

South Australia

Supreme Court Special Applications Rules 2014

The Supreme Court Special Applications Rules 2014, dated 25th August 2014, that came into operation on 1st October 2014 (Government Gazette on 11th September 2014, p. 5115) have been varied by Supreme Court rules dated:

| | | <i>Gazette</i> | <i>Date of operation</i> |
|-----|------------------------|---------------------------------|--------------------------|
| # 1 | 29 February 2016 | 14 April 2016, p. 1228 | 1 May 2016 |
| #2 | 30 October 2017 | 28 November 2017, p 4798 | 18 December 2017 |

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 Special Applications Rules 2014.

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History of Amendment

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

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

2—Commencement

These Rules commence on 1 October 2014.

Part 2—Interpretation

3—Interpretation

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

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

Court means the Supreme Court of South Australia;

Director means the Director of Public Prosecutions within the meaning of section 24 of the *Witness Protection Act 1996*;

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

Police Commissioner means the Commissioner of Police within the meaning of section 2(1) of the *Terrorism (Police Powers) Act 2005*, section 3(1) of the *Witness Protection Act 1996* or section 3 of the *Serious and Organised Crime (Control) Act 2008* or of the *Police Act 1998* as the requires;

prospective witness means a prospective witness within the meaning of section 24(1) of the *Witness Protection Act 1996*;

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

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

search warrant means a warrant under section 31 of the *Independent Commissioner Against Corruption Act 2012*, section 16 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*; section 29 of the *Australian Crime Commission (South Australia) Act 2004* or section 22 of the *Australian Crime Commission Act 2002 (Cth)*;

Supplementary Rules — see rule 9.

[interpretation inserted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

surveillance authority confirmation means a confirmation of a surveillance device (emergency) authority under sections 22 and 23 of the *Surveillance Devices Act 2016*;

[interpretation substituted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

surveillance warrant means a surveillance device (general) warrant under sections 17 to 19 of the *Surveillance Devices Act 2016*;

warrant means a search warrant or surveillance warrant;

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

Part 3—Application of rules

4—Application of rules

These Rules apply to proceedings under the following Acts—

- (a) the *Australian Crime Commission (South Australia) Act 2004*;
- (b) the *Australian Crime Commission Act 2002* (Cth);
- (c) the *Criminal Investigation (Covert Operations) Act 2009*;
- (d) the *Independent Commissioner Against Corruption Act 2012*;

[paragraph 4(e) amended by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (e) the *Serious and Organised Crime (Control) Act 2008*;

[paragraph 4(f) amended by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (f) the *Serious and Organised Crime (Unexplained Wealth) Act 2009*;

[paragraph 4(g) amended by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (g) the *Surveillance Devices Act 2016*;
- (h) the *Terrorism (Police Powers) Act 2005*;
- (i) the *Terrorism (Preventative Detention) Act 2005*;
- (j) the *Witness Protection Act 1996*.

5—Application of Supreme Court Civil Rules

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

Part 4—Repeal and transitional provision

6—Repeal

The following rules are repealed—

- (a) the *Listening and Surveillance Devices Rules 2005*;

- (b) the *Supreme Court Independent Commissioner Against Corruption Act Rules 2013*;
- (c) the *Supreme Court Witness Protection Act Rules 2009*;
- (d) the *Terrorism (Police Powers) (Supreme Court) Rules 2006*;
- (e) the *Terrorism (Preventative Detention) (Supreme Court) Rules 2006*.

7—Transitional provision

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

Chapter 2—General procedural rules

8—Power of court to control procedure

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

9—Supplementary rules

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

10—Filing and retention of documents

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

contents to the applicant or other person who lodged them with the Court or destroy them.

11—Confidential material

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

12—Provision of search warrants

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

[paragraph 12(a) amended by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

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

[paragraph 12(b) amended by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

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

Chapter 3—Private applications

Part 1—Introduction

13—Application of Chapter

This Chapter applies to—

- (a) applications for a search warrant under section 22 of the *Australian Crime Commission Act 2002* (Cth), section 29 of the *Australian Crime Commission (South Australia) Act 2004*, section 31 of the *Independent Commissioner Against Corruption Act 2012* or section 16 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*;

[paragraph 13(b) substituted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (b) applications for a surveillance warrant under section 17 and applications for confirmation of surveillance device (emergency) authorities under section 22 of the *Surveillance Devices Act 2016*;

[paragraph 13(ba) inserted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (ba) applications to authorise use, communication or publication of information or material under sections 9, 10 and 11 of the *Surveillance Devices Act 2016*

- (c) applications for a monitoring order under section 14 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*;

- (d) applications to confirm a special powers authorisation or special area declaration under section 3 or 13 of the *Terrorism (Police Powers) Act 2005*;

- (e) applications to authorise the establishment of a new identity or restoration of the former identity of a witness under a witness protection program under section 17 of the *Witness Protection Act 1996*;

- (f) applications to authorise the making or cancellation of an entry in the Register of Births, Deaths and Marriages under section 12 or 13 of the *Criminal Investigation (Covert Operations) Act 2009*;

- (g) applications relating to disclosure of information concerning a witness under a witness protection program under section 21(3) or (4) of the *Witness Protection Act 1996*; and

- (h) disclosure and review of information under section 24 of the *Witness Protection Act 1996*.

[paragraph 13(i) inserted by Supreme Court Special Applications Rules 2014 (Amendment No. 1)]

- (i) applications by the Independent Commissioner Against Corruption or an examiner within the meaning of the *Independent Commissioner Against Corruption Act 2012* for leave to serve a summons or notice outside the State pursuant to section 76 of the *Service and Execution of Process Act 1992* (Cth).

Part 2—Application

14—Originating application

- (1) Subject to rules 15 and 16, an application or disclosure to which this Chapter applies is to be made in person to a Judge in private and initiated by originating application.

[subrule 14(2) substituted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (2) An application under section 17 of the *Surveillance Devices Act 2016* to issue, renew or vary a surveillance device (general) warrant is to be—
 - (a) in accordance with section 17(4) of the *Surveillance Devices Act 2016*;
 - (b) for an application for the issue of a surveillance device (general) warrant under subsection 17(1), in the form set out in the Schedule to the *Supreme Court Special Applications Supplementary Rules 2014*;

[subrule 14(2A) inserted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (2A) An application under section 22 of the *Surveillance Devices Act 2016* to confirm a surveillance device (emergency) authority and the exercise of powers thereunder is to be—
 - (a) in accordance with section 22(3) of the *Surveillance Devices Act 2016*;
 - (b) in the form set out in the Schedule to the *Supreme Court Special Applications Supplementary Rules 2014*.
 - (c) for an application for the renewal of a surveillance device (general) warrant under subsection 17(2), in the form set out in the Schedule to the *Supreme Court Special Applications Supplementary Rules 2014*;
 - (d) for an application for the variation of a surveillance device (general) warrant under subsection 17(2), in the form set out in the Schedule to the *Supreme Court Special Applications Supplementary Rules 2014*.
- (3) Any other application to which this Chapter applies is to be—
 - (a) in accordance with the relevant statutory provision; and
 - (b) in an approved form.
- (4) A disclosure by the Director under section 24(5) to (9) of the *Witness Protection Act 1996* relating to a prospective witness who is, was, or may be under a witness protection program is to be made immediately after the later of—
 - (a) the first directions or other hearing before a judicial officer of the Court; or
 - (b) the Director becoming aware that a prospective witness is, was, or may be under a witness protection program.
- (5) The applicant is to notify the Registrar orally that an application is to be made and of the general nature of the application.
- (6) The Registrar will appoint a time for hearing the application by a Judge.
- (7) The Registrar will make arrangements with the applicant for delivery to the Registrar in advance of the hearing of the originating application and documents in support of the application in an envelope marked “Strictly Confidential. Application under the [name] Act. Not to be opened other than by Justiceor pursuant to the order of the Chief Justice”.

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

15—Email or facsimile application

- (1) This rule applies to—
 - (a) an email application under section 31(4) of the *Independent Commissioner Against Corruption Act 2012* for issue of a search warrant;

[paragraph 15(1)(b) substituted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (b) a facsimile, email or other electronic written application under section 18 of the *Surveillance Devices Act 2016* for issue of a surveillance device (general) warrant;
 - (c) a facsimile application under section 3(5) or (6) of the *Terrorism (Police Powers) Act 2005* for confirmation that the relevant authority has or had proper grounds for issuing a special powers authorisation.
- (2) The applicant is to notify the Registrar orally that an application is to be made and of the general nature of the application and to ascertain an email address or facsimile number, as the case may be, to which the documents may be sent.
- (3) The applicant is to send to the Registrar at the designated email address or facsimile number an originating application using the appropriate form prescribed by rule 14(2) or (3) together with the supporting documents required by rule 17. The documents are not to be filed or lodged in the Registry and the proceeding is not to be entered in the records of the Court.

[subrule 15(4) substituted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (4) An application for a surveillance warrant is to be made in accordance with section 18(3) of the *Surveillance Devices Act 2016*.
- (5) The Registrar will appoint a time for a Judge to hear the application as soon as practicable.
- (6) The Registrar will place the application and documents in support of the application in an envelope marked “Strictly Confidential. Application under the [name] Act. Not to be opened other than by Justice or pursuant to the order of the Chief Justice”.
- (7) The Registrar will deliver the sealed envelope personally to the Judge. The documents are not to be filed or lodged in the Registry and the proceeding is not to be entered in the records of the Court.
- (8) The applicant is to be available to speak to the Judge by telephone and is to provide such further information as is required by the Judge.
- (9) The Judge may require the applicant to provide a further affidavit deposing to the additional information but may issue the warrant on the applicant’s undertaking to provide that affidavit.
- (10) If the applicant has undertaken to provide a further affidavit, the applicant is, as soon as practicable after issue of the warrant, to deliver to the Judge an affidavit verifying the additional information.

16—Telephone application

- (1) This rule applies to a telephone application under—

[paragraph 16(1)(a) substituted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (a) section 23 of the *Australian Crime Commission Act 2002* (Cth), section 30 of the *Australian Crime Commission (South Australia) Act 2004*, section 31(4) of the *Independent Commissioner Against Corruption Act 2012*, section 18 of the *Surveillance Devices Act 2016* or section 16(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for the issue of a warrant; or
- (b) section 3(5) or (6) of the *Terrorism (Police Powers) Act 2005* for confirmation that the relevant authority has or had proper grounds to issue a special powers authorisation.
- (2) Before making the application, the applicant is to prepare the form of the proposed warrant or special powers authorisation.

Note—

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

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

Part 3—Documents in support of application

17—Documents in support of application

- (1) An application under rule 14 or 15 is to be accompanied by an affidavit verifying—
 - (a) the grounds of the application;
 - (b) any relevant matters required by the relevant legislation or any applicable regulations to be verified by affidavit or to be established to the satisfaction of or taken into account by the Judge; and
 - (c) in the case of an email or facsimile application when permitted by the relevant legislation, the circumstances giving rise to the urgency of the application.
- (2) When it is not practicable to obtain an affidavit from a witness who is able to speak of his or her own knowledge, an affidavit may contain statements that the witness reasonably believes to be true if the witness also states the grounds of the belief.
- (3) There is to be exhibited to the supporting affidavit—

[paragraph 17(3)(a) deleted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (a) *****

[paragraph 17(3)(b) renumbered to (a) by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (a) in the case of an application under section 3(5) or (6) of the *Terrorism (Police Powers) Act 2005* for confirmation that the relevant authority had or has proper grounds to issue a special powers authorisation, a copy of the issued or proposed special powers authorisation referred to in regulation 4(2)(c)(i) of the *Terrorism (Police Powers) Regulations 2006*;

[paragraph 17(3)(c) renumbered to (b) by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (b) in the case of an application under section 13(3) of the *Terrorism (Police Powers) Act 2005* for confirmation that issuing a special area declaration by the Police Commissioner is appropriate in the circumstances, a copy of the proposed special area declaration referred to in regulation 5(1)(b) of the *Terrorism (Police Powers) Regulations 2006*;

[paragraph 17(3)(d) renumbered to (c) by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (c) in the case of an application under section 17 of the *Witness Protection Act 1996* to authorise the establishment of a new identity or restoration of the former identity of a witness under a witness protection program, a copy of the relevant memorandum of understanding referred to in section 17(5)(b) of the *Witness Protection Act 1996*.
- (4) An application under rule 14 or 15 is to be accompanied by—
 - (a) in the case of an application for a warrant—two copies, together with the number of copies needed for service, of the proposed warrant; or
 - (b) in the case of any other application—minutes of order.

Part 4—Hearing and determination

18—Hearing and determination of application

- (1) The hearing of an application under this Chapter will be conducted in private. The Judge may give directions concerning any other persons being present or taking a transcript or record of the proceeding.
- (2) The applicant is to provide such further information as may be required by the Judge.
- (3) Upon hearing an application for a warrant, the Judge will—
 - (a) inform the applicant of the Judge’s decision; and
 - (b) if satisfied of the matters required by the relevant legislation, any applicable regulations and these Rules and that it is appropriate to issue the warrant—
 - (i) inform the applicant of the grounds on which the Judge relies for the issue of the warrant and of the terms of the warrant;
 - (ii) sign the warrant and indicate on the warrant the date and time when the warrant is issued;
 - (iii) arrange for the Court seal to be affixed to the warrant; and
 - (c) if so satisfied, arrange for a copy of the warrant to be provided to the applicant—
 - (i) when the application is made in person—in person;
 - (ii) when the application is made by facsimile—by facsimile or, if an email address is available, by email;
 - (iii) when the application is made by telephone or email—by email.

[subrule 18(4) substituted by Supreme Court Special Applications Rules 2014 (Amendment No. 2)]

- (4) A surveillance warrant issued under the *Surveillance Devices Act 2016* is to be in the form set out in the Schedule to the *Supreme Court Special Applications Supplementary Rules 2014* with such variations as are appropriate when a remote application is made under section 18 of the *Surveillance Devices Act 2016*.
- (5) Upon hearing an application for confirmation that the relevant authority had or has proper grounds to issue a special powers authorisation or that the issue of a special area declaration by the Police Commissioner is appropriate in the circumstance, the Judge will—
 - (a) inform the applicant of the Judge’s decision; and
 - (b) if satisfied of the matters required by the relevant legislation, any applicable regulations and these Rules, confirm that the relevant authority had or has proper grounds to issue a special powers authorisation or that the issue of a special area declaration by the Police Commissioner is appropriate in the circumstances.
- (6) Upon hearing any other application under this Chapter, the Judge will—
 - (a) inform the applicant of the Judge’s decision; and

- (b) if satisfied of the matters required by the relevant legislation, any applicable regulations and these Rules and that it is appropriate to make the order sought—
 - (i) inform the applicant of the grounds on which the Judge relies for making the order and the terms of the order;
 - (ii) draw up the order if necessary and arrange for the Court seal to be affixed to the order; and
 - (iii) arrange for a copy of the order to be provided to the applicant in person.
- (7) A copy of any order made under section 24 of the *Witness Protection Act 1996* when the substantive proceeding is in another court is to be provided to that court in a sealed envelope only to be opened by the Judge or Magistrate presiding at the trial of the proceeding.
- (8) The Judge may give any consequential directions to give effect to any decision or order and to ensure the confidentiality of the proceeding as the Judge thinks fit.
- (9) After the hearing and determination of an application under this rule, the application, affidavit, warrant issued or order made and any other documents relating to the application will be placed in an envelope that will be sealed and marked by the Judge “Not to be opened without the permission of a Judge”. The documents are otherwise to be dealt with in accordance with such directions as are given by the Court to ensure that they remain confidential.

Chapter 4—Review of preventative detention orders

19—Application of Chapter

This Chapter applies to the review of a preventative detention order under section 17 of the *Terrorism (Preventative Detention) Act 2005*.

20—Interpretation

In this Chapter –

the Act means the *Terrorism (Preventative Detention) Act 2005*;

applicant means the police officer bringing the subject before the Court for review under the Act;

subject means the subject detained under the Act.

21—Application

- (1) A review to which this Chapter applies is to be initiated by originating application in an approved form.
- (2) The application is to name as defendant the subject of the preventative detention order.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the preventative detention order; and
 - (c) the order sought.
- (4) The application is to be supported by an affidavit—
 - (a) identifying the circumstances in which the preventative detention order was made and giving rise to its making; and
 - (b) exhibiting a copy of the preventative detention order and all other materials before the issuing authority.

22—Arrangement of hearing

- (1) The applicant is to notify the Registrar orally that an application is to be made and of the general nature of the application.
- (2) The Registrar will appoint a time for hearing the application by a Judge.
- (3) The Registrar will determine whether some or all of the documents lodged or to be lodged are to be filed in the Court or merely delivered to the Judge who is to hear the review.
- (4) When the Registrar determines that documents are to be delivered to the Judge who is to hear the review—
 - (a) the Registrar will make arrangements with the applicant for delivery to the Registrar in advance of the hearing of those documents in an envelope marked “Strictly Confidential. Documents relating to application under the *Terrorism (Preventative Detention) Act 2005*. Not to be opened other than by Justiceor pursuant to the order of the Chief Justice”;

- (b) the Registrar will deliver the sealed envelope personally to the Judge without being filed or lodged in the Registry; and
- (c) the documents are not to be filed or lodged in the Registry and the proceeding is not to be entered in the records of the Court.

23—Hearing and determination

- (1) Subject to the directions of the Court, the hearing of an application to which this Chapter applies will be in private in the presence of the applicant, the subject, their lawyers and such other persons as the Court may permit.
- (2) The Court may direct that the hearing be conducted as an audio visual hearing.

Note—

Section 17(2) of the Act authorises the giving of such a direction.

- (3) An order made under section 17(3) of the Act may include such consequential directions to give effect to the order as the Court thinks fit. The order will be drawn up and sealed in such manner as the Court directs and provided to the applicant and to such persons and in such manner as the Court directs.

Note—

Section 17(3) of the Act sets out the powers that the Court may exercise on a review.

Chapter 5—Serious and organised crime applications

Part 1—Declared organisations

Division 1—Preliminary

24—Application of Part

This Part applies to applications to make, register, vary, revoke or cancel declarations in relation to organisations and control orders in relation to persons under the *Serious and Organised Crime (Control) Act 2008*.

25—Interpretation

In this Part –

the Act means the *Serious and Organised Crime (Control) Act 2008*.

26—Directions

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

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

Division 2—Declarations

27—Application for declaration

- (1) An application under section 9(1) of the Act for a declaration that an organisation is a declared organisation is to be made by originating application in an approved form.
- (2) The application is to name as defendant the organisation the subject of the application and such other persons as are necessary parties.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the organisation in respect of which the declaration is sought;
 - (c) the order sought; and
 - (d) the matters set out in section 9(2)(c) to (f) of the Act either by reference to the accompanying affidavit or in the application.
- (4) The application is to be accompanied by an affidavit by a police officer verifying the matters set out in section 9(2)(b) to (f) of the Act.
- (5) The Court may give directions relating to inspection of an application or supporting affidavit by a person.

- (6) An application under section 15(1)(e) of the Act to make submissions, or an application under section 15(1) of the Act to make written submissions, at the hearing of the application is to be made by interlocutory application in the proceeding instituted under subrule (1).

Note 1—

Section 10(1) of the Act requires the Police Commissioner to publish notice of the application in the Gazette and a newspaper circulating generally throughout the State.

Note 2—

Section 9(6) of the Act requires the Police Commissioner, subject to preserving confidentiality in criminal intelligence, to make a copy of an application and supporting affidavit available for inspection by a representative, member or former member of the organisation, person who may be directly affected by the outcome of the application and any other person whom the Court considers should be provided with an opportunity to inspect them.

Note 3—

Section 11(1) of the Act requires the Police Commissioner to publish notice of any declaration made by the Court in the Gazette and a newspaper circulating generally throughout the State.

Note 4—

Section 15(1) of the Act specifies who has standing to make submissions at the hearing.

Note 5—

Section 18 of the Act provides that the Court is not bound by the rules of evidence but may inform itself on any matter as it thinks fit; and must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

28—Application to revoke declaration

- (1) An application under section 14(1) of the Act to revoke a declaration that an organisation is a declared organisation is to be made by interlocutory application in the proceeding instituted under rule 27.

Note —

Section 14(1) of the Act specifies who has standing to make an application.

- (2) An application under section 14(1)(b)(iii) of the Act for permission to apply to revoke a declaration that an organisation is a declared organisation is to be made in the same interlocutory application seeking the revocation.

Note —

Section 14(1)(b)(iii) of the Act specifies who has standing to apply for permission to make the application.

- (3) An application under section 14(2) of the Act for permission to make the application is to be made in the same interlocutory application seeking the revocation.

Note —

Section 14(2) of the Act provides that permission of the Court is required if a revocation application has been made within the preceding 12 months and either been refused or not finally determined.

- (4) The application is to identify—
- (a) the nature of the application;
 - (b) the order sought;
 - (c) short grounds of the application; and
 - (d) the information supporting the grounds either by reference to the accompanying affidavit or in the application.

Note —

Section 14(3) of the Act requires the grounds and information supporting the grounds to be set out and verified by affidavit.

- (5) The application is to be supported by an affidavit—
- (a) verifying the detailed grounds of the application and the information supporting the grounds; and
 - (b) in the case of an application for permission under section 14(1)(b)(iii) or 14(2) of the Act, verifying also the grounds on which permission is sought.

Note 1 —

Section 14(6) of the Act requires the application and supporting affidavit, if not made by the Police Commissioner, to be served on the Police Commissioner.

Note 2—

Section 14(7) of the Act requires the Police Commissioner to publish notice of the application in the Gazette and a newspaper circulating generally throughout the State.

Note 3—

Section 14(10) of the Act requires the Police Commissioner to publish notice of any revocation of a declaration made by the Court in the Gazette and a newspaper circulating generally throughout the State.

Note 4—

Section 15(1) of the Act specifies who has standing to make submissions at the hearing.

Note 5—

Section 18 of the Act provides that the Court is not bound by the rules of evidence but may inform itself on any matter as it thinks fit; and must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

Division 3—Application for control order

29—Application for control order

- (1) An application under section 22(1) of the Act for a control order in relation to a person is to be made by originating application in an approved form.
- (2) The application is to name as defendant the subject of the application.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the person in respect of whom the control order is sought;
 - (c) the order sought; and
 - (d) short grounds of the application.
- (4) The application is to be accompanied by an affidavit by a police officer verifying the detailed grounds of the application.

Note —

Section 22(2) of the Act prescribes the matters of which the Court must be satisfied before making a control order.

30—Application for interim control order

- (1) An application under section 22A of the Act for an interim control order is to be made by interlocutory application in the proceeding instituted under rule 29.
- (2) The application is to be supported by an affidavit verifying the detailed grounds for an interim control order and any application to proceed without notice.
- (3) The Court may, if it thinks fit, make the order without notice.

31—Objection when interim control order made without notice

- (1) A notice of objection under section 22D of the Act to an interim control order made without notice is to be made by interlocutory application in the proceeding instituted under rule 29.

Note—

Section 22D(2) of the Act requires a notice of objection to be lodged within 14 calendar days of service of the interim control order or such longer period as the Court may allow.

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

Note—

Section 22D(3) of the Act requires that the Police Commissioner be served with the notice of objection by registered post.

32—Application to revoke or vary control order

- (1) An application under section 22C(1) of the Act to revoke or vary a control order is to be made by interlocutory application in the proceeding instituted under rule 29.
- (2) An application under section 22C(2) of the Act for permission to apply to revoke or vary a control order is to be made in the same interlocutory application seeking the revocation or variation.
- (3) The application is to be supported by an affidavit—
 - (a) verifying the detailed grounds for the revocation or variation; and
 - (b) in the case of an application under section 22C(2) of the Act, also verifying the grounds on which permission is sought.
- (4) The application and supporting affidavit need not be served on the respondent in the first instance if the applicant applies for an interim variation order without notice under section 22C(6) of the Act.

33—Application for interim variation order

- (1) An application for an interim revocation order under section 22C(5) of the Act is to be made by interlocutory application in the proceeding instituted under rule 29.
- (2) The application is to be supported by an affidavit stating the grounds for the application for an interim variation order and any application to proceed without notice.
- (3) The Court may, if it thinks fit, make the order without notice.

34—Objection when interim variation order made without notice

- (1) A notice of objection under section 22D of the Act to an interim variation order made without notice is to be made by interlocutory application in the proceeding instituted under rule 29.

Note—

Section 22D(2) of the Act requires a notice of objection to be lodged within 14 calendar days of service of the interim variation order or such longer period as the Court may allow.

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

Note—

Section 22D(3) of the Act requires that the Police Commissioner be served with the notice of objection by registered post.

Division 4—Registration of declarations and control orders under corresponding laws

35—Application for registration or cancellation

- (1) An application under section 39 or 39I of the Act to register a declaration or control order made under a corresponding law is to be made by application to the Registrar under and is to be governed by rule 308 of the General Civil Rules.
- (2) An application under section 39F, 39O or 39Q of the Act to cancel or vary registration of a declaration or control order made under a corresponding law is to be made by application to the Registrar in the proceeding instituted under subrule (1) for registration of the corresponding declaration or order and is to be governed by rule 308 of the General Civil Rules.
- (3) An application under section 39E or 39P of the Act is to be made by interlocutory application in the proceeding instituted under subrule (1) for registration of the corresponding declaration or order and is to be governed by rule 308 of the General Civil Rules.

36—Variation of corresponding control order

An application to register a corresponding control order referred by the Registrar to a Judge under sections 39J(2) and 39K of the Act will be heard by a Judge in the same manner as an application to vary a control order under Chapter 5 Division 3.

Note—

There are no rules 37 and 38.

Chapter 6—Ancillary applications under ICAC Act

Part 1—Introduction

39—Interpretation

In this Chapter –

the Act means the *Independent Commissioner Against Corruption Act 2012*;

Commissioner means the Independent Commissioner Against Corruption;

examiner means an examiner within the meaning of clause 1 of Schedule 2 to the Act;

witness means the subject of an application to show cause why his or her passport should not be delivered to the examiner or of an application for a warrant of arrest under the Act.

40—Application of Chapter

This Chapter applies to—

- (a) applications under section 32 of the Act for an extension of time for retention of a thing;
- (b) applications under clause 18 of Schedule 2 to the Act relating to delivery up of a passport; and
- (c) applications under clause 9 of Schedule 2 to the Act for a warrant of arrest.

41—Directions

On an application to which this Chapter applies, a Judge may give directions relating to—

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

Part 2— Extension of time for retention

42—Application to extend time for retention of thing

- (1) An application by the Commissioner under section 32 of the Act to extend time for retention of a thing seized or subject of a retention order under section 31 of the Act is to be made by originating application in an approved form.

Note—

Section 32 of the Act provides for retention of things for the “designated period” and defines the “designated period” to mean 6 months or such longer period as a Judge of the Supreme Court may, on application by the Commissioner, allow.

- (2) The application is to name as defendant—
 - (a) the person from whom the thing was seized or to whom the retention order was issued, as the case may be;
 - (b) the person with legal title to the thing; and
 - (c) any other person who is a necessary party.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the thing seized or the subject of the retention order and the date of seizure or issuing of the retention order;
 - (c) the order sought including the period of extension sought; and
 - (d) short grounds of the application.
- (4) The application is to be accompanied by an affidavit—
 - (a) exhibiting a copy of the warrant under which the thing was seized or the retention order was issued and a copy of the retention order when applicable;
 - (b) identifying the thing seized or the subject of a retention order and the date of seizure or issuing of the retention order;
 - (c) verifying the detailed grounds of the application
- (5) Unless a Judge otherwise orders, the application is to be served on the defendant before it is heard.
- (6) If a Judge makes an order without notice, the Commissioner is to cause a copy of the order to be served on the defendant in accordance with any directions of the Judge.
- (7) If a Judge makes an order without notice, the defendant may, within 21 calendar days after service of the order or such other period as the Judge may fix, apply by interlocutory summons to set aside or vary the order.

43—Application for interim extension of time

- (1) The Commissioner may apply for an interim extension of time for return of a thing seized or subject of a retention order under section 31 of the Act by interlocutory application in the proceeding instituted under rule 42.
- (2) The application is to be supported by an affidavit verifying the detailed grounds for the application for an interim extension.
- (3) A Judge may, if he or she thinks fit, make an order for an interim extension of time without notice.

Part 3— Delivery of passport

44—Application for order to show cause

- (1) An application by an examiner under clause 18(1) of Schedule 2 to 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 to the examiner is to be made by originating application in an approved form.

- (2) The application is to name as defendant the witness in respect of whom the order is sought.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the order sought; and
 - (c) short grounds of the application.
- (4) The application is to be accompanied by an affidavit—
 - (a) exhibiting the summons issued to the witness;
 - (b) if the witness has given evidence, deposing to the basis on which the witness was required to attend to give further evidence or produce further documents;
 - (c) identifying briefly the subject matter of the evidence it is believed the witness could give and its relevance to the investigation; and
 - (d) deposing to a suspicion that the witness intends to leave Australia and has in his or her possession, custody or control a passport issued to him or her and the basis for that suspicion.
- (5) The application may be heard without notice.
- (6) An order requiring a witness 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 in an approved form.

45—Hearing

- (1) The hearing of an application under clause 18(2) of Schedule 2 to the Act for an order that a person deliver his or her passport to the examiner is to proceed in accordance with the directions of the Judge.
- (2) If the Judge makes an order, the Commissioner is to cause a copy of the order to be served on the defendant in accordance with any directions of the Judge.

46—Application to extend time for retention of passport

- (1) An application by an examiner under clause 18(3) of Schedule 2 to the Act to extend time for retention of a passport is to be made by interlocutory application in the proceeding instituted under rule 44.
- (2) Unless a Judge otherwise orders, the application is to be served on the defendant before it is heard.
- (3) If a Judge makes an order without notice, the Commissioner is to cause a copy of the order to be served on the defendant in accordance with any directions of the Judge.
- (4) If a Judge makes an order without notice, the defendant may, within 5 business days of service of the order or such other period as the Judge may fix, apply by interlocutory summons to set aside or vary the order.

47—Application to revoke order

- (1) An application under clause 18(4) of Schedule 2 to the Act to revoke an order made under clause 18 to retain a passport issued to a person is to be made by interlocutory application in the proceeding instituted under rule 44.
- (2) The application is to be supported by an affidavit verifying the grounds for the application.

Part 4—Warrant of arrest

48—Application

- (1) An application under clause 9 of Schedule 2 to the Act to issue a warrant of arrest is to be made by originating application in an approved form.
- (2) The application is to name as defendant the witness in respect of whom the warrant is sought.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the order sought; and
 - (c) short grounds of the application.
- (4) The application is to be accompanied by an affidavit verifying the detailed grounds of the application.
- (5) The application is to be accompanied by two copies of the proposed warrant.
- (6) The application may be heard without notice.

49—Warrant

- (1) On hearing an application under rule 48, the Judge may, if satisfied of the matters required by clause 9 of Schedule 2 to the Act, issue a warrant for the arrest of the defendant.
- (2) A warrant of arrest issued under clause 9 of Schedule 2 to the Act is to contain the following endorsements—

Note 1—

If a person is apprehended under this warrant, he or she must be brought, as soon as practicable, before a Judge of the Supreme Court and the Judge may—

- (a) admit the person to bail, with such security as the Judge thinks fit, on such conditions as he or she thinks necessary to ensure the appearance of the person as a witness before the examiner; or
- (b) order the continued detention of the person for the purposes of ensuring his or her appearance as such a witness; or
- (c) order the release of the person.

Note 2—

If a person is under detention under clause 9 of Schedule 2 to the *Independent Commissioner Against Corruption Act 2012*, he or she must, within 14 calendar days after he or she was brought, or last brought, before a Judge of the Supreme

Court in accordance with that clause, or within such shorter or longer time as a Judge has fixed upon the last previous appearance of the person before a Judge under that clause, be again brought before a Judge.”

50—Application to set aside warrant

- (1) The defendant may apply to set aside a warrant issued under rule 49 by interlocutory application in the proceeding instituted under rule 48.
- (2) The application is to be supported by an affidavit verifying the facts relied upon to set aside the warrant.
- (3) Unless the Judge otherwise directs, any such application may be made without the defendant surrendering under the warrant.

Chapter 7—Enforcement applications

Part 1—Introduction

51—Interpretation

In this Chapter –

Commissioner means the Independent Commissioner Against Corruption; and
examiner means an examiner within the meaning of clause 1 of Schedule 2 to the *Independent Commissioner Against Corruption Act 2012* or section 46B(1) of the *Australian Crime Commission Act 2002* (Cth) as the case may be.

52—Application of Chapter

This Chapter applies to—

- (a) applications under section 15(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for an order to give evidence or produce documents or materials;
- (b) applications under section 19(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for enforcement of an unexplained wealth order;
- (c) applications under section 20 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* to make, vary or revoke a restraining order;
- (d) applications under clause 13 in Schedule 2 to the *Independent Commissioner Against Corruption Act 2012* for a person to be dealt with for contempt; and
- (e) applications under section 26B of the *Australian Crime Commission (South Australia) Act 2004* or section 34B of the *Australian Crime Commission Act 2002* (Cth) for a person to be dealt with for contempt.

53—Commencement of proceeding

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

54—Directions

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

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

- (d) any other matter.

Part 2—Giving evidence or production of documents

55—Application

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

Note—

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

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

56—Order

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

Note 1—

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

Note 2—

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

Part 3—Aid of unexplained wealth order

57—Application for enforcement of unexplained wealth order

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

Note 1—

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

Note 2—

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

58—Application for restraining order

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

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

Note—

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

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

59—Objection when restraining order made without notice

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

Note—

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

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

Note—

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

60—Application to revoke or vary restraining order

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

Part 4—Contempt

61—Application for contempt

- (1) An application by an examiner under section 26B of the *Australian Crime Commission (South Australia) Act 2004*, section 34B of the *Australian Crime Commission Act 2002 (Cth)* or clause 13 of Schedule 2 to the *Independent Commissioner Against Corruption Act 2012* for a person to be dealt with in relation to a contempt is to be commenced by originating application in an approved form.
- (2) The application is to name as defendant the person sought to be dealt with in relation to the contempt.
- (3) The application is to identify—
 - (a) the nature of the application;
 - (b) the order sought; and
 - (c) short grounds of the application.
- (4) The application is to be accompanied by an affidavit by the examiner—
 - (a) exhibiting the certificate to which section 26B(3) of the *Australian Crime Commission (South Australia) Act 2004*, section 34B(3) of the *Australian Crime Commission Act 2002 (Cth)* or clause 13(3) of Schedule 2 to the *Independent Commissioner Against Corruption Act 2012* refers; and

- (b) verifying the grounds on which the application is made as stated in the certificate;
 - (c) deposing to or exhibiting the evidence relied upon in support of the application as stated in the certificate.
- (5) If the application is in respect of a person who has been detained under section 26D of the *Australian Crime Commission (South Australia) Act 2004*, section 34D of the *Australian Crime Commission Act 2002* (Cth) or clause 15 of Schedule 2 to the *Independent Commissioner Against Corruption Act 2012*, the examiner is to—
 - (a) include an endorsement on the originating application to that effect; and
 - (b) request, when filing the application, that it be listed before a Judge as a matter of urgency for directions under section 26D of the *Australian Crime Commission (South Australia) Act 2004*, section 34D of the *Australian Crime Commission Act 2002* (Cth) or clause 15 of Schedule 2 to the *Independent Commissioner Against Corruption Act 2012*.
- (6) An examiner may withdraw an application under this rule by filing a notice of discontinuance. Unless the parties otherwise agree or the Court otherwise orders, the party against whom the application is discontinued is entitled to costs arising from the application up to receipt of the notice of the discontinuance.

History of Amendment

| Rules | Amendments | Date of Operation |
|---|-------------------|--------------------------|
| am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted | | |
| 3(2) | ins am02 | 18 December 2017 |
| 4(e) | am am02 | 18 December 2017 |
| 4(f) | am am02 | 18 December 2017 |
| 4(g) | am am02 | 18 December 2017 |
| 12(a) | am am02 | 18 December 2017 |
| 12(b) | am am02 | 18 December 2017 |
| 13(b) | sub am02 | 18 December 2017 |
| 13(ba) | ins am02 | 18 December 2017 |
| 13(i) | ins am01 | 1 May 2016 |
| 14(2) | sub am02 | 18 December 2017 |
| 14(2A) | ins am02 | 18 December 2017 |
| 15(1)(b) | sub am02 | 18 December 2017 |
| 15(4) | sub am02 | 18 December 2017 |
| 16(1)(a) | sub am02 | 18 December 2017 |
| 17(3)(a) | del am02 | 18 December 2017 |
| 17(3 (b) to (a)) | ren am02 | 18 December 2017 |
| 17(3 (c) to (b)) | ren am02 | 18 December 2017 |
| 17(3 (d) to (c)) | ren am02 | 18 December 2017 |
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