

**SOUTH AUSTRALIA**

**DISTRICT COURT SPECIAL APPLICATIONS RULES 2014**

The District Court Special Applications Rules 2014, dated 16 September 2014, come into operation on 1<sup>st</sup> October 2014 (*Government Gazette* 19 September 2014, p. 5457) have been varied by District Court rules dated:

		<i>Gazette</i>	<i>Date of operation</i>
#1	22 November 2017	28 November 2017, p. 4773	18 December 2017
#2	<b>27 April 2020</b>	<b>14 May 2020, p. 1047</b>	<b>18 May 2020</b>

By virtue and in pursuance of Section 51 of the *District Court Act 1991* and all other enabling powers, we, Geoffrey Louis Muecke, Chief Judge, and Rauf Soulio and Paul Vincent Slattery, Judges of the District Court of South Australia, make the following Rules of Court.

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## **Chapter 6—Note- there is no Chapter 6 - see rule 3A**

39—Note- there is no rule 39 – see rule 3A.

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41—Note- there is no rule 41 – see rule 3A.

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43—Note- there is no rule 43 – see rule 3A.

44—Note- there is no rule 44 – see rule 3A.

45—Note- there is no rule 45 – see rule 3A.

46—Note- there is no rule 46 – see rule 3A.

47—Note- there is no rule 47 – see rule 3A.

48—Note- there is no rule 48 – see rule 3A.

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## **Chapter 7—\*\*\*\*\***

## **Schedule 1 – Forms (separate document)**

## **History of Amendment**

# Chapter 1—Preliminary

## Part 1—Formal provisions

### 1—Citation

These Rules may be cited as the *District 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 *District Court Civil Rules 2006* have the meaning defined by those Rules.

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

**Court** means the *District Court* of South Australia;

[(3(2) General Civil Rules deleted by District Court Special Applications Rules 2014 (Amendment No. 2)]

**General Civil Rules** \*\*\*\*\*

**Police Commissioner** means the Commissioner of Police within the meaning of section 2(1) of the *Terrorism (Police Powers) Act 2005* or of the *Police Act 1998* as the meaning requires;

**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 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.

[(3(2) Uniform Civil Rules inserted by District Court Special Applications Rules 2014 (Amendment No. 2)]

**Uniform Civil Rules** means the *Uniform Civil Rules 2020*;

**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.

### 3A—Numbering of rules

It is intended that the numbering of these rules is to match (so far as possible) the numbering of the *Supreme Court Special Applications Rules 2014* (and thus, if any of the *Supreme Court Special Applications Rules 2014* is inapplicable in the District Court, there will be a gap in the sequential numbering of these rules)

**Note-**

There is no equivalent to this rule in the *Supreme Court Special Applications Rules 2014*.

## **Part 3—Application of rules**

### **4—Application of rules**

[rule 4 amended by District Court Special Applications Rules 2014 (Amendment No. 2)]

These Rules apply to certain proceedings under the following Acts—

- (a) the *Australian Crime Commission (South Australia) Act 2004*;
- (b) the *Australian Crime Commission Act 2002* (Cth);
- (c) **Note-** there is no subrule (c) – see rule 3A;
- (d) **Note-** there is no subrule (d) – see rule 3A;

[subrule 4(e) deleted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (e) \*\*\*\*\*

[subrule 4(f) deleted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (f) \*\*\*\*\*

- (g) the *Serious and Organised Crime (Unexplained Wealth) Act 2009*;
- (h) the *Terrorism (Police Powers) Act 2005*;

[subrule 4(i) deleted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (i) \*\*\*\*\*

- (j) **Note-** there is no subrule (j) – see rule 3A.

### **5—Application of Uniform Civil Rules**

[rule 5 substituted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (1) Unless the Court otherwise directs and subject to subrule (2), Chapters 1 to 4 of the Uniform Civil Rules apply to proceedings in the Court under these Rules.
- (2) To the extent of any inconsistency between these Rules and the Uniform Civil Rules, these Rules prevail.

## **Part 4—Repeal and transitional provision**

### **6—Note- there is no rule 6– see rule 3A**

### **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**—\*\*\*\*\*  
[rule 8 deleted by District Court Special Applications Rules 2014 (Amendment No. 2)]

**9**—\*\*\*\*\*  
[rule 9 deleted by District Court Special Applications Rules 2014 (Amendment No. 2)]

### 10—Filing and retention of documents

[subrule 10(1) amended by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (1) Unless the Court otherwise orders, documents provided to or created by the Court in proceedings governed by Chapter 3 of these Rules are not to be filed or kept as records of the Court in the manner of court records kept under Chapter 2 Part 3 and Chapter 4 of the Uniform 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 District Court Special Applications Rules 2014 (Amendment No. 1)]

- (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 District Court Special Applications Rules 2014 (Amendment No. 1)]

- (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*, or section 16 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*;
- (b) **Note-** there is no subrule (b) - see rule 3A;
- (c) applications for a monitoring order under section 14 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009*; and
- (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) **Note-** there is no subrule (e) – see rule 3A;
- (f) **Note-** there is no subrule (f) – see rule 3A;
- (g) **Note-** there is no subrule (g) – see rule 3A; and
- (h) **Note-** there is no subrule (h) – see rule 3A.

### 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.
- (2) **Note-** there is no subrule (2) – see rule 3A.

[subrule 14(3) substituted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (3) Any other application to which this Chapter applies is to be in accordance with the relevant statutory provision.

[subrule 14(3A) inserted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (3A) An application under section 22 of the *Australian Crime Commission Act 2002* (Cth), section 29 of the *Australian Crime Commission (South Australia) Act 2004*, or section 16 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for a search warrant is to be in the prescribed form.

**Prescribed form—**

Form 7G Originating Application Ex Parte Search Warrant

[subrule 14(3B) inserted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (3B) An application under section 14 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* for a monitoring order is to be in the prescribed form.

**Prescribed form—**

Form 7I Originating Application Ex Parte Monitoring Order

[subrule 14(3C) inserted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (3C) An application under section 3 or 13 of the *Terrorism (Police Powers) Act 2005* to confirm a special powers authorisation or special area declaration is to be in the prescribed form.

**Prescribed form—**

Form 7J Originating Application Ex Parte Special Powers Authorisation or Special Area Declaration

- (4) **Note-** there is no subrule 4— see rule 3A.
- (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 Judge .....or pursuant to the order of the Chief Judge”.
- (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) **Note-** there is no subrule (a) – see rule 3A;
- (b) **Note-** there is no subrule (b) – see rule 3A;
- (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.
- (4) **Note-** there is no subrule (4) – see rule 3A.
- (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 Judge ..... or pursuant to the order of the Chief Judge”.
- (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—
  - (a) section 23 of the *Australian Crime Commission Act 2002* (Cth), section 30 of the *Australian Crime Commission (South Australia) Act 2004*, 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

[subrule 17(1) substituted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (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;
  - (c) in the case of a search warrant, the hours during which it is proposed the warrant can be executed;
  - (d) **Note** – there is no subrule (d) – see rule 3A;
  - (e) 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; and
  - (f) the period the applicant proposes that the Court retain documents associated with the application before destruction or return.
- (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—
  - (a) **Note-** there is no subrule (a) – see rule 3A;
  - (b) 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*;

- (c) 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*;
  - (d) **Note-** there is no subrule (d) – see rule 3A.
- (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
- [para 17(4)(b) amended by District Court Special Applications Rules 2014 (Amendment No. 2)]
- (b) in the case of any other application—a draft 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(3a) inserted by District Court Special Applications Rules 2014 (Amendment No. 2)]

- (3a) A search warrant issued under this Chapter is to be in the prescribed form.

**Prescribed form—**

Form 138 Search Warrant

- (4) **Note-** there is no subrule (4) – see rule 3A.

- (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) **Note-** there is no subrule (7) – see rule 3A.
- (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—Note- there is no Chapter 4 - see rule 3A**

**19—Note-** there is no rule 19 – see rule 3A.

**20—Note-** there is no rule 20 – see rule 3A.

**21—Note-** there is no rule 21 – see rule 3A.

**22—Note-** there is no rule 22 – see rule 3A.

**23—Note-** there is no rule 23 – see rule 3A.

[Chapter 5 deleted by District Court Special Applications Rules 2014 (Amendment No. 2)]

**Chapter 5**—\*\*\*\*\*

**Chapter 6—Note- there is no Chapter 6 - see rule 3A**

**39—Note-** there is no rule 39 – see rule 3A.

**40—Note-** there is no rule 40 – see rule 3A.

**41—Note-** there is no rule 41 – see rule 3A.

**42—Note-** there is no rule 42 – see rule 3A.

**43—Note-** there is no rule 43 – see rule 3A.

**44—Note-** there is no rule 44 – see rule 3A.

**45—Note-** there is no rule 45 – see rule 3A.

**46—Note-** there is no rule 46 – see rule 3A.

**47—Note-** there is no rule 47 – see rule 3A.

**48—Note-** there is no rule 48 – see rule 3A.

**49—Note-** there is no rule 49 – see rule 3A.

**50—Note-** there is no rule 50 – see rule 3A.

[Chapter 7 deleted by District Court Special Applications Rules 2014 (Amendment No. 2)]

**Chapter 7**—\*\*\*\*\*

[Schedule 1 – Forms inserted by District Court Special Applications Rules 2014 (Amendment No. 2)]

**Schedule 1 – Forms (separate document)**

## 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>3(2) definitions deleted, insert</b>	<b>del/ins am02</b>	<b>18 May 2020</b>
<b>4</b>	<b>am am02</b>	<b>18 May 2020</b>
<b>5</b>	<b>sub am02</b>	<b>18 May 2020</b>
<b>8</b>	<b>del am02</b>	<b>18 May 2020</b>
<b>9</b>	<b>del am02</b>	<b>18 May 2020</b>
<b>10(1)</b>	<b>am am02</b>	<b>18 May 2020</b>
12(a)	am am01	18 December 2017
12(b)	am am01	18 December 2017
<b>14(3)</b>	<b>sub am02</b>	<b>18 May 2020</b>
<b>14(3A)</b>	<b>ins am02</b>	<b>18 May 2020</b>
<b>14(3B)</b>	<b>ins am02</b>	<b>18 May 2020</b>
<b>14(3C)</b>	<b>ins am02</b>	<b>18 May 2020</b>
<b>17(1)</b>	<b>sub am02</b>	<b>18 May 2020</b>
<b>17(4)(b)</b>	<b>am am02</b>	<b>18 May 2020</b>
<b>18(3a)</b>	<b>ins am02</b>	<b>18 May 2020</b>
<b>Chapter 5</b>	<b>del am02</b>	<b>18 May 2020</b>
<b>Chapter 7</b>	<b>del am02</b>	<b>18 May 2020</b>
<b>Schedule 1 – Forms (separate document)</b>	<b>ins am02</b>	<b>18 May 2020</b>