

# **ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT RULES**

(as varied to the 1 July 2014 – Amendment No. 1)

The Environment, Resources and Development Court Rules, dated 24 April 2003, which came into operation 8<sup>th</sup> May 2003 (*Government Gazette* 8 May 2003, p. 1871) have been varied by Environment, Resources and Development Court Rules dated:

Amendment #	Gazette	Date of Operation
1	30 May 2014	19 June 2014, p.2806
		1 July 2014

BY virtue of the provisions of section 48 of the *Environment, Resources and Development Court Act 1993*, and of all other enabling powers, we, Christine Louise Trenorden, Presiding Member of the Environment, Resources and Development Court, and Susanne Denise Cole, a Judge of that Court, hereby make the following Rules of Court.

## **PART 1—GENERAL**

- 1.1 These Rules may be cited as the Environment, Resources and Development Court Rules 2003, and revoke the Environment, Resources and Development Court Rules 2001.
- 1.2 These Rules are divided into Parts as follows:
  - Part 1—General
  - Part 2—Definitions
  - Part 3—Administration
  - Part 3A—E-Business Transactions
  - Part 4—General Powers of the Court
  - Part 5—Appeals
  - Part 5A—Appeals from the Warden’s Court
  - Part 6—Applications
  - Part 7—Enforcement/Compliance Applications
  - Part 8—Conferences
  - Part 9—Mediation
  - Part 10—Building References
  - Part 11—Provision of Documents and Copy Documents
  - Part 12—Service
  - Part 13—Jurisdiction of Master
  - Part 14—Costs
  - Part 15—Contempt
  - Part 16—Procedure upon trial of any Charge of an Offence

### 1.3 Purpose and General Procedure

1.3.1 These Rules are made for the purpose of establishing orderly procedures for the conduct of proceedings in the Court, and are to be construed and applied so as to best ensure the attainment of the following objects:

- the simplification of practice and procedure;
- the identification of the real issues between the parties prior to the hearing of proceedings;
- the saving of expense; and
- the fair and expeditious disposal of the business of the Court,

and to this end:

- (a) the evidence of any expert witness must be in the form of a statement or report which clearly states the opinions of the witness and the basis for those opinions;
- (b) where an expert witness has provided a statement or report in relation to the subject of the proceedings, that statement or report must be provided to the Court (one copy for each member constituting the Court hearing the matter and one additional copy) and each party in accordance with the relevant Practice Directions issued by the Court;
- (c) oral examination in chief of any witness will not be necessary where the evidence of that witness has been reduced to a statement or report, or in the case of enforcement and other applications, is set out in an affidavit;
- (d) such plans, diagrams, photographs, specifications or other documents (including any plan or other document amending a development or proposal the subject of proceedings) which are reasonably capable of being copied without undue expense and which are to be relied upon at any hearing must be provided to the Court and each party in accordance with the relevant Practice Directions issued by the Court;
- (e) parties must be prepared at any conference held pursuant to section 16 of the Act to identify the issues;
- (f) in respect of an appeal pursuant to section 86 (1) (a) or (b) of the *Development Act 1993*, the applicant for development authorisation must notify each party of any proposed amendment to the development or proposal in accordance with a timetable as directed by the Court, or, where a timetable has not been set, at least 14 days prior to the hearing; and
- (g) on the hearing of an appeal by a representor, under the *Development Act 1993* or the *Water Resources Act 1997*, the applicant for consent must be prepared to inform the Court as to the proposal, at the commencement of the hearing.

1.3.2 It is acknowledged that the business of the Court will include proceedings involving parties who will not be represented by counsel, solicitor or other qualified representative familiar with these Rules. These Rules are not intended to frustrate the presentation of a case in good faith by a party not so represented, and the Rules are to be construed and applied accordingly, having regard to the duty of the Court, expressed in section 21 (1) (c) of the *Environment, Resources and Development Court Act 1993*.

- 1.3.3 In accordance with the objects set out in paragraph 1.3.1, counsel need not robe for the hearing of any proceedings in the Court.
- 1.3.4 The Court may, at any stage of any proceedings and subject to any statutory requirement, dispense with the observance of any part of these Rules.

## PART 2—DEFINITIONS

2.1 In these Rules, unless the context indicates otherwise:

“**address for service**” means an address of a place at which an application or other document may be sent or left for the party giving such address. Such address:

- (i) if a physical address, (not a post office box number), shall be within 50 km of the Adelaide General Post Office and, if it is of a building or property which is divided into parts which are capable of separate occupation, shall also specify which part of the building or property is the address for service;
- (ii) may be outside the above radius where it is a place, within Australia, at which a legal practitioner filing the address for service carries on practice and where a number for facsimile transmission is included in the address for service;
- (iii) may include such a number where the party giving the address for service is prepared to receive service of documents by facsimile transmission at the number, and may also contain a box number and a branch of the Adelaide Document Exchange where the solicitor for the party giving that address for service is a member of the Adelaide Branch of the Australian Document Exchange, or otherwise entitled to use of its facilities;
- (iv) shall, wherever the addressee is physically located, be a sufficient address for the purposes of this definition, if it specifies an e-mail address to which documents may electronically be directed to the party giving it and the party initiating the proceedings has also indicated, on a document filed by such party, that it has an e-mail address.

“**appeal**” means any appeal to the Court instituted pursuant to:

- (i) any of the following provisions of the *Development Act 1993*, namely:
  - subsection 6 (4);
  - subsection 74 (6);
  - subsection 86 (1) (a) or (b);
  - subsection 86 (1) (d) (i), but not being an application for an order pursuant to section 55;
  - subsection 86 (1) (d) (ii);
  - subsection 86 (1) (d) (iii), being an appeal or a notice issued pursuant to section 71;
- (ii) section 106 of the *Environment Protection Act 1993*;
- (iii) section 20 of the *Heritage Act 1993*;

- (iv) subsections 17 (6), 33 (2), 56 (3) of the *Mining Act 1971*;
- (v) section 142 of the *Water Resources Act 1997*;
- (vi) subsections 65 (1) and 67 (1) of the *Irrigation Act 1994*;
- (vii) section 48 of the *South Eastern Water Conservation and Drainage Act 1992*;
- (viii) subsection 35 (2) of the *Ground Water (Qualco-Sunlands) Control Act 2000*;
- (ix) section 33F of the *Native Vegetation Act 1991*; or
- (x) section 31 of the *Upper South East Dryland Salinity and Flood Management Act 2002*.

**“application”** means any application to the Court instituted pursuant to:

- (i) any of the following provisions of the *Development Act 1993*, namely:
  - subsection 41 (2);
  - subsection 55 (1);
  - subsection 60 (3);
- (ii) section 42, subsections 49 (8) or 89 (4) of the *Environment Protection Act 1993*;
- (iii) sections 30 or 35 of the *Heritage Act 1993*;
- (iv) the power of the Court to make a declaration of right pursuant to section 28 of the Act;
- (v) the power of the Court to make a determination, contemplated by subsection 49 (2) of the *Irrigation Act 1994*; or
- (vi) section 30 of the *Native Vegetation Act 1991*,

but does not include an enforcement or compliance application or an interlocutory application.

**“authorised electronic communication”** means:

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both, including an e-mail or an e-mail attachment; or
- (b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed, at its destination, by an automated speech recognition system,

in accordance with information technology requirements specified by the Court by Practice Direction.

**“Authority”** includes the Development Assessment Commission, a Council, the Environment Protection Authority, the State Heritage Authority, the Native Vegetation Council, a Minister of the Crown or a public authority against whom an appeal to the Court may be instituted, or an irrigation trust constituted under the *Irrigation Act 1994*, as the case may be.

**“building referee”** and **“building referees”** mean a Commissioner or Commissioners to whom a dispute is referred for determination as a building referee or building referees.

**“building reference”** means an appeal against a refusal under section 67, a refusal under section 68 and an order under subsection 69 (1) (a) of the *Development Act 1993*.

**“certificate of title”** means every certificate of title issued pursuant to the *Real Property Act 1886*, every memorandum of lease issued pursuant to the *Crown Lands Act 1929*, the *Pastoral Land Management and Conservation Act 1989*, or the *Irrigation Act 1930*, and every mining production tenement.

**“compliance application”** means an application pursuant to section 74A of the *Mining Act 1991* or section 86 of the *Opal Mining Act 1995*.

**“conference”** means a conference conducted pursuant to Section 16 of the Act.

**“Council”** means a municipal or district council.

**“Court”** means the Environment, Resources and Development Court and includes a Judge, Commissioner, Master or Magistrate of the Court.

**“decision”** means any decision, assessment, request, declaration, direction, restriction, order or other act (including a proposal pursuant to section 67 (1) of the *Irrigation Act 1994*), against which an appeal may be instituted or which may be the subject of a reference to building referees.

**“deliver”** includes electronic transmission to the e-mail address of the deliverer by an authorised electronic communication.

**“District Registry”** means any Registry of the Court other than the Principal Registry of the Court.

**“e-mail address”** means the mailing address to and from which an authorised electronic communication may be sent and received, using the World Wide Web.

**“enforcement application”** means an application to the Court for an order pursuant to section 85 of the *Development Act 1993*, section 104 of the *Environment Protection Act 1993*, section 141 of the *Water Resources Act 1997*, section 31A of the *Native Vegetation Act 1991*, or section 29 of the *Upper South East Dryland Salinity and Flood Management Act 2002*.

**“interim injunction”** means any injunction or other order of the Court issued pursuant to section 34 of the Act.

**“interlocutory application”** means any application for an interlocutory order of the Court.

**“interlocutory order”** means any injunction, interim injunction, interlocutory order or other order made by the Court which does not finally dispose of the rights of parties, pursuant to or as contemplated by:

- (i) sections 17 (3), 28a, 34 or 35 of the Act;
- (ii) subsections 69 (11), 71 (13), 84 (10) or 85 (10) of the *Development Act 1993*;
- (iii) subsections 106 (4) or 107 (2) of the *Environment Protection Act 1993*;
- (iv) section 71 of the *Water Resources Act 1997*;
- (v) Part 4 of these Rules;
- (vi) sections 31C, 31E (7) and 31F (5) of the *Native Vegetation Act 1991*; or
- (vii) section 30 of the *Upper South East Dryland Salinity and Flood Management Act 2002*,

but this list is not necessarily exhaustive.

**“mining application”** means any application to the Court for:

- a determination of compensation pursuant to subsection 9 (3), sections 54 or 61 of the *Mining Act 1971* or section 38 of the *Opal Mining Act 1995*;
- a determination of the compensation payable and an order that the Minister pay such compensation to the holder of a licence pursuant to subsection 33 (5) of the *Mining Act 1971*;
- a determination consequent upon the lodging of a notice of objection pursuant to section 58A of the *Mining Act 1971* or section 32 of the *Opal Mining Act 1995*;
- a determination of the conditions on which declared equipment may be used on land, pursuant to subsection 59 (8) of the *Mining Act 1971*.

**“Registrar”** means the Registrar of the Court and includes a Deputy Registrar.

**“registry”** means the Principal Registry and any District Registry of the Court.

**“related decisions”** means any decisions made or issued by the same authority and relating to the same development, land, or watercourse.

**“signed”** includes executed under seal or by virtue of power of attorney or of delegation.

**“the Act”** means the *Environment, Resources and Development Court Act 1993*.

## **PART 3—ADMINISTRATION**

### **3.1 Seal of the Court**

- 3.1.1 The Registrar shall be responsible for the safe keeping and due and proper use of the seal of the Court.
- 3.1.2 The Registrar must ensure that a seal of the Court is kept at each registry of the Court.
- 3.1.3 Subject to paragraph 3.1.4 of this Rule, the seal of the Court shall be affixed to each originating process and all orders issued by the Court, and to such other documents as the Court may from time to time determine.
- 3.1.4 The Court may, if it considers it to be appropriate, direct that any order, other than a final order or an interim injunction, need not be drawn up or sealed, in which case the endorsement of the order in the Court record shall take effect as the order of the Court as from the date of such endorsement.
- 3.1.5 The Court may, of its own motion, affix its seal to any order issued by it.
- 3.1.6 The Court may vary or amend any order issued by it (including any order to which the seal of the Court has been affixed) in order to remedy any error or omission in such order.

### **3.2 Registries of the Court**

- 3.2.1 The Principal Registry of the Court shall be at the Sir Samuel Way Building, Victoria Square, Adelaide.
- 3.2.2 The District Registries of the Court shall be at the same places as the District Registries of the District Court, namely at Berri, Mount Gambier, Port Lincoln, Port Pirie and Whyalla.

### 3.3 Practice Directions

- 3.3.1 The Registrar may issue practice directions, not inconsistent with these Rules, with respect to the business of the Court, for the information and guidance of parties and their representatives.

#### PART 3A—E-BUSINESS TRANSACTIONS

- 3A.01 If a person is required or permitted to give information in writing or produce a document that is in the printed or typewritten form to either:
- (a) the Court; or
  - (b) a person who has advised either:
    - (i) the Registrar, or
    - (ii) the person giving the information or producing the document,
- of their willingness to receive information by means of authorised electronic communication, that requirement is taken to have been met if the person gives the information, or produces the document, by means of an authorised electronic communication.
- 3A.02 If the Court is required to give information to a person in writing, and that person has advised the Registrar of their willingness to receive information by means of an authorised electronic communication, that requirement is taken to have been met if the Court gives the information by means of such a communication.
- 3A.03 A person who has an e-mail address shall state that address on any documents or communication filed, served or given. The publishing of an e-mail address in such a manner indicates a willingness, thereafter, to receive information, at that address, by means of an authorised electronic communication from both the Court and other parties or persons.
- 3A.04 The Registrar shall approve and promulgate a facsimile number for the purpose of receiving information authorised, by Practice Direction, to be received by such means.
- 3A.05 Information sent to the Registrar by facsimile transmission must be:
- (a) sent to the approved facsimile number for the Court; and
  - (b) accompanied by a cover sheet clearly stating:
    - (i) the sender's name, postal address, document exchange number (if any), telephone number, facsimile number and e-mail address (if any);
    - (ii) the number of pages transmitted; and
    - (iii) what action is required in relation to the document.
- 3A.06 If the information comprises a document that is required to be signed or sealed by or on behalf of the Registrar, and is accepted, the Registrar must:
- (a) make one copy of it; and
  - (b) if the sender requests that the document be held for collection—hold it for collection for 7 days; and

- (c) if the sender does not request the document to be held for collection, or having made a request does not collect the document within 7 days—return the document by facsimile transmission to the facsimile number stated on the cover sheet.

3A.07 A person who sends information to the Registrar by facsimile transmission must:

- (a) keep the original information and the transmission report evidencing successful transmission; and
- (b) produce the original information or the transmission report as directed by the Court.

3A.08 If the Court directs that the original information be produced, the first page of it must be endorsed with:

- (a) a statement that the information is the original of that sent by facsimile transmission; and
- (b) the date that the information was sent by facsimile transmission.

#### **PART 4—GENERAL POWERS OF THE COURT**

4.1 The Court has power generally to give effect to the purpose of these Rules and, in particular may:

- (a) dispense (either prospectively or retrospectively) with compliance with all or any part of these Rules;
- (b) give leave to any party to amend, alter or withdraw any step in the proceedings;
- (c) extend or abridge any periods of time within or by which any step in a proceeding is required to be taken, irrespective of whether such period of time has expired;
- (d) correct, revoke or vary any order by a subsequent order; and
- (e) do anything or give such directions relating to the conduct of the action or the conduct of the hearing as may expedite the resolution of the issues between the parties.

4.2 The Court may give such directions as it thinks appropriate with respect to any matter referred or removed to it by or from another Court or in circumstances not provided for either by the Act, any Regulations made thereunder, or by these Rules.

4.3 The Court may order that:

- (a) two or more actions be consolidated, where such actions concern related decisions;
- (b) two or more actions be heard together;
- (c) two or more actions be heard one immediately after the other; and
- (d) evidence taken in one action be taken as evidence in another.

#### **4.4 Particulars, Discovery and Production of Documents**

4.4.1 The Court may, at any time prior to or in the course of the hearing of proceedings, order a party to produce to the Court and to each other party:

- (a) further particulars of that party's case;



- (b) full particulars of the reasons for decision of the relevant authority;
- (c) a list of documents which are in the possession of that party and are directly relevant to the proceedings;
- (d) a specified document in the possession of that party, which is directly relevant to the proceedings.

4.4.2 Where a party is ordered to produce a list of documents, the party must comply with the following:

- (a) a list of documents should not describe a document separately where it is:
  - (i) part of a file which is discovered as a file;
  - (ii) contained on a computer disc which is discovered as a disc;
  - (iii) part of a related group of documents where the group is discovered, e.g., the accounting records for a stated financial year;
  - (iv) a different version of a document already discovered;
  - (v) of similar type but of different date or content to a document already discovered;
- (b) a party's list of documents must include any claim by that party for privilege for a document and the grounds upon which the claim is based;
- (c) a list of documents must identify a place where the documents may be inspected by the other party or parties to the proceedings and that party or those parties are entitled to inspect the documents and obtain copies of such documents as they require, upon payment of a reasonable fee to the party producing the copies.

## **4.5 Interlocutory Applications**

4.5.1 Every application for an order:

- (a) pursuant to the provisions of this Part;
  - (b) for substituted service pursuant to Part 12 of these Rules; or
  - (c) of an interim or interlocutory nature,
- shall be made by interlocutory application.

4.5.2 Except in the case of urgency, or where all interested parties consent to the order sought, every interlocutory application must:

- (a) be in writing;
- (b) set out the order sought and the grounds for it;
- (c) state whether the application is to be served on any person and, if so, upon whom.

4.5.3 Where an interlocutory application is for an injunction or restraining order, it must be accompanied by an affidavit setting out the facts and circumstances upon which the applicant relies.

4.5.4 Where the Court is of the opinion that an interlocutory application should be supported by affidavit, it may adjourn such application until such affidavit has been filed.

- 4.5.5 Any interlocutory application may be included in any document instituting proceedings before the Court or may be made by subsequent interlocutory application.
- 4.5.6 Where the Court is of the opinion that an interlocutory application should have been served upon a person or party upon whom it has not been served, the Court may:
- (a) give such directions as it thinks fit relating to the service of the interlocutory application and adjourn further consideration; or
  - (b) dismiss the interlocutory application.
- 4.5.7 In the case of urgency, or in any other circumstances in which the Court considers it appropriate, the Court may:
- (a) hear an oral application; and
  - (b) hear an application and make an order by telephone, radio telephone, facsimile, computer, email, video conference or television.

#### **4.6 Powers on Application for Restraining Order**

- 4.6.1 Where an interlocutory application is for a restraining order pursuant to section 28A of the Act, and the Court considers it appropriate to exercise its powers under subsection 28A (5) of the Act, the Court may:
- (a) direct the Registrar to issue and cause to be served, a summons directing the respondent or defendant, as the case may be, to appear before the Court at a specified time and place to be examined concerning the identification of property the subject of the proposed restraining order; or
  - (b) issue a warrant for the arrest of the respondent or defendant, as the case may be, under the hand of a Judge, directed to the Sheriff, ordering the Sheriff to take the person into custody and to hold him or her in custody until he or she can be brought before the Court to be examined concerning the identification of property the subject of the proposed restraining order.

#### **4.7 Court May Make Orders Without Application by Party**

- 4.7.1 Where, for any reason, the Court considers it necessary or desirable that an order be made pursuant to this Part, but no interlocutory application has been made, the Court may require the parties to attend before it and may give orders relating to the conduct of the action.

#### **4.8 Failure to Comply with Rules/Orders of Court**

- 4.8.1 Where a party fails to comply with:
- (a) these Rules in relation to the production of a statement or other material which the party intends to produce or rely on at the hearing; or
  - (b) an order pursuant to paragraph 4.4.1 of these Rules,
- the Court may direct that any statement (including oral testimony of any expert witness whose statement should have been produced) or document shall not be admitted into evidence at the hearing.

## PART 5—APPEALS

### 5.1 Institution of Appeals

5.1.1 Every appeal to the Court shall be by notice of appeal in writing which must:

- (a) identify the land, watercourse or building to which the appeal relates;
- (b) name and provide (to the extent the appellant knows) the postal and e-mail addresses and telephone and facsimile numbers of the Authority against which the appeal is instituted;
- (c) specify the decision or notice of the Authority to which the appeal relates;
- (d) specify the grounds of appeal against such decision or notice;
- (e) specify the full name of and the address for service of the appellant and, if available, the telephone and facsimile numbers and e-mail address of the appellant;
- (f) if the appeal relates to the issue or refusal of a development authorisation, specify whether the appellant was the applicant for the development authorisation or is a person who made a representation and to whom notice was given pursuant to section 38 of the *Development Act 1993*; and
- (g) be signed by the appellant, or on his or her behalf by a solicitor, agent or other representative.

5.1.2 Every notice of appeal to the Court must have affixed to it a copy of the order, notice or notice of decision of the Authority which is the subject of the appeal.

5.1.3 No appeal shall be duly instituted until:

- (a) a notice of appeal meeting the requirements of these Rules has been filed in a registry of the Court;
- (b) the prescribed fee has been paid; and
- (c) the notice of appeal has been served on the Authority in the manner prescribed by these Rules.

5.1.4 Notwithstanding that a notice of appeal has not been served in accordance with these Rules, the Court may hear and grant any interlocutory application.

### 5.2 Joint Parties and Appeals

5.2.1 A notice of appeal may be lodged by or on behalf of one or more appellants, provided:

- (a) the appeal relates to one order, notice or decision or to related decisions; and
- (b) the notice of appeal specifies one address for service at or to which documents or notices may be served or delivered upon all appellants or may be deemed to have been so served.

### 5.3 Representor appeals

5.3.1 Where an appeal is instituted pursuant to placitum 86 (1) (b) of the *Development Act 1993* or subsection 19 (10) or 40 (10) of the *Water Resources Act 1997* by a person who is or was entitled to be given notice of a decision under the relevant Act, the Registrar must, as soon as is reasonably practicable provide a copy of the notice of

appeal to the applicant for consent in each case, and advise the applicant that he, she or it is a party to the appeal.

#### **5.4 Participation in Appeal Hearings**

- 5.4.1 Where an appeal is instituted pursuant to placitum 86 (1) (a) of the *Development Act 1993* or placita 142 (1) (a) or (b) of the *Water Resources Act 1997*, by an applicant for consent in each case, the Registrar must give notice to each person who made a representation to the relevant authority and whose name and address has been given to the Court pursuant to placitum 38 (12) (b) of the *Development Act 1993* or placita 19 (8) (b) (ii) or 41 (8) (b) (ii) of the *Water Resources Act 1997*, of the fact that an appeal has been instituted and that he or she may apply, in accordance with the provisions of this Rule, to be joined as a party to the appeal.
- 5.4.2 Where a representation has been made by two or more persons, notice shall only be given to the person nominated as the person making the representation, or (where no such nomination has been made), to the first person named in the representation, who shall be deemed to be the person who made the representation.
- 5.4.3 Any person to whom the Registrar has given notice pursuant to paragraph 5.4.1 of this Rule may, within seven business days of the giving of such notice, apply in writing to the Court to be joined as a party to the appeal to which such notice relates.
- 5.4.4 The Court may, after hearing such application, join the person to whom such notice has been given.

### **PART 5A—APPEALS FROM THE WARDEN’S COURT**

#### **5A.1 Requirements of Notice of Appeal**

- 5A.1.1 An appeal under section 65 of the *Mining Act 1971* shall be instituted by filing and serving a notice of appeal which must set out:
- (a) a brief statement of the judgment or order appealed from;
  - (b) the grounds of appeal in sufficient detail to enable the Judge to know what points are being relied on in support of each ground;
  - (c) whether all or part only, and if so which part, of the decision is complained of;
  - (d) the order sought by the appellant,
- and unless the Judge hearing the appeal otherwise directs an appellant may not rely upon any grounds which are not set out in the notice of appeal.

- 5A.1.2 A notice of appeal shall be filed in the Registry and served on all parties directly affected by the appeal.

#### **5A.2 Time for Appeal**

- 5A.2.1 An appeal under section 65 of the *Mining Act 1971* must be instituted within one month after publication of the judgment or order appealed from, or within such other period as the Court may allow.

### **5A.3 Cross Appeal**

- 5A.3.1 Where a respondent to an appeal wishes to appeal against the whole or any part of the decision appealed, the respondent must file a notice of cross-appeal within fourteen days of service of the notice of appeal on him.
- 5A.3.2 The provisions of Rule 5.1.1 relating to notices of appeal shall with all necessary modifications apply to a notice of cross-appeal.

### **5A.4 Amendment to Notice of Appeal**

- 5A.4.1 A notice of appeal may be amended without leave prior to the appeal being listed for hearing by filing and serving on all other parties a supplementary notice of appeal. After the appeal has been set down for hearing, the notice may only be amended by leave of a Judge.

### **5A.5 Discontinuance of Appeal**

- 5A.5.1 An appellant may at any time file and serve a notice of discontinuance of appeal and upon its being filed the appeal shall be abandoned.
- 5A.5.2 A notice of discontinuance filed under Rule 5A.5.1 by one of several appellants shall not affect any other appellant in the appeal.
- 5A.5.3 A party filing a notice of discontinuance under Rule 5A.5.1 shall be liable to pay the costs of the other party or parties occasioned by his appeal.

### **5A.6 Dismissal of Appeal as Incompetent**

- 5A.6.1 A respondent to an appeal may apply on notice at any time to a Judge for an order dismissing an appeal as incompetent or for want of prosecution.
- 5A.6.2 Upon the hearing of the application, the burden of establishing the competency of the appeal is on the appellant.

### **5A.7 Listing of Appeal for Hearing**

- 5A.7.1 A day shall be fixed by the Registrar for the hearing of the appeal. The Registrar must give written notice of the date fixed for hearing.

### **5A.8 Report from Warden's Court**

- 5A.8.1 The Court may request the presiding Warden from whose judgment or order an appeal has been brought, to furnish a report with respect to the hearing and may in the report particularise the matters and things with reference to which the report is sought. A copy of such report is to be made available to the parties.

### **5A.9 Written Case**

- 5A.9.1 The Court may of its own motion or on the application of a party direct any party to prepare detailed submissions as to its case.
- 5A.9.2 Where such a direction has been issued, the party subject to the direction must file and serve a submission:
- (a) if the party is an appellant, 5 clear business days before the date fixed for the hearing;
  - (b) if the party is a respondent, 3 clear business days before the date fixed for the hearing.

## PART 6—APPLICATIONS

### 6.1 Institution of Applications

- 6.1.1 Except in the case of urgency, every application (not being an interlocutory or an enforcement application) to the Court shall be by notice of application in writing which must:
- (a) briefly state the facts, circumstances and other relevant matters upon which the application is based;
  - (b) identify the land, buildings or watercourse to which the application relates;
  - (c) specify the declaration, order or orders which the applicant seeks from the Court, and the grounds upon which such declaration, order or orders are sought;
  - (d) identify the Authority or person against whom such declaration, order or orders are sought and set out (to the extent the applicant knows) the postal and e-mail address and telephone and facsimile numbers of such Authority or person;
  - (e) specify the full name of and the address for service of the applicant, and, if available, the telephone and facsimile numbers and e-mail address of the applicant; and
  - (f) be signed by the applicant, or on his or her behalf by a solicitor, agent or other representative.
- 6.1.2 Where an application seeks an order pursuant to section 55 of the *Development Act 1993*, the notice of application must also set out the name and an address for service of the owner and/or occupier of the land to which the application relates and of any other person who (to the best knowledge of the applicant) has a material interest in the application, and must have affixed to it a copy of the certificate of title of the land.
- 6.1.3 Where an order is sought pursuant to either subsection 30 (3) of the *Heritage Act 1993*, or subsection 30 (1) of the *Upper South East Dry-land Salinity and Flood Management Act 2002*, the application must be accompanied by an affidavit setting out the facts in support thereof.
- 6.1.4 No application shall be duly made or instituted until:
- (a) a notice of application meeting the requirements of these Rules has been filed in a registry of the Court;
  - (b) the prescribed fee has been paid; and
  - (c) excepting an application pursuant to subsection 30 (3) of the *Heritage Act 1993* or the *Upper South East Dryland Salinity and Flood Management Act 2002*, the notice of application has been served upon the person or Authority against whom or which the applicant seeks any declaration or order and, in the case of an application for an order pursuant to section 55 of the *Development Act 1993*, the notice of application has also been so served upon any owner and/or occupier whose name has been set out in the notice pursuant to paragraph 6.1.2 of this Rule.

6.1.5 In the case of urgency, or in any other circumstances in which the Court considers it appropriate, the Court may:

- (a) hear an oral application; and
- (b) hear an application and make an order by telephone, radio telephone, facsimile transmission, computer, e-mail transmission, video link or television.

## **PART 6A—MINING APPLICATIONS**

### **6A.1 Institution of Mining Applications**

6A.1.1 Every mining application to the Court shall be by written notice of application which must:

- (a) specify the full name and address for service of the applicant and, if applicable, the telephone and facsimile numbers and e-mail address of the applicant;
- (b) be signed by the applicant, or on his or her behalf by a solicitor, agent or other properly appointed representative;
- (c) specify both the body or person against whom or which any order or declaration is sought by the applicant and any other person or body upon whom it is intended to serve the application and set out (to the extent the applicant knows) the address, and telephone and facsimile numbers and email address of such people or bodies;
- (d) identify the land, buildings or mining tenements which are involved in or to which the application relates;
- (e) briefly specify the details and nature of the dispute (if any) between the parties to the application;
- (f) specify the declaration or order which the applicant seeks from the Court, and the grounds upon which such declaration or order is sought; and

6A.1.2 If the mining application relates to any order, declaration, assessment or other documents, such order, declaration, assessment or document must be affixed to or be filed with the application and for the purposes of these Rules (including the calculation of any fees payable upon filing the application), shall be regarded as part of the application.

6A.1.3 The Court may decline to deal with any mining application until proof of service meeting the requirements of these Rules has been filed in a registry of the Court.

6A.2.1 No mining application shall be accepted as having been duly made or instituted until:

- a notice of application meeting the requirements of these Rules has been filed in a registry of the Court; and
- the prescribed fee has been paid.

## PART 7—ENFORCEMENT AND COMPLIANCE APPLICATIONS

### 7.1 Institution of Application

7.1.1 An order for enforcement pursuant to section 85 of the *Development Act 1993*, section 104 of the *Environment Protection Act 1993* section 141 of the *Water Resources Act 1997*, section 31A of the *Native Vegetation Act 1991*, or section 29 of the *Upper South East Dryland Salinity and Flood Management Act 2002*, shall be sought by summons.

7.1.2 Proceedings for an enforcement order (but not including a compliance order sought pursuant to the provisions of section 74A of the *Mining Act 1971* or section 86 of the *Opal Mining Act 1995*), shall be commenced by filing in a registry of the Court the following documents:

- (a) an application seeking leave to serve a summons (and where the applicant is a person other than those contemplated by subsections 104 (7) (a) and (7) (b) of the *Environment Protection Act 1993*, or subsections 141 (6) (a) and (6) (b) of the *Water Resources Act 1997* seeking leave to bring the application);
- (b) the summons in respect of which leave is sought;
- (c) one or more supporting affidavits; and
- (d) where the applicant brings the proceedings in a representative capacity, a memorandum.

7.1.2a Proceedings for a compliance order to be sought pursuant to the provisions of section 74A of the *Mining Act 1971* or section 86 of the *Opal Mining Act 1995* shall be commenced by filing in a registry of the Court the following documents:

- (a) the summons which the applicant seeks to be issued by the Court;
- (b) one or more supporting affidavits setting out briefly the facts upon which the applicant will request Court to make the order set out in the summons.

7.1.3 Every application must:

- (a) be in writing and give the full name of the applicant;
- (b) identify the person or persons on whom it is sought to serve the summons;
- (c) specify the address for service of the applicant and, if available, the telephone and facsimile numbers and email address of the applicant; and
- (d) be signed by the applicant, or on his or her behalf by a solicitor, agent or other representative.



7.1.4 Every summons must be in the following form:

SOUTH AUSTRALIA  
IN THE ENVIRONMENT RESOURCES AND  
DEVELOPMENT COURT

No.        of        20    .

IN THE MATTER OF THE  
[insert name of relevant Act]

BETWEEN

A.B.                    Applicant

and

C.D.                    Respondent

Summons        issued        at        the        request        of        the        Applicant,

To:.....of.....

You are advised that the applicant seeks the following orders against you:

(insert the order(s) sought)

The facts upon which the applicant relies are set out in the affidavit of (or affidavits of ..... ) served with this Summons.

If you wish to be heard or to oppose the making of any of these orders, you or your solicitor must file a Notice of Address for Service within 14 days after service of this Summons on you.

This Notice of Address for Service must be filed at a Registry of the Court. A List of the Registry addresses is attached.

If you do not have a solicitor, you may attend personally at a Registry to do this.

If a Notice for Address for Service is not filed within the time stated, orders may be made against you in your absence.

Dated the                    day of                    20    .

This summons remains in force for three months only after its date of issue unless it has been extended by order of the Court.

.....  
Registrar

This summons is taken out by                    (applicant or applicant’s solicitor) whose address for service is telephone number                    facsimile number                    e-mail address.

7.1.5 Every accompanying affidavit (or, where more than one, the affidavits taken together) must set out:

(a) the facts and circumstances upon which the applicant relies; and

- (b) the name (and, as far as is known, the address, telephone and facsimile numbers) of any person who, in the opinion of the deponent, either has or might reasonably be expected to have a legal or equitable interest in the land the subject of the application.

7.1.6 Every memorandum must specify all the people or organisations upon behalf of whom or which the proceedings are brought and signed by all the people or organisations in such manner as shows that all the people or organisations consent to the proceedings being brought on their behalf.

## **7.2 Leave to Serve Summons**

7.2.1 The Court, on the hearing of an application for leave may refuse to grant the application or may amend or strike out part of the summons where, on the evidence before the Court, there is no reasonable prospect that the Court would make any order of the nature sought.

7.2.2 Every summons in respect of which leave has been granted by the Court:

- (a) shall not be issued by the Court after one month of such leave being granted; and
- (b) will remain in force for three months only after the date of such issue, unless the Court extends such period.

7.2.3 As soon as is reasonably practicable after a summons and accompanying affidavits have been served upon any person (including an Authority, where such service is required), the applicant shall file an affidavit verifying such service.

## **7.3 Notice of Address for Service**

7.3.1 A person served with a summons and wishing to be heard by the Court in response must file a Notice of Address for Service at a registry of the Court within fourteen days of the date of service.

7.3.2 The Notice of Address for Service must specifically acknowledge service of the summons, set out the name of the person who desires to be heard in response to the summons and specify an address for service and, if available, a telephone number.

## **7.4 Affidavit of Merits**

7.4.1 A person (other than a relevant Authority) who has filed a Notice of Address for Service must, at least fourteen days prior to the hearing, file and serve on all other parties to the summons an affidavit setting out such facts and circumstances as he, she or it may ask the Court to take into account upon the hearing of the summons.

## **7.5 Legal or Equitable Interest**

7.5.1 Where an affidavit filed pursuant to paragraph 7.1.2 of this Part sets out the name of any person who, in the opinion of the deponent, either has or might reasonably be expected to have a legal or equitable interest in the land the subject of the application, the Court may order that notice of the summons be given to that person.

7.5.2 Where, in the opinion of the Court, any person has a legal or equitable interest in the land the subject of the application, the Court may order that notice of the summons be given to that person.

7.5.3 Where an order that notice be given to any person is made pursuant to this Part, an affidavit verifying that such notice has been given must be filed by the applicant as soon as is reasonably practicable after such notice has been given.

- 7.5.4 Any person to whom notice has been given pursuant to this Rule and who desires to be heard by the Court upon the hearing of the summons, must file a written notice of his, her or its desire to be so heard, within fourteen days of being served with such notice.
- 7.5.5 Every notice filed pursuant to paragraph 7.5.4 of this Rule must give an address for service (and, if available, a contact telephone number, of the person filing the notice and must contain a brief statement of the person's interest in either the land or the proceedings.
- 7.5.6 Every notice given to a person in consequence of an order made pursuant to paragraphs 7.5.1 or 7.5.2 of this Rule shall:
- (a) be in writing;
  - (b) have attached to it a copy of the summons; and
  - (c) contain the following endorsement:

To.....

TAKE NOTICE that if you wish to be heard by the Environment Resources and Development Court on any question or matter relating to these proceedings, you must file at a registry of the Court a written notice of your wish to be heard. Such notice must:

- be filed within 14 days of the service of this notice upon you;
- contain an address (and, if available, telephone and facsimile numbers and e-mail address) at which documents and communications can be directed to you; and
- contain a brief statement of your interest in either these proceedings or in the land to which they relate.

## 7.6 Setting Down for Hearing

- 7.6.1 The summons shall be set down for hearing as soon as is practicable after the time for filing of a Notice of Address for Service has expired, and the Registrar must give notice of the time appointed for the conference to the applicant, any respondent who has filed a Notice of Address for Service, any person who has filed a notice pursuant to and meeting the requirements of paragraphs 7.5.4 and 7.5.5 of this Part, and any Authority which has been served.

## PART 8—CONFERENCES

- 8.1 A judge, commissioner, master or magistrate of the Court may preside at any conference.

### 8.2 Matters to be Referred to a Conference

- 8.2.1 In addition to the matters which must be referred to a conference pursuant to subsections 85 (5) and 86 (6) of the *Development Act 1993*, and subsections 104 (2) and 106 (5) of the *Environment Protection Act 1993*, subsections 141 (11) and 142 (6) of the *Water Resources Act 1997* and subsection 38 (4) of the *Ground Water (Qualco-Sunlands) Control Act 2000*, and subsection 31A (5) of the *Native Vegetation Act 1991* the following actions must at first instance be referred to a conference, namely:

- (a) any appeal to the Court pursuant to subsections 6 (4) or 74 (6) of the *Development Act 1993*;
- (b) any appeal to the Court pursuant to section 48 of the *South Eastern Water Conservation and Drainage Act 1992*;
- (c) any appeal to the Court pursuant to section 20 of the *Heritage Act 1993*;
- (d) any appeal to the Court pursuant to subsections 65 (1) or 67 (1) of the *Irrigation Act 1994*;
- (e) any appeal to the Court pursuant to section 17 of the *Mining Act 1971*;
- (f) any compliance application to the Court pursuant to section 74A of the *Mining Act 1971* or section 86 of the *Opal Mining Act 1995*;
- (g) any mining application which involves a party other than the applicant;
- (h) any application to the Court pursuant to subsections 55 (1) or 60 (3) of the *Development Act 1993*, section 35 of the *Heritage Act 1993* subsection 49 (2) of the *Irrigation Act 1994*, subsections 29 (1) or 31 (1) of the *Upper South East Dryland Salinity and Flood Management Act 2002*, or section 33F of the *Native Vegetation Act 1991*.

### **8.3 Authority to Provide Application and Reports**

8.3.1 Where the decision of an Authority is the subject of proceedings to be referred to a conference, the Authority must, at least two clear business days prior to the scheduled conference date, provide to the Court and to each party to the proceedings, a copy of each of the application documents and any representation, submission or report with respect to the application (including a report by staff of, and any consultant engaged by, the Authority), submitted to the Authority or any person or Committee acting under delegation from the Authority prior to its decision. Nothing in this Rule derogates from the duty of an Authority to provide notice to the Court of persons who made representations, pursuant to subsections 38 (12) and 38 (13) of the *Development Act 1993*.

### **8.4 The Conference**

8.4.1 The purpose of a conference is to enable the member of the Court presiding at the conference to assist the parties to explore any possible resolution of the matters in dispute without resorting to a formal hearing and to that end, it is expected that:

- (a) the issues or matters in dispute, from the perspective of each party, will be aired and discussed openly at the conference, with a view to a fair and reasonable exchange of views in good faith;
- (b) the party or his, her or its representative(s) attending the conference will attend in good faith, and that the representative(s) will have obtained the authority to discuss, negotiate and authorise a settlement of the proceedings, or agree on such issues or part of the proceedings as may be agreed;
- (c) each party or his, her or its representative(s), will be prepared at the conference, to discuss its case, identifying the issues it proposes to argue, and the grounds therefor and respond as best it then can to the case of each other party.

## **8.5 Adjourning of Conference to Give Notice to Another Person**

8.5.1 Where, during the course of a conference, the member presiding concludes that the parties have reached or may reach a settlement which will or may prejudice any person not represented at the conference but who has a direct or material interest in the proceedings to which the conference relates, the member presiding may adjourn the conference and direct the Registrar to give notice of the conference and of the proposed or probable settlement to such person and the Registrar must give notice accordingly.

8.5.2 Any person to whom a notice has been given pursuant to this paragraph may:

- (a) attend at the adjourned conference and participate in it; and
- (b) apply to be joined as a party to the proceedings the subject of the conference.

## **8.6 Order for Costs**

8.6.1 Where the member of the Court presiding at a conference makes an order for costs pursuant to placitum 16 (7) (h) of the Act, the amount of costs so ordered shall be determined by reference to Part 14 of these Rules.

## **PART 9—MEDIATION**

9.1 ‘Mediation’ is a process voluntarily entered into by the parties whereby a neutral third party assists and encourages the parties in dispute as to one or more matters in a proceeding, to achieve their own negotiated settlement of the matter or matters in dispute.

### **9.2 Mediation Pursuant to section 28B of the Act**

9.2.1 Mediation may be conducted in relation to proceedings at any stage thereof. The Court may appoint a mediator with the consent of the parties.

### **9.3 Settlement Resulting from Mediation**

9.3.1 In the event that a mediation results in the settlement of any of the matters in dispute between the parties, the outcome shall be reduced to writing, signed by the mediator and the parties, (‘the mediation report’) and filed in a registry of the Court.

9.3.2 Following receipt of a mediation report, the Court may record a settlement and make any decision or order it considers appropriate.

## **PART 10—BUILDING REFERENCES**

10.1 All matters to be determined by the Court pursuant to subsection 86 (5) and section 87 of the *Development Act 1993* shall be commenced by a reference to the Court (‘a building reference’).

### **10.2 Building Referees**

10.2.1 Every building referee determining a building reference must be a Commissioner with practical knowledge of, and experience in architecture, civil engineering, building, building safety or building regulation.

### **10.3 Institution of Building Reference**

10.3.1 Every building reference must be in writing and:

- (a) identify the building work (current or proposed) to which the reference relates;
- (b) specify the decision, direction or dispute the subject of the reference and, if appropriate, have annexed to it or be accompanied by, any plans, specifications or other documents (including any order or notice of refusal) either the subject of or relating to the reference;
- (c) briefly set out the order, direction or modification which the party seeking the reference is requesting the Court to make or give;
- (d) identify and give the address (and, if known) the telephone and facsimile numbers and e-mail address of the Council or other party to the reference;
- (e) specify the address for service of the party seeking the reference and, if available, the telephone and facsimile numbers and e-mail address of such party; and
- (f) be signed by or on behalf of the party seeking the reference by his or her solicitor, agent or other representative.

10.3.2 Subject to paragraph 10.4.1 of this Part, no building reference shall be duly instituted until:

- (a) a reference meeting the requirements of these Rules has been filed in a registry of the Court;
- (b) the prescribed fee has been paid; and
- (c) the reference has been served on the relevant authority.

10.3.3 A building reference shall not seek a decision of the Court on any matter in dispute between the parties excepting those identified by subsection 86 (5) of the *Development Act 1993*.

### **10.4 Additional Powers of Building Referees**

10.4.1 For the purpose of expediting the hearing and determination of any building reference, the building referees, without limiting any other power of the Court, may:

- (a) waive the filing of any document or the payment of the prescribed fees until the commencement of the hearing of the building reference;
- (b) conduct the proceedings at any place (including upon the land or within the building the subject of the reference), at any time and in such form or manner as he or she thinks will be conducive to the expeditious determination of the issues between the parties; and
- (c) keep or cause to be kept such transcript or other record of the proceedings of the reference as he or she thinks fit.

## **PART 11—PROVISION OF DOCUMENTS AND COPY DOCUMENTS**

### **11.1 Copy Documents—Civil Enforcement Applications**

11.1.1 The applicant must provide to the Court and each other party copy documents in the form, and within the time, specified in the relevant Practice Directions issued by the Court.

### **11.2 Documents Requested by the Court**

11.2.1 Where any material has been delivered or sent to the Principal Registry as a consequence of a notice given pursuant to subsection 21 (2) of the Act, the Registrar must make it available for inspection by the parties or their representatives, in the matter to which the notice relates, at a registry of the Court.

11.2.2 The Registrar may provide a copy of such material as may reasonably be copied in the Registry to any party or representative thereof upon such party or representative paying to the Registrar the relevant fee, or where there is no fee, an amount sufficient to cover the cost of producing such copy.

### **11.3 Documents for the Hearing—Appeals**

11.3.1 The applicant for consent, and the authority whose decision is the subject of an appeal, must each provide to the Court and each other party, those documents specified in the relevant Practice Directions issued by the Court, in the form and within the time required by the Practice Directions.

### **11.4 Statements of Expert Witnesses**

11.4.1 A copy of the Statement or Report of any expert to be called as a witness at the hearing of proceedings must be provided to the Court with a clear indication of the proceedings to which the statement relates, and to any other party, in the form and within the time required by the relevant Practice Directions issued by the Court.

## **PART 12—SERVICE OF DOCUMENTS**

### **12.1 Service Generally**

12.1.1 Subject to the provisions of the *Electronic Transactions Act 2000* and these Rules, any notice required to be served or given, or anything required to be delivered, by the Act or these Rules may be served upon, given or delivered to:

- (a) the Development Assessment Commission—unless subparagraph (d) applies, by delivering it to the office of the Secretary to the Commission, or by posting in an envelope addressed to the Secretary to the Commission at his or her office;
- (b) a Council—unless subparagraph (d) applies, by delivering it to the office of the chief executive officer of the Council or by posting it in an envelope addressed to the chief executive officer, at his or her office;
- (c) any other person, unless subparagraph (d) applies, by:
  - (i) delivering it personally either to the person or his or her solicitor, agent, or other representative;

- (ii) posting it in an envelope addressed to the person at his or her usual or last known place of address or business;
- (iii) where the person is a body corporate, by delivering it to the registered or principal office of that body, and leaving it with a person apparently over the age of 16 years, or by posting it in an envelope addressed to the body at its registered or principal office;
- (iv) facsimile transmission to a facsimile number known to be used by the person or his or her solicitor, agent or other representative (in which case the notice or document will be taken to have been served at the time of transmission); or
- (v) delivering it to the box or other receptacle used by the party or his or her solicitor, agent or other representative, at the Australian Document Exchange (in which case the notice or document will be taken to have been served or given on the day following the day on which the notice or document was delivered to the box or receptacle);

and

- (d) where a party to an appeal has filed a notice or other document in the proceedings which contains an address for service, leaving the notice or document to be served at the address for service with some person apparently in charge thereof, or by sending it by pre-paid post addressed to the party at the address for service.

## **12.2 Personal Service**

12.2.1 Personal service of any document on any person or party shall be proved by the person so serving such document swearing an affidavit or statutory declaration containing the following facts:

- (a) the time, date and place of service;
- (b) the person upon whom service was effected and the capacity in which such person was served; and
- (c) sufficient facts to prove the identity (or apparent connection) of the person served with the person or party named in the document.

## **12.3 Proof of Service**

12.3.1 Service, other than personal service, of any document on any person or party shall be proved by the person so serving such document swearing an affidavit or statutory declaration setting out the manner in which such service was effected.

## **12.4 Substituted Service**

12.4.1 Where reasonable efforts have been made but have failed to effect service of a document in accordance with these Rules, the party wishing to serve such document may apply to the Court for an order for substituted service.

12.4.2 Every application for substituted service must be supported by an affidavit setting out the grounds for such application.

12.4.3 The Court may make an order for substituted service if the justice of the case so requires.



## **PART 13—JURISDICTION OF MASTER**

- 13.1 In addition to any other powers conferred upon him or her by these Rules or otherwise, a Master of the Court has jurisdiction to:
- (a) with the consent of all parties to any action, make any order which the Court is empowered to make in that action;
  - (b) make any interim or interlocutory order or issue any interim injunction;
  - (c) make an order requiring a party to produce particulars, a list of relevant documents or specified documents pursuant to Part 4 of these Rules;
  - (d) make an order for substituted service or any other order relating to the service of documents;
  - (e) where the Court has made an order for costs against any party, tax the costs to be paid pursuant to such order;
  - (f) order any party to proceedings before the Court to give security for the payment of costs or make any other order in relation thereto or pursuant to section 39 of the Act;
  - (g) make an order remitting or reducing any court fees to be paid by any party in accordance with subsection 45 (2) of the Act;
  - (h) preside at any conference conducted pursuant to section 16 of the Act, and may, whilst so presiding, refer any question of law to a Judge of the Court for determination;
  - (i) adjourn any matter set for hearing or list any matter for hearing, including making any order for the early hearing of any matter; and
  - (j) settle any order of the Court (either final, interlocutory or interim) and direct that such order be sealed.
- 13.2 When exercising any of the powers or jurisdiction conferred by this Part or by any of these Rules, a Master shall constitute the Court.

## **PART 14—COSTS**

### **14.1 Scales of Costs**

14.1.1 The Scale of Costs prescribed by the Court for the purposes of sections 29 and 44 of the Act is that which applies generally, mutatis mutandis, in the District Court at the relevant time.

### **14.2 Disbursements**

14.2.1 Where any plan, photograph, model or other exhibit not covered by the scale prescribed by these Rules is purchased or prepared by any party for the purpose of tendering to the Court, the Court may allow the actual cost of purchasing or preparing such exhibit.

14.2.2 Where any fees have been paid to the Court in accordance with the scale prescribed in the Environment, Resources and Development Court Regulations 1993 or where liability to pay such fees either has been or is likely to be incurred, the Court may allow the amount of such fees.

14.2.3 Where a witness has attended the Court for the purpose of giving evidence, the Court may allow fees payable to such witness upon any of the following bases:

- (a) where the witness was accepted by the Court as an expert witness in a recognised profession or trade, or would have been likely to have been accepted if called, the witness shall be allowed a fee of such amount per hour necessarily attended at Court, as is reasonable having regard to the profession or trade;
- (b) where a witness was accepted by the Court as an expert witness in a recognised profession or trade, or would have been likely to have been so accepted if called, the Court may allow any reasonable costs properly incurred by a party in obtaining from such witness any report on matters relevant to the proceedings before the Court;
- (c) where a witness is not an expert witness but attends the Court for the purpose of giving evidence relevant to the proceedings before the Court, the witness shall be allowed a fee of \$30.00 per hour necessarily attended or such greater amount as is reasonable; and
- (d) where a witness incurs travelling expenses for the purpose of attending Court, the fee payable to such witness may include such amount as the Court thinks reasonable to reimburse to the witness such expenses.

14.2.4 Such out of pocket expenses as are not otherwise provided for herein which have been properly incurred, as the Court shall allow.

### **14.3 Order Against Parties**

14.3.1 Where the Court makes an order for costs pursuant to section 29 of the Act against more than one party, it may, if it thinks it just so to do, make an order directing the amount or proportion of such costs as shall be paid by each party.

### **14.4 Order on Issue of Summons to Witness**

14.4.1 Where the Court, at the application of a party to proceedings, issues a summons, pursuant to section 22 of the Act, requiring a person to appear before the Court, the Court may, either at the time of the issue of the summons or at any time before the conclusion of the action, order the party which applied for the issue of the summons to pay to the person required to appear the cost of that person attending before the Court.

14.4.2 When determining the amount to be paid pursuant to paragraph 14.3.1, the Court shall have regard to:

- the principles enunciated in subparagraph 3 under the heading 'Disbursements' in paragraph 14.1.1 of this Part; and
- any travelling, accommodation or other costs actually incurred or likely to be incurred by the person in attending the Court.

14.4.3 The Court may make an order pursuant to this paragraph either upon an application by the person required to appear or a party to the proceedings, or of its own motion.

14.4.4 Where an order is made pursuant to this paragraph, the amount ordered to be paid shall be a debt payable to the person required to attend by the party against whom the order is made.

## **14.5 Adjudication of Costs**

The adjudication of costs awarded by the Court shall be undertaken in accordance with the practice and procedure for the time being of the District Court, with such modifications as may be necessary in the circumstances.

## **PART 15—CONTEMPT**

### **15.1 Meaning of ‘Contempt of Court’**

15.1.1 ‘Contempt of court’ for the purposes of this Rule shall include:

- (a) contempt in the face or the hearing of the Court;
- (b) disruption of the proceedings of the Court;
- (c) the obstruction, prevention or intimidation of litigants, witnesses or other persons from attending Court, or threats to do so; and
- (d) a refusal to obey or failure to comply with any order, direction, summons, judgment or other process of the Court.

### **15.2 Action by Court**

15.2.1 Where it is alleged or appears to the Court on its own view, that a person is guilty of contempt of court the Court may:

- (a) by oral order direct that the person be brought forthwith before the Court by the Sheriff or other appropriate officer; or
- (b) issue a warrant for the arrest of the person under the hand of a Judge directed to the Sheriff ordering the Sheriff to take the person into custody and to hold him or her in custody until he or she can be brought before the Court to answer the alleged contempt.

15.2.2 Where it is alleged that a contempt has been committed the Court may, in lieu of ordering the immediate arrest of the person, direct the Registrar to issue a summons in the form set out in paragraph 15.3.1 of this Part and cause it to be served upon the person alleged to be in contempt; the said summons to state the nature of the alleged contempt with sufficient particularity for the person charged to make his or her defence to the charge, and to state a specific time and place for him or her to attend.

15.2.3 Where the contempt consists of an insult offered to a Judge or other member of the Court, except where in the opinion of the Judge or Magistrate (where the member concerned is a Judge or Magistrate) it is just and expedient to take immediate action, the contempt proceedings shall be heard before a Judge (where the insult was offered to a Commissioner) or another Judge or Magistrate (where the insult was offered to a judge or magistrate), of the Court.

### **15.3 Form of Summons**

15.3.1 The Judge or Magistrate of the Court may direct the Registrar to issue a summons in the following form:

SOUTH AUSTRALIA

IN THE ENVIRONMENT, RESOURCES AND  
DEVELOPMENT COURT

No.          of          20          .

Re proceedings for an alleged  
contempt of Court by A.B.

To:.....of.....You are required to attend before  
the Environment, Resources & Develop-ment Court at  
on          on the hearing of this summons which is issued by the  
Registrar of the Court, to answer a charge of contempt of Court. The details of the  
charge of contempt of Court are that you did, on [date], [set out details of alleged  
contempt].

Dated the          day of          20          .

.....  
Registrar

THIS SUMMONS is issued pursuant to Part 15 of the Environment, Resources and  
Development Court Rules.

N.B. If you fail to attend at the time and place set out above, a warrant may be issued  
for your arrest, and orders may be made against you in your absence and you may be  
punished for contempt of Court.

### **15.4 Powers of Court**

15.4.1 Where the person charged with contempt is brought before the Court, the Court may:

- (a) cause him or her to be informed orally of the contempt with which he or she is charged, with sufficient particularity and direct him or her to make his or her defence to the charges;
- (b) upon hearing the person's defence proceed forthwith, or after an adjournment, to determine the matter of the charge;
- (c) after hearing any submissions in mitigation make such order for the punishment or discharge of the person as is just;
- (d) remand the person for the hearing of the contempt charge before another, or a Judge; or
- (e) in a proper case recall or rescind the charge of contempt.

### **15.5 Procedure on Hearing of Charge**

15.5.1 When the person so charged comes before the Court for the hearing or the adjourned hearing of the charge, the procedure shall be:

- (a) if he or she is not represented by counsel, he or she shall be advised or reminded of the nature and substance of the charge of contempt with sufficient particularity for him or her to understand the charge and the nature of the proceedings;
- (b) in all proceedings, irrespective of whether he or she is represented, he or she shall be asked whether he or she pleads guilty or not guilty;
- (c) if he or she is not represented by counsel, he or she shall be advised and reminded from time to time of his or her rights;
- (d) if he or she pleads not guilty, evidence in support of the charge of contempt shall be presented to the Court by a person and in the manner directed by the Court;
- (e) where substantial punishment is a practical possibility, the procedures to be adopted and the onus of proof to be applied and the rules of evidence to be followed, shall be those generally applicable in criminal proceedings to the extent that they are appropriate, except as follows:
  - (i) for the purposes of the proof of the charge of contempt, any affidavits previously filed in the matter, or in preparation for the hearing of the contempt charge, or during the course of the hearing on the contempt charge, may be used in evidence as proof beyond reasonable doubt of the facts therein stated provided the Judge or Magistrate is satisfied that it is safe so to act and provided the said person has been given a copy of the affidavit and afforded an opportunity to peruse it and to consider the same and thereafter elects not to require the deponent to be called for cross-examination; and
  - (ii) the Judge or Magistrate shall be entitled to call witnesses who may then be cross-examined by those persons supporting and contesting a finding of guilt;
- (f) at the conclusion of the hearing the Court shall make a finding whether the said person is guilty or not guilty of the contempt alleged or of the substance of the alleged contempt; and
- (g) where the Court finds the person guilty, he or she shall be heard in mitigation of penalty;
- (h) where the penalty for the contempt includes an order that the said person shall pay a substantial sum of money, whether by way of fine or costs of the contempt proceedings or both, the Court shall fix a period of imprisonment in default of payment within the time allowed;
- (i) where the said person is unable to pay the fine or costs within the time allowed, the Court may either extend the time for payment or reduce the fine but not the costs.

15.5.2 The Court may, pending disposal of the charge:

- (a) direct that the person be detained in such custody as the Court directs;
- (b) direct that the person be released, upon such terms to secure his or her appearance to answer the charge as the Court may direct; or

- (c) where the person so charged fails to attend before the Court in answer to a summons issued and served on him or her pursuant to this Part of the Rules, the Court may issue a warrant for the arrest of the person under the hand of a Judge directed to the Sheriff ordering the Sheriff to take the person into custody and to hold him or her in custody until he or she can be brought before the Court to answer the alleged contempt.

## **15.6 Suspension of committal order**

15.6.1 The Court when making an order for committal may by order direct that the execution of the order of committal be suspended for such period and on such terms or conditions as the Court thinks fit. Upon compliance with the terms and conditions during the said period the order for committal may be discharged.

## **15.7 Power to release before the expiration of the term of imprisonment**

15.7.1 Where a person in contempt is committed to prison for a specified period, the Court may order his discharge before the expiry of that period.

## **15.8 Order for suspension of committal to be drawn up**

15.8.1 (a) Where the Court suspends the execution of an order of committal pursuant to Rule 15.6.1 an order shall be drawn up setting out any findings of contempt, the period of imprisonment fixed, any other orders as to fines, costs or undertakings, the terms and conditions of the suspension of the term of imprisonment and a warning to the person of the consequences of non-compliance.

### *Order to be served*

(b) The order shall be drawn up and served on the person at the time of his release or as soon as practicable after his release.

### *Omission of details from sealed order not to invalidate it*

(c) If the order as served does not contain one or more of the matters in Rule 15.8.1 the omissions shall not invalidate the order of suspension or relieve the person of the obligation to comply with the terms and conditions of an order or fines or undertakings.

## **15.9 Discharge from imprisonment may be conditional**

15.9.1 Where the person is to be discharged under Rule 15.7.1 prior to the expiry of the original period fixed for his imprisonment, the discharge may be unconditional or conditional upon such terms and conditions as are fixed by the Court and where terms and conditions are fixed the provisions of Rules 15.8.1 (b) and (c) shall apply.

## **15.10 Court may direct the Registrar to apply to revoke a suspension order**

15.10.1 (a) Where the person is alleged to be in breach of any term, condition, obligation or undertaking referred to in this Rule, the Court may of its own motion, or on the application of an interested party, direct the Registrar to issue an application for the revocation of the suspension order or of the order of early discharge from custody as the case may be, the application to contain the particulars referred to in Rule 15.2.2 and the procedures to be those provided for the hearing of the original contempt allegations.

*Powers of the Court*

- (b) Where the Court is satisfied that the person has been in breach as alleged it may make such order as is just and expedient in the circumstances.

*Court may issue a warrant for arrest in the first instance*

- (c) The Court may, where it is just and expedient to do so, issue a warrant for arrest in the first instance either of its own motion or on the application of an interested party instead of directing the issue of a summons.

**15.11 Punishment of Contempt**

15.11.1 The Court may punish contempt of Court by committal of the person to prison or fine or both, or by the imposition of a bond to be of good behaviour with such other conditions as may be proper, and by ordering the person to pay the costs of the contempt proceedings.

15.11.2 When the Court imposes a fine, it may allow time to pay and in default of payment within that time order that the person be imprisoned for a fixed period.

15.11.3 The Court may on the person making proper tender of apology and amends recall or reconsider any previous order of the Court punishing him or her for his or her contempt.

**15.12 Power of the Court to Dispense with Service Requirements**

15.12.1 The Court may, where it is just and expedient to do so, dispense with the requirements as to personal or substituted service of any order, notice, application or summons, provided the Court is satisfied that the person had knowledge of the substance of the terms of the order, notice, application or summons and has been evading service.

**PART 16—PROCEDURE UPON TRIAL OF ANY CHARGE OF AN OFFENCE**

16.1 The Magistrates Court Rules 1992 (Criminal Jurisdiction) apply generally, mutatis mutandis, to the practice and procedure of the Court in the exercise of its jurisdiction over offences.

16.2 The Court may, in its unfettered discretion, modify the application of the Magistrates Court Rules either generally or having regard to the exigencies of particular cases, in the light of the nature of the Court's jurisdiction over offences and the number of prosecutions that may from time to time be commenced in the Court.

## History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
14.5	ins am1	1 July 2014