

**SUPREME COURT INDEPENDENT COMMISSIONER  
AGAINST CORRUPTION ACT RULES 2013**

The Supreme Court Independent Commissioner Against Corruption Act Rules 2013, dated 29<sup>th</sup> July 2013, came into operation on 1<sup>st</sup> September 2013 (*Government Gazette* 29 August 2013, p. 3631).

		<i>Gazette</i>	<i>Date of operation</i>
# 1	14 November 2013	28 November 2013 p. 4377	1 December 2013

1. **Short title**

These Rules may be cited as the Supreme Court Independent Commissioner Against Corruption Act Rules 2013.

2. **Commencement**

These Rules will come into operation on 1 September 2013, or upon their gazettal, whichever is the later.

3. **Interpretation**

In these Rules –

**the Act** means the Independent Commissioner Against Corruption Act 2012 (SA);

**the Commissioner** means the Independent Commissioner Against Corruption;

**examiner** has the same meaning as “examiner” in Schedule 2, clause 1 of the Act.

4. **Applications under s 31(2) for the issue of a search warrant**

(1) An application under s 31(2) of the Act for the issue of a search warrant is to be made using Form 1 to these Rules and must be accompanied by the affidavit required by s 31(5)(b) of the Act and by two copies of the proposed warrant, together with the number of copies which will be needed for service.

(2) An applicant is not to file the application, the supporting affidavit and the copies of the proposed warrant in the Registry but is instead to notify the Registrar orally that an application is to be made.

(3) Upon receiving notification that an application is to be made, the Registrar will appoint a time for the hearing of the application by a judge and will

make arrangements with the applicant for the delivery to the judge in advance of the hearing of the application, the supporting affidavit and the copies of the proposed warrant.

- (4) When a warrant is issued, the judge will arrange for the seal of the Court to be affixed to it, and will provide copies of the sealed warrant to the applicant.
- (5) At the conclusion of the hearing, the application, the affidavit in support, a copy of the warrant as issued, and any other documents relating to the application will be placed in an envelope which the applicant is to provide and which will be sealed and marked by the judge “Not to be opened without the permission of a judge”.

**5. Applications by email under s 31(4) of the Act for the issue of a search warrant**

[Rule 5 amended by Supreme Court Independent Commissioner Against Corruption Act Rules 2013 (Amendment No. 1)]

- (1) If an application is to be made under s 31(4) of the Act by email:

[Sub-paragraph 5(1)(a) amended by Supreme Court Independent Commissioner Against Corruption Act Rules 2013 (Amendment No. 1)]

- (a) the applicant must first notify the Registrar in order to ascertain an email address to which the documents may be sent and the Registrar will then arrange for a judge to consider the application;
  - (b) the application must be made using Form 1 and must in addition state the circumstances giving rise to the urgency of the application;
  - (c) the application must be accompanied by an affidavit of the applicant verifying the facts referred to in the application and a copy of the proposed warrant;
  - (d) the applicant must be available to speak to the judge by telephone and to provide such further information as may be required by the judge; and
  - (e) the judge may require the applicant to provide a further affidavit deposing to the additional information but may issue the warrant on the applicant’s undertaking to provide that affidavit.
- (2) If satisfied as to the circumstances of urgency and that it is appropriate to issue the search warrant, the judge will sign the warrant, indicate on the warrant the date and time on which the warrant is issued, arrange for the Court seal to be affixed to the warrant and forward a copy of the warrant to the applicant by email.
  - (3) If the applicant has undertaken to provide a further affidavit, the applicant must, as soon as practicable after the issue of the warrant, deliver to the judge an affidavit verifying the additional information.
  - (4) After the issue of the warrant, the application, the affidavit in support, an original of the warrant and any other documents relating to the application will be placed in an envelope which will be sealed and marked by the judge “Not to be opened without the permission of a judge”.

**6. Applications by telephone under s 31(4) of the Act for the issue of a search warrant**

- (1) If an application is to be made under s 31(4) of the Act by telephone:

- (a) the applicant should in the first instance, and whether within or outside normal business hours, contact the Registrar and the Registrar will appoint a time for the hearing of the application by a judge as soon as practicable;
  - (b) before making the application, the applicant must prepare an affidavit deposing to the grounds on which the issue of the warrant is sought but may, if it is necessary to do so, make the application before the affidavit has been sworn or affirmed;
  - (c) the applicant must inform the judge of the applicant's name and position;
  - (d) the applicant must inform the judge of the purpose for which the search warrant is required, the grounds on which it is sought and the circumstances giving rise to the urgency of the application; and
  - (e) the applicant must, either before or while speaking to the judge, provide the proposed terms of the warrant.
- (2) If satisfied as to the circumstances of urgency and that it is appropriate to issue the warrant, the judge will inform the applicant of the facts on which the judge relies as grounds for the issue of the warrant, but will not issue the warrant unless the applicant first undertakes to provide an affidavit verifying those facts.
- (3) If the applicant gives such an undertaking, the judge may then make out and sign a warrant, indicating the date and time at which the warrant was issued.
- (4) The judge will inform the applicant of the terms of the warrant and the date and time at which it was issued.
- (5) The applicant must fill out and sign a warrant form (the duplicate warrant) which includes:
- (a) the name of the judge who issued the original;
  - (b) the terms of the warrant as stated by the judge; and
  - (c) the date and time at which the warrant was issued.
- (6) The applicant must, as soon as practicable after the issue of the warrant, deliver to the judge an affidavit verifying the facts referred to in subrule (2) and a copy of the duplicate warrant.
- (7) The documents referred to in subrule (6) should be contained in a sealed envelope marked "To be opened only by Justice .....".
- (8) If the judge is satisfied with the documents provided under subrule (6), the judge will cause the affidavit, copy duplicate, warrant and any other documents relating to the application to be placed in an envelope which will be sealed and marked by the judge "Not to be opened without the permission of a judge".

**7. Retention of documents in a secure repository**

The sealed envelopes referred to in Rules 4(6), 5(4), and 6(8):

- (a) are to be kept in a secure repository by the Registrar for the period written on the face of the envelope by the Judge who heard the application; and

- (b) are not to be opened except by, and in accordance with, an order of a judge of the Court.

**8. Applications under clause 9, Schedule 2 for the issue of a warrant of arrest**

- (1) An application under clause 9 of Schedule 2 of the Act for the issue of a warrant of arrest is to:
  - (a) be in the form of Form 2;
  - (b) name as the respondent to the application the person in respect of whom the warrant is sought;
  - (c) be accompanied by an affidavit in which the examiner deposes in detail to the circumstances relied upon for the issue of the warrant; and
  - (d) be accompanied by two copies of the proposed warrant.
- (2) If the examiner intends that the application be heard and determined without notice to the person, the examiner is not to file the application, the supporting affidavit and the copies of the proposed warrant in the Registry but is instead to notify the Registrar orally that an application is to be made.
- (3) Upon receiving notification that an application is to be made, the Registrar will appoint a time for the hearing of the application by a judge and will make arrangements with the applicant for the delivery to the judge in advance of the hearing of the application the supporting affidavit and the copies of the proposed warrant.
- (4) At the hearing of the application, the judge may:
  - (a) issue the warrant, arrange for the seal of the Court to be affixed to it and provide a copy of the warrant to the applicant; or
  - (b) make orders as to the filing and service of the application and affidavit; and, in each case;
  - (c) make such orders as are necessary to ensure the confidentiality of the proceedings, the application, the affidavit, the order and any other documents relating to the application.
- (5) Applications under clause 9 of Schedule 2 to the Act to which subrules (2), (3) and (4) do not apply are to be filed and served upon the respondent.
- (6) The Court will fix a date and time for the hearing of applications to which subrule (5) applies at the time of filing and such date and time is to be endorsed on the copy of the application served on the respondent.

**9. Provision of Warrants**

A person executing a warrant issued under these Rules must, unless it is not reasonably practical to do so, show the warrant to the occupier of a place, or the owner or driver of a vehicle, to which the warrant applies and, on request, provide a copy of the warrant to that occupier, owner or driver as the case may be.

**10. Contempt applications**

- (1) An application by an examiner under clause 13 in Schedule 2 of the Act for a person to be dealt with in relation to a contempt of the Commissioner is to be commenced by a summons under rule 34 of the Supreme Court Civil Rules 2006.

- (2) A summons under subrule (1) must be accompanied by:
  - (a) an application for directions under rule 131 of the Supreme Court Civil Rules 2006;
  - (b) an affidavit of the examiner in which the examiner:
    - (i) exhibits the certificate to which clause 13(3) in Schedule 2 of the Act refers;
    - (ii) deposes to his or her belief in the accuracy of the grounds on which the application is made, as stated in the certificate, and in the truth of the evidence relied upon in support of the application, as stated in the certificate.
- (3) If the application is in respect of a person who has been detained under clause 15 of Schedule 2 of the Act, the examiner is:
  - (a) to include an endorsement on the summons to that effect;
  - (b) to request, at the time of filing of the summons, that the summons be listed before a judge as a matter of urgency for directions under clause 15 of Schedule 2 of the Act.
- (4) At the hearing of the application for directions filed under subrule (2), the Court will give directions as to the conduct of the application.
- (5) An examiner may withdraw an application under this rule by filing a notice of discontinuance.

#### **11. Applications for surrender of passports**

- (1) An application by an examiner under clause 18 of Schedule 2 of the Act for an order that a person appear before a judge to show cause why he or she should not be ordered to deliver his or her passport or passports to the examiner is to be made by a summons under rule 34 of the Supreme Court Civil Rules 2006.
- (2) The summons under subrule (1) must be accompanied by:
  - (a) an application for directions;
  - (b) an affidavit of the examiner in which the examiner deposes to the grounds of the application.
- (3) The summons, application for directions and supporting affidavit need not be served on any person before the first hearing of the application for directions, and the application may be heard without notice to any other person.
- (4) Subject to any contrary order or direction of the judge, on the first hearing of the application for directions, the Court will consider whether to make an order requiring the person to appear before a judge of the Court to show cause why he or she should not be ordered to deliver the passport or passports to the examiner, and will give directions as to the conduct of the application as the Court thinks fit.
- (5) An order under clause 18(1) of Schedule 2 of the Act requiring a person to show cause why he or she should not be ordered to deliver his or her passport or passports to the examiner will be in Form 3 to these Rules.

**APPLICATION FOR A SEARCH WARRANT**

**Independent Commissioner Against Corruption Act 2012, s 31**

Applicant’s name [*in full*] .....

1. I am an investigator appointed or seconded under s 14 of the Independent Commissioner Against Corruption Act 2012 (SA) (the Act).

2. I apply for the issue of a warrant under s 31 of the Act for the purposes of the investigation by the Independent Commissioner Against Corruption into

.....

*[insert details of the investigation by the Commissioner including details of the matters indicating that the investigation concerns a potential issue of corruption in public administration]*

2. I apply for a warrant authorising the investigation and search of .....

.....

*[insert details of the private place or private vehicle in respect of which the issue of the warrant is sought]*

and seek to be able to exercise the warrant during the following hours of the day or night...../at any time of the day or night [*delete whichever is inapplicable*]

3. I apply for the warrant on the following grounds:

.....

*[set out in detail the grounds upon which it is said that the warrant is reasonably required for the purposes of the investigation]*

4. The grounds of the application are verified in my accompanying affidavit.

5. The circumstances of urgency making it appropriate for the application to be made by email are .....

*[to be completed only in relation to applications made by email under s 31(4) of the Act]*

6. I propose that the Court should retain the application, accompanying affidavit and all documents associated with this application for a period of at least .....years before destroying them.

Signature of applicant: .....

Address and contact details of applicant: .....

.....

Dated the .....day of ..... 20 .....

APPLICATION FOR A WARRANT OF ARREST

Independent Commissioner Against Corruption Act 2012, cl 9 of Sch 2

Supreme Court of South Australia Applicant .....

No ..... of 20 ..... Respondent .....

Applicant's name [in full] .....

1. I am the Commissioner/the Deputy Commissioner/examiner appointed under s 14 of the Independent Commissioner Against Corruption Act 2012 (SA) (the Act). [delete whichever is inapplicable]

2. I apply under clause 9 of Schedule 2 of the Act for the issue of a warrant for the apprehension of [insert full name and address of the person who is to be the subject of the warrant]

.....

3. I make the application on the following grounds:
[set out in detail the grounds upon which the warrant is sought]

.....

4. The grounds of the application are verified in my accompanying affidavit.

5. The above application will be heard by a judge in chambers at the Supreme Court, Victoria Square, Adelaide at .....am/pm, on ..... [date], [month], [year]

Signature of applicant: .....

Address and contact details of applicant: .....

.....

Dated the .....day of ..... 20 .....

**ORDER TO SHOW CAUSE**

**Independent Commissioner Against Corruption Act 2012, cl 18 of Sch 2**

Supreme Court of South Australia

No .....of 20.....

Applicant .....

Respondent.....

**ORDER**

Judge .....

Date of order : .....

To: *[insert name and address of the respondent]*

The Court orders that you appear before the Supreme Court of South Australia at the time and place stated below to show cause why you should not be ordered under clause 18 of Schedule 2 of the Independent Commissioner Against Corruption Act 2012 to deliver your passport or passports to the applicant.

The grounds upon which you are required to show cause are set out in the summons and affidavit of the applicant which accompany this order.

You must file a notice of address for service in accordance with Rule 59 of the Supreme Court Civil Rules 2006 in the Registry before attending Court.

**Time and date for hearing:** .....

**Place:** .....

Signed .....

Dated the .....day of ..... 20 .....



## History of Amendment

<b>Rules</b>	<b>Amendments</b>	<b>Date of Operation</b>
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
<b>5</b>	<b>am1</b>	<b>1 December 2013</b>
<b>5(1)(a)</b>	<b>am1</b>	<b>1 December 2013</b>
<b>Form 1</b>	<b>am1</b>	<b>1 December 2013</b>
<b>Form 2</b>	<b>am1</b>	<b>1 December 2013</b>