of pleadings.

## **Part 3A—Application for electronic trial**

### **Division 1—Application and order for electronic trial**

#### **139—Introduction**

- (1) The Court expects the parties to a proceeding and their lawyers to consider, as early as practicable, the use of technology in the management of documents and conduct of the proceeding including at trial.
- (2) The Court expects the parties to meet and confer with a view to agreeing whether there should be an electronic trial and, if so, the protocols to be used for the electronic provision of documents and the conduct of the proceeding up to and at trial.
- (3) An order for a proceeding to be conducted by way of electronic trial may be made in a proceeding in which a significant number of the relevant documents have been, or will be, created or stored in an electronic format and the use of technology in the management of documents and conduct of the proceeding will help facilitate the quick, just and efficient resolution of the proceeding.

#### **140—Application and order**

- (1) Subject to paragraph (2), the parties may jointly or individually apply to the Court for an order that the trial of the proceeding be conducted by way of electronic trial.
- (2) An application for an electronic trial is to be made within 14 calendar days after the close of pleadings or with the permission of the Court, and is to outline—
  - (a) the key issues in dispute;
  - (b) the anticipated volume and/or electronic form of documents to be tendered;
  - (c) the manner in which disclosure of documents is to be given (which, as a guide, may be expected to be in a form similar to Part 3 Division 3 of this Chapter);
  - (d) the proposed platform or document database to be utilised by each party and during the electronic trial;
  - (e) the agreed or proposed protocols to be used for the electronic provision of documents; and

- (f) the identity of the proposed electronic courtroom provider to prepare, install and maintain the electronic courtroom facilities to enable the trial to be conducted by way of electronic trial (the *electronic courtroom provider*).
- (3) The Court may at any time on application or its own initiative order that the trial of the proceeding is to be conducted by way of electronic trial or vary or revoke an order for electronic trial.
- (4) Subject to any direction by the Court, all other rules and supplementary rules continue to apply to a proceeding the trial of which is to be conducted by way of electronic trial.

## **Division 2—Documents to be served electronically after order for electronic trial**

### **141—Format of court documents to be served**

- (1) After an order is made for an electronic trial, all documents filed with the Court, including but not limited to pleadings or affidavits, are to be served between the parties in electronic form.
- (2) If an exhibit or annexure to a court document has been disclosed in the proceeding, the parties are to refer to that document using its Document ID.
- (3) A reference in a court document to a disclosed document is to be made using its allocated Document ID. A Document ID is, wherever possible, to be hyperlinked to its associated disclosed documents.
- (4) All court documents with a court stamp, signature or hand marked changes—
  - (a) are to be imaged and served as multi page text searchable PDF documents in addition to the hyperlinked version of the court document; and
  - (b) are to contain the document’s FDN.
- (5) The naming convention of each file is to reflect the FDN, pleading, witness name or nature of the document; and the date filed in the Court. For example—
  - (a) FDN# affidavit of Joseph James Blogs filed [day] [month] [year]; or
  - (b) FDN# statement of claim filed [day] [month] [year]; or
  - (c) FDN# plaintiff’s closing submissions filed [day] [month] [year].
- (6) If errors are found in a served document, the producing party is to provide a corrected version of the document to the receiving party.

## **Division 3—Preparation for electronic trial**

### **142—Parties to meet and confer**

- (1) If an order is made for an electronic trial, the parties are as soon as practicable after completion of disclosure to request to meet with the Registrar to arrange for the conduct of the electronic trial.
- (2) The Court expects the parties to reach agreement about the costs of an electronic trial, which are not to be borne by the Court.
- (3) The parties are to consider at the outset—
  - (a) preparation of an Electronic Trial Book in accordance with supplementary rule 204;
  - (b) the instructions to the electronic courtroom provider;

- (c) the payment of third party costs;
- (d) real time transcript;
- (e) training of and access by judicial staff on and to the Electronic Trial Book;
- (f) access by the trial Judge and judicial staff to the Electronic Trial Book from the conclusion of the trial to the delivery of judgment; and
- (g) the requirements of Chapter 9 Part 5 of these Supplementary Rules.

## **Part 4—Non-party disclosure**

*[no supplementary rules]*

## **Part 5—Gathering of evidentiary material**

### **143—Introduction**

- (1) This Part addresses (among other things) the Court’s usual practice relating to the making of a search order under rule 148 of the Rules and the usual terms of such an order. While a standard practice has benefits, this Part and form 30 do not, and cannot, limit the judicial discretion to make such order as is appropriate in the circumstances of the particular case.
- (2) A search order compels the respondent to permit persons specified in the order (the *search party*) to enter premises and to search for, inspect, copy and remove the things described in the order.
- (3) The purpose of a search order is to preserve important evidence pending the hearing and determination of the applicant’s claim in an action brought or to be brought by the applicant against the respondent or against another person.
- (4) A search order is an extraordinary remedy in that it is intrusive, potentially disruptive, made before judgment and is ordinarily made without notice.

### **144—Search party**

- (1) The search party is to include an independent lawyer who will supervise the search and a lawyer representing the applicant.
- (2) If it is envisaged that specialised computer expertise may be required to search the respondent’s computers for documents, or if the respondent’s computers are to be imaged (eg hard drives are to be copied wholesale, thereby reproducing documents referred to in the order and other documents indiscriminately), an independent computer specialist will need to be appointed who will be required to give undertakings to the Court.
- (3) It may be necessary that the search party include other persons, such as a person able to identify things being searched for if difficulties of identification arise.
- (4) Ordinarily, the search party should not include the applicant or the applicant’s directors, officers, employees or partners or any other person associated with the applicant (other than the applicant’s lawyer).

### **145—Identity of independent lawyer**

- (1) The independent lawyer is an important safeguard against abuse of the order.

- (2) The independent lawyer must not be a member or employee of the applicant's firm of lawyers.
- (3) The independent lawyer should be a lawyer experienced in commercial litigation, preferably in the execution of search orders. The Law Society maintains a list of lawyers willing to be appointed as an independent lawyer for the execution of search orders, but it is not only persons on that list who may be appointed.

#### **146—Responsibilities of independent lawyer**

- (1) The responsibilities of the independent lawyer ordinarily include the following—
  - (a) serve the order, the application, the affidavits relied on in support of the application and the originating process on the respondent;
  - (b) explain to the respondent the terms of the order;
  - (c) explain to the respondent that he or she has the right to obtain legal advice;
  - (d) supervise the carrying out of the order;
  - (e) before removing things from the premises, make a list of them, allow the respondent a reasonable opportunity to check the correctness of the list, sign the list, and provide the parties with a copy of the list;
  - (f) take custody of all things removed from the premises until further order of the Court;
  - (g) if the independent lawyer considers it necessary to remove a computer from the premises for safekeeping or for copying its contents electronically or printing out information in documentary form—remove the computer from the premises for that purpose and return the computer to the premises within the time prescribed by the order together with a list of any documents that have been copied or printed out;
  - (h) submit a written report to the Court within the time prescribed by the order as to the execution of the order; and
  - (i) attend the hearing on the return date of the application (the *return date*), and have available to be brought to the Court all things removed from the premises.
- (2) On the return date, the independent lawyer may—
  - (a) be required to release material in his or her custody that has been removed from the respondent's premises or to provide information to the Court; and
  - (b) may raise any issue before the Court as to execution of the order.

#### **147—Undertakings**

- (1) Appropriate undertakings to the Court will be required of the applicant, the applicant's lawyer and the independent lawyer as conditions of making a search order.
- (2) The undertakings required of the applicant will normally include the usual undertaking as to damages.
- (3) If the applicant has or may have insufficient assets within the jurisdiction to provide substance for the usual undertaking as to damages, the applicant may be required to support the undertaking by providing security. There is provision for such security in form 30.

- (4) Security may take the form of a bank's irrevocable undertaking to pay or a payment into Court. An irrevocable undertaking is to be in wording contained within form 30 subject to such modifications as are necessary.
- (5) The applicant's lawyer is to undertake to the Court to pay the reasonable costs and disbursements of the independent lawyer and of any independent computer expert.
- (6) The applicant's lawyer is to undertake not to disclose to the applicant any information that the lawyer has acquired during or as a result of execution of the search order without the permission of the Court. Release from this undertaking in whole or in part may be sought on the return date.

### **148—Application**

An application for a search order is to be accompanied by a supporting affidavit, undertakings and minutes of order.

### **149—Affidavit in support**

The supporting affidavit is to include the following information—

- (a) a description of the things or categories of things in relation to which the order is sought;
- (b) the address or location of the premises in relation to which the order is sought and whether they are private or business premises;
- (c) why the order is sought, including why there is a real possibility that the things to be searched for will be destroyed or otherwise made unavailable for use in evidence before the Court unless the order is made;
- (d) the prejudice, loss or damage likely to be suffered by the applicant if the order is not made;
- (e) the name, address, firm, and commercial litigation experience of an independent lawyer who consents to being appointed to serve the order, supervise its execution and do such other things as the Court considers appropriate; and
- (f) if the premises to be searched are or include residential premises—whether to the best of the applicant's belief it is reasonably likely that the only occupants of the premises will be a child or children under the age of 18 or other persons in a position of vulnerability because of age, mental capacity, infirmity, English language ability or otherwise (*vulnerable persons*).

### **150—Hearing of application**

- (1) An applicant for a search order made without notice to the respondent is under a duty to the Court to make full and frank disclosure of all material facts to the Court.
- (2) Without affecting the generality of paragraph (1), possible defences known to the applicant and any financial information that may indicate that the applicant is unable to meet the usual undertaking as to damages from assets within Australia are to be disclosed.

### **151—Terms of order**

- (1) A search order is to be modelled on form 30 (the footnotes and references to footnotes in that form should not form part of the order). That form may be adapted to meet the circumstances of the particular case. It contains provisions aimed at achieving the

permissible objectives of a search order while minimising the potential for disruption or damage to the respondent and for abuse of the Court’s process.

- (2) The order should be clear about the identity of persons in the search party (see supplementary rule 144) and the maximum number of persons permitted to be in the search party. The number of persons should be as small as is reasonably practicable. Form 30 contemplates that they will be named in the order. If this is not possible, the order is at least to describe the class of person who will be in the search party (eg “one lawyer employed by AB and Co”).
- (3) If it is reasonably likely that the only occupants of the premises when service of the order is effected will be vulnerable persons, the Court will give consideration to whether the search party should include a person capable of addressing the relevant vulnerability.
- (4) Any period during which the respondent is to be restrained from informing any other person (other than for the purpose of obtaining legal advice) of the existence of the search order should be as short as possible and not extend beyond 4.30 pm on the return date.
- (5) The order to be served is to be endorsed with a notice that meets the requirements of rule 225 of the Rules.

### **152—Execution of search order**

- (1) Ordinarily, a search order should be served between 9.00 am and 2.00 pm on a business day to permit the respondent more readily to obtain and act upon legal advice. However, there may be circumstances in which such a restriction is not appropriate.
- (2) A search order should not be executed at the same time as execution of a search or other warrant by the police or another regulatory authority.
- (3) Unless the Court otherwise orders, the applicant is not permitted, without the permission of the Court, to inspect things removed from the premises or copies of them, or to be given any information about them by members of the search party.

### **153—Subsequent hearing**

- (1) At the hearing of the application on the return date, the Court will consider the following issues—
  - (a) what is to happen to any things removed from the premises or to any copies that may be made;
  - (b) how any commercial confidentiality of the respondent is to be maintained;
  - (c) any claim of privilege;
  - (d) any application by a party; and
  - (e) any issue raised by the independent lawyer or any independent computer expert.
- (2) A search order is subject to the Court’s adjudication of any claim of privilege against self-incrimination. The privilege against self-incrimination is available to individuals but not to corporations. The Court will not make an order reducing or limiting that privilege in circumstances in which the legislature has not indicated that it may do so.

## **Part 6—Pre-trial examination by written questions**

*[no supplementary rules]*

## **Part 7—Medical examinations**

*[no supplementary rules]*

## **Part 8—Admissions**

### **154—Notice to admit facts or documents**

A notice to admit under rule 156 of the Rules is to be in form 31.

## **Part 9—Notice of evidence to be introduced at trial**

### **Division 1—Notice generally**

*[no supplementary rules]*

### **Division 2—Expert reports**

#### **155—Introduction**

- (1) The provisions of rule 160 of the Rules and this Division apply to any person called as an expert witness or providing an expert report in the action, even if the expert is, or is employed by or otherwise associated with, a party to the action.
- (2) This Division must be complied with for an expert to comply with rule 160(3) of the Rules.
- (3) This Division is not intended to address exhaustively all aspects of an expert's report and an expert's duties.

#### **156—General duty to the Court**

- (1) An expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise.
- (2) An expert is not an advocate for a party.
- (3) An expert's paramount duty is to the Court and not to the person retaining the expert.
- (4) If a draft of the expert's report (in whole or in part) or any of the content of a draft report has been provided or communicated to a party, a party's representative or a third party, a copy of the draft so provided or communicated is to be retained by the expert.

#### **157—Form of expert report**

- (1) The report is to set out separately from the factual findings or assumptions each of the opinions that the expert expresses.
- (2) The expert is to give reasons for each opinion, leading from identified factual findings or assumptions to the opinion.
- (3) If tests or experiments are relied upon by the expert in compiling the report, the report is to contain details of the qualifications of the person who carried out the tests or experiments.
- (4) When an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, they are to be provided to the opposite party at the same time as delivery of the report.

- (5) If an expert opinion is not fully researched because the expert considers that insufficient information is available or for any other reason, this is to be stated with an indication that the opinion is no more than a provisional one.
- (6) If an expert believes that a report may be incomplete or inaccurate without some qualification, that qualification is to be stated in the report.
- (7) The expert is to make it clear when a particular question or issue falls outside his or her field of expertise.
- (8) The expert's report is to contain—
  - (a) an acknowledgement that the expert has been provided with copies of rule 160 of the Rules and this Division before preparing the report and that the expert has read and understood them;
  - (b) a declaration that the expert has made all inquiries that the expert believes are desirable and appropriate and no matters of significance that the expert regards as relevant have, to the expert's knowledge, been withheld from the Court.

### **158—Further obligations of an expert and the party retaining the expert**

If, after exchange of reports or at any other stage, an expert changes his or her view on a material matter, having read another expert's report or for any other reason, the change of view is to be communicated in writing (through lawyers) without delay to each party to whom the expert's report has been provided and, when appropriate, to the Court.

### **159—Consequences of non-disclosure**

If a party fails to comply with the Rules or this Division in respect of an expert's report, the Court may—

- (a) adjourn the hearing or trial at the cost of the party in default or his or her lawyer;
- (b) direct that evidence from that expert not be adduced by that party at the trial in the action; and/or
- (c) award costs incurred or thrown away due to the failure in favour of the other parties.

### **160—Expert's conference**

- (1) If experts retained by the parties meet at the direction of the Court, or at the request of lawyers for the parties, an expert must not be given or accept instructions not to reach agreement.
- (2) If, at a meeting directed by the Court, the experts cannot reach agreement on matters of expert opinion, they are to specify their reasons for being unable to do so.

### **161—Shadow experts**

A certificate under rule 161(2) of the Rules is to be in form 32.

## **Part 10—Evidence**



## **Division 1—Affidavits**

### **162—Form of affidavit**

An affidavit under rule 162 of the Rules is to be in form 33.

[Note inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 2)]

#### **Note—**

The affidavit must comply with supplementary rule 49.

## **Division 2—Use of affidavits in interlocutory proceedings**

*[no supplementary rules]*

## **Division 3—Use of affidavit or expert report at trial**

### **Subdivision 1—Tender books**

#### **163—Introduction**

- (1) Unless the Court otherwise directs, the parties are to cooperate in the preparation of a joint tender book of documents for use at trial whenever the number or volume of documents to be tendered at the trial (excluding experts' reports) will be substantial. As a guide, if there will be more than 25 documents or more than one lever arch folder of documents tendered, it is likely to be substantial.
- (2) Unless the Court otherwise directs or the parties otherwise agree, when a joint tender book is to be prepared, the parties are to comply with the provisions of this Subdivision.
- (3) The Court may direct, or the parties may agree, that the provisions of this Division do not apply, or should be varied, to suit the circumstances of a particular case, including those cases—
  - (a) that do not involve significant documentary evidence;
  - (b) that are large and complex matters;
  - (c) that involve multiple parties;
  - (d) in which a defendant or third party will be tendering more documents than the plaintiff; or
  - (e) in which a plaintiff lacks the capacity or facilities to prepare a tender book.
- (4) If a defendant relevantly has the carriage of the action instead of the plaintiff, references in this Division to the “plaintiff” are to be read as referring to the defendant with the carriage of the action and references to a “defendant” are to be read as referring to a plaintiff.

#### **164—Format of joint tender book**

- (1) Unless the Court otherwise directs, a document is to be included in the joint tender book if one party nominates its inclusion despite the fact that another party objects to its tender or opposes its inclusion.
- (2) Unless the Court otherwise directs—
  - (a) documents in the joint tender book are to be arranged in a logical sequence independently of the party who nominates their inclusion or is likely to tender them;

- (b) subject to subparagraphs (c) and (d), documents are to be arranged in a single chronological sequence;
- (c) when a group of documents is relevant only to a discrete issue or topic or will be considered at trial separately from other documents, that group of documents may be arranged in its own chronological sequence separately from the other documents or other discrete groups of documents;

**Examples—**

Documents relating to quantum separate from documents relevant to liability.

A set of annual financial statements for several consecutive years separate from other documents.

A bundle of invoices or other transaction documents separate from other documents.

- (d) when a group of documents does not lend itself to or there is no utility in chronological order, it may be arranged in some other logical order that has utility.
- (3) The joint tender book may take the form of lever arch folders or spiral bound documents or both, as agreed by the parties.
- (4) Unless the Court otherwise directs—
  - (a) the joint tender book is to be paginated either per volume or in a single numbering sequence as the parties agree;
  - (b) documents in the joint tender book are to be separated by dividers; and
  - (c) an index is to be included at the front of each volume either of the documents in that volume or of the whole tender book as the parties agree.
- (5) If the parties cannot agree on an aspect of production of the joint tender book, they are to apply informally to the Registrar for directions.

**165—Draft index to be served by plaintiff**

- (1) The plaintiff is, by no later than 28 calendar days before the date fixed for the trial to commence, to provide to each other party in electronic form a draft index to a joint tender book listing all documents, other than expert reports, that the plaintiff intends, absolutely or conditionally, to tender at trial.
- (2) The plaintiff is, on request, to make available to another party for inspection, or on payment of a reasonable fee provide copies of, the nominated documents arranged in the order listed in the draft index.

**166—Response to draft index**

- (1) Each defendant is, by no later than 21 clear calendar days before the date fixed for the trial to commence, to provide to each other party in electronic form an amended draft index including any additional documents, other than expert reports, that the defendant intends, absolutely or conditionally, to tender at trial.
- (2) A defendant is, on request, to make available to another party for inspection, or on payment of a reasonable fee provide copies of, the additional nominated documents arranged in the order listed in the draft index.

- (3) When there is a third party claim, each third party is, no later than 16 calendar days before the date fixed for the trial to commence, to provide to each other party in electronic form an amended draft index including any additional documents, other than expert reports, that the third party intends, absolutely or conditionally, to tender at trial.
- (4) A third party is, on request, to make available to another party for inspection, or on payment of a reasonable fee provide copies of, the additional nominated documents arranged in the order listed in the draft index.

### **167—Lodgment and service of joint tender book**

- (1) The plaintiff is, by no later than 10 calendar days before the date fixed for the trial to commence, to lodge with the Court two copies, and provide to each other party one copy, of the joint tender book.
- (2) If the plaintiff intends to include any additional documents in the joint tender book, the plaintiff is to provide to each other party in electronic form an amended draft index including reference to the additional documents as soon as possible without waiting for production of the joint tender book.

### **168—Notice of objections**

Each party is, by no later than 4 clear business days before the date fixed for the trial to commence, to lodge with the Court and serve on each other party a schedule showing which, if any, documents in the joint tender book will be the subject of objection, together with a code identifying the nature of the objection.

#### **Examples—**

A party might use the following codes—

- A authenticity not established
- C inadmissible conclusion or opinion
- H inadmissible hearsay
- P inadmissible due to privilege
- R not relevant
- S inadmissible secondary evidence when primary evidence available.

### **Subdivision 2—Written witness statements**

#### **169—Introduction**

- (1) The Court may order or the parties may agree that written statements of evidence in chief of witnesses be prepared and exchanged before trial.
- (2) Unless the Court otherwise directs or the parties otherwise agree, when written witness statements are to be prepared, the parties are to comply with the provisions of this Subdivision.

#### **170—Format of written witness statements**

- (1) Written witness statements are to be in numbered paragraphs. A paragraph is to address a single topic and not be of excessive length.

- (2) When a joint tender book is to be produced before written witness statements are to be prepared, the witness statements are to refer to documents in the tender book by number according to the index.
- (3) When written witness statements are to be prepared before preparation of a joint tender book, the witness statements are in the first instance to refer to documents by reference to their number in a list of documents or, when applicable, in index data. After production of the joint tender book, references to the joint tender book by number according to its index are to be substituted for the disclosure-based references.
- (4) Unless the Court otherwise directs, only the final version of the witness statements with references to the joint tender book are to be lodged with the Court.

### **171—Lodgment and service of witness statements**

- (1) The Court will give directions fixing the time for each party to serve written witness statements on each other party and for written witness statements to be lodged with the Court.
- (2) Unless the Court otherwise directs, each other party is to lodge with the Court two copies, and serve on each other party one copy, of the final form of the written witness statements.

### **172—Notice of objections**

Each party is, by no later than 4 clear business days before the date fixed for the trial to commence, to lodge with the Court and serve on each other party a schedule showing which, if any, passages of the written witness statements will be the subject of an objection, together with a code identifying the nature of the objection.

#### **Example—**

A party might use the following codes—

- C inadmissible conclusion or opinion
- H inadmissible hearsay
- P inadmissible due to privilege
- R not relevant
- S inadmissible secondary evidence when primary evidence available
- V impermissibly vague or ambiguous.

### **Subdivision 3—Expert reports**

#### **173—Introduction**

Unless the Court otherwise directs or the parties otherwise agree, when expert evidence is to be adduced at trial, the parties are to comply with the provisions of this Subdivision.

#### **174—Notice of objections**

Each party is, by no later than 4 clear business days before the date fixed for the trial to commence, to provide to the Court and serve on each other party a schedule showing which, if any, passages of the expert reports will be the subject of objection, together with a code identifying the nature of the objection.

**Example—**

A party might use the following codes—

- A assumptions not identified
- C inadmissible conclusion or opinion
- D reasoning not disclosed
- E expert lacks expertise to express opinion
- F no foundation for opinion
- R not relevant
- V impermissibly vague or ambiguous.

**Division 4—Subpoenas**

**175—Form of subpoena**

[rule 175 substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 5)]

A subpoena under rule 173 of the Rules:

- (a) to attend to give evidence is to be in form 34A;
- (b) to produce any document or thing is to be in form 34B;
- (c) to do both those things is to be in form 34C.

**176—Disposal of documents and things produced**

A declaration by addressee under rule 180(3) of the Rules is to be in form 35.

**Division 5—Examination of witnesses**

[*no supplementary rules*]

## **Part 11—Offers of settlement**

### **177—Offer of settlement**

[rule 177 substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 4)]

- (1) A formal offer under rule 187(4)(a) of the Rules is to be in form 36.
- (2) A notice of withdrawal of a formal offer under rule 188(3) of the Rules is to be in form 36A.

### **178—Response to offer of settlement**

[rule 178 substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 4)]

- (1) A formal response under rule 188A(4)(b) of the Rules is to be in form 36B.
- (2) An acceptance of a formal offer under rule 188C(3) is to be in form 37.

## **Part 12—Suitors fund**

### **179—Payment into court**

- (1) Every order that directs funds to be lodged in court is to contain—
  - (a) the name, or a sufficient description, of the person by whom the funds are to be lodged; and
  - (b) the amount, if ascertained, and the description of the funds.
- (2) A person lodging funds in court is at the time of lodgment to furnish to the Registrar a pay-in slip in a form directed by the Registrar containing—
  - (a) the action number and names of the parties to the proceeding in relation to which the funds are lodged;
  - (b) the description and amount of the funds lodged;
  - (c) the full name, address and description of the person lodging the funds; and
  - (d) particulars of the order or other authority under which the lodgment is made and any other details showing the circumstances under which the lodgment is made.

### **180—Monies in court**

The title of the account to which the funds are to be credited may be determined by the Registrar.

### **181—Certificate or transcript of monies in court**

- (1) The Registrar, upon a request signed by or on behalf of a person claiming to be interested in funds in court standing to the credit of an account specified in the request, may, at his or her discretion, issue a certificate of the amount and description of the funds. Unless otherwise shown, the certificate will be taken to refer to the position at the beginning of the day and not include transactions on the day on which it is issued.
- (2) The Registrar will notify on the certificate details of—
  - (a) any order restraining the transfer, payment out or other dealing with the funds in court to the credit of the account mentioned in the certificate, and whether such order affects capital or interest; and

- (b) any restraining or charging order affecting the funds, of which the Registrar has received notice, and the name of the person to whom notice is to be given or in whose favour such restraining or charging order has been made.

[subrule 181(3) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 1)]

- (3) The Registrar may re-date a certificate, provided that the amount or description of the funds has not changed since the certificate was issued.
- (4) Upon a request signed by or on behalf of a person claiming to be interested in funds in court, the Registrar may, at his or her discretion, issue a transcript of the account in the books of the Court specified in the request, and, if requested by the applicant, such transcript will be authenticated by the Auditor-General.
- (5) The Registrar may upon a like request supply such other information or issue such other certificates with respect to transactions or dealings with funds in court as may from time to time be required in a particular case.

## **182—Payment out of court**

- (1) Moneys that a person is entitled to have paid out may be paid out to—
  - (a) the person; or
  - (b) the person’s attorney appointed under a power that the Registrar deems sufficient, on the written request of the person or attorney; or
  - (c) the lawyer of the person or attorney on the written authority of the person or the attorney.

[subrule 182(2) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (2) Every request or authority is to be in form 38.
- (3) If the person entitled to payment out of funds in court or the person’s attorney appointed under a power that the Registrar deems sufficient gives to the Registrar instructions in writing to remit the money to the person or attorney by cheque sent by post, the Registrar may at his or her discretion remit the money in accordance with the instructions.

[subrule 182(4) deleted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (4) \*\*\*\*\*

[subrule 182(5) renumbered to (4) by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (4) When money is, by an order, to be paid to a person who is deceased, it may be paid to the administrator or executor of the deceased person, unless the order otherwise directs.

[subrule 182(6) renumbered to (5) by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (5) When money is, by an order, to be paid to persons described therein as partners, or as trading or carrying on business in the name of a firm, it may be paid to any one or more of such persons, unless the order otherwise directs.

[subrule 182(7) renumbered to (6) by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (6) The Registrar need only pay out funds in court upon being satisfied of the identity of the person entitled to receive them.

## **Part 13—Power to stay or dismiss proceedings**

*[no supplementary rules]*

## **Part 14—Security for costs**

*[no supplementary rules]*



## **Chapter 8—Special kinds of action**

### **Part 1—Application of general rules**

*[no supplementary rules]*

### **Part 2—Actions in defence of liberty**

#### **183—Directions hearing**

- (1) Upon receipt of an affidavit proving service of the originating process on the defendant or of a notice of address for service or earlier if requested, the Registrar will convene a directions hearing.
- (2) At the directions hearing, a Master or Judge will give directions for the further conduct of the action.

### **Part 3—Actions for judicial review**

#### **184—Manner of commencement of action**

- (1) A summons in an action for judicial review under rule 200A(1) of the Rules is to be in form 39.
- (2) A statement of grounds under rule 200A(3) of the Rules is to be in form 40.

#### **185—Response**

A response to the statement of grounds under rule 200B(3) of the Rules is to be in form 41.

#### **186—Matters to be heard by Judge of land and valuation division**

- (1) A judicial review proceeding involving compulsory acquisition, encroachment, land partition or sale, land boundary, land development, valuation or attribution of use for statutory revenue purposes under prescribed legislation will be managed and heard by a Judge of the Land and Valuation Division.
- (2) In this direction, prescribed legislation means—
  - Aboriginal Heritage Act 1988;*
  - Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981;*
  - Coast Protection Act 1972;*
  - Crown Land Management Act 2009;*
  - Development Act 1993.*
  - Emergencies Services Funding Act 1998;*
  - Emergency Service Funding Act 1998;*
  - Encroachments Act 1944;*
  - Highways Act 1926;*
  - Historic Shipwrecks Act 1981;*
  - Land Acquisition Act 1969;*

*Law of Property Act 1936;*  
*Local Government Act 1999;*  
*Mining Act 1971;*  
*Pastoral Land Management and Conservation Act 1989;*  
*Petroleum and Geothermal Energy Act 2000;*  
*Roads (Opening and Closing) Act 1991;*  
*Survey Act 1992;*  
*Taxation and Administration Act 1996;* or  
*Valuation of Land Act 1971.*

### **187—Directions hearing**

Unless the Court otherwise directs, in an action for judicial review, the Registrar will fix a date for an initial directions hearing approximately 2 weeks after the commencement of the action (and in fixing the date the Registrar may consider but is not bound by wishes expressed by a party).

## **Part 4—Interpleader actions**

*[no supplementary rules]*

## **Part 5—Actions for possession of land**

### **188—Summons**

- (1) A summons for possession of land under rule 204 of the Rules is to be in form 6.
- (2) A summons is to contain a proper description of the land and include a reference to the certificate of title and any other basic document of title (eg registered mortgage, registered lease).
- (3) A return date for the summons should be obtained from the Registry that will allow sufficient time to serve the summons so that the defendant is required to attend not earlier than 16 calendar days from the date of service (section 193 of the *Real Property Act 1886*).

### **189—Supporting affidavit**

- (1) The summons is to be supported by an affidavit sworn by a person who can swear to the facts of his or her own knowledge and supported when appropriate by documents exhibited to the affidavit.
- (2) The affidavit in support is to—
  - (a) prove that the plaintiff is—
    - (i) the registered proprietor of a freehold estate in the relevant land within the meaning of section 192(a) of the *Real Property Act 1886*;
    - (ii) a registered mortgagee or encumbrancee in respect of the relevant land within the meaning of section 192(b) of the *Real Property Act 1886*; or
    - (iii) a lessor of the relevant land within the meaning of section 192(c) or (d) of the *Real Property Act 1886*; and

- (b) if the plaintiff is the registered proprietor—prove that the plaintiff is the registered proprietor of a freehold estate in possession within the meaning of section 192(a) of the *Real Property Act 1886*; or
- (c) if the plaintiff is a registered mortgagee or encumbrancee—prove that the person in possession is a mortgagor or encumbrancer in default, or a person claiming under such mortgagor or encumbrancer, within the meaning of section 192(b) of the *Real Property Act 1886*; or

[paragraph 189(2)(d) deleted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 1)]

- (d) \*\*\*\*\*

[paragraph renumbered to 189(2)(d) by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 1)]

- (d) if the plaintiff is a lessor—prove that the plaintiff has a power to re-enter where the rent is in arrear for 3 months within the meaning of section 192(b) of the *Real Property Act 1886*; and

[paragraph renumbered to 189(2)(e) by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 1)]

- (e) exhibit copies of the documents from which the plaintiff derives title; and

[paragraph renumbered to 189(2)(f) by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 1)]

- (f) exhibit copies of the documents upon which the plaintiff bases the entitlement to possession; and

[paragraph renumbered to 189(2)(g) by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 1)]

- (g) state whether the provisions of the *National Credit Code* apply.

- (3) The plaintiff is to file with the summons or when appropriate with the affidavit of service of the proceeding an affidavit deposing to whether any person has possession of the relevant premises or part thereof—
  - (a) as a tenant under a residential tenancy agreement; or
  - (b) as a former tenant holding over after termination of a residential tenancy agreement.

## **190—Service**

- (1) Unless the Court otherwise orders, the summons and supporting affidavit is to be served personally upon the defendant.
- (2) An affidavit of service is to be filed before the hearing. The affidavit is to disclose the means of knowledge of the deponent of the identity of the person served.

## **191—Notice to defendant and occupiers**

- (1) A notice to defendants of an application for permission to serve a warrant of possession under rule 204A(3)(a) of the Rules is to be in form 42.
- (2) A notice to occupiers of an application for permission to serve a warrant of possession under rule 204A(3)(b) of the Rules is to be in form 43.
- (3) A certificate of service of notice of application for permission to serve a warrant of possession under rule 204A(7) of the Rules is to be in form 44.

## **192—Notice of opposition by defendant or occupiers**

A notice of opposition to an application for permission to serve a warrant of possession under rule 204A(4) of the Rules is to be in form 45.

## **Part 6—Probate actions**

### **193—Production of original will**

- (1) In a probate action in which a party seeks to have a will propounded or pronounced against, the Court may, on the application of a party or on its own initiative, order that the original of the will be lodged in the Probate Registry pending determination of the action.
- (2) A party propounding a will in solemn form or seeking an order pronouncing against a will in solemn form is to produce or arrange for production of the original will for marking by the Judge or Master hearing the matter.
- (3) A party wishing to use at a hearing an original will in the custody of the Probate Registry should, at least 2 clear business days before the hearing, request the Probate Registry to produce the will to the Judge or Master hearing the matter.
- (4) If the document sought to be propounded or pronounced against is said to be a copy or a reconstruction of a will—
  - (a) the particular copy or reconstruction must be produced;
  - (b) due execution of the original will must be proved;
  - (c) the accuracy of the copy or reconstruction must be proved; and
  - (d) the facts giving rise to any presumption of revocation and the facts (if any) said to rebut the presumption must be proved.

### **194—Proof of execution of will**

- (1) A party propounding a will in solemn form is to prove due execution of the will.
- (2) If due execution is to be proved by affidavit, a true copy of the will is to be made an exhibit to the affidavit.

### **195—Costs in probate matters**

When there are a number of separately represented parties, the Court will exercise its general discretion as to costs under rule 263 of the Rules as appropriate in the circumstances of a particular case, but having particular regard to—

- (a) ordering costs against parties who have not succeeded;
- (b) ordering costs in the light of whatever offers have been made under rule 187 of the Rules;
- (c) not giving full costs to separately represented parties when they could properly have been jointly represented;
- (d) awarding less than full costs when the amount in issue is relatively small.

## **Part 7—Actions for administration**

*[no supplementary rules]*

## **Part 8—Admiralty actions**

*[no supplementary rules]*

## **Part 9—Caveats**

### **196—Application for extension of time for removal of caveat**

- (1) An application for an extension of time for removal of a caveat under section 191 of the *Real Property Act 1886* is to be made as soon as possible after receipt of the notice from the Registrar-General and not left until shortly before the 21 day period expires.
- (2) When an application to extend time for removal of a caveat cannot be dealt with in sufficient time in the normal course of a general list, the plaintiff may request to have the summons made specially returnable.
- (3) A party or his or her lawyer personally may be penalised in costs on an application to extend time when the need for the application is due to their own delay.

### **197—Service of summons**

- (1) Service of the summons may be effected pursuant to section 191(b) of the *Real Property Act 1886*.
- (2) When an application is brought to extend time for removal of a caveat, and an address for service has not been entered by the defendant, proof is to be given of the service of the summons.

## **Part 10—Executors, administrators and trustees**

### **198—Remuneration of executors, administrators and trustees**

- (1) The allowance of remuneration to executors, administrators or trustees in relation to deceased estates, whether under section 70 of the *Administration and Probate Act 1919* or under section 91 of the *Trustee Act 1936*, is a matter for determination by the Court in each case.
- (2) The Masters may from time to time publish an indicator to the exercise of the jurisdiction in cases in which there are no special or unusual circumstances. Such an indicator is a guide only and does not fetter the exercise of the discretion in a particular case.
- (3) A copy of any indicator is to be available on the Courts Administration Authority website and at the Registry.

## **Chapter 9—Trial**

### **Part 1—Constitution of Court for trial**

*[no supplementary rules]*

### **Part 2—Court’s power to control trial**

#### **Division 1—Pre-trial directions**

##### **199—Convening pre-trial directions hearing**

- (1) Ordinarily, the Judge allocated to the trial of an action will convene a pre-trial directions hearing to be held approximately 3 or 4 weeks before the trial is to commence.

- (2) The trial Judge may, without hearing from the parties, dispense with holding a pre-trial directions hearing if satisfied that such a hearing is unnecessary.

## **200—Preparation for pre-trial directions hearing**

- (1) By the time of the pre-trial directions hearing, all interlocutory and pre-trial steps should have been completed.
- (2) The parties should, before the pre-trial directions hearing, proactively review that they have complied with the Rules, these Supplementary Rules and directions by the Court and are ready for trial, including—
  - (a) no late application for permission to amend pleadings is to be made;
  - (b) no late request or application for permission to seek particulars or to provide particulars is to be made;
  - (c) no late request or application for permission to seek further and better disclosure or to seek production is to be made;
  - (d) no late disclosure of documents is to be made;

[paragraph 200(2)(e) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 1)]

- (e) no late application for permission to serve a notice to admit is to be made;
- (f) compliance with the rules relating to the joint tender book of documents;
- (g) compliance with the rules relating to expert evidence;
- (h) no late application for permission to serve a new or amended expert report is to be made;
- (i) if the trial is to proceed on the basis of written witness statements or affidavits—compliance with previous directions relating to the timing of the provision of written witness statements or affidavits;
- (j) if the trial is to proceed on the basis of written witness statements or affidavits—no late application for permission to serve a new or amended written witness statement or affidavit is to be made;

### **Note—**

Rule 131(5) and (6) of the Rules constrains the making of interlocutory applications after the parties have certified that the action is ready to proceed to trial or the Court has dispensed with such certification under rule 120A(5).

## **201—Pre-trial directions hearing**

- (1) Other than for good reason, counsel retained for the trial should attend at the pre-trial directions hearing.
- (2) At the pre-trial directions hearing, the matters that might be considered by the Court in a particular case may include—
  - (a) confirmation that counsel have been briefed for trial.
  - (b) identification or preparation of a statement of issues to be determined at trial;
  - (c) narrowing issues (including agreement on facts, the use of section 59J of the *Evidence Act 1929*, other evidentiary aids to proof and agreement on the law);
  - (d) the form and timing of openings (including written openings and mini-openings);

- (e) whether there is to be a view, inspection or demonstration;
- (f) subpoenas;
- (g) documentary evidence (including nature, form and objections);
- (h) lay witness evidence (including the nature and identity of lay witnesses and whether the evidence of particular witnesses can be agreed, dispensed with or shortened);
- (i) expert witness evidence (including conferral of experts, identification of differences in assumptions or in opinions, manner and timing of taking expert evidence, whether evidence should be taken concurrently and whether all lay evidence should be called before any expert witness is called by any party);
- (j) order in which witnesses are to be called (including any witnesses who are able to attend to give evidence only at particular times and interposition);
- (k) special witness requirements (including disability access and impairment, interpreters and evidence by audiovisual link);
- (l) conferral by counsel in relation to objections to witness statements, expert reports or documentary evidence;
- (m) lists of authorities;
- (n) when applicable, arrangements for an electronic trial;
- (o) whether all attempts at settlement, including mediation, have been exhausted;
- (q) confirmation of estimated trial length.

## **Division 2—Electronic trials**

### **202—Preparation for electronic trial**

- (1) If an order is made under supplementary rule 140 that the trial of a proceeding is to be by way of electronic trial, the parties are to—
  - (a) prepare for the electronic trial in accordance with Chapter 7 Part 3A of these Supplementary Rules; and
  - (b) report to the Court at the pre-trial directions hearing on the final proposed arrangements for the conduct of the electronic trial in accordance with supplementary rule 201.
- (2) Unless the Court otherwise directs or the parties otherwise agree, the parties are to comply with supplementary rules 163 to 168 for preparation of a joint tender book.

### **203—Electronic trial book**

- (1) The parties are to prepare an electronic database for the electronic trial called the Electronic Trial Book.
- (2) All documents intended to be used at trial are to be hyperlinked to the referenced document and included in the Electronic Trial Book.
- (3) Unless the Court otherwise directs or the parties otherwise agree, the Electronic Trial Book is to include—
  - (a) all court documents, including submissions or other documents not filed with the Court but provided to the trial judge;

- (b) all pleadings, including particulars;
- (c) the parties' lay and expert evidence;
- (d) the joint tender book documents;
- (e) subpoenas issued in the proceeding;
- (f) any authorities relied upon; and
- (g) any other documents or interlocutory materials that the parties agree or the Court directs be included.

#### **204—Providing additional documents during electronic trial**

- (1) A party is to obtain consent from all other parties to the matter before providing new documents to the Court in electronic form.
- (2) If a new document, not included in the Electronic Trial Book, is required for cross-examination of a witness or submission, the party requiring the document is to ensure that the document is provided to the electronic courtroom provider the evening or morning before the hearing commences to ensure that the document is readily accessible during the electronic trial and access to the document does not delay the orderly conduct of the trial.

#### **205—Real time transcript**

- (1) The parties are to advise the Court if real time transcript is required at the pre-trial directions hearing in accordance with supplementary rule 201.
- (2) If the parties agree that real time transcript is to be provided, the costs of the transcript and any third party provider are to be paid by the parties and not the Court.

### **Part 3—Issues involved in trial of action**

*[no supplementary rules]*

### **Part 4—Evidence at trial**

#### **Division 1—General rules about taking evidence**

*[no supplementary rules]*

#### **Division 2—Limitation on right to call evidence etc**

*[no supplementary rules]*

#### **Division 3—Documentary evidence**

#### **206—Production of documents at trial**

A notice to produce under rule 215 of the Rules is to be in form 46.

#### **Division 4—Cross-examination on pleadings**

*[no supplementary rules]*

### **Part 5—Record of trial**

*[no supplementary rules]*



## **Part 6—Effect of death or incapacity of Judge**

*[no supplementary rules]*

## **Chapter 10—Alternative dispute resolution**

### **Part 1—Mediation**

#### **207—Mediation**

- (1) Unless the Court otherwise directs, this supplementary rule applies to mediations under section 65 of the *Supreme Court Act 1935*.
- (2) If the parties and the mediator do not reach agreement as to the mediator’s fees, the mediator may only charge fees for the work in relation to the mediation that do not exceed the fees in the “Supreme and District Courts’ Indicator on Counsel Fees”.
- (3) The parties to the action are jointly and severally liable for payment of the mediator’s fees.
- (4) The lawyers on the Court record for the parties are to use their best endeavours to ensure prompt payment of those fees.
- (5) The parties are expected to participate appropriately in the mediation and to make genuine attempts to resolve the matters in issue.
- (6) If the mediator considers that a party has not participated appropriately in the mediation or has not made genuine attempts to resolve the matters in issue, the mediator may provide a written report to the Court of the circumstances.

### **Part 2—Arbitration**

*[no supplementary rules]*

## **Chapter 11—Judgment**

### **Part 1—Nature of relief**

#### **208—Pre-judgment interest**

The appropriate rate for the calculation of interest on pre-judgment economic loss under section 30C of the *Supreme Court Act 1935* is a matter for determination by the Judge or Master in each case. As a guide only, and subject to any contrary legislative provision, the Court may calculate interest in such cases as follows—

- (a) in respect of the period from 1 January to 30 June or part of that period in a year, the cash rate of interest last set by the Reserve Bank of Australia before that 1 January, plus 4%; and
- (b) in respect of the period from 1 July to 31 December or part of that period in a year, the cash rate of interest last set by the Reserve Bank of Australia before that 1 July, plus 4%.

### **Part 2—Judgment by consent**

*[no supplementary rules]*

### **Part 3—Default judgments**

*[no supplementary rules]*

#### **Division 1—Entry of default judgment by permission of Court**

*[no supplementary rules]*

#### **Division 2—Entry of default judgment where Court's permission not required**

*[no supplementary rules]*

#### **Division 3—Power to set aside default judgments etc**

*[no supplementary rules]*

### **Part 4—Summary judgment**

*[no supplementary rules]*

### **Part 5—Judgment on admissions**

*[no supplementary rules]*

## **Part 6—Publication of reasons for judgment**

### **209—Publication of reasons for judgment**

- (1) The Court aims to deliver judgment in routine cases within 3 months of reservation of judgment. However, there will be particular cases in which that target is not appropriate and other cases in which, due to workloads and other matters, it will not be practicable for a Judge to observe the target.
- (2) When judgment is not delivered within 3 months of reservation of judgment, a party may by letter addressed to the Chief Justice inquire about progress of the judgment.
- (3) The party making such an inquiry is to deliver a copy of the letter to all other parties to the action.
- (4) The identity of a party making such an inquiry is not to be disclosed to—
  - (a) a judicial officer other than the Chief Justice; and
  - (b) any other person except the other parties to, and a person having an interest in, the outcome of the action.

## **Part 7—Judgments against partnerships etc**

*[no supplementary rules]*

## **Part 8—Judgment in representative action**

*[no supplementary rules]*

## **Part 9—Entry of judgment**

### **210—Entry of judgment**

- (1) The front sheet for each sealed judgment or order is to be in accordance with form 1.
- (2) The nature of the judgment or order is to be specified under “DOCUMENT TYPE”, eg JUDGMENT ON APPEAL.
- (3) The preamble to the judgment or order is to be in accordance with form 47.
- (4) The text of judgments and orders set out in the Common Form Judgments and Orders, as published by the Supreme Court, is to be used with the appropriate modifications to suit the circumstances of the case.
- (5) This supplementary rule is subject to the provisions of the *Corporations Rules 2003* (South Australia).

## **Part 10—Power to correct, vary or set aside judgment**

*[no supplementary rules]*

## **Part 11—Orders ancillary to judgment**

*[no supplementary rules]*

## Part 12—Injunctions

### Division 1—Freezing orders

#### 211—Introduction

- (1) This Division addresses (among other things) the Court’s usual practice relating to the making of a freezing order under rule 247 of the Rules and the usual terms of such an order. While a standard practice has benefits, this Division and form 48 do not, and cannot, limit the judicial discretion to make such order as is appropriate in the circumstances of the particular case.
- (2) A freezing order restrains a respondent from removing assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of those assets.
- (3) The order is designed to prevent frustration or abuse of the process of the Court, not to provide security in respect of a judgment or order.
- (4) The order is an extraordinary interim remedy in that it can restrict the right to deal with assets even before judgment and is commonly granted without notice to the respondent.
- (5) A freezing order or ancillary order may be sought against a third party (not the person said to be liable on a substantive cause of action of the applicant) who has possession, custody, control or ownership of assets that he or she may be obliged ultimately to disgorge to help satisfy a judgment against another person. If so, the third party is to be joined as a respondent to the application for the freezing or ancillary order.
- (6) When a freezing order against a third party seeks only to freeze the assets of another person in the third party’s possession, custody or control (but not ownership), form 48 will require adaptation. In particular, the references to “*your assets*” and “*in your name*” should be changed to refer to the other person’s assets or name (eg “*John Smith’s assets*”, “*in John Smith’s name*”).
- (7) A freezing or ancillary order may—
  - (a) be limited to assets in Australia or in a defined part of Australia or may extend to assets anywhere in the world;
  - (b) cover all assets without limitation, assets of a particular class, or specific assets (such as the amount standing to the credit of an identified bank account).
- (8) Rule 247 of the Rules has the effect that certain restrictions expressed in *The Siskina* [1979] AC 210 do not apply in this jurisdiction.
  - (a) First, the Court may make a freezing order before a cause of action has accrued (a “prospective” cause of action).
  - (b) Secondly, the Court may make a free-standing freezing order in aid of a foreign proceeding in prescribed circumstances.
  - (c) Thirdly, when there are assets in Australia, service outside of Australia is permitted under Chapter 3 Part 4 of the Rules.

#### 212—Undertakings

- (1) Appropriate undertakings will normally be required of the applicant as a condition of making a freezing order.

- (2) The undertakings required of the applicant will normally include the usual undertaking as to damages.
- (3) If the applicant has or may have insufficient assets within the jurisdiction of the Court to provide substance for the usual undertaking as to damages, the applicant may be required to support the undertaking by providing security. There is provision for such security in form 48.

### **213—Application**

An application for a freezing order is to be accompanied by a supporting affidavit, undertakings and minutes of order.

### **214—Affidavit in support**

The supporting affidavit is to address the following information—

- (a) any judgment that has been obtained;
- (b) if no judgment has been obtained, the following information about the cause of action—
  - (i) the basis of the claim for substantive relief;
  - (ii) the amount of the claim; and
  - (iii) if the application is made without notice to the respondent—the applicant’s knowledge of any possible defence;
- (c) the nature and value of the respondent’s assets, so far as known to the applicant, within and outside Australia;
- (d) the matters referred to in rule 247(5) of the Rules; and
- (e) the identity of any person, other than the respondent, who, to the best of the applicant’s belief, may be affected by the order and how that person may be affected by it.

### **215—Hearing of application**

- (1) An applicant for a freezing order or ancillary order made without notice to the respondent is under a duty to the Court to make full and frank disclosure of all material facts to the Court.
- (2) Without affecting the generality of paragraph (1), possible defences known to the applicant and any financial information that may cast doubt on the applicant’s ability to meet the usual undertaking as to damages from assets within Australia are to be disclosed.

### **216—Terms of order**

- (1) A freezing order is to be modelled on form 48 (the footnotes and references to footnotes in that form should not form part of the order made). That form may be adapted to meet the circumstances of the particular case. It may be adapted for a freezing order made on notice to the respondent as indicated in the footnotes to the form. It contains provisions aimed at achieving the permissible objectives of the order while minimising the potential for disruption or damage to the respondent and third parties.

- (2) The duration of a freezing order made without notice should be limited to a period terminating on the return date of the application, which should be as early as practicable (usually no more than a day or two) after the order is made, when the respondent will have the opportunity to be heard. The applicant is then to bear the onus of satisfying the Court that the order should be continued or renewed.
- (3) A freezing order should reserve liberty for the respondent to apply on short notice. An application by the respondent to discharge or vary a freezing order will normally be treated by the Court as urgent.
- (4) The value of the assets covered by a freezing order should not exceed the likely maximum amount of the applicant's claim, including interest and costs. Sometimes it may not be possible to satisfy this principle (for example, an employer may know that an employee has been making fraudulent misappropriations but not know how much has been misappropriated at the time of the approach to the Court).
- (5) The order should exclude dealings by the respondent with assets for legitimate purposes, in particular—
  - (a) payment of ordinary living expenses;
  - (b) payment of reasonable legal expenses incurred in the action in which the freezing order is made;
  - (c) dealings and dispositions in the ordinary and proper course of the respondent's business, including paying business expenses bona fide and properly incurred; and
  - (d) dealings and dispositions in the discharge of obligations bona fide and properly incurred under a contract entered into before the order was made.
- (6) When a freezing order extends to assets outside Australia, the order should provide for the protection of persons outside Australia and third parties. Such provisions are included in form 48.
- (7) The Court may make ancillary orders. The most common example of an ancillary order is an order for disclosure of assets. Form 48 provides for such an order and for the privilege against self-incrimination.
- (8) The order to be served should be endorsed with a notice in compliance with rule 225 of the Rules.

## **Part 13—Orders dealing with property**

*[no supplementary rules]*

## **Part 14—Orders for accounts or report**

*[no supplementary rules]*

## **Part 15—Appointment of receiver**

*[no supplementary rules]*

## **Part 16—Protection of persons under disability**

*[no supplementary rules]*

## **Part 17—Representative actions**

*[no supplementary rules]*

## **Part 18—Service of judgment**

*[no supplementary rules]*

## **Part 19—Interest on judgment debt**

### **217—Interest on judgment debt**

Unless another rate is fixed by law, interest on a judgment debt accrues—

- (a) in respect of the period from 4 September 2006 to 30 September 2008 - at the rate of 6.5 percent per annum;
- (b) in respect of the period from 1 October 2008 to 30 June 2010 - at the rate of 10 percent per annum;
- (c) with effect from 1 July 2010—
  - (i) in respect of the period from 1 January to 30 June or part of that period in a year, the cash rate of interest last set by the Reserve Bank of Australia before that 1 January, plus 6 percent per annum; and
  - (ii) in respect of the period from 1 July to 31 December or part of that period in a year, the cash rate of interest last set by the Reserve Bank of Australia before that 1 July, plus 6 percent per annum.



## Chapter 12—Costs

### Part 1—Record of costs to be kept

*[no supplementary rules]*

### Part 2—Court’s discretion as to costs

#### 218—Scale of costs to 30 June 2011

- (1) Subject to paragraphs (2) to (5), the scale of costs for work done in the period from 4 September 2006 to 30 June 2011 is fixed by Schedule 1.
- (2) For work done in the period from 1 August 2007 to 30 September 2008, the costs specified in Schedule 1 (excluding Items 4(a) and 16(a)(i)) are to be increased by 1.8%.
- (3) For work done in the period from 1 October 2008 to 30 September 2009, the costs specified in Schedule 1 (excluding Items 4(a) and 16(a)(i)) are to be increased by 6.1%.
- (4) For work done in the period from 1 October 2009 to 30 September 2010, the costs specified in Schedule 1 (excluding Items 4(a) and 16(a)(i)) are to be increased by 9.7%.
- (5) For work done in the period from 1 October 2010 to 30 June 2011, the costs specified in Schedule 1 (excluding Items 4(a) and 16(a)(i)) are to be increased by 12.6%.

#### 219—Scale of costs from 1 July 2011

- (1) Subject to the subsequent paragraphs of this supplementary rule, the scale of costs for work done in the period from 1 July 2011 is fixed by Schedule 2.
- (2) For work done in the period from 1 October 2012 to 30 September 2013, the costs specified in Schedule 2 are to be increased by 4.7%.
- (3) For work done in the period from 1 October 2013 to 30 September 2014, the costs specified in Schedule 2 are to be increased by 7.7%.

[subrule 219(4) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 3)]

- (4) For work done in the period from 1 October 2014 to 30 September 2015, the costs specified in Schedule 2 are to be increased by 11.1%.

[subrule 219(5) inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 3)]

[subrule 219(5) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 7)]

- (5) For work done in the period from 1 October 2015 to 30 September 2016, the costs specified in Schedule 2 are to be increased by 20%.

[subrule 219(6) inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 7)]

[subrule 219(6) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (6) For work done in the period from 1 October 2016 to 31 October 2017, the costs specified in Schedule 2 are to be increased by 23.33%.

[subrule 219(7) inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

[subrule 219(7) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 10)]

- (7) For work done in the period from 1 November 2017 to 30 November 2018, the costs specified in Schedule 2 are to be increased by 25.82%.

[subrule 219(8) inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 10)]  
[subrule 219(8) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 13)]

- (8) For work done in the period from 1 December 2018 to 31 October 2019, the costs specified in Schedule 2 are to be increased by 28.70%.

[subrule 219(9) inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 13)]

- (9) For work done in the period from 1 November 2019, the costs specified in Schedule 2 are to be increased by 31.27%.

## **Part 3—Adjudication upon costs**

### **220—Initiation of proceeding for adjudication upon costs**

[rule 220 amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

A claim for costs under rule 271(1B) of the Rules is to be in form 49.

### **221—Application for adjudication under statute**

An application for an adjudication of costs under rule 272(1) of the Rules is to be in form 50.

### **222—Proof of service of claim for costs**

[rule 222 substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

Evidence in letter form is to be lodged confirming service of the claim for costs ordered to be adjudicated.

### **223—Lawyer’s file**

- (1) A lawyer is not to lodge the files or other supporting documents at the Registry when lodging a schedule of costs for adjudication.
- (2) If the Court requires the lawyer’s file and supporting documents for an adjudication without attendance, or for inspection before the time set for an adjudication, the Registry will inform the lawyer by written notice.
- (3) A lawyer must be able to produce the files and other supporting documents on request to the adjudicating officer at the adjudication.

[rule 224 deleted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

**224**—\*\*\*\*\*

### **225—Conferral of parties**

[subrule 225(1) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

- (1) The lawyers involved in a disputed adjudication are to confer before the adjudication appointment with a view to resolving, limiting or clarifying the items in dispute and are to report to the Court on the result of such conference at the commencement of the adjudication.

[subrule 225(2) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

- (2) A date for adjudication of the claim for costs will not be fixed until written confirmation that the parties have conferred is received by the Court.

## Chapter 13—Appellate proceedings

### Part 1—General

#### 226—Interpretation

In this Chapter—

*appellant* means a person who is given a right to appeal or apply for permission to appeal or make any other application dealt with in this Chapter;

*respondent* means the person who undertakes the defence of the appellate proceeding.

#### 227—Appeals to be heard by Judge of land and valuation division

An appeal or application for permission to appeal under section 30(1)(a) to (d) and section 30(4) of the *Environment, Resources and Development Court Act 1993* will be heard by a Judge of the Land and Valuation Division.

### Part 2—Appeals

#### 228—Form of notice of appeal

A notice of appeal under rule 282(2)(a) of the Rules is to be in form 52.

#### 229—Name of party—Police

In an appeal under section 42 of the *Magistrates Court Act 1991*, the South Australian Police, whether as appellant or respondent, are to be referred to as “Police” and not as “South Australian Police” or “SA Police”.

**Example—**

“Jones v Police” or “Police v Jones”

#### 230—Interlocutory application for permission to appeal to Full Court

An interlocutory application under rules 289(1)(b) and 291(1)(b) of the Rules to a Judge or Master of the Court for permission to appeal against a judgment of that Judge or Master is to be made in accordance with rule 131 of the Rules in the proceeding in which the judgment was given.

#### 231—Application book for application for permission to appeal to Full Court

The application book under rule 290(1)(c)(ii) of the Rules in relation to an application for permission to appeal—

- (a) is to contain a copy of the notice of appeal, each affidavit filed under rule 290(1)(a) of the Rules, and any other document (other than the summary of argument) necessary for the Court to consider in relation to the application;
- (b) is not to include a copy of the transcript of evidence or exhibits tendered at trial, unless their inclusion is essential for the determination of the application, in which case the appellant should include copies only of the relevant transcript pages or exhibits;
- (c) is to be paginated and contain a simple index identifying each document in the book and the page at which the document commences;
- (d) is otherwise to comply with supplementary rule 239(1).

## **Part 3—Applications for permission to appeal**

*[no supplementary rules]*

## **Part 4—Reservation or reference of questions of law**

*[no supplementary rules]*

## **Part 5—Miscellaneous**

### **Division 1—Appeal to single Judge**

#### **232—Setting down appeal**

- (1) An appeal that is to be heard by a single Judge will be allocated to a single Judge appeal sittings month being a month the first day of which is no sooner than 21 calendar days after the date of filing.
- (2) The first day of the sittings month is usually the first Monday of the calendar month, except for January.
- (3) The Registrar will forward a notice to the parties confirming the sittings month to which the appeal has been allocated.
- (4) During the previous month, the Registrar will publish in the Court’s case list a warning list of appeals that will be listed for hearing in the following month.
- (5) A party is not required to set the appeal down.

#### **233—Listing appeal**

- (1) A party wishing the Court to take into account the party’s or counsel’s availability when listing an appeal should make a request in writing as soon as practicable after receiving notification of the sittings month.
- (2) Between 1 and 2 weeks before commencement of the single Judge appeal sittings month, the Registrar will publish in the Court’s case list an appeals list showing the date and time allocated for the hearing of each appeal.
- (3) The parties may contact the associate to the named Judge to seek a different date and time for the hearing of the appeal but should not assume that the Court will be able to accommodate such a request.

#### **233A—Appeal book for appeals to a single judge**

*[rule 233A inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]*

- (1) For appeals heard by a single judge, an appeal book is to be lodged with the Court and simultaneously served on the respondent no later than 4.30 pm 5 clear business days before the listed hearing date.
- (2) An appeal book under subrule 233A(1):
  - (a) is to contain a copy of the notice of appeal, the current versions of the pleadings and the reasons for judgment the subject of the appeal;
  - (b) is to be paginated and contain a simple index identifying each document in the book and the page at which the document commences; and

- (c) is otherwise to comply with supplementary rule 239(1).

### **234—Referral of appeal to Full Court**

If a single Judge refers an appeal under section 42(2)(b) of the *Magistrates Court Act 1991* to the Full Court, the preparation of case books, setting down of the appeal and listing of the appeal will be governed by the rules and supplementary rules applying to appeals direct to the Full Court.

### **235—Timing of summary of argument and list of authorities**

- (1) The appellant's summary of argument, list of authorities and any chronology or summary of evidence are to be emailed to the Court no later than 5.00 pm, 4 clear business days before the listed hearing date.
- (2) The respondent's summary of argument, list of authorities and any chronology or summary of evidence are to be emailed to the Court no later than 5.00 pm, 2 clear business days before the hearing date.
- (3) The email and the summary of argument, list of authorities and any chronology or summary of evidence are to be prepared, lodged and served in compliance with supplementary rules 52, 53, 54 and 236.
- (4) The email is to be sent with the subject line required by supplementary rule 54(3)—
  - (a) to the chambers email address of the Judge who is to hear the appeal (see the link to the Supreme Court on the Courts Administration Authority website (<http://www.courts.sa.gov.au>);
  - (b) if and only if the identity of the single Judge is not known—to [submissions@courts.sa.gov.au](mailto:submissions@courts.sa.gov.au)
- (5) In each case the email is to be sent to the other parties as required by supplementary rule 54(5) or (6).

### **236—Form and content of summary of argument**

- (1) The summary of argument is to be as brief as possible and, without the prior permission of the Court, is not to exceed 10 pages. It should not be in the nature of a written submission.
- (2) The summary of argument is to—
  - (a) contain a concise statement of the issues raised by the appeal;
  - (b) provide the Court with an outline of the steps in the argument to be presented on each issue;
  - (c) contain a succinct statement of each contention to be advanced by the party followed by a reference to authorities (giving paragraph or page numbers), legislation (giving section numbers), relevant passages of the evidence and exhibits and/or the reasons for the judgment under appeal;
  - (d) if a party intends to challenge a finding of fact—
    - (i) identify the relevant finding or failure to make a finding;
    - (ii) state concisely why the finding or failure to make a finding is said to be erroneous;
    - (iii) identify the finding that the party contends should have been made; and

- (iv) give references to the evidence to be relied upon in support of the argument;  
and
  - (e) identify any ground of appeal that is not to be pursued.
- (3) Except when necessary to identify the error at first instance, the summary of argument should not set out passages from reasons for a judgment under appeal, from the evidence, or from the authorities relied upon, but is instead to be a guide to these materials.

### **237—Reference to authority**

- (1) A summary of argument is to provide a citation to cases in the manner required by supplementary rule 53 for a list of authorities.
- (2) A summary of argument is to hyperlink each authority referred to in the manner required by supplementary rule 53 for a list of authorities.

### **238—Costs in criminal appeals to a single Judge**

- (1) This supplementary rule applies to appeals to a single Judge of the Court under section 42 of the *Magistrates Court Act 1992* or section 22(2)(c) of the *Youth Court Act 1993* against a judgment of a Magistrate in a criminal action (*Magistrates criminal appeal*).
- (2) Costs in a Magistrates criminal appeal are in the discretion of the Court.
- (3) The general rule is that costs follow the event and in the ordinary case costs fixed at \$500 plus the appeal filing fee will be awarded in favour of a successful appellant and costs fixed at \$500 will be awarded in favour of a successful respondent.
- (4) The general rule that costs follow the event is subject to the discretion of the Court.

#### **Examples—**

- 1 When the appellant succeeds on part of the appeal or one issue on appeal but fails on another.
  - 2 When a party is guilty of misconduct in relation to the original or appellate proceeding.
  - 3 When one party adopts an unreasonable position on appeal.
- (5) If either party intends to apply for costs in an amount other than that reflected in paragraph (3), that party is to make an application at the outset of the hearing of the appeal. In that event, the Court may fix a different amount for the purpose of paragraph (3) that will generally apply regardless of which party is successful on the appeal or may make any other order that the Court thinks fit.

#### **Examples—**

- 1 An application might be based on the complexity of the appeal requiring especially extensive preparation for the hearing of the appeal.
  - 2 An application might be based on the appeal being listed for an especially lengthy hearing.
  - 3. An application might be based on the reasonable retention of senior counsel to argue the appeal.
- (6) The Court may, if it thinks fit, dispense with the requirement in paragraph (5) that an application for costs in an amount other than that reflected in paragraph (3) is to be made at the outset of the hearing of the appeal.

## Division 2—Appeal to Full Court

### 239—Format of case books

- (1) The presentation of case books is to comply with the following—
  - (a) the books are to have a title page;
  - (b) the books are to be paginated and indexed;
  - (c) documents in case books are to be copied using both sides of A4 sized bond paper and their contents are to be clear and legible;
  - (d) case books are to be bound so that when opened they lie flat, eg bound with spiral binding, and staples are not to be used in the binding;
  - (e) the cover is to be of manila type board not heavier than 300 gsm;

[paragraph 239(1)(f) substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (f) a title page containing the item number and a short description of the nature of each document is to precede each document (eg Item 1 - statement of claim filed on 19 December 2016).
- (2) The index to the case book is to—
    - (a) be located immediately after the title page;
    - (b) contain columns for an item number, a short description of each document, the document’s date (if a document has been amended, the original date is to be shown in the date column with the amended date appearing with the document description) and page number;
    - (c) state the exhibit number or mark (including the letters “MFI” when appropriate) and the date of the document, and give a brief description of the document in relation to each exhibit, including exhibits to affidavits;
    - (d) apart from those cases to which paragraph (5)(e) applies, if an exhibit tendered at trial or a tender book of documents contains more than 1 separate document—separately identify each document within the exhibit or tender book, with a short description of each document, the date of the document and the page number of the document in the case book;
    - (e) number documents consecutively in the “Item Number” column and these numbers are to appear in the body of the book at the head of the corresponding document;
    - (f) in relation to the evidence of witnesses, show the surname, typed in capital letters, preceding the full given names and the detail shown in the following example—

**Example—**

JONES John James	Pages
Examination	1-4
Cross-examination	4-8
Re-examination	8-9
Further cross-examination	9-10

- (g) subject to paragraph (5)(e), when the case book comprises more than one volume—be included in full in each volume.

- (3) The documents in the case book are to be arranged in the following order—
  - (a) originating process and pleadings;
  - (b) subject to paragraph (6), the evidence, whether oral or by affidavit;
  - (c) subject to paragraph (6), the evidence taken on commission or before an examiner;
  - (d) subject to paragraph (5)(e), the exhibits;
  - (e) reasons for judgment of the primary Court or Judge;
  - (f) formal judgment or sealed order of the primary Court or Judge;
  - (g) the sealed order granting permission to appeal (if permission was necessary);
  - (h) the notice of appeal to the Full Court;
  - (i) any order referring a case or a point in a case to the Full Court for determination.
- (4) If the judgment or order appealed against was made by a Judge of the Court on appeal, the following additional documents are to be included in the case book before the notice of appeal—
  - (a) the reasons for judgment given by the Judge on appeal;
  - (b) the formal order of the Court on appeal;
  - (c) if permission was necessary—any formal order granting permission to appeal.
- (5) The exhibits to be included in the case book are to—
  - (a) be arranged in the order in which they were lettered or numbered at trial;
  - (b) contain a note at the foot of the first page of each exhibit of the page of transcript that records the tender of the exhibit;

[paragraph 239(5)(c) deleted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

  - (c) \*\*\*\*\*

[paragraph 239(5)(d) renumbered to (c) by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

  - (c) if it is not practicable to include colour copies of colour photographs exhibited at trial in the case book—be placed in a pocket inside the back cover, with the exhibit number and page of transcript at which the photograph was tendered marked on the back of each photograph in the pocket;

[paragraph 239(5)(e) renumbered to (d) by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

  - (d) if an exhibit tendered at trial contains several bundled documents—be paginated and identified separately in an index and, in the case of a tender book of documents containing a complete index of its contents, may be replicated for the appeal in a separate volume or volumes of the case book without repagination and without incorporation of the content of the index in the case book index. Documents in the tender book not admitted at trial or not relevant to the grounds of appeal should be omitted from the case book without re-paginating or re-indexing the tender book.
- (6) In relation to transcript—
  - (a) in the case of an appellate proceeding arising from a judgment of the Supreme Court, the District Court or the Environment, Resources and Development Court—it is not usually necessary to include in the case book a copy of the transcript of the witnesses' evidence or of the proceedings as the Court will itself arrange for the transcript to be provided electronically to the members of the Full Court;



- (b) in the case of an appellate proceeding arising from a judgment of any other court or tribunal—the party responsible for the carriage of the appellate proceeding is to seek directions from the Registrar as to whether it is necessary for that party to provide a paper copy of the transcript of the proceedings in the case book (in some cases, the Court may be able to arrange for the transcript to be provided electronically to the members of the Full Court);
  - (c) whether or not the transcript of evidence of witnesses is provided electronically, the index to the case book is to comply with paragraph (2)(f);
  - (d) if the transcript of evidence is not available electronically—the transcript is to be provided in a separate volume of the case book maintaining the trial page numbering;
  - (e) if a paper copy of the transcript of evidence is not included in the case book—the party responsible for the carriage of the appellate proceeding is, on request and upon receiving the appropriate fee for copying, to provide another party to the proceeding with a supplementary case book containing a copy of the transcript.
- (7) With a view to reducing the bulk of the case book—
- (a) the parties are to exclude all documents and parts of documents (such as formal parts) that are not relevant to the matter before the Full Court— for example, if the only issue on appeal is that of liability, evidence relating to damages is not to be copied, and vice versa;
  - (b) as far as practicable, parties are to avoid duplication;
  - (c) subject to subparagraph (d), unnecessary repetition of formal headings is to be avoided in the body of the book, and formal parts of documents, such as jurats, formal identification of exhibits and the like, should be omitted unless there is special reason to include them;
  - (d) if documents have been copied in a way that makes it more convenient to include copies of the formal parts, that may be done;
  - (e) a concise summary of excluded parts of documents may be included when necessary for purposes of clarity.
- (8) Lists of documents, pre-trial questions and their answers, affidavits and correspondence should not be included in the case book unless they were tendered in evidence. If pre-trial questions and answers are included, they should be copied in parallel columns so that each answer appears opposite the corresponding question.
- (9) Addresses by counsel, argument and submissions are not to be included, unless there is a particular reason to do so (such as a dispute on appeal whether the case was conducted on a certain basis). Directions are to be sought from the Registrar if the inclusion of such material is proposed.
- (10) The party lodging the case books is to have a certificate signed by the lawyers for all parties, or by the parties personally if not represented by lawyers, certifying that the case books have been examined by them and that they are satisfied that the case books have been prepared in accordance with the Rules and Supplementary Rules and are accurate and complete. This certificate is to be included as the last document in the case book.
- (11) Despite the inclusion of a certificate, the Registrar may reject a case book that he or she considers to be unsatisfactory.

- (12) The Registrar may waive the requirement for the certificate to be signed by those parties who have informed the Registrar in writing that they do not wish to participate in any way in the appeal.

## **240—Preparation of draft index and case books**

[rule 240 is substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (1) The appellant is to lodge with the Court by email to [caapmsupremecourtappeals@courts.sa.gov.au](mailto:caapmsupremecourtappeals@courts.sa.gov.au) and simultaneously serve on all other parties a draft electronic index to the case books as soon as practicable and in any event within 21 calendar days after—
- (a) filing a notice of appeal when the appeal is as of right;
  - (b) obtaining permission to appeal when permission is required; or
  - (c) a decision by the Court to refer an application for permission to appeal for hearing before the Full Court.
- (2) If the appellant fails to lodge and serve a draft index to the case books in accordance with paragraph (1), another party may—
- (a) lodge and serve a draft index to the case books; or
  - (b) apply for dismissal of the appellate proceeding for want of prosecution.
- (3) The respondent is to lodge and serve on all other parties notice of agreement with the draft index or an electronic version of an amended draft index as soon as practicable and in any event within 14 calendar days after receipt of the draft index from the appellant.
- (4) Following lodgement of an amended or agreed index to the case books by the respondent, the Registrar or the Appeals Clerk will liaise with the parties to settle the draft index as soon as possible.
- (5) Despite rule 21(3) of the Rules, an application under rule 21 of the Rules for review of a decision of the Appeals Clerk relating to the settled index is to be made within 2 business days after the decision. The review will generally be heard by the Chamber List Judge on short notice to the parties.
- (6) Unless the Registrar, the Appeals Clerk or the Registrar’s delegate otherwise directs, case books are to be lodged and served on the other parties by the appellant and the appellate proceeding is to be set down for hearing within 7 calendar days after the settling of the draft index.

## **241—Listing appeal**

[rule 241 is substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (1) Once the case books are lodged, the Chief Justice will list the appeal based on the information sheet lodged pursuant to supplementary rule 242(2)(d). The parties will be notified of the listing date.
- (2) The date and time for hearing appellate proceedings will be published from time to time in the Court’s case list

## **242—Setting down appeal**

[rule 242 is substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (1) If permission has been granted to another party under rule 296(1) of the Rules to set the appellate proceeding down for hearing, that party is to set the proceeding down within 7 calendar days after the grant of permission.
- (2) In order to set an appellate proceeding down under rule 296 of the Rules, the party having the carriage of the matter is to—
  - (a) file three sets of case books in hard copy;
  - (b) lodge with the Court and serve on each other party a USB or disk containing an electronic copy of the case books in the image format of PDF and whenever practicable text searchable (using OCR); and
  - (c) file a completed Information Sheet in form 54.

## **243—Form and content of written submissions**

[rule 243 is substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (1) A written submission is not to exceed 20 pages without the prior permission of the Court.
- (2) A written submission is to—
  - (a) contain a concise statement of the issues raised by the appeal and of facts on which the party relies;
  - (b) provide the Court with an outline of the steps in the argument to be presented on each issue;
  - (c) comprise a written submission in the appeal with each contention to be advanced by the party followed by a reference to authorities (giving paragraph or page numbers), legislation (giving section numbers), relevant passages of the evidence and exhibits and/or the reasons for the judgment under appeal;
  - (d) If a party intends to challenge the reasoning of the judicial officer at first instance, identify any relevant passage in the reasons for judgment;
  - (e) If a party intends to challenge a finding of fact—
    - (i) identify the relevant finding or failure to make a finding;
    - (ii) state concisely why the finding or failure to make a finding is said to be erroneous;
    - (iii) identify the finding that the party contends should have been made; and
    - (iv) give references to the evidence to be relied upon in support of the argument; and
  - (f) If a party intends to challenge a finding of law, or the appellate proceeding is in the nature of the reservation or reference of a question of law, identify the relevant decided cases and the relevant legislation.
  - (g) identify any ground of appeal that is not to be pursued.
- (3) Except when necessary to identify the error at first instance, a written submission should not set out passages from reasons for a judgment under appeal, from the evidence, or from the authorities relied upon, but is instead to be a guide to these materials.

## **244—Lodgment and service of written submission and list of authorities**

[rule 244 is substituted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (1) Subject to paragraph (7), the appellant’s written submission, list of authorities and any chronology or summary of evidence are to be lodged with the Court by emailing them to [submissions@courts.sa.gov.au](mailto:submissions@courts.sa.gov.au) and simultaneously served on the respondent no later than 4.30 pm 8 clear business days before the listed hearing date.
- (2) Subject to paragraph (7), the respondent’s written submission, list of authorities and any chronology or summary of evidence are to be lodged with the Court by emailing them to [submissions@courts.sa.gov.au](mailto:submissions@courts.sa.gov.au) and simultaneously served on the appellant no later than 4.30 pm 4 clear business days before the listed hearing date.
- (3) If the appellant intends at the hearing of the appeal to raise a new point as a result of the respondent’s written submission not identified in the appellant’s written submission that will embarrass the respondent if advance notice is not given—the appellant is to lodge with the Court a written submission articulating that point by emailing it to [submissions@courts.sa.gov.au](mailto:submissions@courts.sa.gov.au) and simultaneously serving it on the respondent no later than 4.30 pm 2 clear business days before the listed hearing date.
- (4) If the respondent delivers a summary of evidence in accordance with paragraph (2) and the appellant intends at the hearing of the appeal to challenge or supplement the respondent’s summary of evidence—the appellant is to lodge a summary of evidence identifying any items disputed and why and any additional items by emailing it to [submissions@courts.sa.gov.au](mailto:submissions@courts.sa.gov.au) and simultaneously serving it on the respondent no later than 4.30 pm 2 clear business days before the listed hearing date.
- (5) The appellant may lodge a written submission in reply to the respondent’s written submissions not exceeding 5 pages by emailing it to [submissions@courts.sa.gov.au](mailto:submissions@courts.sa.gov.au) and simultaneously serving it on the respondent no later than 4.30 pm 2 clear business days before the listed hearing date.
- (6) An email and written submission, list of authorities, chronology or summary of evidence governed by this supplementary rule are to be prepared, lodged and served in compliance with supplementary rules 52, 53, 54 and 236.
- (7) A party may apply to the Registrar during the process referred to in supplementary rule 240(4) to vary the timetable prescribed by this supplementary rule.

## **245—Skeleton of oral argument**

- (1) A party may, but unless the Court otherwise directs is not required to, lodge with the Court a skeleton outline of the propositions that the party intends to advance in oral argument.
- (2) A skeleton outline is to—
  - (a) be lodged with the Court no later than the commencement of the hearing;
  - (b) be given to all other parties at the same time as given to the Court;
  - (c) be no longer than 3 pages;
  - (d) state propositions sequentially in the order they are intended to be addressed in oral argument;

[paragraph 245(2)(e) is amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 8)]

- (e) cross refer to the party’s written submissions.

### **Division 3—Matters other than appeals heard by Full Court**

#### **246—Matters other than appeals**

- (1) An application that is to be heard by the Full Court is to be filed in the Registry in the usual way.
- (2) The application will be referred to the Appeals Clerk who will, if the matter is in order and is appropriate for Full Court consideration, enter it in the list of matters for the next convenient Full Court sittings.
- (3) Applications for admission to practise as a lawyer will automatically be listed before the Full Court.

## **Chapter 14—Contempt of Court**

### **Part 1—Contempt committed in face of court**

*[no supplementary rules]*

### **Part 2—Court initiated proceedings for contempt—other cases**

#### **247—Summons for contempt**

A summons under rule 302 or 303 of the Rules is to be in form 55.

### **Part 3—Contempt proceedings by party to proceeding**

*[no supplementary rules]*

### **Part 4—Hearing of charge of contempt**

*[no supplementary rules]*

## Chapter 15—Statutory proceedings

### Part 1—General principles

#### 248—Application to Registrar

An application to the Registrar under rule 308(2) of the Rules is to be in form 56.

### Part 2—Substantive proceedings under particular Acts

#### Division 1—Aged and Infirm Persons’ Property Act 1940

##### 249—Form of summons

- (1) An application under section 8 of the *Aged and Infirm Persons’ Property Act 1940* (the *Act*) for a protection order under rule 310 of the Rules is to be made by summons—
  - (a) if the application is made by the person whose property is sought to be protected—in form 5;
  - (a) otherwise—in form 6 naming the person whose property is sought to be protected as a defendant.
- (2) When it is intended to seek an order restricting the testamentary capacity of the person whose property is sought to be protected or the circumstances indicate that such a course may be desirable, the summons should specifically ask for such an order.
- (3) Unless the Court otherwise directs, unless the application is made by the person whose property is sought to be protected, the summons and supporting affidavit are to be served on the person whose property is sought to be protected.

**Note—**

Section 8(2) of the Act requires the summons to be served on the person whose property is sought to be protected unless the Court in any special case otherwise directs.

##### 250—Affidavit in support

- (1) The application is to be supported by an affidavit identifying—
  - (a) the age of the person whose property is sought to be protected and the nature of the alleged mental or physical infirmity, for which evidence of a medical practitioner is ordinarily required;
  - (b) the assets and liabilities of the estate of the person whose property is sought to be protected, so far as known to the plaintiff or ascertainable on reasonable enquiry;
  - (c) any will or codicil in existence, which should be exhibited;
  - (d) if it is possible that the person whose property is sought to be protected was subject to an incapacity identified in section 7 of the Act when making any such will—any will or codicil made before the person possibly became subject to such incapacity, which should be exhibited.
- (2) A knowledge of the names of the executors is of assistance in appointing a manager and fixing the amount of security to be given. The other information required under paragraph (1)(d) will be of assistance whenever the Court is asked to exercise jurisdiction under sections 16 and 16A of the Act.

- (3) An affidavit or exhibit containing information as to a will or codicil may be sealed and filed in an envelope endorsed with a note that it not be opened except by direction of a Judge or Master.
- (4) If the application is made by a person other than the person whose property is sought to be protected, his or her spouse or near relative or Public Trustee—the affidavit in support of the application should prove the circumstances that make it proper for the plaintiff to make the application.

**Note—**

Section 8(1)(d) of the Act provides that an application may be made by any other person who adduces proof of circumstances which in the opinion of the court make it proper that such other person should make the application.

### **251—Minutes of order**

- (1) On every application, minutes of order should be prepared for the Court.
- (2) The minutes are to require service of the order on the manager, the protected person and the Registrar of Probate.

### **252—Costs**

In cases having no special or unusual features, or when the estate is comparatively small, details of the amount sought for costs should be made available on the hearing of the application to enable the fixing of a lump sum without adjudication.

### **Division 2—Criminal Assets Confiscation Act 2005 and Proceeds of Crime Act 2002 (Cth)**

*[no supplementary rules]*

### **Division 3—Family Relationships Act 1975**

*[no supplementary rules]*

### **Division 4—Inheritance (Family Provision) Act 1972**

### **253—Notice of action**

Notice of action under rule 314(4) of the Rules is to be in form 57.

### **Division 5—Native Title (South Australia) Act 1994**

*[no supplementary rules]*

## **Part 3—Statutory appeals against administrative decisions**

### **254—Notice of appeal**

- (1) A notice of appeal from an administrative decision under an enactment under rule 320(1) of the Rules is to be in form 58.
- (2) An appeal under section 92 of the *Taxation Administration Act 1996* is to name as the respondent the Commissioner of State Taxation.



## **255—Statement of facts, issues and contentions**

- (1) A statement of facts, issues and contentions under rule 320(3) of the Rules is to be in form 59.
- (2) Unless the Court otherwise directs, the statement of facts, issues and contentions is not to exceed 15 pages.
- (3) Part 1 is to—
  - (a) be brief;
  - (b) identify succinctly the subject matter of the decision subject to appeal;
  - (b) identify succinctly the decision subject to appeal;
  - (c) identify succinctly the essential facts, if any, relied on that were not accepted by the decision maker in making the decision the subject of the appeal,  
taking into account the fact that documents annexed to the statement may be expected to address the underlying facts.
- (4) Part 2 is to—
  - (a) be brief;
  - (b) identify succinctly the issues in neutral terms without setting out either party's position on the issues;
  - (c) address only issues understood to be contested.
- (5) Part 3 is to—
  - (a) be brief;
  - (b) identify succinctly the party's contention on each issue in Part 2;
  - (c) not contain argument in support of the contentions, references to evidence or to authorities.
- (6) Part 4 is to—
  - (a) be brief;
  - (b) identify succinctly the party's contention why an extension of time should be granted or refused when applicable;
  - (c) not contain argument in support of the contention or references to evidence or authorities.
- (7) On an appeal under section 92 of the *Taxation Administration Act 1996*, the appellant's statement of facts, issues and contentions is to annex—
  - (a) the Minister's determination of the objection;
  - (b) the appellant's objection to the assessment;
  - (c) the assessment the subject of the objection.

## **256—Respondent's statement of facts, issues and contentions**

- (1) The respondent's statement of facts, issues and contentions under rule 321(2) of the Rules is to be in form 60.

- (2) Unless the Court otherwise directs, the statement of facts, issues and contentions is not to exceed 15 pages.
- (3) A respondent's statement of facts, issues and contentions is to follow the format of the appellant's statement of facts, issues and contentions.

### **257—Subsequent steps**

Directions hearings will ordinarily be listed before a Judge of the Court for management in a similar manner to a special classification action but may on occasions be listed before a Master.

### **258—Appeals to be heard by Judge of land and valuation division**

An appeal against a decision by the Minister on an objection to a decision of the Commissioner under a taxation law under section 92 of the *Taxation Administration Act 1996* in which the principal issue is valuation will be managed and heard by a Judge of the Land and Valuation Division.

## **Part 4—Arbitration proceedings**

### **Division 1—General**

*[no supplementary rules]*

### **Division 2—International commercial arbitration**

#### **259—Application for stay and referral to arbitration—foreign arbitration agreements**

An application under section 7 of the International Arbitration Act to stay a proceeding and refer the parties to arbitration under rule 326 of the Rules is to be in form 61.

#### **260—Application to enforce foreign award**

An application under section 8(2) of the International Arbitration Act to enforce a foreign award under rule 327 of the Rules is to be in form 62.

#### **261—Application for referral to arbitration—Model Law**

An application under article 8 of the Model Law to refer parties to arbitration under rule 328 of the Rules is to be in form 63.

### **262—Subpoenas**

- (1) An application under section 23(3) of the International Arbitration Act to issue a subpoena under rule 329 of the Rules is to be in form 64.
- (2) A subpoena under section 23(3) of the International Arbitration Act—
  - (a) to attend for examination before an arbitral tribunal under rule 329(3)(a) of the Rules—is to be in form 65A;
  - (b) to produce to the arbitral tribunal the documents mentioned in the subpoena under rule 329(3)(b) of the Rules—is to be in form 65B;
  - (c) to attend for examination and produce documents under rule 329(3)(c) of the Rules—is to be in form 65C.

### **263—Application relating to evidence for arbitration**

An application for an order under section 23A(3) of the International Arbitration Act that a person attend before the Court for examination or to produce documents or do a thing required by an arbitral tribunal for an arbitration under rule 330(1) of the Rules is to be in form 66.

### **264—Application relating to disclosure of confidential information**

An application under section 23F or 23G of the International Arbitration Act for an order prohibiting or allowing the disclosure of confidential information under rule 331(1) of the Rules is to be in form 67.

### **265—Application for other order—Model Law**

An application for relief under article 11(3), 11(4), 13(3), 14, 16(3), 17H(3), 17I, 17J or 27 of the Model Law under rule 332(1) of the Rules is to be in form 68.

### **266—Application to set aside award—Model Law**

An application under article 34 of the Model Law to set aside an award under rule 333(1) of the Rules is to be in form 69.

### **267—Enforcement of award—Model Law**

An application under article 35 of the Model Law to enforce an award under rule 334(1) of the Rules is to be in form 70.

### **268—Enforcement of award—Investment Convention**

An application under section 35(2) of the International Arbitration Act to enforce an Investment Convention award under rule 335(1) of the Rules is to be in form 71.

## **Division 3—Domestic commercial arbitration**

### **269—Application for referral to arbitration**

An application under section 8 of the Commercial Arbitration Act to refer the parties to arbitration under rule 336(1) of the Rules is to be in form 72.

### **270—Subpoenas**

- (1) An application under section 27A of the Commercial Arbitration Act to issue a subpoena under rule 337(1) of the Rules is to be in form 73.
- (2) A subpoena under section 27A of the Commercial Arbitration Act—
  - (a) to attend for examination before an arbitral tribunal under rule 337(3)(a) of the Rules—is to be in form 74A;
  - (b) to produce to the arbitral tribunal the documents mentioned in the subpoena under rule 337(3)(b) of the Rules—is to be in form 74B;
  - (c) to attend for examination and produce documents under rule 337(3)(c) of the Rules—is to be in form 74C.

### **271—Application relating to evidence for arbitration**

An application for an order under section 27B of the Commercial Arbitration Act that a person attend before the Court for examination or to produce documents or do a thing required by an arbitral tribunal under rule 338(1) of the Rules is to be in form 75.

## **272—Application relating to disclosure of confidential information**

An application under section 27H or 27I of the Commercial Arbitration Act for an order prohibiting or allowing the disclosure of confidential information under rule 339(1) of the Rules is to be in form 76.

## **273—Application for other order**

An application for relief under section 11(3), 11(4), 13(4), 14, 16(9), 17H, 17I, 17J, 19(6), 27 or 27J of the Commercial Arbitration Act under rule 340(1) of the Rules is to be in form 77.

## **274—Preliminary point of law**

An application under section 27J of the Commercial Arbitration Act for leave to apply for determination of a question of law arising in the course of an arbitration and, if leave be granted, for the determination of the question of law under rule 341 of the Rules is to be in form 78.

## **275—Application to set aside award**

An application under article 34 of the Commercial Arbitration Act to set aside an award under rule 342(1) of the Rules is to be in form 79.

## **276—Appeal**

- (1) An application under section 34A of the Commercial Arbitration Act for leave to appeal on a question of law arising out of an award under rule 343 of the Rules is to be in form 80.
- (2) The appellant is, within 2 business days after filing a notice of appeal, to serve a copy of the notice of appeal on—
  - (a) all parties to the appeal; and
  - (b) the arbitral tribunal.

## **277—Application to enforce arbitral award**

An application under section 35 of the Commercial Arbitration Act to enforce an award under rule 344(1) of the Rules is to be in form 81.

# **Part 5—Ancillary proceedings**

## **278—Foreign Judgments Act**

Notice of registration of a judgment under rule 346(7) of the Rules is to be in form 82.

# **Part 6—Enforcement of judgments**

## **279—Enforcement of Judgments Act**

- (1) A summons for examination of a judgment debtor under section 4 of the *Enforcement of Judgments Act 1991* is to be in form 83.
- (2) A request for issue of a warrant, summons or garnishee against a judgment debtor under section 4, 5, 6 or 7 of the *Enforcement of Judgments Act 1991* is to be in form 84.
- (3) A request for issue of a warrant of possession under section 11 of the *Enforcement of Judgments Act 1991* is to be in form 85.

- (4) A warrant of sale under section 7 of the *Enforcement of Judgments Act 1991* is to be in form 86.
- (5) A warrant of arrest under section 12 of the *Enforcement of Judgments Act 1991* is to be in form 87.
- (6) A notice of claim of property subject to execution under section 16(2) of the *Enforcement of Judgments Act 1991* is to be in form 88.
- (7) A person arrested on a warrant issued under section 4(4) or 5(6) of the *Enforcement of Judgments Act 1991* will usually be brought before the Registrar if the warrant was issued by the Registrar and before a Master if the warrant was issued by a Master.
- (8) A person arrested on a warrant issued under section 12 of the *Enforcement of Judgments Act 1991* will usually be brought before a Judge in the first instance.

## **Chapter 16—Sheriff’s duties**

*[no supplementary rules]*

## **Chapter 17—Lawyers and notaries public**

### **Part 1—Preliminary**

*[no supplementary rules]*

### **Part 2—General procedural rules**

#### **280—Form of applications**

- (1) An originating application under rule 362(2) of the Rules when there is a defendant is to be in form 89A.
- (2) An originating application under rule 362(2) of the Rules when there is no defendant is to be in form 89B.
- (3) An originating application under rule 362(2) when there is to be a hearing date listed is to be in form 89C.
- (4) An interlocutory application under rule 362(3) is to be in form 26.

### **Part 3—Allocation of Court business**

*[no supplementary rules]*

### **Part 4—Admission of lawyers**

#### **Division 1—Application for admission**

##### **281—Application for admission by original applicant**

- (1) An originating application for admission under rule 370(1)(a) of the Rules is to be in form 90.
- (2) The application is to be accompanied by the relevant filing fee under Schedule 1 of the *Supreme Court Regulations 2005*.

**Note—**

Rule 370(1) provides that the originating application and supporting affidavit are to be lodged with the Law Society on behalf of the Court.

##### **282—Affidavit in support of application for admission**

An affidavit in support of an application for admission under rule 370(1)(b) of the Rules is to be in form 91A or form 91B as applicable.

##### **283—Certificate of principal**

A certificate from the applicant's principal under rule 370(2)(a) of the Rules is to be in form 92.

##### **284—Notice of application**

A notice to be placed on the Law Society's website under rules 370(1)(c) and 371(1)(b) of the Rules is to be in form 93.

## **285—Application for admission by re-applicant**

- (1) An originating application for admission under rule 371(1)(a) of the Rules is to be in form 90.
- (2) The application is to be accompanied by the relevant filing fee under Schedule 1 of the *Supreme Court Regulations 2005*.

### **Note—**

Rule 371(1) provides that the originating application and supporting affidavit are to be lodged with the Law Society on behalf of the Court.

## **286—Board of Examiners report**

The Board is to file in Court its report and recommendation on the application for admission prepared pursuant to section 15(4) of the Act. A front sheet is not required.

## **Division 2—Objection to admission**

### **287—Objection**

A notice of objection under rule 373(2)(a) of the Rules is to be in form 94.

## **Division 3—Hearing of application for admission**

### **288—Attendance at Full Court sitting**

- (1) If an applicant seeks to be exempted from the requirement to attend the Full Court sitting at which the his or her admission will be moved, the applicant is to write to the Law Society on behalf of the Court seeking an exemption from attendance and setting out why the he or she will be unable to attend.
- (2) The Master who holds the appointment as Chair of the Board will grant or refuse the application on behalf of the Court.
- (3) At least 14 calendar days before the date on which the Court will be moved to admit an applicant, the applicant is to inform the Law Society by letter whether the applicant has been exempted from the requirement to attend the Full Court admission sitting.
- (4) If the applicant has been so exempted, he or she is to request that the Supplementary Roll of Practitioners sheet be forwarded after the Court has approved the admission to enable the Roll to be signed in accordance with Part 5 Division 2 of these Supplementary Rules.
- (5) If notification in accordance with paragraph (3) is not received, it will be assumed that the applicant intends to attend personally at the admission sitting.



## **289—Oath or affirmation of admission**

The oath or affirmation of admission to be administered to newly admitted practitioners of the Court is as follows—

“I (*state full name*) swear on oath and promise that I will diligently and honestly perform the duties of a practitioner of this Court and will faithfully serve and uphold the administration of justice under the Constitution of the Commonwealth of Australia and the laws of this State and of the other States and Territories of Australia. So help me God. I swear.”

“I (*state full name*) do truly and solemnly affirm and promise that I will diligently and honestly perform the duties of a practitioner of this Court and will faithfully serve and uphold the administration of justice under the Constitution of the Commonwealth of Australia and the laws of this State and of the other States and Territories of Australia.”

## **Division 4—The Roll of Practitioners**

### **290—Change of name**

- (1) When a lawyer has changed his or her name as a result of marriage, divorce, separation or otherwise, the lawyer will be permitted to re-subscribe the Roll of Practitioners without moving the Full Court for that purpose upon production of evidence of the change of name.
- (2) If the lawyer holds a practising certificate, the lawyer is to re-subscribe the Roll of Practitioners within 28 calendar days after changing his or her name.
- (3) An application to re-subscribe the Roll of Practitioners is to be made by application under rule 308 of the Rules in the proceeding in which the original order for admission was made supported by an affidavit—
  - (a) exhibiting a certified copy of the certificate of change of name or a certified copy of the birth certificate on which the notation of change has been made;
  - (b) exhibiting a certified copy of the marriage certificate; or
  - (c) deposing to the fact that the lawyer proposes to practise in the lawyer’s former name and to use that name for all professional purposes.
- (4) Upon receipt of the application and affidavit, the Registrar, if satisfied that it is appropriate, will arrange for the lawyer to re-subscribe the Roll of Practitioners.

## **Division 5—Lapsed orders for admission**

### **291—Application for re-admission**

An interlocutory application for re-admission under rule 377(2)(a) of the Rules is to be in form 26.

## **Part 5—Registration of interstate and New Zealand lawyers**

### **Division 1—Application for registration**

#### **292—Introduction**

A registration applicant will be granted registration to practise as a barrister and solicitor in South Australia irrespective of whether the applicant practises or is entitled to practise only as a solicitor or only as a barrister in the first jurisdiction.

**Note—**

Rule 368(1) assigns to the Board, inter alia, the functions and powers of the Court relating to the decision to admit and enrol a registration applicant applying under the Mutual Recognition Acts.

### **293—Application for registration**

- (1) An originating application for registration under the Mutual Recognition Acts under rule 379(1)(a) or rule 382(1)(a) of the Rules is to be in form 95A or 95B as applicable.
- (2) An applicant is to include within the application for registration full details of any condition or restriction on the applicant's right to practise or practising certificate imposed by—
  - (a) the admitting authority;
  - (b) legislation or statutory instrument; or
  - (c) the authority charged with the responsibility for issuing practising certificates, in the first jurisdiction or any other jurisdiction in which the applicant is admitted.
- (3) The application is to be accompanied by the relevant filing fee under Schedule 1 of the *Supreme Court Regulations 2005*.

**Note—**

Rule 379(1) provides that the originating application is to be lodged with the Law Society on behalf of the Court.

### **294—Conditions of registration**

- (1) The discretion to impose conditions under rule 379(7) of the Rules will generally be exercised so as to equate with conditions applying to the applicant's registration in the first jurisdiction.
- (2) The Board may impose other conditions, in lieu of or in addition to a condition applying to the applicant's registration in the first jurisdiction, within the limits prescribed by section 20(5) of the *Mutual Recognition Act 1992* (Cth) and section 19(5) of the *Trans-Tasman Mutual Recognition Act 1997* (Cth).
- (3) An applicant who has carried on practice—
  - (a) for a continuous period of no less than 3 years following admission to practice, or
  - (b) for aggregate periods amounting to no less than 3 years during the 5 years immediately preceding the filing of an application,will normally be entitled to registration in South Australia free of conditions or restrictions if at the time of the application for registration no condition or restriction applies to his or her practice in the first jurisdiction.

### **295—Notification to registration applicant**

- (1) The Secretary to the Board will notify the applicant of the Board's determination.
- (2) Upon the Board's approval of an applicant's registration in South Australia, the Secretary to the Board will forward to the applicant a Notification of Registration Certificate.

## **Division 2—The Roll of Practitioners**

### **296—Application of this Division**

This Division applies to—

- (a) an original applicant, a re-applicant or a lapsed applicant whose admission has been admitted by the Full Court in absentia under rule 375 of the Rules and who were exempted by the Court from the requirement to attend the sitting at which he or she was admitted (*admittees*); and
- (b) a registration applicant whose application for registration has been granted under rule 379 of the Rules (*registrants*).

**297—Oath or affirmation of admission and signing the Roll of Practitioners**

- (1) A registrant may elect to—
  - (a) take the oath or affirmation of admission and sign the Roll of Practitioners in person before the Registrar; or
  - (b) take the oath or affirmation of admission and sign the Supplementary Roll of Practitioners sheet in absentia before an authorised witness and return it to the Law Society on behalf of the Registrar.
- (2) If a registrant has elected under paragraph (1)(a) to proceed before the Registrar, the Registrar will arrange a time for the person to take the oath or affirmation of admission and sign the Roll of Practitioners before the Registrar.
- (3) If an admittee or a registrant has elected to proceed in absentia, the Law Society will forward to the person—
  - (a) an affidavit containing the oath or affirmation of admission set out at supplementary rule 289;
  - (b) the Supplementary Roll of Practitioners sheet;
  - (c) an affidavit deposing to signing the Supplementary Roll of Practitioners sheet; and
  - (d) a copy of this Division.

**298—Supplementary Roll of Practitioners**

The right-hand column of the Supplementary Roll of Practitioners sheet is to contain the following endorsement which is to be executed by the authorised witness before whom it is signed—

“The within named (*full name*) appeared before me on (*date*) and signed his/her name as it appears in my presence.  
 .....

**299—Affidavit deposing to signing Supplementary Roll of Practitioners sheet**

The content of the affidavit deposing to signing the Supplementary Roll of Practitioners sheet is as follows—

“contemporaneously with swearing/affirming (*delete whichever is inapplicable*) this affidavit I did—

- (a) take an oath/make an affirmation (*delete whichever is inapplicable*) of admission; and
- (b) sign my name in the Supplementary Roll of Practitioners sheet.”

**300—Execution of documents**

- (1) The applicant is to—

- (a) swear or affirm the affidavit containing the oath or affirmation of admission;
  - (b) sign the Supplementary Roll of Practitioners sheet; and
  - (c) swear or affirm the affidavit deposing to signing the Supplementary Roll of Practitioners sheet.
- (2) The authorised witness before whom the affidavits are sworn or affirmed and the Supplementary Roll of Practitioners sheet is signed is to complete the endorsement required by supplementary rule 298 after the applicant has signed the Supplementary Roll.
- (3) The authorised witness before whom the affidavits are sworn or affirmed is to provide the following information beneath his or her signature—
- “Print name .....
- Authority pursuant to which oath/affirmation (*delete whichever is inapplicable*) administered.....”
- (4) The original signed Supplementary Roll of Practitioners sheet and the two affidavits are to be lodged with the Law Society on behalf of the Registrar.

### **301—Entry of name into Roll of Practitioners**

- (1) Upon receipt of the duly executed Supplementary Roll of Practitioners sheet and two affidavits, the Law Society is to transmit the documents to the Registrar.
- (2) Upon receipt, the Registrar will—
  - (a) include the Supplementary Roll of Practitioners sheet in the Supplementary Roll of Practitioners; and
  - (b) enter the name of the applicant on the Roll of Practitioners in the usual order with the following endorsement alongside the applicant’s name—

“see Supplementary Roll of Practitioners”.

### **302—Issue of practising certificate**

An admittee or registrant is not entitled to be issued with a practising certificate until the Supplementary Roll of Practitioners sheet and two accompanying affidavits have been returned duly executed.

### **Division 3—Lapsed grants of registration**

#### **303—Application for re-registration**

An interlocutory application for re-registration under rule 382(2)(a) of the Rules is to be in form 26.

## **Part 6—Practising certificates**

### **Division 1—Preliminary**

*[no supplementary rules]*

## **Division 2—Application to cancel, suspend or amend**

### **304—Application to cancel, suspend or amend practising certificate**

An originating application under rule 386(1) of the Rules for an order cancelling, suspending or amending a practising certificate is to be in form 89A.

### **305—Application to stay order**

An interlocutory application under rule 388 of the Rules for a stay of an order cancelling, suspending or amending a practising certificate is to be in form 26.

### **306—Application to revoke order**

An interlocutory application under rule 389 of the Rules to revoke an order cancelling, suspending or amending a practising certificate is to be in form 26.

## **Division 3—Show cause events**

### **307—Notice of show cause event by holder**

An affidavit comprising notice by a holder of a show cause event under rule 390 of the Rules is to be in form 33.

### **308—Statement relating to show cause event by holder**

An affidavit comprising a statement by a holder relating to a show cause event under rule 391 of the Rules is to be in form 33.

### **309—Statement relating to show cause event by applicant**

An affidavit comprising a statement by an applicant relating to a show cause event under rule 392 of the Rules is to be in form 33.

## **Division 4—Application for immediate suspension**

### **310—Application for immediate suspension of practising certificate**

An application for immediate suspension of a practising certificate under rule 394(1) of the Rules is to be made—

- (a) if there is an existing application under rule 386 or notice or statement under rule 390, 391 or 392 of the Rules—by interlocutory application in form 26;
- (b) otherwise—by originating application in form 89A.

### **311—Application to revoke or vary order**

An interlocutory application by the holder to revoke or vary an order immediately suspending the holder's practising certificate under rule 396(1) of the Rules is to be in form 26.

## **Division 5—Re-issue of practising certificates**

### **312—Introduction**

- (1) This Division addresses the procedure for applications under rule 9 of the LPEAC Rules for the issue of a practising certificate when a current South Australian certificate has not been held for at least 3 years.

- (2) The Board takes into account requirements affecting all practitioners that may have changed since the applicant last practised. In this regard, the Board has imposed conditions, when appropriate, that an applicant within a specified period, usually 12 months, of the date of issue of the first renewed practising certificate is to attend and complete course work—
  - (a) for a recognised trust account course;
  - (b) for a recognised risk management course.
- (3) The Board may impose conditions—
  - (a) restricting the right of practice of the applicant to that of an employed solicitor under the supervision of a lawyer who has been admitted in South Australia for at least 5 years or a period specified by the Board; and/or
  - (b) requiring the applicant to attend a specified number of hours of structured continuing legal education within a specified period (and when areas of future legal practice are nominated, possibly within those areas).
- (4) When an applicant is employed by the government, a corporation or other body or person who is not a lawyer, the Board may impose a condition restricting the applicant’s right of practice to acting only for his or her current employer.
- (5) An applicant should consider these possible conditions or restrictions when preparing an application and address them if necessary.

### **313—Affidavit**

- (1) An application for the re-issue of a practising certificate when a current South Australian certificate has not been held for at least 3 years is to be made by way of affidavit in form 33 and lodged with the Law Society on behalf of the Board.
- (2) The following matters are to be addressed in the affidavit—
  - (a) the date of first admission in South Australia and any other jurisdiction in which admitted;
  - (b) the period during which a South Australian practising certificate was held including the period during which the last practising certificate was held;
  - (c) details of practice when a practising certificate was held, including whether work was full or part-time and details of the type of work carried out and nature of any employment;
  - (d) details of practice or other employment (particularly law-related employment) since the last South Australian practising certificate was held;
  - (e) a statement that the applicant has not practised the profession of law without holding a practising certificate and has not committed any other act that might constitute a proper ground for disciplinary action, or, if otherwise, details of practice without a practising certificate or of such act;
  - (f) details of any disciplinary matters; and
  - (g) details of intended future practice, such as for example whether the applicant proposes to practise on his or her own account or as a partner or employee of a law firm or government law office or in some other capacity.

### **314—Certificate of good standing**

- (1) A certificate of fitness or good standing from the Commissioner must accompany the affidavit lodged with the Board.
- (2) When the applicant has been admitted in other jurisdictions, the Board requires a certificate of fitness or good standing from the appropriate authority in each jurisdiction in which the applicant has been admitted.

### **315—Further renewal**

Each applicant who is required to attend or complete course work or structured continuing legal education or to work under supervision for a specified period is, before the further renewal of a practising certificate, to provide evidence to the Board via the Law Society that the conditions imposed have been complied with within the specified period.

## **Part 7—Disciplinary proceedings**

### **316—Disciplinary proceedings**

An originating application to institute a disciplinary proceeding under rule 398(1) of the Rules is to be in form 89A.

### **317—Consent to order striking off name from Roll of Practitioners**

An originating application for an order striking the name of a lawyer from the Roll of Practitioners under rule 400(1) of the Rules is to be in form 89A.

### **318—Application for interim suspension or conditions**

An application for an interim suspension of or imposition of conditions on a lawyer's practising certificate under rule 401(1) of the Rules is to be made—

- (a) if there is an existing application under rule 398 of the Rules—by interlocutory application in form 26;
- (b) otherwise—by originating application in form 89A.

### **319—Hearing and determination of application**

The setting of the matter down for hearing and the hearing of the matter is to be governed by Chapter 13 to the extent applicable.

## **Part 8—Costs**

### **320—Adjudication of costs**

- (1) An originating application for adjudication of costs of a lawyer under rule 405(1) of the Rules—
  - (a) by a person claiming to be entitled to legal costs—is to be in form 96A.
  - (b) by a person who is liable to pay or has paid legal costs—is to be in form 96B.
- (2) An originating application for adjudication of costs of a manager or supervisor under rule 405(1) of the Rules is to be in form 96C.

- (3) An application for review of an adjudication under rule 405(4) of the Rules is to be instituted by interlocutory application in form 26.

### **321—Application to set aside costs agreement**

An originating application to set aside a costs agreement under rule 406(1) of the Rules is to be in form 89A.

### **322—Other proceeding in relation to costs of a lawyer**

An application relating to any other proceeding under the Act or in the inherent jurisdiction of the Court in relation to costs of a lawyer under rule 404 of the Rules is to be made—

- (a) if there is an existing proceeding in the Court in relation to the same matter—by interlocutory application in form 26;
- (b) otherwise—by originating application in form 89A.

## **Part 9—Appeals**

### **323—Appeals**

An appeal against a decision of the Law Society, the Board, LPEAC or the Tribunal under rule 408(1) is to be in form 52.

## **Part 10—Other proceedings involving lawyers**

### **324—Form of originating application**

An application under rule 410 of the Rules is to be made—

- (a) if there is an existing proceeding in the Court in relation to the same matter—by interlocutory application in form 26;
- (b) otherwise—by originating application in form 89A.

## **Part 11—Public notaries**

### **325—Introduction**

- (1) This Part addresses the procedure for admission of public notaries under sections 91 and 92 of the Act.
- (2) Applicants are referred to *Re Bos* [2003] SASC 320; (2003) 230 LSJS 27.

### **326—Application for admission as a public notary**

- (1) An application for admission as a public notary is to be made by filing with the Court an originating application in form 89B.
- (2) The application may be heard before a Master.

### **327—Affidavit in support of application for admission**

The application is to be supported by an affidavit deposing to—

- (a) the applicant's date of birth;
- (b) the applicant's qualifications and experience relevant to the application;



- (c) the applicant’s knowledge of the functions and duties of public notaries, including any study undertaken by the applicant relevant to that knowledge;
- (d) the applicant’s character;
- (e) the purpose for which the applicant seeks to be admitted as a public notary and the manner in which the applicant, if admitted, proposes to practise;
- (f) publication of notice of the making of the application for admission in the Public Notices section of *The Advertiser*; and
- (g) any other matter relevant to the Court’s consideration of the application.

### **328—Service**

A copy of the application and supporting affidavit is to be served at least 14 calendar days before the hearing on each of the Law Society and the Notaries’ Society of South Australia Inc.

### **329—Hearing**

Applicants are to attend personally on the hearing of the application, although they may be represented by a lawyer.

### **330—Signing the Roll of Notaries**

- (1) As soon as practicable after an order admitting the person as a public notary is made, the notary is to—
  - (a) cause the order to be sealed;
  - (b) take the oath or make an affirmation of admission; and
  - (c) sign the Roll of Notaries at a time arranged with the Registrar.
- (2) The oath or affirmation of admission to be administered to newly admitted public notaries Court is as follows—

“I (*state full name*) swear on oath and promise that I will not make or attest any Act, contract, or instrument in respect of which I shall know there is violence or fraud; and in all things I will act uprightly and justly in the business of a Public Notary according to the best of my skill and ability. So help me God. I swear.”

“I (*state full name*) do truly and solemnly affirm and promise that I will not make or attest any Act, contract, or instrument in respect of which I shall know there is violence or fraud; and in all things I will act uprightly and justly in the business of a Public Notary according to the best of my skill and ability.”

## **Part 12— Senior Counsel**

[Chapter 17, Part 12 substituted in its entirety by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 9)  
 [Chapter 17, Part 12 substituted in its entirety by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 12)

### **331—Introduction**

This Part deals with Senior Counsel and Queens Counsel in the State of South Australia appointed before 1 May 2019.

### **332—Senior Counsel**

A person who has been admitted to the office of Senior Counsel in accordance with Part 12 of these Rules is a person whom the Court regards as having proven himself or herself to be an advocate of high skill, integrity, professional judgment, and independence justifying an expectation on the part of the public and the judiciary generally that, as Senior Counsel, he or she will provide outstanding service in the course of the administration of justice.

### **333—Seniority**

Senior Counsel rank in seniority according to the date of their appointment, and in the case of persons appointed on the same date, by the date of their admission and in the case of persons admitted on the same date, by alphabetical order of their surnames.

### **334—Undertaking**

Senior Counsel, by retaining appointment, undertakes:

- (a) to confine the nature of his or her practice to the type of work usually performed by Senior Counsel and to do so to the standard expected of Senior Counsel;
- (b) to use the designation only while her or she remains a practising barrister in sole practice or retained under statute by the Crown, or during temporary appointments in a legal capacity to a court, tribunal or statutory body, or in retirement from legal practice;
- (c) that, if he or she practises in future as a solicitor or in partnership or association with a solicitor, he or she will not permit partners or associates to attribute to him or her, in connection with such legal practice, the title SC or Senior Counsel or any other indicia of the Office of Senior Counsel;
- (d) to disclose in writing to the Chief Justice as soon as practicable the result of disciplinary proceedings taken against him or her after appointment or any conviction for a serious offence or bankruptcy after his or her appointment.

### **335—Attire**

Subject to the requirements and permission of particular courts, tribunals and other jurisdictions, Senior Counsel are to wear the court dress generally worn by Senior Counsel (see supplementary rule 58).

### **336—Title and use of post nominals**

- (1) A person appointed as Senior Counsel will be entitled to the appellation of Senior Counsel and to the use of the abbreviation “SC” after her or his name.
- (2) A person holding the office of Queen’s Counsel in and for the State of South Australia is entitled to adopt the appellation of Senior Counsel and to be recognised as such upon giving notice of such adoption and upon giving notice of resignation from the office of Queen’s Counsel to the Chief Justice for transmission to His Excellency the Governor. Any such Queen’s Counsel will be entitled to be recognised as Senior Counsel from the date of such notice, but will take precedence as and be deemed to hold office as Senior Counsel in accordance with the date of his or her appointment as Queen’s Counsel.
- (3) A person holding the office of Queen’s Counsel in and for the State of South Australia is entitled to retain the style or appellation of Queen’s Counsel and will take precedence in accordance with the date of his or her appointment as Queen’s Counsel.

### **337—Interstate Queen’s Counsel and Senior Counsel**

- (1) A Queen’s Counsel and Senior Counsel appointed as such elsewhere in Australia will be accorded in the courts of this State the title under which he or she practises in the jurisdiction in which he or she was appointed and the status and privileges of Senior Counsel in this State, without the necessity of obtaining a separate appointment as Senior Counsel or Queen’s Counsel in South Australia.
- (2) Such a person will rank in seniority according to his or her date of appointment as Queen’s Counsel or Senior Counsel in the first jurisdiction in which he or she was so appointed.

### **338—Resignation**

A Senior Counsel may resign her or his appointment by writing, signed by counsel and delivered to the Chief Justice.

### **339—Revocation**

- (1) The Chief Justice may revoke an appointment as Senior Counsel, including that of a person previously appointed as Queen’s Counsel in and for the State of South Australia who has adopted the style or appellation of Senior Counsel, if—
  - (a) in a disciplinary proceeding the Supreme Court, the Legal Practitioners Disciplinary Tribunal or the Commissioner finds the person guilty of conduct that, in the opinion of the Chief Justice, is incompatible with the office of Senior Counsel;
  - (b) in the opinion of the Chief Justice that person has acted or practised in a manner incompatible with the office of Senior Counsel; or
  - (c) in the opinion of the Chief Justice that person is otherwise unfit to hold the office of Senior Counsel.
- (2) Before exercising the power conferred by this supplementary rule, the Chief Justice will give the person concerned an opportunity to show cause why his or her appointment or recognition should not be revoked.
- (3) The revocation or resignation of an appointment will be published in the South Australian Government Gazette.

## Schedule 1—Scale of costs up to 30 June 2011

(The amounts allowable under this Schedule may be increased by the operation of supplementary rule 218)

### Documents

- |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1 | Drawing a document that is necessary to originate, or for use in, or in connection with, any proceeding or in a matter, whether litigious or otherwise, including the engrossment of the original, per A4 page, provided that a greater amount may be allowed where the matter is of importance and/or difficulty<br><br>(see Notes D, E and G)                                                                                                                                                                         | \$65.00 |
| 2 | Where a document is partly printed and partly drawn, the drawing fee for the drawn part will be allowed and, in addition, for the printed matter (including all perusals of the same), per A4 page<br><br>(see Notes D and E)                                                                                                                                                                                                                                                                                           | \$14.50 |
| 3 | Engrossing the original of a document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per A4 page<br><br>(see Notes D and E)                                                                                                                                                                                                                                                                                                                                             | \$14.50 |
| 4 | Before 1 October 2008—<br><br>(a) photocopying or printing a document including printing an email (sent or received), per page.<br><br>From 1 October 2008—<br><br>(b) subject to sub-item (c), photocopying or printing a document, including printing an email (sent or received), per page;<br><br>(c) for photocopying or printing documents which are, or which should be, photocopied or printed at the same time (including the printing of emails), for each page after the first 20 pages.<br><br>(see Note L) | \$1.00  |
| 5 | Perusing a document, per A4 page or equivalent<br><br>(However, if the document is of substance, an amount not exceeding \$19.50 per A4 page or equivalent may be allowed)                                                                                                                                                                                                                                                                                                                                              | \$7.20  |
| 6 | Scanning of documents, including emails, where full perusal is not justified, per A4 page or equivalent<br><br>(see Note D)                                                                                                                                                                                                                                                                                                                                                                                             | \$2.10  |

## Attendances

(see Note C)

7	The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour  (see Note K)	\$263.00
8	The attendance of a solicitor where work done does not require special skill or legal knowledge, but where it is proper that a solicitor should personally attend, and travelling time, per hour  (see Note K)	\$162.00
9	Attending on an application, matter or adjudication in chambers or on a pre-trial conference, or a settlement conference (not certified fit for counsel) or a callover—  (a) if short or matter adjourned without substantial argument  (b) if ordinary  (c) if protracted or of difficulty, per hour—in a range	\$95.00 \$163.00 \$263.00
10	Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour	\$127.00
11	Attending at Court to file or lodge documents or papers, or to set down, attendance to deliver documents or any other attendance capable of performance by a junior clerk, including attending to set down a chamber application and to search the list for chamber appointments and all attendances necessary to settle and seal an order or other document, and filing or lodging documents or papers at Court electronically, per attendance or lodgment	\$21.00
12	An attendance by telephone of a solicitor, for each 6 minutes interval or part of 6 minutes	\$27.00
13	An attendance by telephone of a clerk—  (a) on a matter of substance  (b) on a short call where a message is left	\$13.50 \$3.10
14	An attendance on the swearing of an affidavit—  (a) of a solicitor to be sworn to an affidavit  (b) of a solicitor to take an affidavit where the solicitor or the solicitor's firm has prepared the affidavit  (c) of a clerk to be sworn to an affidavit	\$38.20 \$20.60 \$20.60

- |     |                                                                                                                                                                                                                                                                                                                                                                                                            |         |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| (d) | of a solicitor on another person to be sworn to an affidavit where no charge is made under paragraph (b) (such fee is to include all charges for marking exhibits and for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes. If the attendance exceeds 15 minutes, the attendance will be allowed proportionately, at the rate fixed by item 7 of the scale.) | \$40.20 |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|

**Letters**

- |    |                                                                                                                              |         |
|----|------------------------------------------------------------------------------------------------------------------------------|---------|
| 15 | Any letter (including an email letter)—                                                                                      |         |
|    | (a) per A4 page, provided that letters of less than one page and the first page of a letter are to be charged proportionally | \$65.00 |
|    | (b) circular letters after the first (including the cost of copying/printing), per A4 page                                   | \$8.30  |
|    | (see Notes D and E)                                                                                                          |         |
| 16 | For receiving and sending documents by fax transmission and email and the electronic scanning of documents—                  |         |
|    | (a) for incoming fax transmissions,                                                                                          |         |
|    | (i) Before 1 October 2008, per page                                                                                          | \$1.00  |
|    | (ii) From 1 October 2008                                                                                                     |         |
|    | the first 20 pages, per page                                                                                                 | \$1.00  |
|    | for each subsequent page                                                                                                     | \$0.40  |
|    | (b) for outgoing fax transmissions, for the first page (and, for each subsequent page, an additional \$2.10)                 | \$9.30  |
|    | (c) for outgoing emails (not charged under item 15) (and, for each attachment, an additional \$7.30)                         | \$7.30  |
|    | (d) for electronically scanning documents, for the first sheet (and, for each subsequent sheet, an additional \$2.10)        | \$7.30  |

Where applicable, STD and ISD charges will be allowed as a disbursement

- |    |                                                                                                                                                                                                                                                         |        |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 17 | For the payment of an account where an account in writing has been rendered and which is in order, including any letter sent with the payment of that account, if the letter relates solely to the account, and to include all disbursements on cheques | \$8.30 |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|

### **Registration of certificate of judgment under *Service and Execution of Process Act 1992***

18	Instructions for and attending to registration of a certificate of judgment under the <i>Service and Execution of Process Act 1992</i> (Cth), including all correspondence, documents, attendances in relation thereto as assessed pursuant to section 22A(1) of the Act, but not exceeding	\$363.00
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### **Miscellaneous**

19	Paging, collating, binding and indexing copy documents for use of the Trial Judge, including the index	
	(a) for the first 10 A4 pages	\$9.30
	(b) for more than 10 A4 pages	\$17.50
20	Paging, collating, binding and indexing a brief or appeal book—	
	(a) for 10 pages or less	\$18.60
	(b) from 11 pages to 50 pages	\$74.30
	(c) from 51 pages to 100 pages	\$123.00
	(d) from 101 pages to 200 pages	\$195.00
	(e) for more than 200 pages	\$285.00

Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of half of the amount allowable under this item for the first copy of the brief or appeal book will be allowed for each additional brief or appeal book.

Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 pages may be treated as a separate brief or appeal book.

21	Care and consideration in the preparation of a brief is to be an amount in the discretion of the adjudicating officer but, in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters, the amount allowed is	\$85.00
22	Preparation of short form Claim for costs, per A4 page	\$65.00
23	Drawing and the engrossment of the original, and of the solicitor's own copy of—	
	(a) a proof of a witness for a brief, where it is not necessary substantially to recast any notes made of the statement of the witness or to collate any number of previous statements	
	(b) indices (where not otherwise provided)	
	(c) formal lists	

	(d) copies of extracts from other documents	
	per A4 page	\$32.00
24	The Lump Sum allowed on a default judgment pursuant to rule 229(4) of the Rules	\$1,790.00

**Notes**

- A** The amount allowed for each of the above items is to be at the discretion of the adjudicating officer, who is at liberty, in the particular circumstances of the matter, to disallow an item entirely or allow a greater or lesser amount for an item. The adjudicating officer may allow a greater amount when the matter is of importance or difficulty.
- B** Each Schedule of costs (other than a short form Claim for costs) must show—
- (a) the time spent on an attendance; and
  - (b) the number of A4 pages (or the equivalent) contained in any document for which a charge is made; and
  - (c) the name of any solicitor and the status of any clerk in respect of whom an attendance is charged; and
  - (d) a separate identifying number for each item and the date of the item; and
  - (e) the items of work and disbursements in chronological order.
- C** Where the time for an attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of the hour.
- D** Where, in this Schedule, fees (other than for photocopying, printing, electronic scanning, or sending and receiving fax transmissions) are set by reference to an A4 page, such fees are fixed (except in the case of correspondence) on the basis that the typed or printed content of each page consists of 30 lines of 12 size print with a left hand margin no wider than 4 centimetres and a right hand margin no wider than 2 centimetres). Where correspondence is concerned, the fee is fixed on the basis that the typed content of each page consists of 45 lines in 12 size print with margins as previously stated in this note. The fee allowable may be adjusted by the adjudicating officer depending on whether the document or correspondence in question exceeds or falls short of those standards.
- Where the contents of a document (or page of a document) are less than one A4 page in length, the fee allowed is, therefore, to be at the discretion of the adjudicating officer.
- E** Where a document is prepared on other than A4 paper, the amounts to be allowed under items 1, 2, 3 and 15 may be increased or decreased in the discretion of the adjudicating officer.
- F** Only the amount of disbursements actually paid or payable are to be shown in the Schedule as disbursements. Where a disbursement is yet to be paid, this must be specially stated.



- G** For drawing of any Schedule of costs (not including a short form Claim for costs), the adjudicating officer may allow an additional 50 per cent on all drawing fees.
- H** Such allowance for kilometrage by motor vehicle or other conveyance will be made as the adjudicating officer considers reasonable.
- I** Where the Court orders a party, or a party or person is otherwise required, to adjudicate costs both as between party and party and solicitor and client, the appropriate form is to be modified by the applicant so as to provide for the inclusion of both party and party and solicitor and client costs and the respondent's respective responses thereto.
- J** The maximum rate for perusal is appropriate for documents such as pleadings, particulars, advices and opinions and for the more complicated medical and expert reports. A middle range figure will be appropriate for standard expert reports, lists of documents and medical reports. The lower rate will apply to appearances, ordinary correspondence, special damages, vouchers and the like. In cases where a large volume of documents is required to be perused, an hourly rate may be allowed by the adjudicating officer instead of a perusal fee.
- K** When an instructing solicitor is in Court, the lower attendance rate should be allowed if the solicitor is merely assisting counsel by being present, but the higher rate should be allowed if the solicitor is more actively involved, for example, by proofing witnesses, preparing indices, etc.
- L** Where a substantial number of sheets are, or should be, photocopied at the same time, regard may be had to commercial photocopying rates in respect of multiple copies of the same document, for each sheet after the first.
- M** The costs allowed in the scale do not include the Goods and Services Tax (**GST**) which is to be added except in the following circumstances. GST should not be included in a claim for costs in a party/party Schedule of costs if the receiving party is able to recover GST as in input tax credit. Where 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 Schedule of costs. Where there is a dispute as to whether GST is properly claimed in the party/party Schedule of costs, the receiving party must provide a certificate signed by the solicitors or auditors of the receiving party as to the extent of any input tax credit available to the receiving party.

## Schedule 2—Scale of costs from 1 July 2011

(The amounts allowable under this Schedule may be increased by the operation of supplementary rule 219)

### DOCUMENTS

#### *Drawing and engrossing*

[Including original and the lawyer's file copy]

1	Drawing any document of importance other than correspondence and those listed in item 2, per ¼ page.	\$28.00
2	Drawing proofs, indices, formal lists, extracts from other documents, lists of authorities, or other formal documents, per ¼ page.	\$14.00
3	Engrossing documents, when copying or scanning is not appropriate, per ¼ page.	\$4.00

#### *Perusing and examining documents and electronic documents*

4	Perusing documents, per ¼ page.	\$2.00-\$8.00
5	Examining documents, when a perusal is not justified, per ¼ page.	\$0.50

#### *Documents produced by copying or scanning, or receiving emails, faxes, or any other electronic transmissions*

6	Per sheet.	\$0.30
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### ATTENDANCES AND COMMUNICATIONS

#### *Attendances and oral communications, whether personal or by electronic communication, and including attendances to swear or take affidavits, per six minute unit*

7	By a lawyer involving skill.	\$30.00
8	By a lawyer not involving skill.	\$18.00
9	By a non lawyer employed or engaged by a lawyer.	\$14.00
10	Arranging appointments, per person, including all work involved.	\$20.00

#### *Attending Hearings, including preparation, and when not attending as instructing lawyer for counsel*

11	Short.	\$110.00
12	Ordinary.	\$190.00
13	If protracted, per 6 minute unit of hearing time.	\$30.00

#### *Filing and delivery*

- 14 Filing or delivery of documents other than personal service, when no other attendance is properly allowable. \$20.00

#### **CORRESPONDENCE**

[Including original to send and the lawyer's file copy, and the ordinary postal or transmission expenses]

- 15 Whether sent by letter, email, SMS, or fax, per ¼ page. \$20.00
- 16 Circular correspondence, after the first, per item (plus copying for subsequent pages after the first page). \$10.00

#### **MISCELLANEOUS**

- 17 Paying disbursements by whatever means and including all work and associated expenses. \$20.00
- 18 Preparation of Trial Books, Tender Books, Books of Exhibits, Application Books, Appeal Books and Briefs, including indices, pagination and binding, per page. \$1.50
- 19 Lump sum on a default judgment. \$2040.00

#### **NOTES**

##### ***General***

- A** The amount allowed for each of the above items is to be at the discretion of the adjudicating officer, who is at liberty, in the particular circumstances of the matter, to disallow an item entirely or allow a greater or lesser amount for an item. The adjudicating officer may allow a greater amount where the matter is of importance or difficulty.
- B** The costs allowed in the scale do not include the Goods and Services Tax (**GST**) which is to be added except in the following circumstances. GST should not be included in a claim for costs in a short form Claim or Schedule of costs if the receiving party is able to recover GST as an input tax credit. If the receiving party is able to obtain an input tax credit for only a proportion of the GST, only the portion which is not eligible for credit should be claimed in the party/party Schedule of costs. If there is a dispute as to whether GST is properly claimed in the party/party Schedule of costs, the receiving party must provide a certificate signed by the lawyers or auditors of the receiving party as to the extent of any input tax credit available to the receiving party.

##### ***Attendances***

- C** A six minute unit comprises six minutes or part thereof, but no part is to be allowed as a full unit if it is unreasonable to do so.
- D** When a lawyer is instructing counsel, the lower attendance rate should be allowed if the lawyer is merely assisting by being present, but the higher rate should be allowed if the lawyer is more actively involved, for example, by proofing witnesses, preparing indices, etc.

##### ***Documents and perusals***

- E** Unless the adjudicating officer considers there is good reason to depart from it, pages for items in this Schedule are to be measured by compliance with supplementary rule 46 of the Supplementary Rules and on the basis that a full page contains 44 lines and a quarter page contains 11 lines. A part of a quarter page is to be treated as a full quarter page. Each page of a short form claim for costs or itemised schedule of costs drawn in accordance with the Supplementary Rules may be allowed as a standard page.
- F** If a document is prepared on other than A4 paper, the amounts to be allowed may be increased or decreased in the discretion of the adjudicating officer.
- G** A rate towards the maximum rate for perusal is appropriate for documents such as pleadings, particulars, advices and opinions and for the more complicated medical and expert reports. A middle range figure will be appropriate for standard expert reports, lists of documents and medical reports. A rate towards the lower rate will apply to appearances, notices of address for service, ordinary correspondence, special damages vouchers and the like. In cases in which a large volume of documents must be perused, an hourly rate may be allowed by the adjudicating officer instead of a perusal fee.

#### *Copying scanning and emailing*

- H** When a substantial number of sheets are, or should be, photocopied or scanned at the same time, regard may be had to commercial photocopying rates in respect of multiple copies of the same document, for each sheet after the first.
- I** When multiple emails or SMSs are claimed, those dealing with the same issues over a period of 48 hours extending over not more than 3 consecutive days excluding non-business days will be treated as one.

#### *Disbursements*

- J** Allowable disbursements are whenever possible to be included in the same item as the corresponding claim for lawyer's costs, but within the disbursements column.
- K** Only the amount of disbursements actually paid or payable are to be shown in the Schedule as disbursements. If a disbursement is yet to be paid, this must be specially stated.
- L** Such allowance for kilometrage by motor vehicle or other conveyance will be made as the adjudicating officer considers reasonable.

#### *Schedules of Costs*

[Note M amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

**M** A Claim for costs must show—

- (a) the time spent on an attendance; and
- (b) the number of A4 pages (or the equivalent) contained in any document for which a charge is made; and
- (c) the name of any lawyer and the status of any clerk in respect of whom an attendance is charged; and
- (d) a separate identifying number for each item and the date of the item; and

[Note M (e) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

- (e) the items of work and disbursements in chronological order with a total of disbursements and counsel fees after the total of the solicitor's charges; and

[Note M (f) amended by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

- (f) succinctly the nature of the work done (*Examples* att of sol X on cl, tel call by sol Y on cnsl; ltr to witnss, att of sol Z at dir hrng, perusing ltr from def's sols etc) and where possible, use recognised abbreviations (eg sol for solicitor, cl for client, ltr for letter etc)

[Note N inserted by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

- N** Copies of the accounts for counsel fees and other external disbursements must be attached to the claim for costs.

[Note N renumbered to O by Supreme Court Civil Supplementary Rules 2014 (Amendment No. 6)]

- O** When the Court orders a party, or a party or person is otherwise required, to adjudicate costs both as between party and party and lawyer and client, the appropriate form is to be modified by the applicant so as to provide for the inclusion of both party and party and lawyer and client costs and the respondent's respective responses thereto.

## History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
37	am am05	1 May 2016
38	am am05	1 May 2016
39	am am06	1 September 2016
49	ins am06	1 September 2016
53(2)	am am04	1 December 2015
53(3)	am am04	1 December 2015
58(2)	del am08	1 December 2017
67(3)	ins am02	1 September 2015
69(1)	am am05	1 May 2016
69A	ins am05	1 May 2016
74A	ins am02	1 September 2015
85(5)	ins am05	1 May 2016
162 Note	ins am02	1 September 2015
175	sub am05	1 May 2016
177	sub am04	1 December 2015
178	sub am04	1 December 2015
181(3)	am am01	9 October 2014
182(2)	am am08	1 December 2017
182(4)	del am08	1 December 2017
182(5) to (4)	ren am08	1 December 2017
182(6) to (5)	ren am08	1 December 2017
182(7) to (6)	ren am08	1 December 2017
189(2)(d)	del am01	9 October 2014
189(2)(e)	ren am01	9 October 2014
189(2)(f)	ren am01	9 October 2014
189(2)(g)	ren am01	9 October 2014
219(4)	am am03	1 October 2015
219(5)	ins am03 am am07	1 October 2015 1 October 2016
219(6)	ins am07 am am08	1 October 2016 1 December 2017
219(7)	ins am08 am am10	1 December 2017 1 December 2018
<b>219(8)</b>	ins am10 <b>am am13</b>	1 December 2018 <b>1 November 2019</b>
<b>219(9)</b>	<b>ins am13</b>	<b>1 November 2019</b>
200(2)(e)	am am01	9 October 2014
220	am am06	1 September 2016
222	sub am06	1 September 2016
224	del am06	1 September 2016
225(1)	am am06	1 September 2016
225(2)	am am06	1 September 2016
233A	ins am08	1 December 2017
239(1)(f)	sub am08	1 December 2017
239(5)(c)	del am08	1 December 2017
239(5)(d) to (c)	ren am08	1 December 2017
239(5)(e) to (d)	ren am08	1 December 2017
240	sub am08	1 December 2017
241	sub am08	1 December 2017

<b>Rules</b>	<b>Amendments</b>	<b>Date of Operation</b>
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
242	sub am08	1 December 2017
243	sub am08	1 December 2017
244	sub am08	1 December 2017
245(2)(e)	am am08	1 December 2017
Chapter 17, Part 12 (rules 331 to rule 345)	sub am09	7 June 2018
Chapter 17, Part 12 (rule 331 to rule 347)	sub am12	1 May 2019
331(h)	ins am02	1 September 2015
331(i)	ins am02	1 September 2015
336(1)(g)	am am08	1 December 2017
336(1)(l)	am am08	1 December 2017
336(1)(q)	ins am08	1 December 2017
337(1)	ins am05	1 May 2016
337(2) from (1)	ren and am am05	1 May 2016
337(2)(a)	ins am05	1 May 2016
337(2)(b) from (a)	ren am05	1 May 2016
337(2)(c) from (b)	ren am05	1 May 2016
337(2)(d) from (c)	ren am05	1 May 2016
337(2)(e) from (d)	ren am05 sub am08	1 May 2016 1 December 2017
337(2)(f) from (e)	ren am05	1 May 2016
337(2)(g) from (f)	ren am05	1 May 2016
337(2)(h) from (g)	ren am05	1 May 2016
337(2)(i) from (h)	ren am05	1 May 2016
337(2)(j)	ins am08	1 December 2017
337(3) from (2)	ren am05	1 May 2016
337(3)(a)	sub am05	1 May 2016
337(3)(g)	am am08	1 December 2017
337(4) from (3)	ren and del am05	1 May 2016
338(1)	am am05	1 May 2016
Second Schedule Note M	am am06	1 September 2016
Second Schedule Note M (e)	am am06	1 September 2016
Second Schedule Note M (f)	am am06	1 September 2016
Second Schedule renumber Note O from N	ren am06	1 September 2016
Second Schedule Note N	ins am06	1 September 2016