

**MAGISTRATES COURT RULES 1992**  
(Amendment 64)

being  
Magistrates Court of South Australia Rules as amended by

Amendment No 1 to the Magistrates Court Rules (Gov Gaz 7 January 1993 p 106)  
Amendment No 2 to the Magistrates Court Rules (Gov Gaz 18 March 1993 p 1010)  
Amendment No 3 to the Magistrates Court Rules (Gov Gaz 29 March 1994 p 822) [1]  
Amendment No 4 to the Magistrates Court Rules (Gov Gaz 19 May 1994 p 1238)  
Amendment No 5 to the Magistrates Court Rules (Gov Gaz 28 July 1994 p 190) [2]  
Amendment No 6 to the Magistrates Court Rules (Gov Gaz 7 September 1995 p 695)  
Amendment No 7 to the Magistrates Court Rules (Gov Gaz 28 September 1995 p 862)  
Amendment No 8 to the Magistrates Court Rules (Gov Gaz 21 March 1996 p 1695)  
Amendment No 9 to the Magistrates Court Rules (Gov Gaz 12 December 1996 p 1881)  
Amendment No 10 to the Magistrates Court Rules (Gov Gaz 10 April 1997 p 1485)  
Amendment No 11 to the Magistrates Court Rules (Gov Gaz 29 May 1997 p 2722)  
Amendment No 12 to the Magistrates Court Rules (Gov Gaz 12 February 1998 p 899)  
Amendment No 13 to the Magistrates Court Rules (Gov Gaz 23 April 1998 p 1952) [3]  
Amendment No 14 to the Magistrates Court Rules (Gov Gaz 11 March 1999 p 1355) [4]  
Amendment No 15 to the Magistrates Court Rules (Gov Gaz 8 July 1999 p 208) [5]  
Amendment No 16 to the Magistrates Court Rules (Gov Gaz 24 February 2000 p 1126) [6]  
Amendment No 17 to the Magistrates Court Rules (Gov Gaz 6 April 2000 p 2038)  
Amendment No 18 to the Magistrates Court Rules (Gov Gaz 1 June 2000 p 2900)  
Amendment No 19 to the Magistrates Court Rules (Gov Gaz 8 March 2001 p 869)  
Amendment No 20 to the Magistrates Court Rules (Gov Gaz 11 September 2003, p 3510)  
Amendment No 21 to the Magistrates Court Rules (Gov Gaz 6 May 2004 p 1216)  
Amendment No 22 to the Magistrates Court Rules (Gov Gaz 5 August 2004, p 2759 [7]  
Amendment No 23 to the Magistrates Court Rules (Gov Gaz 31 March 2005, p 732)  
Amendment No 24 to the Magistrates Court Rules (Gov Gaz 2 March 2006, p 824)  
Amendment No 25 to the Magistrates Court Rules (Gov Gaz 1 December 2005, p 4055)  
Amendment No 26 to the Magistrates Court Rules (Gov Gaz 4 May, 2006 p 1199)  
Amendment No 27 to the Magistrates Court Rules (Gov Gaz 1 March 2007 p 643) [8]  
Amendment No 28 to the Magistrates Court Rules (Gov Gaz 31 May 2007 p2192)  
Amendment No 29 to the Magistrates Court Rules (Gov Gaz 17 April 2008 p 1328)  
Amendment No 30 to the Magistrates Court Rules (Gov Gaz 22 May 2008 p 1712)  
Amendment No 31 to the Magistrates Court Rules (Gov Gaz 24 July 2008 p 3451)  
Amendment No 32 to the Magistrates Court Rules (Gov Gaz 25 September 2008 p4561) [9]  
Amendment No 33 to the Magistrates Court Rules (Gov Gaz 8 January 2009 p 63)  
Amendment No 34 to the Magistrates Court Rules (Gov Gaz 23 December 2009 p 6448)  
Amendment No 35 to the Magistrates Court Rules (Gov Gaz 15 July 2010 p 3466)  
Amendment No 36 to the Magistrates Court Rules (Gov Gaz 7 October 2010 p 5034)  
Amendment No 37 to the Magistrates Court Rules (Gov Gaz 11 November 2010 p 5297)  
Addendum to Amendment No 36 to the Magistrates Court Rules (Gov Gaz 9 December 2010 p 5644)  
Addendum to Amendment No 37 to the Magistrates Court Rules (Gov Gaz 9 December 2010 p 5645)  
Amendment No 38 to the Magistrates Court Rules (Gov Gaz 14 November 2011 p 4498)  
Amendment No 39 to the Magistrates Court Rules (Gov Gaz 3 November 2011 p 4405)  
Amendment No 40 to the Magistrates Court Rules (Gov Gaz 3 November 2011 p 4410)  
Amendment No 41 to the Magistrates Court Rules (Gov Gaz 17 November 2011 p 4573) [10]  
Amendment No 42 to the Magistrates Court Rules (Gov Gaz 10 May 2012 p 1650)  
Amendment No 43 to the Magistrates Court Rules (Gov Gaz 15 November 2012 p 5138)  
Amendment No 44 to the Magistrates Court Rules (Gov Gaz 27 June 2013 p 2842)  
Amendment No 45 to the Magistrates Court Rules (Gov Gaz 9 January 2014 p 58)  
Amendment No 46 to the Magistrates Court Rules (Gov Gaz 23 January 2014 p 320)

Amendment No 47 to the Magistrates Court Rules (Gov Gaz 10 April 2014 p 1483)  
 Amendment No 48 to the Magistrates Court Rules (Gov Gaz 17 April 2014 p 1512)  
 Amendment No 49 to the Magistrates Court Rules (Gov Gaz 31 July 2014 p 3702)  
 Amendment No 50 to the Magistrates Court Rules (Gov Gaz 29 August 2014 p 4223)  
 Amendment No 51 to the Magistrates Court Rules (Gov Gaz 23 October 2014 p 6162)  
 Amendment No 52 to the Magistrates Court Rules (Gov Gaz 4 December 2014 p 6584)  
 Amendment No 53 to the Magistrates Court Rules (Gov Gaz 26 February 2015 p 832)  
 Amendment No 54 to the Magistrates Court Rules (Gov Gaz 17 September 2015 p 4281)  
 Amendment No 55 to the Magistrates Court Rules (Gov Gaz 28 January 2016 p 238)  
 Amendment No 56 to the Magistrates Court Rules (Gov Gaz 3 March 2016 p 826)  
 Amendment No 57 to the Magistrates Court Rules (Gov Gaz 28 July 2016 p 3048)  
 Amendment No 58 to the Magistrates Court Rules (Gov Gaz 25 August 2016 p 3400)  
 Amendment No 59 to the Magistrates Court Rules (Gov Gaz 24 November 2016 p 4473)  
 Amendment No 60 to the Magistrates Court Rules (Gov Gaz 11 April 2017 p 1064)  
 Amendment No 61 to the Magistrates Court Rules (Gov Gaz 27 June 2017 p 2574)  
 Amendment No 62 to the Magistrates Court Rules (Gov Gaz 29 August 2017 p 3828)  
 Amendment No 63 to the Magistrates Court Rules (Gov Gaz 4 October 2017 p 4246)  
 Amendment No 64 to the Magistrates Court Rules (Gov Gaz 14 November 2017 p 4585)[11]

- [1] Came into effect 1 April 1994.
- [2] Came into effect 1 August 1994.
- [3] Came into effect 4 May 1998.
- [4] Came into effect 6 April 1999.
- [5] Came into effect 25 July 1999.
- [6] Came into effect 6 March 2000.
- [7] Paragraphs 7 to 10 came into effect 1 January 2005
- [8] Came into effect 1 March 2007.
- [9] Rule 54 came into effect on the date of commencement of the *Prevention of Cruelty to Animals (Animal Welfare) Act 2008*.
- [10] Came into effect 9 December 2011.
- [11] Came into effect 25 November 2017.

PURSUANT to section 49 of the *Magistrates Court Act 1991* and all other enabling powers, WE the undersigned do hereby make the following rules:

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## **1.00 CITATION AND COMMENCEMENT**

1.01 These Rules may be cited as the *Magistrates Court Rules 1992*.

1.02 These Rules shall be divided into the following Sections -

Section A Rules of General Application

Section B Rules Relating to the Criminal Jurisdiction

1.03 These Rules take effect on the 6th day of July 1992.

## **SECTION A - Rules of General Application**

### **2.00 DEFINITIONS**

2.01 In this Section "the Act" means the *Magistrates Court Act 1991*.

2.02 In these Rules 'Prosecuting Authority' means informant.

### **3.00 SEAL**

3.01 The Court shall have a seal bearing the name of the Court.

3.02 The seal of a Registry shall be in the custody of the Registrar.

3.03 The seal of the Court shall be fixed on such process or orders issued out of the Court as the Chief Magistrate shall direct.

3.04 The Chief Magistrate may direct that documents, or classes of documents, issued from the Court may be authenticated by specified electronic means rather than having the seal physically affixed.

### **4.00 STATUTORY JURISDICTION**

4.01 The jurisdiction conferred on the Court by a Statute other than the Act is assigned to that Division of the Court designated in the Rules.

4.02 Where a Statute provides for jurisdiction to vest in a Court of Summary Jurisdiction that jurisdiction shall vest in the Criminal Division.

4.03 Where a Statute provides for jurisdiction to vest in a Local Court of limited jurisdiction that jurisdiction shall vest in the Civil (General Claims) Division,

4.04 The jurisdiction conferred on the Court by the *Criminal Assets Confiscation Act 2005*, other than section 221, shall vest in the appropriate Civil Division of the Court.

4.05 The jurisdiction conferred on the Court by the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*, shall vest in the Criminal Division of the Court.

4.06 The jurisdiction conferred on the Court by the *Serious and Organised Crime (Control) Act 2008*, shall vest in the Civil (General Claims) Division of the Court.

4.07 The jurisdiction conferred on the Court by the *Intervention Orders (Prevention of Abuse) Act 2009*, shall vest in the Criminal Division of the Court.

4.08 The jurisdiction conferred on the Court by sections 66D and 66E of the *Summary Offences Act 1953*, shall vest in the Civil (General Claims) Division of the Court.

4.09 The jurisdiction conferred on the Court by the *Births, Deaths and Marriages Registration Act 1996* shall vest in the Civil (General Claims) Division of the Court.

4.10 The jurisdiction conferred on the Court by the *Marriage Act 1961* (Cth), shall vest in the Civil (General Claims) Division of the Court.

4.11 The jurisdiction conferred on a Magistrate by the *Spent Convictions Act 2009*, shall vest in the Criminal Division of the Court.

4.12 The jurisdiction conferred on the Court by the *Criminal Law (Sentencing) Act 1988* ss 70K(11), 70P(6), 70U(1), 70U(10), must vest in the Criminal Division of the Court.

4.13 The jurisdiction conferred on the Court by the *Expiation of Offences Act 1996* s 14 must vest in the Criminal Division of the Court.

4.14 The jurisdiction conferred on the Court by the *Child Sex Offenders Registration Act 2006* ss 66JA, 66JC, 66JE, 66JG, vests in the Criminal Division of the Court

4.15 The jurisdiction conferred on the Court by the *Work Health and Safety Act 2012* s 167 must vest in the Criminal Division of the Court.

4.16 The jurisdiction conferred on the Court by the *South Australian Public Health Act 2011* s 47 must vest in the Criminal Division of the Court.

4.17 The jurisdiction conferred on the Court by s 35 of the *Housing Improvement Act 2016* shall vest in the Civil (General Claims) Division of the Court.

## **5.00 FORMS – COMPLIANCE**

5.01 It is sufficient compliance with these Rules, as to the form of any document, if the document is substantially in accordance with the Form.

5.02 Any number of forms may be incorporated in the one document.

## **6.00 AUTHORISATION**

6.01 An authorisation under s 22(2) of the Act shall comply with Form No 27.

### SECTION B - Rules relating to the Criminal Jurisdiction

## **7.00 DEFINITIONS**

7.01 In this Section "the Act" means the *Summary Procedure Act 1921* unless otherwise provided.

7.02 In this Section 'electronic filing' means filing by electronic means by a method approved by the Chief Magistrate.

## **8.00 CASEFLOW MANAGEMENT**

8.01 These Rules are made for the purpose of establishing orderly procedures for the conduct of litigation in the Court and of promoting the just and efficient determination of such litigation. They are not intended to defeat the determination of litigation according to the merits of the case of litigants who are genuinely endeavouring to comply with the procedures of the Court, and are to be interpreted and applied with the above purpose in view.

8.02 With the object of -

- (a) promoting the just determination of litigation;
- (b) disposing efficiently of the business of the Court;
- (c) maximising the efficient use of available judicial and administrative resources; and
- (d) facilitating the timely disposal of business at a cost affordable by the parties;

proceedings in the Court will be managed and supervised in accordance with a system of positive caseflow management. These Rules are to be construed and applied and the processes and procedures of the Court conducted so as best to ensure the attainment of the above objects.

8.03 The practice, procedure and processes of the Court shall have as their goal the elimination of any lapse of time from the date of initiation of proceedings to their final determination beyond that reasonably required for the identification of the factual and



legal issues bona fide in dispute between the parties and the preparation of the case for trial or other disposition.

8.04 To these ends -

- (a) Parties to proceedings are required to be ready to proceed to trial by the date of the hearing at which a trial date is set.
- (b) Parties must fully comply with Rule 26.
- (c) A trial date which has been fixed will not be postponed unless the justice of the case, assessed having regard to the obligations of the parties pursuant to paragraph (a) hereof, so requires.

8.05 In the event that any application is made at trial to amend the information, application, particulars or other process the Court may, if the amendment would cause the postponement or adjournment of the trial, refuse such application, if it sees fit, in order to protect the integrity of the caseload management system and to implement the Court's requirement that trials proceed at the time appointed for trial, notwithstanding that any injustice to the opposing party might have been avoided by an order for costs adjournment or otherwise.

8.06 The Court may from time to time establish and publish time performance standards for the various stages of proceedings before it as may be necessary and desirable for the most efficient disposal of its business and to this end may establish and promulgate case listing tracks on a differential basis by written practice direction. All proceedings thereafter shall be in accordance with such standards.

8.07 The Court may, at any time, of its own motion on notice to the parties review the progress of proceedings and make such orders or give such directions to lead to their efficient and timely disposal and make such orders concerning time defaults committed by any party as it may consider just and expedient.

## **9.00 STANDARDS**

9.01 The Court pursuant to rules may establish and publish standards with respect to any aspect of the legal process.

## **9A.00 FILING AND SERVICE**

9A.01 The Registrar must endorse the Court copy of the document showing the date of service by the Registrar.

9A.02 The records of the Registrar may be accepted as proof of service of a document by the Registrar.

9A.03 In any other case, service may be proved by completing the proof of service certificate on the relevant form.

9A.04 A form filed by electronic filing will be deemed to be filed on the day when it is accepted for filing by the Courts Administration Authority.

## **10.00 WITNESSES - *Magistrates Court Act***

10.01 A summons to witness must be in Form 11.

10.02 A summons to witness must be served personally at least 7 days before the return date.

10.03 Service of a summons to witness may be proved by affidavit or certificate as provided by the Act.

10.04 A warrant to arrest pursuant to Section 20 of the *Magistrates Court Act 1991* must be in Form 12.

10.05 A notice or warrant pursuant to Section 23 of the *Magistrates Court Act 1991* must be in Forms 13 and 14 respectively.

10.06 The Court may require an applicant under Section 20(1) of the *Magistrates Court Act* to tender appropriate travelling and sustenance expenses to the person to whom the summons is to issue. The Court may also order the applicant to pay any other reasonable expenses incurred in meeting the requirements of a witness in complying with a summons including the cost of producing evidentiary material to the court.

10.07 Where a person fails to comply with a summons under Section 20(1) of the *Magistrates Court Act 1991*, the Court may decline to issue a warrant to have that person arrested and brought before the Court, where at the time of the service of the summons there was not tendered to the person, appropriate travelling and/or sustenance expenses and/or other reasonable expenses to compensate the person for the expense of complying with the summons.

10.08 A witness summons that is vexatious, oppressive or an abuse of process may be set aside by the Court on application by a party or person with sufficient interest. The Court may set aside the witness summons in whole or in part, or grant other relief in respect of it.

10.09 Where an application is made to set aside a witness summons, the Court may direct that notice be given to all parties to the proceedings.

10.10 Unless a summons specifically requires a person to produce the original, the addressee may produce a copy of any document required in a format that can be accessed by the Court.

## **10A.00 VULNERABLE WITNESSES**

10A.01 An Application for Special Arrangements for a vulnerable witness made pursuant to section 13A of the *Evidence Act 1929*, shall comply with Form 80.

10A.02 A Notice of Objection shall comply with Form 81.

10A.03 Subject to any Act and these Rules, on the filing of an application under Rule 10A.01, the Registrar must fix a date, time and place for the hearing of the application and give at least 21 days notice of the hearing by providing a copy of the application to the person(s) nominated by the applicant to be the person(s) to be served.

## **11.00 CHALLENGE TO CLASSIFICATION OF OFFENCE.**

11.01 A challenge pursuant to section 5(8) of the Act must be made and determined before the matter is given a trial date.

## **12.00 INFORMATION**

12.01 An information shall be reduced to writing and comply with Form 1.

12.02 The informant in person may lay an information by stating the matter of information to a witness who must be a Registrar, Deputy Registrar or Justice of the Peace.

12.03 The information when reduced to writing must be –

- (i) signed by the informant, and
- (ii) signed and dated by the witness.

12.04 A "public authority" or "public officer" (as defined in section 57A of the Act) or a legal practitioner may lay an information in writing on signing and dating it without appearing before a witness.

12.05 Where an information is laid by a police officer in the execution of his or her duty the information and proceedings thereon may be entitled "Police v .....".

12.06 Where an information is laid by a "public authority" (as defined in section 57A of the Act) the information and proceedings thereon may be entitled "(Name of public authority) v.....".

12.07 An information, other than an information filed under Rule 28, must be filed in the Court within seven days of being laid unless not practicable.

12.08 An information shall state as to each charge whether it is a major indictable, minor indictable or summary offence.

12.09 A copy of the information and any applicable apprehension report shall be given to the defendant at or before the time of the first Court appearance.

12.10 An information shall comply with Rule 15.03.

12.11 An information for contempt of Court may be laid by a judicial officer or the Principal Registrar as provided for in Rule 12.04.

12.12 It shall be sufficient signature under rule 12.04 for a "public authority", a "public officer" (as defined in section 57A of the Act) or a legal practitioner to cause a facsimile of their signature to be affixed to the information.

### **13.00 PLEA OF GUILTY WITHOUT APPEARANCE - SUMMARY OFFENCE**

13.01 An information and summons under s 57A of the Act shall comply with Form 3.

13.02 A written notice of intention to plead not guilty under section 57A(7a) must be served personally or by post on the Registrar at least three clear days before the date of appearance in the summons and at the address stated therein.

### **14.00 ENFORCEMENT OF PECUNIARY SUMS**

#### **Orders to Exclude Property from Sale or Direct Proceeds of Sale**

14.01 An application to oppose the seizure and sale of assets pursuant to section 70K(11) of the *Criminal Law (Sentencing) Act 1988* must comply with Form 58.

14.02 An affidavit complying with Form 115 must be filed with the application.

14.03 If available, a copy of the Written Determination made by the Fines Enforcement and Recovery Officer and a copy of the notice listing the property seized must accompany the application.

14.04 The Registrar must serve a copy of the application and all accompanying documentation on the Fines Enforcement Recovery Officer within one working day. It will be sufficient service for the purpose of this rule if the Fines Enforcement and Recovery Officer is notified in writing, electronically, by telephone, email or facsimile.

14.05 The Registrar must serve a copy of the application and all accompanying documentation on the debtor, if the debtor is not the applicant. Service may be effected:

- (a) Personally;
- (b) By pre-paid post; or
- (c) By email, if the address has been confirmed.

14.06 If the Court is satisfied that all reasonable efforts have been made to effect service on the debtor, but those efforts have failed, the Court may hear and determine the application.

14.07 The application must be listed for first mention as soon as practicable.

14.08 The Fines Enforcement and Recovery Officer must be present at the hearing.

14.09 Pending hearing the application, any seized property, the subject of the application, must not be disposed of, but held at such place and in such a manner as the Fines Enforcement and Recovery Officer directs.

14.10 An Order pursuant to section 70K(11) of the Act must comply with Form 59.

### **Order to Release a Seized and Clamped or Impounded Vehicle**

14.11 An application to release a seized and clamped or impounded vehicle pursuant to section 70P(6) of the *Criminal Law (Sentencing) Act 1988* must comply with Form 60.

14.12 An affidavit complying with Form 115 must be filed with the application.

14.13 If available, a copy of the Written Determination to clamp or impound and any Notice of Disposal made by the Fines Enforcement Recovery Officer must accompany the application.

14.14 The Registrar must serve a copy of the application and all accompanying documentation on the Fines Enforcement Recovery Officer within one working day. It will be sufficient service for the purpose of this rule if the Fines Enforcement and Recovery Officer is notified in writing, electronically, by telephone, email or facsimile.

14.15 The Registrar must also serve a copy of the application and all accompanying documentation on:

- (a) the debtor,
- (b) the interested parties identified on Form 60; and
- (c) the registered owner of the vehicle, if they are not the debtor or the applicant.

14.16 Service on any party, other than the applicant and the Fines Enforcement and Recovery Officer may be effected:

- (a) Personally;
- (b) By pre-paid post; or
- (c) By email, if the address has been confirmed.

14.17 If the Court is satisfied that all reasonable efforts have been made to effect service on a party to the application, but those efforts have failed, the Court may hear and determine the application.

14.18 The application must be listed for first mention as soon as practicable.

14.19 The Fines Enforcement and Recovery Officer is required to search and, on the first mention date, notify the Court of any other interested parties to the application.

14.20 The Registrar must serve a copy of the application and all accompanying documentation on the interested parties identified by the Fines Enforcement and Recovery Officer.

14.21 The Fines Enforcement and Recovery Officer must be present at the hearing.

14.22 Pending hearing the application, any seized property, the subject of the application, must not be disposed of, but held at such place and in such a manner as the Fines Enforcement and Recovery Officer directs.

14.23 An order for the release of a seized and clamped or impounded vehicle must comply with Form 61.

### **Community Service Order**

14.24 An application for a community service order pursuant to section 70U(1) of the *Criminal Law (Sentencing) Act 1988* must comply with Form 56.

14.25 An outline of the financial circumstances of the debtor must be filed with the application.

14.26 It is sufficient for the Fines Enforcement and Recovery Officer to file Form 56 and an outline of the debtor's financial circumstances by electronic filing.

14.27 The Fines Enforcement and Recovery Officer must serve a copy of the application on the debtor.

14.28 For the purpose of r 14.27, service of the application may be effected:

- (a) Personally;
- (b) By pre-paid post; or
- (c) By email, if the address has been confirmed.

14.29 The Fines Enforcement and Recovery Officer must be present at the hearing.

14.30 An order for community service must not be made in the absence of the debtor unless he or she has been personally served with the application.

14.31 A community service order must comply with Form 62.

### **Order Revoking Community Service**

14.32 An application to revoke a community service order pursuant to section 70U(10) of the *Criminal Law (Sentencing) Act 1988* must comply with Form 57.

14.33 An outline of the financial circumstances of the debtor must be filed with the application.

14.34 It is sufficient for the Fines Enforcement and Recovery Officer to file Form 57 and an outline of the debtor's financial circumstances by electronic filing.

14.35 The Fines Enforcement and Recovery Officer must serve a copy of the application and hearing details on the debtor.

14.36 For the purpose of r 14.34, service of the application may be effected:

- (a) Personally;
- (b) By pre-paid post; or
- (c) By email, if the address has been confirmed.

14.37 The Fines Enforcement and Recovery Officer must be present at the hearing and provide the following details:

- (a) the amount of the original pecuniary sum;
- (b) the amount of the debt paid;
- (c) the number of hours of community service performed in respect of the pecuniary penalty order; and
- (d) the amount of the pecuniary sum outstanding.

14.38 So long as the debtor has been served, the Court can revoke a community service order in the absence of the debtor.

14.39 Where a community service order is revoked, an order to restore the pecuniary sums must comply with Form 63.

## **15.00 NOTICE BY PROSECUTION OR COURT BEFORE IMPOSITION OF PENALTY**

15.01 When the Court is contemplating making an order that a defendant be disqualified from holding or obtaining a driver's licence and notice is required pursuant to section 62C(2) or section 27C(3) of the Act, the notice shall comply with Form No 15.

15.02 A notice pursuant to section 62C(2) or section 27C(3) of the Act, other than a notice to which Rule 15.01 applies, shall comply with Form No 16.

15.03 Where an informant seeks an order in the nature of forfeiture, compensation, additional penalty or destruction, the information must so state.

15.04 A summons under section 168 (2) of the *Road Traffic Act 1961*, shall comply with Form No. 15A.

15.05 A notice under section 27C(5) or section 62B(8) of the Act must comply with Form No 18.

## **16.00 PROOF OF PREVIOUS CONVICTIONS**

16.01 A notice under section 62D of the Act shall comply with Form No 17.

## **17.00 APPLICATION TO SET ASIDE**

17.01 An application under section 76A of the Act shall comply with Form No 19 or be in a form that appears on the reverse of Forms No 15 or 18.

17.02 A copy of the application shall be served on the other party.

17.03 Service and proof thereof shall be effected as for notices.

17.04 Upon the filing of the application the Registrar shall notify the parties of a hearing date and time.

## **18.00 INTERVENTION ORDERS, FOREIGN RESTRAINING ORDERS AND CONSEQUENTIAL ORDERS UNDER THE *INTERVENTION ORDERS (PREVENTION OF ABUSE) ACT 2009*.**

18.01A In this rule:

“private application” means an application for an Intervention Order that is made by a proposed protected person.

“police/third party application” means an application for an Intervention Order that is not a private application.

18.01 Where a police officer issues an interim intervention order he or she must:

- a. state on the interim intervention order her or his identification and rank, the identification of the police officer of or above the rank of sergeant who authorised the issue of the order (if he or she is not of that rank) and the relevant Apprehension Report (AP) number; and
- b. record in writing the factual matters that were the grounds for issuing the order and provide a copy of those grounds to the defendant at the time of serving the interim order and as soon as practicable to the Commissioner of Police must give a copy of them to the Principal Registrar together with a copy or details of the Interim Intervention Order and details of the addresses and date of birth of the protected persons and the defendant, and
- c. at the first return date at Court of the interim intervention order advise the Court of any relevant orders or agreements under the *Family Law Act 1975* (Cth), *Children’s Protection Act 1993* and other matters under section 20(3) of the *Intervention Orders (Prevention of Abuse) Act 2009*, and
- d. arrange for relevant witnesses to be available for oral examination by the court to provide evidence to establish the factual matters that were the grounds for issuing the order or provide affidavit evidence of those factual matters, and



- e. apply to the court prior to the hearing for any protected person who is available to give evidence to do so by audio visual link or other suitable means and the evidence shall then be heard in accordance with any direction of the court.

18.02 Where the Commissioner of Police revokes an interim intervention order issued by a police officer they must advise the Principal Registrar prior to the first return date with the reference number.

18.03 At the first return of an interim intervention order issued by a police officer:

- (a) the Court will hear evidence about the factual matters that were the grounds for granting the order and must record the evidence and where possible keep an audio visual record so that it can be available to the Court in later hearings;
- (b) subject to any order of the Court to the contrary, if the defendant contests any factual matter, or the issuing of a final order, any evidence given at the first return will be treated as evidence in chief, and further evidence in chief of the witness(es), cross examination and other evidence on behalf of the applicant or the defendant will be adjourned to a later date to be fixed by the Court.

18.04 Except as provided by r 18.04B, a police/third party application must comply with Form 28. The Form 28 Annexure must accompany the application and contain the following details of the protected person(s):

- (a) the person's full name;
- (b) address;
- (c) telephone number;
- (d) email address; and
- (e) preferred method of notification.

18.04A A private application must comply with Form 28AA. The Form 28AA Annexure must accompany the application and contain the following details of the protected person(s):

- (a) the person's full name;
- (b) address;
- (c) telephone number;
- (d) email address; and
- (e) preferred method of notification.

18.04B A police/third party application may be made on a Form 28AA if it is made on behalf of a proposed protected person under ss 20(1)(b) or 20(2)(b) of the *Intervention Orders (Prevention of Abuse) Act 2009* by a person who lives at the same address as the proposed protected person.

18.04C The Form 28 Annexure or Form 28AA Annexure must be stored electronically, separately from the hard file and any hardcopy of the document must be subsequently destroyed.

18.05 An application to the Court for an Intervention Order must be supported by evidence which may consist of an affidavit in Form 45 or oral evidence in person or by video link. The Court must record the evidence and where possible keep an audio visual record so that it can be available to the Court in later hearings.

18.05A Where the applicant intends to apply for evidence to be received by video link it must notify the Registrar not later than the day before the first hearing.

18.06 An Interim Intervention Order must comply with Form 29.

18.07 A Final Intervention Order must comply with Form 30.

18.08 An application for variation or revocation of an Intervention Order made by someone other than a person protected under the Order must comply with a Form 31 and must be served personally. The application must be accompanied by the Form 31 Annexure, however the annexure must not be served with the application for variation or revocation.

18.08A An application for variation or revocation of an Intervention Order made by a person protected under the Order must comply with a Form 31AA and must be served personally. The application must be accompanied by the Form 31AA Annexure, however the annexure must not be served with the application for variation or revocation.

18.08B The Form 31 Annexure and Form 31AA Annexure, containing the contact details of the protected person(s), must be stored electronically, separately from the hard file and any hardcopy of the document must be subsequently destroyed.

18.09 An order of variation or revocation of an Intervention Order must comply with Form 46.

18.10 A Problem Gambling Order and any variation of it must comply with Form 36.

18.11 Notice of a Problem Gambling Attachment Order must comply with Form 37.

18.12 Notice of intention to assign a Tenancy must comply with Form 38.

18.13 A Tenancy Order and any variation of it must comply with Form 39.

18.14 An application to vary or revoke a Problem Gambling Order must comply with Form 40.

18.15 A request to register a Foreign Intervention Order or Foreign Restraining Order must comply with Form 41 and may be listed before a Magistrate. The applicant may appear in person or by telephone or file an affidavit explaining why the order should be registered and any reasons to support a request that it not be

served. The Magistrate when ordering registration of the order must specify whether it is to be served or not.

18.15A The Form 41 Annexure, containing the contact details of the applicant, must accompany Form 41. The Form 41 Annexure must be stored electronically, separately from the hard file and any hardcopy of the document must be subsequently destroyed.

18.16 A notice of registration of a Foreign Intervention Order must comply with form 42.

18.17 Any Interim Intervention Order, other than an Interim Intervention Order issued by a police officer, or Intervention Order that is served on or provided to a defendant must be served with a multilingual notice in Form 43.

18.18 An application by a police officer to extend the time of permitted detention under Section 34 or Section 35 of the *Intervention Orders (Prevention of Abuse) Act 2009* must comply with Form 44.

18.19 A Magistrate may accept an application to make an order by telephone or other electronic means and it shall proceed and be recorded as the Magistrate directs. The applicant must first establish to the Magistrate why particular urgency exists and why the matter cannot be dealt with by any other method contemplated by the *Intervention Orders (Prevention of Abuse) Act 2009*. The Magistrate must reduce any order made to writing, forward a copy to the applicant and the Principal Registrar as soon as possible and ensure it is entered into the Court record on the next business day.

18.20 An applicant who seeks permission to apply for an intervention order on behalf of a person to be protected must file the proposed application with a request that a magistrate give leave for it to be accepted and the application for permission shall be dealt with in accordance with the directions of the magistrate.

18.21 Where an applicant for an intervention order intends to apply for a tenancy order the applicant must seek directions of the court in relation to service of form 38 on the Landlord, the existing tenants and assignees.

18.22 Unless the court orders otherwise, where any aspect of an Intervention Order involving domestic abuse is contested, after no more than one adjournment it must be set for a pretrial conference, at which on the first occasion the matter must resolve, or be set for trial.

18.23 An applicant for an Intervention Order must investigate whether there are circumstances that may require the court to make special arrangements for the taking of the evidence of a witness and if there are, when the trial date is set, apply to the court to make special arrangements. Where a witness suffers from a physical or mental disability the court may require the applicant to obtain professional advice on how best to facilitate the taking of evidence from the witness and to minimise the witness's embarrassment or distress.

18.24 Where a defendant who is not represented by a lawyer contests the granting of an Intervention Order or any of its terms and wishes to ask questions of a person against whom it is alleged he or she has committed or might commit an act of abuse or a relevant child the defendant must submit the proposed questions in writing to the court before the time appointed for the hearing of that evidence. The court may give directions to permit further questions to be submitted as the hearing progresses.

18.26 There is no rule 18.26.

18.27 Where a form in a matter under the *Intervention Orders (Prevention of Abuse) Act 2009* is to be served on a defendant the address details of the protected person (including a protected person who is an applicant) are not to be included in any form that is served unless the address forms part of the order.

18.28 Where the applicant for an Intervention Order is not a police officer and the allegation is not domestic abuse the court at the earliest possible date must provide the opportunity for an assessment as to whether mediation is appropriate in accordance with s 21(4)(a).

18.29 A defendant and/or a defendant's solicitor is entitled, upon request, to be provided with a copy of the audio recording and/or transcript of any audio or audio visual recording of evidence given by a protected person at a preliminary hearing or at trial in relation to an application or an order made by the Court pursuant to the *Intervention Orders (Prevention of Abuse) Act 2009*. The defendant and/or defendant's solicitor is entitled to view an audio visual recording under the supervision of the Registrar.

### **Nationally Recognised Domestic Violence Orders**

18.30 An application for a declaration that a domestic violence order is a recognised domestic violence order pursuant to s 29ZE of the *Intervention Orders (Prevention of Abuse) Act 2009* must comply with Form 46A.

18.31 The Form 46A Annexure containing the contact details of the protected person(s) must be stored electronically, separately from the hard file and any hardcopy of the document must be subsequently destroyed.

18.32 Where the Court makes a declaration pursuant to s 29ZD(1) of the *Intervention Orders (Prevention of Abuse) Act 2009*, a notice of the declaration must comply with Form 46B.

18.33 Where the Court makes a declaration pursuant to s 29ZD(1) of the *Intervention Orders (Prevention of Abuse) Act 2009*, the Principal Registrar must, as soon as practicable, notify the prescribed public sector agencies of the declaration.

18.34 Where the Court varies or revokes a nationally recognised domestic violence order that was issued interstate, or declares an interstate domestic violence order to be a recognised domestic violence order, the Principal Registrar must, as soon as practicable, notify the Court in which the order was made of the variation, revocation or declaration.

18.35 A certificate issued pursuant to s 29W(1) of the Intervention Orders (Prevention of Abuse) Act 2009 must comply with Form 45A.

## **18A.00 CHILD PROTECTION RESTRAINING ORDERS AND PAEDOPHILE RESTRAINING ORDERS UNDER THE *SUMMARY PROCEDURE ACT 1921*.**

18A.01 An information for a Restraining Order pursuant to s 99AA shall comply with Form 28A.

18A.02 A summons to a defendant on an information for a Restraining Order pursuant to s 99AA shall comply with Form 29A.

18A.03 An information for a Restraining Order pursuant to s 99AAC shall comply with Form 28B.

18A.04 A summons to a defendant on an information for a Restraining Order pursuant to s 99AAC shall comply with Form 29B.

18A.05 A Restraining Order made ex parte pursuant to ss 99AA and 99C(2) of the Act and summons to a defendant shall comply with Form 31A and a final Restraining Order pursuant to s 99AA(1) shall comply with Form 31C.

18A.06 A Restraining Order made ex parte pursuant to ss 99AAC and 99C(2) of the Act and summons to a defendant shall comply with Form 31B and a final Restraining Order pursuant to s 99AAC(2) shall comply with Form 31D.

18A.07 An application pursuant to s 99F (1) to vary or revoke a restraining order shall comply with Form 32.

18A.08 A defendant seeking leave to make such an application shall also file an affidavit setting out details of the substantial change in the relevant circumstances since the order was made or last varied. The Registrar shall serve a copy of the application for leave and affidavit on the informant by pre-paid post directed to the informant's last known address. Should leave to make an application to vary or revoke a restraining order be granted, the Form 32 filed shall be treated as the application to vary the order and served with the affidavit. The hearing of the application shall be adjourned to enable the Registrar to serve a copy of the Form 32 on the person or persons for whose benefit the order was made (if they are not the informant) by pre-paid post directed to their last known address.

18A.09 An application by an informant or a person for whose benefit the order was made, shall be served by the Registrar on the defendant, the informant and the person or persons for whose benefit the original order was made (if not the informant), by pre-paid post directed to their last known address.

18A.10 An order varying a Restraining Order shall comply with Form 33.

18A.11 An order revoking a Restraining Order shall comply with Form 34.

## **18AA.00 INTERVENTION ORDERS UNDER THE *BAIL ACT 1985***

18AA.01 An intervention order made under s 23A of the *Bail Act 1985* must comply with Form 29AA and must be served on the defendant in accordance with s 21 of the *Intervention Orders (Prevention of Abuse) Act 2009*.

18AA.02 Unless the Court orders otherwise, an intervention order made under s 23A of the *Bail Act 1985* is an interim intervention order.

## **18AAA.00 INTERVENTION ORDERS UNDER THE *CRIMINAL LAW (SENTENCING) ACT 1988***

18AAA.01 An intervention order made under s 19A of the *Criminal Law (Sentencing) Act 1988* must comply with Form 30 and must be served on the defendant in accordance with s 23 of the *Intervention Orders (Prevention of Abuse) Act 2009*.

18AAA.02 Unless the Court orders otherwise, an intervention order made under s 19A of *Criminal Law (Sentencing) Act 1988* is a final intervention order.

## **18B.00 *CHILD SEX OFFENDERS REGISTRATION ACT 2006***

18B.01 An application pursuant to Section 9 (1a) of the *Child Sex Offenders Registration Act 2006* must comply with Form 23. A copy of the paedophile restraining order relating to the application must also be attached.

18B.02 An application pursuant to section 15A (5) of the *Child Sex Offenders Registration Act 2006* must comply with Form 23.

18B.03 An application pursuant to section 15A (7) of the *Child Sex Offenders Registration Act 2006* must comply with Form 23.

## **19.00 DELETED**

There is no Rule 19.

## **20.00 PRELIMINARY EXAMINATION**

20.01 The prosecutor shall file and serve the documents specified in section 104 (1) (a) within such period not exceeding 13 weeks as the Court at the defendant's first appearance before the Court may specify.

20.02 The defendant must, not later than 7 working days prior to the date appointed by the Court for the defendant to answer the charge, give notice in writing to the Court and to the prosecution of the witnesses in relation to whom application to examine orally will be made, and a brief outline of the reasons for which they are required.

20.03 The documentary material required to be filed by the prosecution pursuant to s 104 of the Act shall be:

- (i) in triplicate
- (ii) accompanied by a document:
  - (a) containing the names of the witnesses providing each statement;
  - (b) identifying exhibits and other evidentiary material.

## **21.00 ELECTION**

21.01 The form of election pursuant to section 103(2) of the Act shall comply with Form No 8.

21.02 The defendant shall be provided with a form of election -

- (a) where the defendant is served with a summons, at the time of service of the summons.
- (b) In any other case when the defendant first appears before the Court.

21.03 An election is made by filing a copy of the information to which the election relates with duly completed form of election annexed thereto.

21.04 Unless an election has been sooner made, the prosecution shall, upon the request of the defence or direction of the Court, provide the defence with a summary of the evidence in support of each charge.

21.05 A request for a summary of evidence must be made not later than three weeks after the first appearance of the defendant before the Court.

21.06 A summary of evidence shall be provided within three weeks of the request being made or a direction given.

21.07 An election must be made within 14 days of the delivery of the summary of evidence, or where no summary has been requested or directed, not later than 6 weeks after the defendant's first appearance before the Court.

21.08 Notwithstanding any other provision of this rule, an election may not be made after a matter has, with the consent of the defendant, been set for trial.

21.09 When a defendant makes an election the provisions of Rule 20 apply mutatis mutandis as if the election had been made at the first appearance of the defendant before the Court.

21.10 The Registrar shall notify the prosecutor of the filing of an election.

21.11 If an election is made it must be made with respect to all the charges in the information unless the Court orders otherwise.

21.12 Except for sub-rule 21.11 this Rule does not apply to an election made pursuant to section 107(3)(b)(ii) of the Act.

## **22.00 WRITTEN PLEA OF GUILTY WHERE INFORMATION LAID**

22.01 A written plea pursuant to section 105(1)(a) of the Act shall comply with Form No 9.

22.02 A written plea can only be made if it is a plea of guilty to all charges.

22.03 The defendant shall be provided with the form at the time the defendant is provided with a copy of the information.

22.04 The form shall be signed by the defendant in the presence of a solicitor who shall certify that the defendant has had legal advice before signing the form.

22.05 If the information does not include a major indictable offence the written plea must be accompanied by a duly completed form of election.

22.06 Upon due completion of the form pleading guilty to all charges the defendant shall return it with a copy of the Information to which it relates by delivering it or posting it to the Court at the place indicated in the form so that it reaches the court :

- (a) if the defendant does not wish to attend the date fixed for attendance - at least two clear days before that date.
- (b) Subject to (a) at any time before completion of the preliminary examination.

22.07 A defendant who does not appear after duly pleading guilty in writing shall be informed of the outcome by the Registrar by service on the defendant or the defendant's representative of a notice which shall comply with Form No 20.

22.08 Service of the notice may be by post.

22.09 A copy of the notice endorsed with the manner of service shall accompany the documents to be forwarded to the Director of Public Prosecutions.

22.10 The Registrar shall inform the prosecutor of the receipt of a written plea of guilty.

## **22A.00 ADMISSION AND CONSENT TO SENTENCE OF MAJOR INDICTABLE OFFENCE IN MAGISTRATES COURT**

22A.01 An admission by a defendant of a charge of a major indictable offence and the consent of both the defendant and the Director of Public Prosecutions pursuant to Section 108(1) of the *Summary Procedure Act 1921* must comply with Form 9A.



22A.02 Once completed, the form must be lodged with the Court either at the time the defendant appears before the Court or when the defendant returns a written plea admitting the charge.

## **23.00 NOTICE UPON COMMITTAL**

23.01 The written statement referred to in section 107(5) of the Act shall, in the case of an information being prosecuted by the Director of Public Prosecutions of South Australia, comply with Form No. 21A.

23.02 The written statement referred to in section 107(5) of the Act shall, in the case of an information being prosecuted by the Director of Public Prosecutions for the Commonwealth, comply with Form No. 21B.

## **24.00 PROCEDURAL PROVISIONS - C.L.C.A.**

24.01 The following provisions of the *Criminal Law Consolidation Act 1935* apply (with necessary adaptations and modifications) to the trial or sentencing of a person charged with a minor indictable offence :

So much of rule 6 of Schedule 3 as relates to the naming of the owner of property, and rule 10 of Schedule 3.

Sections 19B (3), 19B (4a), 19B (5), 25, 285B, and 290.

## **25.00 ORDER OF COMMITTAL**

25.01 An order of committal for trial or sentence shall comply with Form No 10.

25.02 A Warrant remanding a defendant for trial or sentence to a superior Court shall comply with Form No 7.

## **26.00 PRE-TRIAL PREPARATION**

26.01 Prior to any matter being listed for summary trial the parties must have ascertained the precise matters in issue both as to fact (in detail) and law so as to :

- (a) fully explore the possibility of disposing of the charge other than by way of trial;
- (b) enable the duration of the hearing to be estimated as accurately as possible,
- (c) determine what evidence if any may be proved by affidavit;
- (d) facilitate the course of the trial,

and shall inform the Court as to each of the above.

26.02 To the extent necessary to comply with this Rule the parties must confer fully and frankly.

26.03 Prior to a matter being set down for hearing the defence must give notice to the prosecution if evidence of alibi may be called. The notice must give details of the proposed evidence including the name and address of the witnesses.

26.04 Insufficient compliance with this Rule must be taken into account on the question of costs.

26.05 To ensure compliance with Rule 8 and this Rule the Court may on notice to the parties require that they attend a pre-trial conference.

26.06 A pre-trial conference:

- (a) shall be attended by counsel briefed to appear at the trial (or, if the attendance of any party's counsel is not practicable, by that party's solicitor);
- (b) shall not be open to the public unless the Court directs to the contrary;
- (c) may be presided over by such person as the Court may nominate.

26.07 Nothing said by or on behalf of a defendant at a pre-trial conference and no failure by a defendant or a defendant's representative to answer a question at a pre-trial conference shall be used in any subsequent trial or shall be made the subject of any comment at that trial.

26.08 Where in the course of any criminal proceedings:

- (a) a person seeks separate trials of different charges alleged against him or her in the same information;
- (b) a person seeks a separate trial from that of another person and charged in the same information;
- (c) a party desires to make an application which, if granted, would have the effect of postponing or delaying a trial which has been listed for hearing;
- (d) a Magistrate directs that a written application should be made,

the application shall be made by issuing and serving an application in Form No. 23.

26.09 Where an application is made under Rule 26.08 it shall state:

- (a) the order or orders sought;
- (b) sufficient particulars of the grounds relied upon to enable any other party to have proper notice of whether the calling of evidence will be necessary in order to resolve the issues raised;

(c) the nature of any question of law sought to be raised.

26.10 An application under Rule 26.08 shall be filed and served on all other parties not less than 14 days prior to the date fixed for the hearing of the trial in such proceedings.

26.11 Subject to any Act and these Rules, on the filing of an application under Rule 26.08, the Registrar must fix a date, time and place for the hearing of the application and give at least 21 days notice of the hearing by providing a copy of the application to the person(s) nominated by the applicant to be the person(s) to be served.

26.12 Where a date for trial has already been fixed, the Registrar may endorse the application that it is to be heard by the trial Magistrate at or immediately prior to the commencement of the trial.

26.13 Where a party seeks to adduce evidence to establish a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue under s 34P of the *Evidence Act 1929*, a Notice of Intention must be filed with the Court and service on all other parties to the proceedings:

(a) in the case of a Notice by the Prosecuting Authority, in compliance with Form 102A, within 21 days following the date on which the proceedings are fixed for trial; and

(b) in the case of a Defendant, in compliance with Form 102B, at least 21 days before the trial date.

26.14 Where a party intends to object to the admission of proposed evidence of discreditable conduct, a written Notice of Objection, in compliance with Form 102C, must be filed with the Court and served on all other parties to the proceedings:

(a) in the case of an objection to evidence proposed by the Prosecuting Authority, no later than 28 days after the filing of the Prosecuting Authority's Notice;

(b) in the case of an objection to evidence proposed by a Defendant, at least 7 days before the listed trial date.

26.15 The Court may vary the time within which any Notice under this rule may be filed and served.

## **27.00 SUMMONS TO DEFENDANT**

27.01 Unless otherwise provided a summons to a defendant shall comply with Form 2, Form 3, or Form 5 as the case may require.

## **28.00 POLICE DISQUALIFICATION**

28.01 Where a member of the police force gives a person a notice of immediate licence disqualification under section 47IAA(2) of the *Road Traffic Act 1961* and has made a determination pursuant to section 47IAA(7a)(a), then if an information is laid, it must be filed in the court within a reasonable time. The information must note the fact that a notice of immediate licence disqualification or suspension has been given and include the relevant notice 'I' number.

28.02 An application to have the disqualification or suspension lifted or reduced under section 47IAB shall comply with Form 79.

28.03 Once an application to have the disqualification or suspension lifted or reduced is filed it shall be listed for directions before a magistrate immediately and if no magistrate is available in the registry where it is filed the directions hearing may be heard by a magistrate by telephone.

28.04 The registrar must advise the criminal justice section of SAPOL who deal with matters in the registry when and where the directions hearing will be heard but if the police do not attend the directions hearing it may be heard in the absence of the police.

28.05 At the directions hearing the magistrate may appoint a time and place for hearing the application and give directions as to the service of the application and notice of hearing and other matters.

28.06 Service on the criminal justice section of SAPOL who deal with matters in the registry where the application will be heard shall be deemed to be service on the Commissioner of Police.

28.07 Once the Commissioner of Police is served with an application, an apprehension report detailing the police case must be available at the hearing of the application.

28.08 When hearing an application the court may take any failure to provide an information or an apprehension report into account in assessing the merits of the application.

## **28A.00 WHEEL CLAMPING; SEIZURE OF MOTOR VEHICLE**

28A.01. In this Rule "the Act" means the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*.

28A.02. An application made pursuant to s 7, s 12 or s 21 of the Act shall comply with Form No. 83.

28A.03. An order to extend a clamping period or to impound or forfeit a motor vehicle shall comply with Form No. 84.

28A.04. An order for relief shall comply with Form No. 85.

28A.05. An application for a warrant to seize a motor vehicle pursuant to s 17 must comply with Form No. 86.

28A.06. A warrant to seize a motor vehicle must comply with Form No. 87.

28A.07. A warrant to seize a motor vehicle after a telephone application must comply with Form No. 88.

28A.08. A duplicate warrant made pursuant to s 17(6)(f) must comply with Form No. 89.

28A.09. An application made under this Act and notice of the hearing date must be served by the Registrar on all the registered owners of the motor vehicle, anyone who holds a registered security interest in respect of the motor vehicle under the *Personal Property Securities Act 2009* (Cth) and any person known to the prosecution or credit provider who claims ownership of the motor vehicle or who is likely to suffer financial or physical hardship as a result of the making of the order.

28A.10. If an application for relief is made by a credit provider, the application and notice of the hearing date must also be served by the Registrar on the Commissioner of Police (if the motor vehicle is clamped or impounded under Part 2) or the Sheriff (if the motor vehicle is impounded or has been forfeited under Part 3).

## **29.00 APPLICATIONS**

29.01 The jurisdiction of the Court pursuant to section 10 of the *Magistrates Court Act 1991* may be invoked on Application complying with Form No 23.

29.02 An Application may be served and service thereof proved in the same manner as for a summons.

29.03 If the Court is satisfied that:

- (i) an application has been duly served, and
- (ii) the respondent does not appear at any hearing thereof ,

the Court may hear and determine the application in the absence of the respondent.

## **29A.00 APPLICATION TO QUASH OR STAY PROCEEDINGS**

29A.01 An application to quash or stay proceeding (including an application made on the grounds of an abuse of process) must comply with Form 23. This application must be filed 14 days prior to the date set for trial.

29A.02 An affidavit complying with Form 115 must be filed with the application.

29A.03 The Registrar must serve a copy of the application and supporting affidavit on the interested parties.

## 29B.00 PRELIMINARY HEARINGS

29B.01 When in the course of any criminal proceedings:

- (a) a person charged with an offence set for trial seeks separate trials of different charges alleged against him in the same information;
- (b) a person charged with an offence set for trial seeks a separate trial from that of another person charged with an offence set for trial and charged in the same information;
- (c) a party seeks to raise any question relating to the admissibility of evidence or any other question of law affecting the conduct of the trial prior to the opening of the case for the prosecution or the calling of witnesses;
- (d) a party desires to make application which, if granted would have the effect of postponing or delaying a trial which has been listed for hearing;
- (e) a party seeks admission of evidence in the form of an audio-visual record under s 13BA of the *Evidence Act 1929*;
- (f) a party seeks an order for communication assistance for a witness under s 14A of the *Evidence Act 1929*;
- (g) a close relative of the accused seeks an exemption from giving evidence under s 21 of the *Evidence Act 1929*;
- (h) a party desires to make some other application which cannot be reasonably made without notice to the other party or parties; or
- (i) a Magistrate directs that a written application should be made;

the application is to be made by issuing and serving an application using Form 23.

29B.02 When an application is made under Rule 29B.01 it is to state:

- (a) the order or orders sought;
- (b) sufficient particulars of the grounds relied upon to enable each other party to consider whether evidence will be necessary in order to resolve the issues raised;
- (c) the nature of any question of law sought to be raised.

29B.03 An application under Rule 29B.01 is to be filed and served on all other parties not less than 14 days prior to the date fixed for the hearing of the trial in such proceedings.

29B.04 No question or matter of a kind referred to in Rule 29B.01 is to be raised at the trial of the proceedings unless an application has been made in accordance with Rule 29B.00 or unless the Magistrate considers that there are circumstances which justify waiving compliance with the Rule.

29B.05 A written application for the admission of evidence in the form of an audio-visual record under s 13BA of the *Evidence Act 1929* must be supported by an affidavit.

## **29C.00 APPLICATION TO VARY A COMMUNITY SERVICE ORDER**

29C.01 An application to vary the terms of an order, or vary or revoke an ancillary order pursuant to section 50A(1) *Criminal Law (Sentencing) Act 1988* must comply with Form 22.

29C.02 The Registrar must serve a copy of the application on the Minister for Correctional Services and the person subject to the Community Service Order.

## **29D.00 Pre-Trial Special Hearings**

29D.01 An application for a pre-trial special hearing under s 12AB of the *Evidence Act 1929* must:

- (a) be made by filing and serving an application in Form 23;
- (b) be filed and served at least 21 days prior to the matter being listed for trial; and
- (c) be supported by an affidavit.

29D.02 A notice objecting to a pre-trial special hearing must be made on a Form 23A and must be filed and served within 14 days of the objecting party being served with the application for a pre-trial special hearing.

## **30.00 CONTACT INFORMATION**

30.01 An address for personal service and the telephone number of the party filing or serving a document must appear on the document unless the Court, a Registrar or Deputy Registrar directs otherwise.

## **31.00 CONTEMPT – WARRANT**

31.01 A Warrant of Commitment for contempt under section 46 of the *Magistrates Court Act 1991* shall comply with Form 24.

## **32.00 LEGAL REPRESENTATION**

32.01 The legal representative of a party to proceedings must inform the Court of that status and of any change therein as soon as practicable.

## **33.00 PROCEEDINGS BROUGHT FORWARD**

33.01 Notwithstanding that proceedings are listed for a future date and time the Court may of its own motion or on the application of a party bring the proceedings forward.

## **34.00 SUBSTANTIATION ON OATH**

34.01 Where it is necessary for an information to be substantiated on oath or affirmation before a warrant to arrest can issue it is not necessary that the substantiation be by the informant.

## **35.00 AFFIDAVIT EVIDENCE**

35.01 In any proceedings before the Court unless the Court directs otherwise any matter may be proved by affidavit without the necessity of calling oral evidence unless the other party objects.

35.02 The party intending to rely on the affidavit must serve the other party with a copy thereof at least 21 days before the hearing together with a copy of this Rule.

35.03 The party upon whom the affidavit is served may object by notice in writing (giving detailed reasons therefore) to the party intending to rely on it at least 10 days before the hearing.

35.04 Service of the affidavit or notice may be effected by post either on the party or the party's legal representative.

35.05 The manner of service must be endorsed on a copy of the affidavit or notice.

35.06 The Court may order costs against a party unreasonably objecting to the use of an affidavit.

35.07 The Court may if it is not satisfied that a genuine dispute exists between the parties or that compliance with the rules of evidence might involve unreasonable expense or delay direct that certain evidence be given by way of affidavit.

35.08 Where any proceedings before the Court or a Registrar may be dealt with, without notice to any other party, any matter may be proved by affidavit filed in the registry without service on any other party.



## **36.00 PRACTICE AND PROCEDURE**

36.01 Subject to these Rules the practice and procedure of the Court in its Criminal Division shall be that which pertained immediately prior to the commencement of the *Justices Amendment Act 1991*.

36.02 The Court may direct that any person or persons may attend any hearing by means of a video link or telephone.

36.03 In deciding whether to conduct a court in the manner described in Rule 36.02, the judicial officer constituting the court shall have regard to:

- (a) the nature of the proceedings;
- (b) the day, or time of day at which they are being conducted;
- (c) the location of the various parties;
- (d) the urgency of the matter before the court;
- (e) the cost and inconvenience in having the person attend before the court;
- (f) the health of the person wishing to appear by telephone or video link, or the effect on their health if they were required to attend before the court;
- (g) the attitude of the parties to the matter being dealt with in that way; and
- (h) any other matter that the court thinks is relevant.

36.04 A hearing conducted in accordance with Rule 36.02

- (a) shall be deemed to have taken place at the place at which the judicial officer constituting the court is, unless the judicial officer orders otherwise; and
- (b) need not be open to the public.

## **37.00 ELECTRONIC RECORDS**

37.01 The Registrar may keep the record of the Court in an electronic form.

37.02 A minute or memorandum of a conviction or order required to be made by section 70 of the Act may be made, recorded, authenticated and maintained in an electronic form.

## **38.00 FORMS**

38.01 Forms not provided for herein may be prepared at the direction of the Court or by the Registrar on behalf of the Court.

38.02 The party instituting a proceeding or process shall prepare the requisite form and shall provide such number of copies thereof as the Registrar directs.

38.03 Forms under the following sections of the Act shall comply with the corresponding forms set out hereunder:

Section 57A(7a)	Notice of Hearing	Form No 35
Sections 58 and 103(1)(b)(i)	Warrant of Apprehension	Form No 6
Sections 59,103 and 112	Warrant of Remand	Form No 7

### **39.00 ENFORCEMENT OF ORDER AGAINST BODY CORPORATE**

39.01 A request for the registration of an Order to which section 188 of the Act applies shall comply with Form 25.

39.02 Upon registration, such an Order may be enforced as if it were an order of a Court in South Australia

### **40.00 RELIEF FROM COMPLIANCE WITH RULES**

40.01 The Court may relieve any party from compliance with the Rules if the justice of the case requires it and on such terms as the Court orders.

### **41.00 CRIMINAL LAW (SENTENCING) ACT 1988**

41.01 In this rule 'the Act' means the *Criminal Law (Sentencing) Act 1988*.

41.02 The powers of the Court must be exercised by a magistrate in:

- (i) \* \* \* \* \*
- (ii) proceedings under section 71(3) of the Act where failure to comply with a community service order is disputed.
- (iii) applications under section 71A of the Act.

41.03 A warrant remanding a defendant to the District Court for sentence pursuant to section 19(4) of the Act shall comply with Form No 7.

41.04 Where a court

- (a) orders that a defendant enter into a bond, extends or varies a bond in any way, pursuant to the provisions of the *Criminal Law (Sentencing) Act*; or
- (b) orders that a defendant enters into a recognisance or undertaking of any kind, or extends or varies a recognisance or undertaking of any kind;

the bond, recognisance, or undertaking may be entered into, varied or extended before a Registrar or Justice of the Peace.

41.05 An application to the Court pursuant to s 72(5) of the Act in respect of an order made by an appropriate officer pursuant to sections 65 or 67 of the Act may be made by telephone where:

- (a) there is no Magistrate readily available to constitute a Court; and
- (b) an application is made during business hours.

41.06 (i) A person wishing to furnish the Court with a victim impact statement pursuant to s 7A of the *Criminal Law (Sentencing) Act 1988* (the Act) shall provide such statement in writing either to the Director of Public Prosecutions (the DPP), or to the Officer in Charge of Prosecution Services of South Australia Police (SAPOL) whoever shall have the conduct of the prosecution.

(ii) A copy of the statement shall be provided to the presiding magistrate upon the defendant pleading guilty to, or being found guilty of, the offence or offences to which the statement relates.

(iii) The presiding magistrate shall appoint the time at which the statement will be read to the Court and may refuse to postpone the reading of the statement if the resulting delay would be unreasonable in the circumstances.

(iv) If the person providing the statement is not in the Court when the presiding magistrate gives directions pursuant to Sub-Rule 41.06(iii), the DPP or SAPOL shall advise the person of the time fixed by the Court for the reading of the statement.

- (v) Subject to Sub-Rule 41.06 (vi), the person making the statement may amend it at any time prior to the time at which it is read to the Court.
- (vi) The presiding magistrate may direct that irrelevant material in the statement not be read out to the Court.
- (vii) A person who has furnished a statement in accordance with s 7A(1) of the Act may at any time withdraw the statement as a victim impact statement provided pursuant to that section in which event the statement will not be read out to the Court.
- (viii) A statement which is withdrawn pursuant to Sub-Rule 41.06(vii) may be furnished to the court by the prosecutor pursuant to s7 of the Act.

41.07 A warrant for the arrest of a person pursuant to section 71(3)(a) and section 71(4) of the *Criminal Law (Sentencing) Act 1988*, shall comply with Form 78.

41.08 A warrant for the arrest of a person pursuant to section 71 (3) (b) of the *Criminal Law (Sentencing) Act 1988*, shall comply with Form 82.

41.09 A summons to a defendant pursuant to s 33BD(5)(a) of the *Criminal Law (Sentencing) Act 1988* shall comply with Form 136.

41.10 A warrant for the apprehension of a defendant pursuant to s 33BD(5)(b) or s 33BD(6) of the *Criminal Law (Sentencing) Act 1988* shall comply with Form 137.

41.11 A Home Detention Order made pursuant to s 33BB(1) of the *Criminal Law (Sentencing) Act 1988* shall comply with Form 139.

41.12 An application to vary or revoke a condition of a bond or to discharge a bond pursuant to s 44 of the *Criminal Law (Sentencing) Act 1988* shall comply with Form 138.

## **42.00 BAIL ACT 1985**

42.01 In this rule "the Act" means the *Bail Act 1985*.

42.02 A warrant of arrest under s 18(1)(a) of the Act shall comply with Form 6.

## **42A.00 DOG AND CAT MANAGEMENT ACT 1995**

42A.01 An application pursuant to sections 47(4) or 59 of the *Dog and Cat Management Act 1995* shall be made in the Criminal Division of the Court.

## **43.00 AFFIDAVITS**

43.01 An affidavit must be in accordance with Form 115.

43.02 In this rule the jurat is called "the witnessing clause".

43.03 The body of an affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject matter.

43.04 An affidavit used in interlocutory proceedings may contain statements based on information received and believed by the person making the affidavit to be true with the sources and the grounds thereof.

43.05 Except as provided by sub-rule 43.04, or unless the Court otherwise orders, an affidavit shall contain only such facts as the person making the affidavit is able of his or her own knowledge to prove.

43.06 Where an affidavit is made by two or more persons, it shall have the full name of each person stated in the witnessing clause, or if sworn separately in separate witnessing clauses.

43.07 Where an affidavit is filed on behalf of a corporate party which does not have a solicitor acting for it, the affidavit shall be sworn by a director, secretary or other person duly authorised by the body corporate to make the affidavit on its behalf.

43.08 Where it appears to the witness before whom an affidavit is sworn that the person is illiterate or blind, that witness shall certify in or below the witnessing clause that at the time the affidavit was sworn -

- (a) the affidavit was read to the person making the affidavit; and
- (b) the person making the affidavit seemed to understand the affidavit.

43.09 Where it appears to the witness before whom an affidavit is sworn that the person is by reason of physical incapacity incapable of signing the affidavit, the person shall certify in or below the witnessing clause that-

- (a) the affidavit was read by or to the person making the affidavit
- (b) the person making the affidavit seemed to understand the affidavit; and
- (c) that the person making the affidavit swore the affidavit.

43.10 Where an affidavit is made by a person who does not have an adequate command of the English language -

- (a) the affidavit and the oath or affirmation to be taken shall be translated to the person making the affidavit by an interpreter into a language which the person making the affidavit understands; and
- (b) the interpreter in writing state his/her full name and shall certify in or below the witnessing clause that paragraph (a) has been complied with.

43.11 Where an affidavit is made by:-

- (a) an illiterate or blind person;
- (b) a person making the affidavit who by reason of physical incapacity is incapable of signing the affidavit; or
- (c) a person who does not have an adequate command of the English language,

and the certificate required by sub-rule 43.08, 43.09 or 43.10 has not been provided, the affidavit may not be used unless the Court is satisfied that the affidavit was read or translated to the person making the affidavit, as the case requires, and the person making the affidavit seemed to understand it.

43.12 Subject to sub-rule 43.14, each page of an affidavit shall be signed and dated by the person making the affidavit and the witness before whom it is sworn.

43.13 Subject to sub-rule 43.14, alterations, interlineations or erasures in an affidavit shall be initialled by the person making the affidavit and the witness before it is sworn.

43.14 It shall not be necessary for a person making the affidavit who is physically incapable of signing the affidavit to do so, or to initial alterations, interlineations or erasures but the witness before whom the affidavit is sworn shall initial alterations interlineations or erasures.

43.15 A document to be used in conjunction with an affidavit may be annexed and not exhibited.

43.16 An annexure or exhibit to an affidavit shall bear an endorsement, signed by the witness before whom the affidavit is sworn, that identifies the annexure as the particular annexure referred to in the affidavit.

43.17 An affidavit may, unless the court otherwise orders, be received in evidence notwithstanding any irregularity in form.

43.18 The Court may, at any stage of proceedings, order to be struck out any matter in an affidavit which -

- (a) is unnecessary, irrelevant, prolix, scandalous or argumentative; or
- (b) sets out opinions other than opinions of persons properly qualified to give them.

43.19 An affidavit may be sworn within South Australia before a Registrar, a Deputy Registrar, a Notary Public, a commissioner for taking affidavits in the Supreme Court, a Justice of the Peace for this State, a commissioned officer of the South Australian Police Force, an Officer-in-Charge of a Police Station of, or above, the rank of Sergeant or as permitted by the *Evidence (Affidavits) Act 1928*.

43.20 An affidavit may be sworn outside South Australia before any of the persons specified in section 66 of the *Evidence Act 1929*.

## **44.00 PRACTICE DIRECTIONS**

44.01 The Chief Magistrate may issue, vary or revoke a Practice Direction and the practice and procedure of the Court, subject to these Rules, must be in conformity with any Practice Direction.

44.02 The Principal Registrar and each Registrar of the Court must maintain registers of all Practice Directions.

## **45.00 CUSTODY OF RECORDS**

45.01 The Registrar has the custody of all records and proceedings of the Court and of all evidentiary material filed with, or submitted to the Court.

45.02 Subject to an order of the Court, the Registrar has custody of all exhibits until the expiration of any relevant appeal or review period. Following the expiration of any such period, the Registrar shall return the exhibit to the person who produced the exhibit, or the solicitor for the party tendering the exhibit. The person to whose custody any exhibit is returned shall be liable for any costs incurred by the Registrar in returning the exhibit.

45.03 In the event that the Registrar is unable to return an exhibit in accordance with sub-rule 45.02, the Court may make any order as it thinks fit for the custody or disposal of the exhibit.

45.04 The Registrar may keep a record of proceedings of the Court in electronic form.

## **46.00 VIDEOLINKS**

46.01 In this rule 'the Act' means the *Evidence Act 1929*.

46.02 The court may receive evidence or submissions from a person not physically present in the courtroom by means of an audio visual link or an audio link in accordance with section 59IQ of the Act.

46.03 Subject to section 59IQ(5) of the Act, the personal attendance of a defendant who is in custody prior to trial is not required where facilities exist for dealing with the proceedings by audio visual link.

46.04 Audio visual link facilities used pursuant to this Rule must be operated in a manner which ensures two way audio and visual communication between the court room and the person in custody.

46.05 Facilities must be available for private audio communication between a person in custody and the person's representative at the Court in accordance with section 59IR of the Act.

46.06 No person shall, by any means, listen to, intercept or record any such private communications.

46.07 Should a party in proceedings to which this Rule applies wish to be brought to the courtroom, notice of not less than 2 working days must be given to the Court.

46.08 If audio visual link facilities fail in the course of proceedings, the Court may adjourn the proceedings and may make such other order as is appropriate in the circumstances as if a person present in the room in which the audio visual link facilities are located were in the presence of the Court.

#### **47.00 EXPIATION OF OFFENCES ACT 1996**

47.01 An appeal of an enforcement determination pursuant to section 14 of the *Expiation of Offences Act 1996* must comply with Form 55.

47.02 An affidavit complying with Form 115 must be filed with the application.

47.03 If available, a copy of the Enforcement Determination and the Expiation Notice must accompany the application.

47.04 The Registrar must serve a copy of the appeal and all accompanying documentation on the Fines Enforcement and Recovery Officer and the issuing authority.

47.05 Unless an application is made for the suspension of an enforcement action, the Registrar must list the appeal for hearing as soon as practicable.

47.06 Where the issuing authority or the Fines Enforcement and Recovery Officer wishes to oppose the appeal, they must file a Notice of Intention.

47.07 Where the issuing authority or the Fines Enforcement and Recovery Officer opposes the appeal, they must appear at the hearing.

47.08 It will be sufficient service for the purpose of this rule if the Fines Enforcement and Recovery Officer and the issuing authority are notified in writing, electronically, by telephone, email or facsimile.

#### **48.00 ORDER FOR THE ATTENDANCE OF A PRISONER AT COURT**

48.01 An order pursuant to section 28 (2) of the *Correctional Services Act 1982* shall comply with Form 13.



## **49.00 CRIMINAL LAW (FORENSIC PROCEDURES) ACT 2007**

49.01 The applicant for a warrant under section 29 of the *Criminal Law (Forensic Procedures) Act 2007* must file a copy of the application for the procedure, the order authorising the procedure, and if it was an order of special urgency made under section 18, a note of the time when it was made, the direction under section 29(1) and an affidavit giving details of the identity of the suspect or offender, the notification of the direction given to the suspect or offender and the failure(s) to comply with the direction.

49.02 A Warrant issued under section 29(3) shall comply with Form 74 and must have the order authorising the forensic procedure attached to it.

## **49A.00 WARRANT - ROAD TRAFFIC ACT 1961**

49A.01 An application for a warrant made pursuant to section 41B of the *Road Traffic Act* shall comply with Form 90.

49A.02 A warrant issued pursuant to section 41B shall comply with Form 91.

49A.03 A duplicate warrant made pursuant to regulation 10(4)(e) of the *Road Traffic (Miscellaneous) Regulations 2014* shall comply with Form 92.

49A.04 When filing an application for a warrant, the applicant must also file with the court an affidavit verifying the grounds for the application.

49A.05 When an application for the issue of a warrant is made by facsimile, the applicant must send an affidavit verifying the grounds for the application with the application form.

49A.06 If a warrant is issued after an application by telephone or facsimile, the warrant, or a copy of the warrant, the duplicate warrant (if applicable) and the affidavit must be filed in the Court on the next working day. The relevant court registry shall be that closest to the location of the premises which are the subject of the warrant. Should this not be practicable, it shall be that to which the Magistrate is assigned.

## **50.00 CRIMINAL LAW CONSOLIDATION ACT, DIVISION 8A - MENTAL IMPAIRMENT PROVISIONS**

50.01 An order for the detention of a person pursuant to section 269O or 269U of the *Criminal Law Consolidation Act 1935* shall comply with Form 73.

## **51.00 COSTS**

51.01 Subject to these Rules, the provisions of any Act, or to an order of the Court, a successful party in an action is entitled to costs against an unsuccessful party.

51.02 For the purpose of this Rule a successful party includes a party who instigates proceedings that are admitted by plea of guilty, and a party who defends proceedings that are withdrawn or dismissed as a result of no evidence being tendered.

51.03 Subject to any order of the court to the contrary, the scale of costs set out in the first schedule shall apply.

## **52.00 PAYMENT OF ADVISORS, ELDERS AND EXPERTS**

52.01 The Court may appoint such cultural advisors, Aboriginal elders and experts within any field as it sees fit to advise it in the conduct of its work and pay them in accordance with rates determined by the Principal Registrar from time to time.

## **53.00 NATIONAL ELECTRICITY LAW AND NATIONAL GAS LAW**

53.01 An application for a search warrant issued pursuant to section 21 of the National Electricity Law or section 35 of the National Gas Law shall comply with Form 93.

53.02 A search warrant shall comply with Form 94.

53.03 An application for extension of period of retention made pursuant to section 26 of the National Electricity Law or section 40 of the National Gas Law shall comply with Form 95.

## **54.00 ANIMAL WELFARE ACT 1985**

54.01 An application for a warrant issued pursuant to Part 2 shall comply with Form 52.

54.02 A warrant issued pursuant to Part 2 shall comply with Form 53.

54.03 A duplicate warrant shall comply with Form 54.

## **55.00 FORTIFICATION REMOVAL ORDERS**

55.01 An application for a fortification removal order shall comply with Form 23.

55.02 A fortification removal order issued pursuant to section 74BB of the *Summary Offences Act 1953* shall comply with Form 75.

55.03 A notice of objection pursuant to section 74BE shall comply with Form 76.

55.04 A withdrawal notice lodged pursuant to section 74BH shall comply with Form 77.

55.05 When filing an application for an order, the applicant must also file with the court an affidavit verifying the grounds for the application.

55.06 The application form must be served by the Registrar on the occupier/s and owner/s of the premises which are the subject of the application unless the applicant can show sufficient grounds why notice should not be given. Such grounds must be included in the affidavit accompanying the application form and the application form must state that the applicant seeks leave of the court for notice not to be served.

55.07 If necessary, the court may conduct a hearing in private to determine whether notice of the application should be given to any other party.

## **56.00 RAIL SAFETY NATIONAL LAW (SOUTH AUSTRALIA) ACT 2012**

56.01 An application for a search warrant issued pursuant to Paragraph 150 of the Schedule—Rail Safety National Law of the *Rail Safety National Law (South Australia) Act 2012* must comply with Form 96.

56.02 A search warrant must comply with Form 97.

56.03 A duplicate warrant must comply with Form 98.

## **57.00 FIREARMS PROHIBITION ORDERS**

57.01 A firearms prohibition order made pursuant to s 66 of the *Firearms Act 2015* or s 299A of the *Criminal Law Consolidation Act 1935* must comply with Form 99.

57.02 When the court makes a firearms prohibition order, the Registrar must as soon as practicable, but not later than 4pm on the following working day, cause a copy of the order to be served electronically on the Registrar of Firearms.

## **57A.00 FIREARMS ACT 2015**

57A.01 An application pursuant to ss 59(2), 63 or 66(3)(b) of the *Firearms Act 2015* must comply with Form 23.

## **58.00 CRIMINAL INVESTIGATION (COVERT OPERATIONS) ACT 2009**

58.01 In the rule 'the Act' means the *Criminal Investigation (Covert Operations) Act 2009*.

58.02 An application pursuant to section 40(1) of the Act shall comply with Form 100.

58.03 A suppression order issued pursuant to section 40(6) of the Act shall comply with Form 101.

## **59.00 CORRECTIONAL SERVICES ACT 1982**

59.01 An application for a warrant issued pursuant to Section 76 or 76A of the *Correctional Services Act 1982* must comply with Form 103.

59.02 A warrant must comply with Form 104.

59.03 An order upon notification pursuant to Section 76B must comply with Form 105.

## **60.00 NON-ASSOCIATION AND PLACE RESTRICTION ORDERS**

60.01 An Interim Non-Association or Place Restriction Order pursuant to Section 80(2) of the *Summary Procedure Act 1921* must comply with Form 106.

60.02 A Non-Association or Place Restriction Order must comply with Form 107.

60.03 Where service is required under Section 81, the Order must be served by a police officer.

60.04 Applications for the variation or revocation of an order pursuant to Section 82 must comply with Form 108.

60.05 An Order for variation or revocation of a Non-Association or Place Restriction Order must comply with a Form 108A.

## **61.00 SPENT CONVICTIONS ACT 2009**

61.01 An application for a spent conviction order pursuant to section 8A of the *Spent Convictions Act 2009* or an application for an exemption order pursuant to section 13A of the *Spent Convictions Act 2009* must comply with Form 110 and a National Police Check must be attached. Only a National Police Check processed within 6 months before the date of filing a spent conviction order application or exemption order application will be accepted.

61.02 A spent convictions order or exemption order must comply with Form 111.

61.03 The Registrar must serve a copy of the application on the Attorney-General and the Commissioner of Police at least 4 weeks before the hearing date.

61.04 Where an application for an exemption order relates to Clause 6 of Schedule 1, the Registrar must also serve a copy of the application on the Minister for Children's Protection at least 4 weeks before the hearing date.

61.05 Where an application for an exemption order relates to Clause 7 of Schedule 1, the Registrar must also serve a copy of the application on the Minister for Disabilities at least 4 weeks before the hearing date.

- 61.06 No parties are required to attend the chambers hearing unless:
- (a) The Attorney-General, the Commissioner of Police or another Minister wishes to intervene in the proceedings; or
  - (b) The qualified Magistrate requires the applicant to attend.

61.07 Where the Attorney-General, the Commissioner of Police or another Minister wishes to intervene they must notify the applicant and the Registrar in writing 7 days before the hearing date.

61.08 Where a qualified Magistrate requires the attendance of the applicant, the Registrar must notify the potential parties at least 7 days before the hearing date.

## **62.00 HEAVY VEHICLE NATIONAL LAW (SOUTH AUSTRALIA) ACT 2013**

62.01 An application for a warrant made pursuant to clause 506 of the Schedule of the *Heavy Vehicle National Law (South Australia) Act 2013* must comply with Form 112.

62.02 A search warrant issued pursuant to clause 507 of the Schedule must comply with Form 113.

62.03 A duplicate search warrant made pursuant to clause 508(5) of the Schedule must comply with Form 114.

## **63.00 RECORDING EVENTS IN COURT**

- (1) Subject to this rule and to any contrary direction of the Court, the making of a record of persons, things, or events in court is not permitted.
- (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
- (3) Despite subrule (1):
  - (a) a party to a proceeding which is being heard by the Court, a legal practitioner, law clerk, student or a bona fide member of the media may make a handwritten or electronic note of persons, things or events in court; and
  - (b) a bona fide member of the media may make an audio recording of proceedings for the sole purpose of verifying notes and for no other purpose.
- (3a) A party to proceedings must seek leave of the Court prior to using an electronic device.
- (4) Any record made in court permitted by this Rule must:
  - (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceedings;

- (b) not interfere with the Court's sound system or other technology; and
  - (c) not generate sound or require speaking into a device.
- (5) Any audio recording made by a member of the media under subrule (3)(b):
- (a) must not record any private conversation occurring in court;
  - (b) must not be made available to any other person or used for any other purpose; and
  - (c) must be erased entirely within 48 hours of the recording.
- (6) For the purpose of this Rule, 'record' means a record by any means whatsoever, including by handwriting, other physical means, audio and/or visual recording or electronic record.
- (7) For the purpose of this Rule, 'electronic note' means a text based note.

## **64.00 ELECTRONIC COMMUNICATIONS IN COURT**

- (1) Subject to this rule and to any contrary direction of the Court, communication by means of an electronic device to and from a court room during the conduct of proceedings is not permitted.
- (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
- (3) Despite subrule (1) and subject to subrules (4) and (5), a party to a proceeding which is being heard by the Court, a legal practitioner or a bona fide member of the media may communicate by means of an electronic device to and from a court room during the conduct of proceedings.
- (4) Any electronic communication permitted by this Rule must:
- (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceedings;
  - (b) not interfere with the Court's sound system or other technology; and
  - (c) not generate sound or require speaking into a device.
- (5) A communication of evidence adduced or a submission made in proceedings, whether in full or in part, must not be made until at least 15 minutes have elapsed since the evidence or submission in question, or until the Court has ruled on any application for suppression or objection made in relation to the evidence or submission within that period of 15 minutes, whichever occurs last.
- (6) For the purpose of this rule, 'electronic device' means any device capable of transmitting and/or receiving information, audio, video or other matter (including, cellular phones, computers, personal digital assistants, digital or analogue audio and/or visual cameras or similar devices).

## **65.00 CONTROLLED SUBSTANCES ACT 1984**

65.01 An application pursuant to s 30ZL, s 30ZM or s 33T of the *Controlled Substances Act 1984* must comply with Form 23.

## **66.00 MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) NATIONAL LAW (APPLICATION) ACT 2013**

66.01 An application for a warrant made pursuant to Schedule 1 Clause 135 (1) of the *Marine Safety (Domestic Commercial Vessel) National Law (Application) Act 2013* must comply with Form 116.

66.02 A search warrant must comply with Form 117.

66.03 A duplicate search warrant must comply with Form 118.

## **67.00 CONTROL ORDERS UNDER THE CHILD SEX OFFENDERS REGISTRATION ACT 2006**

67.01 An application for a Control Order or a Interim Control Order pursuant to Part 5C of the *Child Sex Offenders Registration Act 2006* must comply with Form 47.

67.02 The Commissioner of Police must serve a copy of the application on the registrable offender personally.

67.03 An Interim Control Order must comply with Form 48.

67.04 A Control Order must comply with Form 49.

67.05 An application for variation or revocation of a Control Order or Interim Control Order must comply with Form 50. The application must be personally served on the respondent to it.

67.06 An Order for variation or revocation of a Control Order or Interim Control Order must comply with Form 51.

67.07 An application to extend a period of detention pursuant to section 66JG(3) may be made by telephone.

## **68.00 BURIAL AND CREMATION ACT 2013**

68.01 An application for a warrant made pursuant to section 59 of the *Burial and Cremation Act 2013* must comply with Form 119.

68.02 A warrant must comply with Form 120.

68.03 A warrant will cease to have effect no later than 48 hours after it has been executed by the Magistrate.

## **69.00 FEES**

69.01 The fees payable in relation to an action or proceeding in the Court are the fees prescribed in the *Magistrates Court (Fees) Regulations 2004*, *Sheriff's Regulations 2005* and any other relevant Act or Regulations under which an action is commenced.

69.02 An application for the remission or reduction of a fee must be made to the Registrar on oath or by affirmation in Form 123 and the Registrar must maintain a copy of the application separately from the file of the action or proceeding.

69.03 Where proper cause exists, the Registrar may, by notice in writing served on a person or party, impose conditions in respect of the mode or time of payment of a fee by that person or party.

69.04 Payment of a fee may be ordered by the Court, and the Registrar may enforce the order pursuant to these Rules.

## **70.00 CO-OPERATIVES NATIONAL LAW (SOUTH AUSTRALIA) ACT 2013**

70.01 An application for a warrant made pursuant to section 504 or 505 of the *Co-operatives National Law* must comply with Form 121.

70.02 A search warrant must comply with Form 122.

## **71.00 ELECTORAL ACT 1985**

71.01 An application for a warrant made pursuant to section 130ZZB (16) of the *Electoral Act 1985* must comply with Form 124.

71.02 A warrant issued pursuant to section 130ZZB (17) of the *Electoral Act 1985* must comply with Form 125.

## **72.00 CRIMINAL LAW (HIGH RISK OFFENDERS) ACT 2015**

72.01 An application for the apprehension and detention of a person pursuant to s 11(6)(b) of the *Criminal Law (High Risk Offenders) Act 2015*, for the purpose of bringing that person before the Parole Board where he or she fails to appear before the Parole Board in compliance with a summons, must comply with Form 126.

72.02 A warrant for the apprehension and detention of a person, issued pursuant to s 11(7) of the *Criminal Law (High Risk Offenders) Act 2015*, must comply with Form 127.



72.03 An application for the arrest of a person by a member of the Parole Board (other than the presiding member or deputy presiding member) or a police officer pursuant to s 15(2)(b)(ii) or s 15(3)(b) of the *Criminal Law (High Risk Offenders) Act 2015* respectively, must comply with Form 128. The application must set out the member or police officer's reasonable grounds for suspecting that the person subject to a supervision order may have breached a condition of the order.

72.04 An arrest warrant issued pursuant to s 15(6) of the *Criminal Law (High Risk Offenders) Act 2015* must comply with Form 129.

### **73.00 WORK HEALTH AND SAFETY ACT 2012**

73.01 An application for a search warrant made pursuant to s 167 of the *Work Health and Safety Act 2012* must comply with Form 130.

73.02 A search warrant under s 167 of the *Work Health and Safety Act 2012* must comply with Form 131.

### **74.00 SOUTH AUSTRALIAN PUBLIC HEALTH ACT 2011**

74.01 An application for a warrant made pursuant to s 47(3)(a) of the *South Australian Public Health Act 2011* must comply with Form 132.

74.02 A warrant under s 47(3)(a) of the *South Australian Public Health Act 2011* must comply with Form 133.

74.03 A warrant will cease to have effect no later than 14 days after it has been executed by the Magistrate.

### **75.00 TATTOOING INDUSTRY CONTROL ACT 2015**

75.01 An application for a warrant made pursuant to s 19 of the *Tattooing Industry Control Act 2015* must comply with Form 134.

75.02 A warrant under s 19 of the *Tattooing Industry Control Act 2015* must comply with Form 135.

75.03 A warrant issued under s 19 of the *Tattooing Industry Control Act 2015* will cease to have effect no later than 7 days after it is issued by the Magistrate.

### **76.00 HOUSING IMPROVEMENT ACT 2016**

76.01 An application for a warrant made pursuant to s 11(4)(a) of the *Housing Improvement Act 2016* must comply with Form 140.

76.02 A warrant under s 11(4)(a) of the *Housing Improvement Act 2016* must comply with Form 141.

76.03 A warrant issued under s 11(4)(a) of the *Housing Improvement Act 2016* will cease to have effect no later than 7 days after it is issued by the Magistrate.

## Schedule 1

# Magistrates Court Criminal Scale of Costs

Effective from 7 October 2010

Notes:

- 1 This cost scale is intended for use in making orders as between party and party.
- 2 The fees set out in item 1 and 2 are intended to cover all necessary attendances and preparatory work for a trial (other than attendance at a pre-trial conference). Where an attendance is unnecessary as a result of default by one or other party, an order should be sought and made at that hearing. The fee set out in item 4 or 5 should be used for that purpose.

No.	Item	Represented by solicitor	Represented by non-legally qualified person
1	Instructions, including all preparation for trial and attendances up to, but not including attendance at a Pre Trial Conference	\$900	\$225
2	All aspects not otherwise specified from Pre-Trial Conference to Trial, including proofing witnesses, advice or evidence and law (solicitor and counsel) and delivering brief to counsel.	\$900	\$150
3	Attendance at pre-trial conference	\$250	\$60
4	Attendance at hearing (see note 2 above)	\$90	\$25
5	Attendance where detailed argument is necessary (see note 2 above)	\$150	\$35
6	Arranging attendance of witnesses (including issue and service of summons if necessary) - per witness	\$60	
	<b>Counsel fees</b>		
7	Fee on brief, to include attendance for plea or withdrawal (if separate counsel briefed)	\$800	200
8	Each day	\$1250	\$300

<b>Witness fees</b>	
Professional scientific or other expert witnesses per day	\$600 or such amount ordered by the Court
Other adult person per day	\$300
Persons under 18 years of age per day	\$120
Travel expenses	Where the witness is normally resident more than 50 km from the trial Court at the rate of 70 cents per km or the least expensive return air fare whichever is the lesser or the cheapest combination of both.
Accommodation expenses	In the discretion of the taxing officer where the witness is required to be absent from his or her normal place of residence overnight for accommodation and sustenance per night \$240 or such larger amounts allowed by the Court at the time of or before judgment.
Photocopying	50 cents per page
STD calls	The actual cost.
Expert Reports	\$550 or such other amount ordered by the Court
Other	All Court fees, search fees, and other fees and payments to the extent to which they have been properly and reasonably incurred and paid; but excluding the usual and incidental expenses and overheads of a legal practice and in particular excluding postage, telephone charges (non STD) and courier expenses.
<p>NOTE :</p> <p>A If a witness is released before or is required to first attend after the luncheon break on any day, half a day will be allowed.</p> <p>B Fees for non-legally qualified people are for attendances only.</p>	

	<p>C The costs allowed in this scale do not include Goods and Services Tax (GST) which is to be added except in the following circumstances:</p> <p>The GST should not be included in a claim for costs in a party/party Bill of Costs if the receiving party is able to obtain an input tax credit for a proportion of GST only, only the portion which is not eligible for credit should be claimed in the party/party bill.</p>
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## APPENDIX

### Legislative History

Table of Contents replaced by amendment No.3 (1.4.94), pl.2 replaced by amendment No. 9 (12.12.96), pl.5

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Rule 4.04 inserted by amendment No. 11 (29.5.97), pl.1; replaced by amendment No. 26 (4.5.06)

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Heading before Rule 7 amended by amendment No. 19 (8 March 2001), pl.6

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