SUPREME COURT PRACTICE DIRECTIONS TO OPERATE IN CONJUNCTION WITH THE SUPREME COURT CIVIL RULES 2006

Part I – Practice Directions

(These Practice Directions are made by the Chief Justice pursuant to Rule 11.)

These Practice Directions only apply on and after 4 September 2006 and to actions which are governed by the Supreme Court Civil Rules 2006. All Practice Directions made prior to that date are superseded by these Directions except in relation to actions governed by the old Rules for which purpose they continue to apply.

Expressions in the Practice Directions bear the meanings given to them in Rule 4.

These Practice Directions may be referred to as the Supreme Court Practice Directions 2006.

These Practice Directions have been amended as indicated in the table below, and are current as from 1 December 2012.

	date of operation	
Amendment No. 1	7 December 2006	
Amendment No. 2	1 May 2007	
Amendment No. 3	1 January 2008	
Amendment No. 4	12 May 2008	
Amendment No. 5	12 May 2008	
Amendment No. 6	1 June 2008	
Amendment No. 7	1 July 2008	
Amendment No. 8	1 November 2008	
Amendment No. 9	1 January 2009	
Amendment No. 10	10 April 2009	
Amendment No. 11	1 July 2009	paragraphs 1, 2, 3.2, 4 and 6
	1 November 2010	paragraphs 3.1 and 5
Amendment No. 12	31 August 2009	
Amendment No. 13	1 May 2010	
Amendment No. 14	1 July 2010	
Amendment No. 15	1 October 2010	
Amendment No. 16	31 October 2010	
Amendment No. 17	1 February 2011	
Amendment No. 18	1 April 2011	
Amendment No. 19	12 September 2011	*forms only*
Amendment No. 20	1 December 2011	
Amendment No. 21	1 February 2012	
Amendment No. 22	1 April 2012	
Amendment No. 23	**1 December 2012**	

PART 1 – PRACTICE DIRECTIONS

Table of Practice Directions

Chapter 1 – Registry Practice

Direction 1.1 – Searching Court Files (Rule 18)

1.1.1 The permission of the Court under section 131(2) of the *Supreme Court Act 1935* and section 54(2) of the *District Court Act 1991* may be sought by letter or email to the Registrar and without notice to any party or person interested.

1.1.2 Unless the Court has otherwise ordered, a party to an action may inspect or obtain copies of documents held on the court file for that action by an informal request to the Registry. Insofar as such documents are documents produced by third parties on subpoena, Rule 179 must be used.

Direction 1.2 – Transacting Business through the Civil Registry

1.2.1 The Civil Registry is open for business from 9.30am to 4.30pm each day except on Saturdays, Sundays, Public Holidays and the days between Christmas Day and New Year's Day.

1.2.2 For the purposes of Rule 5(5) the Christmas vacation is from Christmas Day in one year until, but not including, the second Monday in January in the following year.

1.2.3 Where it is sought to file or lodge documents, or to arrange for an urgent hearing by a Judge or a Master, at a time other than when the Registry is normally open for business the applicant should phone the after hours business number (Supreme Court (08) 8204 0494 and District Court (08) 8204 0301). The number will provide the current contact details of the rostered on call officer. If that officer is satisfied about the urgency of the request, he or she will arrange for the opening of the Registry and/or for a special hearing before a Judicial Officer.

1.2.4 Other than with the prior permission of the Judicial Officer no lawyer or litigant is to contact a Judicial Officer to seek any urgent hearing.

1.2.5 Unless waived under section 130(2) of the *Supreme Court Act* or section 53(2) of the *District Court Act* substantial fees are payable under the Regulations for opening the Registry out of hours and for holding special hearings of the Court.

Direction 1.3 – Facsimile Copies of Affidavits (Rule 162)

1.3.1 Other than where Rule 47 applies the signatures on an affidavit must be originals and not copies. A lawyer lodging or producing an affidavit to the Court impliedly warrants to the Court that the signatures on the documents are originals and not copies.

1.3.2 In cases of urgency where it is impossible for the lawyer to obtain the signed original copy of the affidavit before the hearing the lawyer may himself/herself swear an affidavit exhibiting a copy of the affidavit bearing facsimile signatures.

Direction 1.4 – Recording Orders and Directions

1.4.1 As soon as practicable after a Judicial Officer has pronounced an order or direction its contents are to be entered into the Court's computer system. A hard copy as signed by the Judicial Officer or some person delegated by the Judicial Officer for that purpose is to be placed onto a hard copy Court file.

Direction 1.5 – Form of Sealed Judgments and Orders (Rule 241)

1.5.1 The front sheet for each sealed order is to be in accordance with Form 1 in Part 2.

The nature of the order should be specified under "DOCUMENT TYPE", eg JUDGMENT ON APPEAL.

1.5.2 The preamble to judgments and orders will be as follows:

Supreme Court Judge: The Honourable Justice .....

Supreme Court Master: His/Her Honour Judge .....

District Court Judge: His/Her Honour Judge ……

District Court Master: Master ……

Date of notice of appeal/summons/application:

Application made by: Plaintiff/Defendant, etc

Date(s) of hearing/trial:

Date of order:

Appearances: [Name] Lawyer/Counsel for the Plaintiff

[Name] Lawyer/Counsel for the Defendant, etc

(if E-application – E-application by consent)

Undertaking: (where applicable)

The Court orders (or declares) that: .....……OR

By Consent the Court orders that: .....……

1.5.3 This Practice Direction is subject to the provisions of the Corporations Rules 2003 (South Australia).

1.5.4 In the case of orders of the Full Court the Judges will be named as follows:

The Honourable the Chief Justice and Justices

.....……and

.....……

OR

The Honourable Justices .....……..

.....…….. and

.....…….

1.5.5 When an attendance is certified fit for counsel by the Judge or Master, the following shall be added immediately after the last numbered paragraph of the order:

"Fit for counsel" *or*

"Fit for counsel in respect of attendances on [date(s)]."

1.5.6 The text of orders set out in the Common Form Judgments and Orders, as published by the Supreme Court, is to be used with the appropriate modifications to suit the circumstances of the case.

1.5.7 Where a detailed order is sought by summons or application, minutes of order must be filed with the summons or application and served on any party to be served.

Direction 1.6 – Suitors Fund (Rules 189-91)

1.6.1 Every order which directs funds to be lodged in Court is to contain:

1.6.1.1 The name, or a sufficiently identifying description, of the person by whom the funds are to be lodged.

1.6.1.2 The amount, if ascertained, and the description of the funds.

1.6.2. A person lodging funds in Court is at the time of lodgment to furnish to the Registrar a pay-in slip in the form directed by the Registrar containing:

1.6.2.1 The title of the proceedings in relation to which the funds are lodged.

1.6.2.2 The ledger credit to which the funds are to be credited.

1.6.2.3 The description and amount of the funds lodged.

1.6.2.4 The full names, address and description of the person lodging the funds.

1.6.2.5 Particulars of the order or any other authority under which the lodgment is made and any other details showing the circumstances under which the lodgment is made.

1.6.3 The title of the account to which the funds are to be credited may be determined by the Registrar.

1.6.4.1 Any moneys which a person is entitled to have paid out to him/her may be paid out to him/her or to his/her attorney, appointed under a power which the Registrar deems sufficient, on the written request of such person or attorney, or to the lawyer of such person or attorney on the written authority of such person or attorney.

1.6.4.2 Every such request or authority is to be in the form in paragraph 1.6.13 below and be attested by a commissioner for taking affidavits, a notary public, a justice of the peace or a proclaimed bank manager.

1.6.5 If the person entitled to payment out of any funds in Court or the attorney of any such person, appointed under a power which the Registrar deems sufficient, gives the Registrar instructions in writing to remit the money to such person or attorney by cheque sent by post the Registrar may at his discretion remit the money in accordance with the instructions.

1.6.6 Where money is, by an order, authorised to be paid to one person or a lawyer on the authority of another person, the signature to the authority must be attested by one of the persons mentioned in paragraph 1.6.4.2 hereof.

1.6.7 Where funds in Court are directed to be paid to any person who is deceased they may, unless the order otherwise directs, be paid to the administrator or executor, of the deceased person.

1.6.8 Where money in Court is, by an order, directed to be paid to any persons described therein as partners, or as trading or carrying on business in the name of a firm, such money may be paid to any one or more of such persons, unless the order otherwise directs.

1.6.9 The Registrar, upon a request signed by or on behalf of a person claiming to be interested in any funds in Court standing to the credit of an account specified in such request, may, in his/her discretion, issue a certificate of the amount and description of such funds, and such certificate shall have reference to the morning of the day of the date thereof, and shall not include the transactions of that day.

The Registrar shall notify on such certificate:

1.6.9.1 The date of any order restraining the transfer, sale, delivery out, payment out, or other dealing with the funds in Court to the credit of the account mentioned in such certificate, and whether such order affects capital or interest.

1.6.9.2 Any charging order affecting such funds, of which the Registrar has received notice, and the names of the persons to whom notice is to be given, or in whose favour such restraining or charging order has been made.

1.6.9.3 The Registrar may re-date any such certificate, provided that no alteration in the amount or description of the funds has been made since the certificate was issued.

1.6.10 Upon a request signed by or on behalf of a person claiming to be interested in funds in Court, the Registrar may, in his/her discretion issue a transcript of the account in the books of the Court specified in such request, and, if so required by the person to whom it is issued, such transcript shall be authenticated by the Auditor-General.

1.6.11 The Registrar may also upon a like request supply such other information or issue such certificates with respect to any transactions or dealings with funds in Court as may from time to time be required in any particular case.

1.6.12 The Registrar need only pay out funds in Court upon being satisfied of the identity of the person entitled to receive them.

1.6.13 **REQUEST FOR PAYMENT OUT**

(action heading)

I …….. of ……

in the State of South Australia REQUEST that $……standing in Court to the credit of this action in the account numbering…… together with all interest accrued thereon to the date of payment be paid to ……..pursuant to the order

of dated the day of 20 .

DATED this day of 20 .

.....…….....

Witness .....……...

(JP or Commissioner etc.)

Direction 1.7 – Form and Content of Documents Filed or Lodged at Court

1.7.1 Unless otherwise authorised all hard copy documents prepared for filing or lodgement in the Court are expected to:

1.7.1.1 be in the English language;

1.7.1.2 be on substantial A4 size white bond paper;

1.7.1.3 have single spacing between the lines (unless the document is one which is to be settled by the Court, in which case, double spacing is to be used);

1.7.1.4 have double spacing between the paragraphs;

1.7.1.5 be typed or printed so as to be completely legible in not less than size 12 font except for quotations which may be in size 10 font;

1.7.1.6 have margins of 4 centimetres to the left and 2 centimetres to the right;

1.7.1.7 be typed or printed on one side of the page only;

1.7.1.8 be paginated;

1.7.1.9 have figures and amounts of money expressed in numerals and not in words; and

1.7.1.10 have all erasures or handwritten additions authenticated.

1.7.2 If the Registrar is satisfied that a self represented litigant is unable to comply with Direction 1.7.1, the Registrar may accept the document for filing, providing that it is legible and able to be filed conveniently.

1.7.3 When there is substantial non-compliance with paragraph 1.7.1 the Registrar may refuse to accept the document for filing.

Chapter 2 – Electronic Technology

Direction 2.1 – Guidelines for the Use of Electronic Technology

Introduction

2.1.1 The purpose of this Practice Direction is to provide for the use of information technology in the processes of civil litigation, including actions commenced utilising the Electronic Filing System of the Courts Administration Authority, and in case management generally.

2.1.2 Parties to litigation are encouraged to develop, at an early stage, an agreement ("protocol") for the electronic provision of information.

2.1.3 The Court may direct parties to any proceedings to use technology in accordance with the provisions of the Rules and Practice Directions.

2.1.4 The ability of the Court to support the use of technology will depend upon the resources available to it from time to time.

2.1.5 Practitioners and litigants should consider the CHECK LIST OF TECHNOLOGY ISSUES and the GUIDELINES - POSSIBLE FIELDS FOR DATABASE, both of which are available on the CAA website.

2.1.6 It is the responsibility of all parties to take appropriate steps to protect their own systems from viruses and other malicious code. When the Rules or Practice Directions require the service or provision of electronic information of any kind, the sender and recipient should check the information for viruses and other malicious code.

Matters to be Considered in every Case.

2.1.7 In every case parties must consider:

2.1.7.1 creation of electronic lists of disclosable documents;

2.1.7.2 disclosure of documents by electronic means in accordance with an agreed protocol;

2.1.7.3 provision for inspection of disclosed material by way of images; and

2.1.7.4 provision of documents used in litigation including pleadings, disclosed documents, written statements of evidence, pre-trial written questions and answers, notices to admit and notices of response, schedules of costs and notices of dispute, Scott Schedules and responses, and written submissions, in electronic form.

2.1.8 When the number of documents likely to be disclosed is more than 500, or when the estimated length of hearing is more than four weeks, the parties must:

2.1.8.1 develop a protocol for the electronic provision of documents in an agreed electronic format using agreed fields and must consider the use of document images;

2.1.8.2 consider whether the case warrants the engagement of an electronic litigation support provider and the use of real time transcript.

2.1.9 The protocol should be agreed prior to the service of the parties' first list of documents unless the need for the protocol is not apparent at the time, in which

case, the protocol should be agreed as soon as practicable after the need becomes apparent.

2.1.10 At directions hearings, the Court may make orders that parties confer on the use of technology:

2.1.10.1 to provide information about their disclosable documents, the documents to be used at trial and imaged copies of such documents;

2.1.10.2 to manage information in the proceedings generally.

2.1.11 When the use of technology is raised by any party in a matter other than that to which direction 2.1.8 applies, each party should address the matters referred to in directions 2.1.8.1, 2.1.8.2 and 2.1.10 and should have regard to the CHECK LIST OF TECHNOLOGY ISSUES and to the GUIDELINES – POSSIBLE FIELDS FOR DATABASE, both of which are on the CAA website.

Electronic Disclosure of Documents

2.1.12 When the parties have agreed, or the Court has directed, that disclosure should be given by providing details of the documents in an electronic format, before disclosure is made:

2.1.12.1 the parties should endeavour to reach agreement on the protocol to be used; and

2.1.12.2 if agreement cannot be reached, the parties should seek a direction from a Master as to the specific protocol to be used.

2.1.13 Parties should make all reasonable efforts to agree on:

2.1.13.1 the medium to be used to provide data concerning their disclosable documents and/or images of the documents;

2.1.13.2 how data should be delimited;

2.1.13.3 the format of the data;

2.1.13.4 how the parties will record the date of service of the data and ensure that the party providing the data and the nature of the data may be readily identified;

2.1.14 Parties should consider providing data relating to their disclosable documents to the Court electronically (in addition to any hard copy list that may be required).

Electronic Service of Documents

2.1.15 When a party is required to serve a document in hard copy on another party, that party must, on the request of the receiving party, provide an electronic copy of that document.

2.1.16 A party may not be entitled to the costs of photocopying a document if that document could have been provided electronically.

2.1.17 Subject to paragraph 2.1.18, when a party provides the Court or another party with a document in electronic format, that document shall contain the same text and images as a paper copy (if produced).

2.1.18 When a document contains annexures, the party will normally be expected to provide an electronic version of those annexures together with the electronic

version of the host document, unless there is good reason for not supplying such annexures in an electronic format.

2.1.19 When appropriate, the parties should prepare a document in a structured format, such as HTML, so that hypertext links can be made where appropriate. For example, if a document refers to a Document ID, a hypertext link can be made to the relevant document image. This should be done in all written statements of evidence and expert reports to be used at trial.

2.1.20 Parties should make all reasonable efforts to agree, and in the absence of agreement, should seek a direction from the Registrar regarding:

2.1.20.1 the format in which electronic versions of documents will be provided;

2.1.20.2 the methods by which electronic versions of documents are to be provided.

2.1.21 The Court may direct a party to provide it with copies of documents in a specified electronic format.

2.1.22 The protocol for the electronic provision of documents adapted to the needs of a particular case should:

2.1.22.1 list the fields to be used to describe each document in addition to those fields required by Form 20;

2.1.22.2 focus particularly on the Document ID and Document Type fields (see Guidelines - Possible Fields for Database on the CAA website);

2.1.22.3 when documents are to be imaged, identify the resolution, compression type and format to be used, whether images are to be reduced to A4 size (if the original is larger), whether they are to be prepared in colour or black and white (eg for colour photographs);

2.1.22.4 identify how image files and directories are to be named and structured;

2.1.22.5 indicate how disclosure lists and images (if any) are to be provided or offered for inspection (eg hard copy, CD Rom, disk, email, images, photographs etc);

2.1.22.6 identify the format or structure for the provision of lists and images if they are to be produced (eg hard copy, word processing format, spreadsheet format, pre-defined database structure designed for import to a litigation support package etc);

and

2.1.22.7 identify any other issues associated with the use of technology at the trial.

Use of Technology at the Hearing

2.1.23 When it is considered appropriate, the Court may direct the parties to confer with, or to engage, an electronic litigation service provider.

2.1.24 Subject to any direction of the Court otherwise, parties are encouraged to consider the use of electronic data at trial, and in particular to use electronic data for:

2.1.24.1 the basis for an index to agreed documents;

2.1.24.2 creation of a database of documents admitted into evidence and rulings on the admissibility of documents; and

2.1.24.3 management of information in the proceedings generally;

2.1.25 At least 24 hours prior to the hearing, to deliver to the trial Judge's Associate electronic versions of court documents to be used to supplement any hard copy documents which may have been lodged with the Registry;

2.1.26 To liaise with the Associate in relation to the use of such technology in court;

2.1.27 To advise the Court of the equipment and services (including appropriate hardware, software and additional infrastructure) which may be required at the trial;

2.1.28 To advise the Court of any special arrangements which may be required to ensure that appropriate equipment and services are available at the hearing.

Direction 2.2 – Electronic Filing of Documents Transitional

2.2.1 Rule 45 vests in the Registrar the responsibility for maintaining an electronic Case Management System to enable registered users to file documents in electronic form, to serve such documents electronically, to enable the transmission of electronic communications and to facilitate court proceedings by enabling the Court to call up filed documents and other information concerning them in screen readable form. This Direction applies only to all actions commenced on or after the date of operation of the *Supreme Court Rules 2006*, by legal practitioners who register pursuant to Rule 46, or have already registered, as users of the Courts Administration Authority (CAA) Electronic Filing System (EFS).

2.2.2 The reasonable requirements of litigants in person (including handicapped or disabled persons) and others not having the present technical capacity of dealing with the Court electronically will continue to be met by provision of appropriate registry counter facilities suitable for the needs of those concerned.

Electronic Communication

2.2.3 Where an action is commenced by a registered user of the EFS, the primary method of communication by legal practitioners and parties in person with the Court shall be by an electronic communication, utilising the relevant function on the Internet Website of the CAA ("the CAA Website") established for the purpose.

2.2.4 If a person is required or permitted to give information in writing or produce a document that is in the printed or typewritten form to either:

2.2.4.1 the Court; or

2.2.4.2 a person who has advised either

2.2.4.2.1. the Registrar; or

2.2.4.2.2 the person giving the information or producing the document,

of their willingness to receive information by means of an electronic communication,

that requirement is taken to have been met if the person gives the information, or produces the document, by means of such a communication.

2.2.5 If the Court is required to give information to a person in writing, and that person is a registered user, or has advised the Registrar of his/her willingness to receive information by means of an electronic communication, that requirement is taken to have been met if the Court gives the information by means of such a communication.

2.2.6 A person who has an e-mail address must state that address on any documents or communication filed, served or given. The publishing of an e-mail address in such a manner indicates a willingness, thereafter, to receive information, at that address, by means of an electronic communication from both the Court and other parties or persons.

2.2.7 Information sent to the Registrar by facsimile transmission must be:

2.2.7.1 sent to the approved facsimile number for the Court; and

2.2.7.2 accompanied by a cover sheet clearly stating:

2.2.7.2.1 the sender's name, postal address, document exchange number (if any), telephone number, facsimile number and e-mail address (if any); and

2.2.7.2.2 the number of pages transmitted; and

2.2.7.2.3 what action is required in relation to the content.

2.2.8 If the information comprises a document that is required to be signed or sealed by or on behalf of the Registrar, and is accepted, the Registrar will:

2.2.8.2 if the sender requests that the document be held for collection - hold it for collection for 7 days; and

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

2.2.9 A person who sends information to the Registrar by facsimile transmission must:

2.2.9.1 keep the original information and the transmission report evidencing successful transmission; and

2.2.9.2 produce the original information or the transmission report as directed by the Court.

2.2.10 If the Court directs that the original information be produced, the first page of it must be endorsed with:

2.2.10.1 a statement that the information is the original of that sent by facsimile transmission; and

2.2.10.2 the date that the information was sent by facsimile transmission.

Mode of Introduction of Electronic Filing System (EFS)

2.2.11 It is proposed that in actions utilising the EFS:

2.2.11.1 The primary record of proceedings is to be an electronic file, supplemented by such hardcopy materials as may be needed for use in specific hearings or trials;

2.2.11.2 To the maximum extent feasible, matters will be dealt with "on-screen" and with production of only the minimum amount of hardcopy material required;

2.2.11.3 The primary method of communication by practitioners with the Courts is to be through the CAA Web site, in a manner conforming with technical standards from time to time promulgated by the Courts; and

2.2.11.4 The input of documents into the EFS in relation to new actions is by means of templates accessed through the CAA Web site by registered users. These require input of variable data, as appropriate, by registered users or through facilities provided in the registry, that will be incorporated into the relevant forms prescribed by the Practice Directions. Those forms have specifically been designed to facilitate data input in a manner that is suitable for e-business operations.

2.2.12 Where an action is commenced by a registered user using the EFS, all documents thereafter filed with, served on, or delivered to the Registrar in the matter, by any party, must, subject to this Practice Direction, be so filed, served or delivered using the EFS. If it is impractical for a party, or the legal representative of the party, to become a registered user, any document to be filed by or on behalf of the party will have to be in electronic format on diskette, brought to the registry for uploading; or will need to be scanned into the electronic file at the registry, from a hard copy suitable for that purpose.

2.2.13 It is not feasible to accommodate any pending proceedings that are based on a hardcopy record within the EFS. They will need to be carried through to completion in hardcopy format.

2.2.14 Principles, guidelines and standards for the EFS are those set out in Annexure A as appearing at the end of this Direction 2.2.

2.2.15 The EFS is accessed through the CAA Web site at www.courts.sa.gov.au. To effect access, the cursor should be positioned on "e lodgement" under the subheading "Courts".

Registration as a User

2.2.16.1 A firm or sole legal practitioner may become a registered user of the EFS by accessing the registration template on the CAA Web site and entering the appropriate data.

2.2.16.2 Registered user status will only be accorded to the holder for the time being of an alpha/numeric designator (commonly referred to as *"the Law Firm number"*) issued by the Law Society of South Australia ("the Society") to a firm or sole legal practitioner for practice identification purposes ("L Code").

2.2.16.3 The Registrar will not permit registration unless satisfied, in accordance with Rule 46, that proper arrangements have been made, on application for registration, for timely payment of all court fees becoming due in respect of any electronic transactions initiated by the proposed registrant.

Electronic Authentication and Security of Passwords

2.2.17.1 Upon registration a registered user shall nominate:

2.2.17.1.1 the alpha/numeric designator (commonly referred to as "*the practitioner number*") issued by the Society to each individual legal practitioner entitled to practice in South Australia for personal identification purposes ("the P Code") in respect of each practitioner for the time being authorised by the user to operate the electronic filing system for and on behalf of that user; and

2.2.17.1.2 ensure that each such practitioner thereafter nominates, by way of authentication code, a separate related password in respect of that person. Such password shall consist of not less than 8 characters, one of which must be numeric, and not more than 20 characters.

2.2.17.2 The last mentioned password shall conform to the technical requirements specified from time to time by the Registrar.

2.2.17.3 An authorised practitioner will not be permitted to operate the EFS without first entering a current valid electronic authentication code for that practitioner.

2.2.17.4 It is the obligation of each registered user (the L Code holder), forthwith, to inform the CAA, through the Society by such means as the Registrar may from time to time direct, of any change in the particulars contained in the application to become a registered user and, specifically, of any change in the details of authorised agents (the P Code holders) who may operate on their account. Until receipt of notice of revocation of the nomination of a person as an authorised agent, such person will be deemed to continue as the authorised agent of the registered user, who shall be bound by and responsible to the Court for the actions of the authorised agent.

2.2.17.5 Each transaction on the EFS must be initiated by an authorised agent on behalf of a registered user. The input of the P Code and password of that person will, for all purposes, conclusively establish the relevant authorised agent as the initiator of the transaction.

Security of Authentication Code

2.2.18.1 A registered user shall ensure the confidentiality and security of any electronic authentication codes assigned by it to all authorised practitioners and shall take reasonable steps to prevent unauthorised use of them.

2.2.18.2 It is the responsibility of a registered user to ensure that its registration details are forthwith amended when a practitioner ceases to be authorised to operate the electronic filing system on behalf of that user.

2.2.18.3 Until any such amendment is made, the registered user will be bound by the actions of each authorised practitioner nominated by it.

Submission of Documents to the Court

2.2.19.1 Documents may be submitted by or on behalf of a registered user to the Court via the EFS at any time on any day on which the EFS is operational. The system will be operational 24 hours per day, 7 days per week, except that, initially, any document in respect of which a filing fee is payable may only be processed for filing between the hours of 9 am and 4.30 pm, Monday to Friday.

2.2.19.2 Documents presented on diskette or in hard copy may only be so presented during hours in which the registry is normally open for business, unless the Registrar shall otherwise direct in a particular case.

Hard Copy Documents

2.2.20.1 The Registrar may, at any time, request a party to supply the registry with hard copies of any documents filed electronically.

2.2.20.2 Upon such request the filing party or the solicitor for such party must furnish hard copies of the relevant documents within such reasonable time frame as is specified by the Registrar.

2.2.20.3 The Registrar may also direct that any or all documents in proceedings be filed in hard copy, instead of using the EFS, for such period or periods as the Registrar may nominate.

Form of Documents

2.2.21.1 Where a document is to be filed using the EFS, the prescribed form and the input template related to it shall be used, unless there is good reason not to do so. If the circumstances of a case require departure from the prescribed form, the document shall be input using Form 40 [*Other Documents*] and the input template related to it.

2.2.21.2 All such documents shall, as far as possible, be, and print out in hard copy as, A4 in size, and the first page of the document must be A4 in size.

2.2.21.3 Provision should be made, in its preparation, for the sequential, paragraph numbering of each document in a filing, commencing with "1" in each instance.

2.2.21.4 The layout of the first page of each document filed should conform to Form 1.

2.2.21.5 Provision is to be made for a field on the top of the first page of each document submitted, in which the sequential identification number of the document within a file ("*the file document number*" or "*FDN*") may be inserted.

2.2.21.6 The title or description of each document, as appearing on the first page of it, is to be reproduced at the top of each subsequent page. Where relevant, it must (as appropriate) include reference to the party making it, or on behalf of whom it is to be filed.

2.2.21.7 The EFS contains electronic templates capable of receiving all prescribed forms. Provided that a practitioner's practice management system can supply data in a format conforming to LegalXML, it will be possible for data to be loaded directly from such system into the EFS using the bulk lodgement facility, as an alternative to keying such data in to the relevant electronic templates.

Endorsements on Documents

2.2.22 Where it is necessary, in conformity with the Rules or a direction of the Court, to include endorsements on any document:

2.2.22.1 If an endorsement can be made prior to the filing or issue of the document, that endorsement must be incorporated into the document before it is issued or filed.

2.2.22.2 If an endorsement must be made on a document that has already been filed or issued, a fresh copy of that document containing the relevant endorsement must be prepared and the document must be re-filed or re-issued, as the case may be.

Annexures

2.2.23. Each annexure to an electronic document must be filed as a separate document in the proceedings.

Documents Incapable of Conversion to Electronic Form

2.2.24 In the case of documents (including exhibits or annexures) which, in whole or in part, cannot, for technical reasons, be directly converted into a readable electronic form by scanning, the following directions apply:

2.2.24.1 The originals of any such document must physically be lodged in the Registry.

2.2.24.2 A copy of the entire document, including any parts that can directly be converted into an electronic form and those that cannot be so converted, must be produced in a form which is capable of being effectively scanned. That copy is to be scanned in a format compatible with and submitted through the EFS for filing. It is to be endorsed at the top "COPY OF ORIGINAL LODGED IN REGISTRY".

2.2.24.3 An appropriate scanner will be available in the Registry to meet the needs of any party who does not otherwise have reasonable access to scanning facilities compatible with the EFS.

Date and Time of Filing

2.2.25.1 When a document is transmitted to the Registrar using the EFS and is subsequently accepted by the Registrar, the receipt issued pursuant to Rule 49 as to time of filing will indicate the date and the time that the final part of the transmission of that document was received into the EFS.

2.2.25.2 When an originating process is transmitted to the Registrar for filing and issue using the EFS and it is subsequently accepted by the Registrar, the receipt issued pursuant to Rule 49 as to time of issue will indicate the date and the time that the last part of the transmission is received into the system.

2.2.25.3 The receipt issued pursuant to Rule 49 will, as appropriate to the circumstances, also indicate the file and file document number (FDN), and any date and time allocated for a related hearing. The copy of such notification must be attached, by either electronic or manual means, to a copy of the document before it is served on any party.

Security of Documents

2.2.26 The EFS automatically converts any document lodged electronically to Portable Document Format (PDF), so that it will, thereafter, be incapable of amendment, other than by the subsequent filing of another document in accordance with the provisions of Rule 54. This does not apply to draft minutes of order submitted to the Court for its consideration or for settling.

Electronic Disclosure of Documents

2.2.27 Where original disclosure has been made electronically any supplementary disclosure must be in the same electronic format.

2.2.28 Any indexing of documents pursuant to Rule 141 must conform to the Guidelines for the Use of Technology published in Practice Direction 2.1.

Tender Lists

2.2.29 If, in any proceedings, the Court gives a direction for the filing of a notice pursuant to Rule 159, such notice must be in electronic format and conform to the Guidelines published in Practice Direction 2.1.

Subpoenas

2.2.30 A request for the issue of a subpoena shall be lodged in the Registry by means of Form 26 through the EFS. If in order, the subpoena will be authenticated and then transmitted electronically to the registered user requesting it. The registered user may then print off hard copies for service. Where a party to proceedings commenced electronically does not have the technical capacity to comply with that requirement such party may submit a request to the Registry in hard copy capable of being scanned. The Registry staff will scan the request into the EFS and the requisite number of hard copies of the subpoena will be printed and supplied to the party requesting them.

Judgment in Default

2.2.31 A party desirous of entering a judgment in default of defence may do so by transmitting to the Registrar a request to enter such judgment, lodged by utilising Form 18, together with minutes of a proposed form of judgment for settling in electronic form. Such request shall identify those documents upon which the applicant relies as the basis for the entry of judgment and, itself, be allocated an FDN and filed as a document in the proceedings.

File Inspection and Procurement of Hard Copies of Documents

2.2.32.1 Subject to any specific direction by a Judge or Master and the development of the technical facility to support such access, it is proposed that a registered user will be entitled to "*read only*" access to any file on which that user has filed a document. The user may also, subject to any such direction and development, download a paper copy of any of the content of such file.

2.2.32.2 A registered user may, by e-mail request to the Registrar explaining the reason for it, seek *read only* access to any other specified file. If the Registrar is satisfied that the request is in accordance with section 131 of the *Supreme Court Act 1935* or section 54 of the *District Court Act 1991* (as the case may be), access and the right to copy will be granted by such means and subject to such conditions as the Registrar shall stipulate.

2.2.32.3 Any other person may apply to the Registrar, at the Registry, for permission to search a specified file. If the Registrar is satisfied that such request is in accordance with section 131 of the *Supreme Court Act 1935* or section 54 of the *District Court Act 1991* (as the case may be) approval (or conditional approval) will be granted. In terms of the approval Registry staff will, upon payment of any

prescribed fee, assign a computer terminal and associated printer to the inspecting party to enable the inspection to be carried out.

2.2.32.4 Certified true paper copies of documents will be issued by the Registrar to any person who demonstrates a proper reason for requesting them. Such issue may be by request, by electronic or paper means, directed to the proper officer in the Registry.

2.2.32.5 In the event that access to any document on an electronic file may properly be restricted, such restriction shall be coded on the relevant portion of the file, so as to prevent access in accordance with that restriction.

2.2.32.6 The foregoing subparagraphs are to be read subject to (and are not intended to be in extension of) the provisions of section 131 of the *Supreme Court Act 1935* and section 54 of the *District Court Act 1991*. They are subject to the terms of any suppression order which may be made pursuant to Part VIII of the *Evidence Act 1929*.

Affidavits Filed Electronically

2.2.33.1 An affidavit shall be filed by transmitting, by authorised electronic communication, an image of the original affidavit, duly sworn in accordance with the Rules, to the Court for filing in an electronic filing system maintained by the Court.

2.2.33.2 In the case of a practitioner or party who is not a registered user, the original affidavit, duly sworn in accordance with the Rules, shall be delivered to the registry and scanned into the electronic filing system maintained by the Court.

2.2.33.3 Each exhibit to an affidavit filed in the electronic filing system shall be filed as a separate document in the proceedings, except where it is impractical to convert a specific document into electronic format, it shall be filed and lodged in accordance with the directions of the Registrar.

2.2.33.4 Each exhibit must be filed as a separate document in the proceedings.

2.2.33.5 Each exhibit to an affidavit must be separately book marked, using a type of book marking function compatible with the EFS system.

2.2.33.6 The names of the bookmarks are to follow the initials of the maker of the statement eg FN-1, FN-2, etc.

2.2.33.7 When, in a proceeding, a deponent swears more than one affidavit to which there are exhibits, the numbering of the exhibits in any affidavit subsequent to the first shall run consecutively throughout and not begin again with each affidavit.

2.2.33.8 Related documents (eg correspondence and invoices) may be assembled together and collectively presented as one exhibit. They must, however, be arranged in chronological order (commencing with the earliest), with each page being consecutively numbered through the whole of the exhibit.

2.2.33.9 In due course, when the network technology has been upgraded, it will be a requirement that, if the textual portion of the affidavit refers to anything included in the body of an exhibit to the same affidavit, then a hyperlink is to be created from that reference in the text of the affidavit to the document or documents referred to unless, for some reason, it is technically impractical to do so. The link function provided in an approved program should be utilised for that purpose.

2.2.33.10 When the deponent to an affidavit desires to refer to any document already exhibited to some other affidavit filed in the proceedings, that document must not again be exhibited to the affidavit then being sworn, but may create a hyperlink to it.

2.2.33.11 An affidavit, duly sworn in accordance with the Rules, together with any exhibits thereto, shall also be lodged in the registry in hard copy as soon as practicable after its filing in electronic format, and, in the case of an exhibit which cannot for some reason be stored in the registry, dealt with as the Registrar shall direct.

Trial Books and Other Documents for Use by the Trial Judge

2.2.34.1 Any trial books for use at a hearing (where required) and (where produced) all written opening or final addresses or materials, outlines or submissions should be lodged with the Court by transmission in electronic format through the EFS, utilising Form 40 [*the Other Documents template*], or otherwise in an electronic format medium, unless the Court shall otherwise direct in a particular case. Facilities provided in the Registry may be utilised for that purpose by parties or persons not having the technical capacity to do so.

2.2.34.2 The following directions are applicable to all trial books or other materials provided for the use of a trial Judge:

2.2.34.2.1 Index pages shall be prepared. However, it will not be essential to include the page number reference in the index.

2.2.34.2.2 In addition to such index pages, where the index refers to more than one document within a single Portable Document Format (PDF) file in a bundle, a bookmark should be created in that PDF file for each such reference in the index. There should be as many bookmarks in that PDF file as there are references in the index to documents in that PDF file.

2.2.34.2.3 The bookmarking should be effected using the bookmarking function provided in a program compatible with the EFS.

2.2.34.2.4 The name given to each bookmark should be the same as the corresponding reference in the index.

2.2.34.2.5 If a bundle of documents includes:

2.2.34.2.5.1 more than one PDF document;

2.2.34.2.5.2 a number of references to *file document numbers* and also PDF documents; or

2.2.34.2.5.3 a number of references to *file document number*,

then the various PDF documents or *file document number* references, as the case may be, should be arranged chronologically or in some logical order.

2.2.34.2.6 The index should act as a hyperlink to each document to which it refers.

Hearings

2.2.35.1 It is the intention that, in the long term, unless the presiding judicial officer otherwise directs, hearings involving documents filed electronically, whether in

open Court or in Chambers, will be conducted utilising electronic technology. The speed with which that can be accomplished will be governed by the rate at which courtrooms can be appropriately equipped.

2.2.35.2 For the purpose of any such hearing practitioners will be given appropriate read only access to the electronic court file at the start of a hearing, by the Judge or Master conducting the hearing.

2.2.35.3 Practitioners should use any facility provided for the purpose to access and navigate around the relevant electronic case file. The Judge or Master, and other counsel, should be referred to relevant documents using the appropriate switching devices or links. Counsel may bring their paper copies of documents to Court for their own reference, but these may not be tendered to the Court, save as otherwise provided in this paragraph. If counsel bring electronic copies of their documents, these may not normally be loaded into the Court's personal computer. Instead, these should be read using counsel's own notebook or other computer.

2.2.35.4 In the event that a practitioner closes down a computer access facility provided in the course of a hearing for any reason, the legal practitioner in question may need to ask the Judge or Master to give that person fresh access to the case file in question.

2.2.35.5 At the end of the hearing, or if the hearing is halted for any significant length of time, representatives of parties should close down the access facility provided. This will prevent unauthorised access to the electronic case file. If the facility is not closed down, it may be possible for persons not involved in the case to peruse the documents contained in the electronic case file.

2.2.35.6 In the event that a practitioner wishes to refer to case files other than those relating to proceedings that have been listed for hearing, the practitioner should make a request to the Registrar for access to the case file at least one clear day before the day appointed for the hearing.

2.2.35.7 All documents for use at any hearing (including outlines and copy authorities) should be filed, using the EFS, at least one clear day in advance of the hearing. In the event that it is not reasonably possible to so file the documents in advance of the hearing, counsel may apply to the Judge or Master conducting the hearing for leave to use paper documents. Counsel will be required to justify non-compliance with the procedures envisaged by this Practice Direction and will normally be asked to give an undertaking to file all such documents in the EFS by the next working day after the hearing. Any document not filed using the EFS will not be included in the Court's case record.

Presentation of Documents in Electronic Form at Registry for Filing in the EFS

2.2.36 Documents presented by a non-registered user at the Registry in electronic form for filing must comply with the following technical requirements:

2.2.36.1 The documents must be stored in the following types of portable media:

2.2.36.1.1 1.44 Mb 3 1/2 inch floppy diskettes

2.2.36.1.2 CD-ROM

2.2.36.2 The electronic format of the documents must be:

2.2.36.2.1 Microsoft Word 98

2.2.36.2.2 Microsoft Word 2000

2.2.36.2.3 PDF

2.2.36.2.4 TIFF (except files using LZW compression)

2.2.36.3 The portable media submitted must be labelled with the name of the person presenting them and the file names of the documents contained in it. Unnamed or illegibly named diskettes or other media will be rejected by the Registry.

2.2.36.4 Each set of portable media given to the Registry must contain only the documents included in the submission.

2.2.36.5 The non-registered user must warrant to the Registry that any portable media presented are virus free and all relevant files are otherwise free of corruption.

2.2.36.6 The portable media submitted will be returned to the person filing when the contents have been processed into the EFS.

2.2.36.7 Schedules of costs must be submitted in a spreadsheet format, approved by the Registrar.

Court e-mail Addresses and Facsimile Numbers

2.2.37 The following e-mail addresses and facsimile numbers are approved for use by persons desirous of communicating with the Court other than via the CAA web site:

e-mail addresses

supreme.registry@courts.sa.gov.au

district.civil@courts.sa.gov.au

Facsimile numbers

Supreme Court Registry - (08) 8212 7154

District Court Registry - (08) 8204 0544

Authentication of Documents by the Court in Lieu of Signature and/or Sealing

2.2.38.1 Any document that is required by the Rules or the practice of the Court to be issued under seal will bear a facsimile seal of the Court imprinted by computer.

2.2.38.2 Any document that is required by the Rules or the practice of the Court to be authenticated by the signature of a proper officer of the Court will bear upon it a facsimile of the signature of that officer imprinted by computer.

Security of Documents Lodged by Non registered Users

2.2.39.1 Upon presentation of the first document for electronic filing in proceedings by a person who is not a registered user, the Registrar will cause such person to be allocated a unique Personal Identification Number (PIN), and will require that person to input into the EFS a separate, confidential alpha/numeric password (consisting of not less than 8 characters, one of which must be numeric, and not

more than 20 characters) as a personal electronic authentication code (EAC) in respect of the allocated PIN.

2.2.39.2 No document may be filed by such person in the proceedings unless it is first authenticated by that person. Authentication will be by way of typing in his/her PIN, together with its related EAC. Where more than one document is filed on the same occasion it shall only be necessary for the person to provide authentication once in respect of all the transactions.

2.2.39.3 By so authenticating the document the person in question warrants that he or she has personally viewed the document on screen, is satisfied that it has been uploaded in the form desired and authorises the filing of it in that form.

2.2.39.4 Upon release into the EFS, a document so authenticated shall be capable of *read only* access and may not thereafter be capable of alteration. It may, however, be withdrawn by the party authenticating it by leave of the Court. Any amendment of an authenticated document may only be made in the manner prescribed by Rule 54.

Disclaimer

2.2.40 A party or legal practitioner transmitting a document or information electronically either to the Court or to any other party shall be entitled to endorse at the foot of it an appropriate disclaimer to cater for the eventuality that a document or information is inadvertently sent to a transmittee not intended to receive it.

Production of Court Records in Other Courts and Tribunals

2.2.41 When the record of the Court is maintained as an electronic file, the Registrar may satisfy a proper requirement for production of it or any portion of it to any other Court or Tribunal, either by granting to that Court or Tribunal *read only* access to it (where it is practicable to do so) or by transmitting a copy of it to such Court or Tribunal by means of an electronic communication.

Cross Vesting Orders

2.2.42 The Registrar may, by agreement with the other Court concerned, comply with the requirements of Rules 110 and 112 by transmitting or receiving (as the case may be) copies of the relevant documents by means of an electronic communication, in lieu of sending or receiving the original documents.

Appeals from Subordinate Courts and Tribunals

2.2.43 In any case in which, in accordance with the prescribed procedures relating to appeals from subordinate Courts and Tribunals, it is incumbent on the Court or Tribunal appealed against to transmit its record or file related to the matter under appeal or any portion or portions of it to the Court, it will be sufficient compliance with such obligation in relation to any portion of the relevant record or file maintained in electronic format, if the Registrar and the Judge to whom the appeal is assigned are given direct computer access to it, or the relevant electronic portion of it.

2.2.44 Any report that may be requested of a judicial officer of a subordinate Court or Tribunal in relation to an appeal may be transmitted by means of an electronic communication from that judicial officer to the Registrar.

Practice Direction 2.2

Annexure A

1 Terminology

Expressions used in this Practice Direction have the same meanings as corresponding expressions used in the SCR.

2 Functional Principles

The following functional principles, which have been adopted by the Council of the Courts Administration Authority ("CAA"), underpin and govern the e-business framework within which this Practice Direction is to operate:

2.1 The principles of the *Electronic Transactions Act* will be applied to the CAA e Business systems.

2.2 All Courts will use the same systems that have a common core and are functionally equivalent, but some variations will be necessary to accommodate local needs.

2.3 Electronic case files will comprise all written documents and other items presently included in paper case files, and also provide direct access to other relevant files.

2.4 Electronic case files will interface with other relevant electronic files maintained in the Courts, and with other automated official records, eg financial and statistical systems.

2.5 Case file items will be captured in electronic form at the earliest possible time.

2.6 Electronic case files that include the filing of pleadings and other documents in electronic form must also have the ability to capture file information for the Court for purposes such as effecting notice and service on the parties, verifying the timeliness of filing, and confirming receipt by the Court.

2.7 Electronic case files are to be designed to maintain the integrity of the Court's files and ensure the effective control of the public record.

2.8 Electronic case files are to be designed to promote decreased reliance on paper copies, but should also continue to provide access to records in paper form.

2.9 Electronic case files are to be designed to accommodate local practices while satisfying the Judiciary's more general information needs.

2.10 Systems will conform to basic requirements and industry standards and design, that emphasise ease of access, adaptability to change, reliability, and compatibility with alternative technological solutions and function needs.

2.11 Electronic case files are to provide enhanced user access to case file information.

2.12 Innovative solutions will be developed to accommodate unrepresented litigants, persons suffering disability and other parties who do not have access to computers.

2.13 Electronic case files will include appropriate security measures.

2.14 The Court will, during a specified transition phase, continue to accept paper documents.

2.15 There will always be an opportunity, no matter what stage proceedings have reached, to still produce paper copies of electronic documents in Court.

3 Technical Guidelines

The technical guidelines set out hereunder govern the manner in which the CAA electronic Filing System ("EFS") has been developed and will be operated:

3.1 All documents filed electronically must be capable of being printed on paper, or transferred to archival media, without the loss of content, or material alteration of appearance.

3.2 Electronic documents must be submitted in a court designated electronic file format, and retained in the electronic format in which they are submitted.

3.3 Every implementation of electronic filing must accommodate the submission of non-electronic documents. Physical documents submitted to the Courts in paper form may be imaged to facilitate the creation of a single electronic case file.

3.4 A mechanism must be provided to ensure the authenticity of the electronically filed document. This requires the ability to verify the identity of the filer, as well as the ability to verify that a document has not been altered since it was filed.

3.5 The Court must control interactive access to the EFS via a user authentication process. When an electronic communication channel is used, the login process must be secured via the use of a telephone connection directly to the Court, a secure communication channel, or other secure means.

3.6 Files capable of carrying viruses in the Court's computers (especially on floppy disk and in electronic mail) must be scanned for viruses prior to processing. This is particularly important when documents include exhibits of considerable volume and/or are from an unvouched source.

3.7 Access to computers for electronic filing must be isolated from access to other court networks and applications.

3.8 Electronic filing systems must protect electronic filings against system and security failures. In addition, they must provide appropriate backup and disaster recovery mechanisms.

3.9 All electronic submissions must generate a positive acknowledgment to the filer indicating that the document has been received by the Court. The positive acknowledgment must include the identity of the

receiving court, date and time of the receipt of the documents (which is the Court's official receipt date/time), and a Court assigned reference number.

3.10 Electronic filing systems must provide mechanisms for quality assurance and quality control of submitted documents and case management data by both the Court and the filer.

3.11 Subject to considerations of commercial in confidence and suppressed material, adequate public access to electronically filed documents must be provided.

4 Standards

Documents transmitted electronically to the EFS are required to comply with the following standards:

4.1 The preferred document format for electronic filing is Microsoft Word 2000. Electronic exhibits and images not available in text form should be embedded within the document.

4.2 The required format for batch electronic submission is LegalXML, in the standard for that format directed by the Court.

4.3 Electronic document submissions should carry sufficient case management data to enable the automation of the Court's case file process.

4.4 Hyperlinks embedded within an electronic document should refer only to another part of the same document or another document on the same electronic file. Hyperlink references to external documents or information should not be used.

4.5 The use of document images (including facsimile) as the document format for electronic submissions is strongly discouraged and should only be resorted to where it is essential to do so. Every effort should be made to have original documents submitted in a standard electronic format which retains document content and appearance in a compact, text-searchable form.

4.6 The CAA will designate what document features it is willing to accept in electronic format, and what features it is not willing to accept. It will also consider the use of a document feature list which shows which acceptable features require special handling, so that filers can indicate when these special-handling features are present in an electronically filed document.

4.7 The ability to archive Court documents in a rich electronic final-form document is necessary in order to maximise the long-term benefits of electronic filing.

4.8 The EFS will offer alternative means by which electronic documents can be delivered to the Court. Commonly available electronic delivery mechanisms include network or e-mail connections with the Court and physical delivery of media.

4.9 Digital signature standards in the form of a Personal Identification Number (PIN), based on public-private key encryption technology, may be used to authenticate the filer's identity and to ensure the integrity of a the content of a document.

Chapter 3 – Interlocutory Procedures, Affidavits and Pleadings

Direction 3.1 – Contents of Affidavits (Rule 162)

3.1.1 The address of a deponent in an affidavit may be a business address provided it is a place where the deponent may usually be found during normal working hours.

3.1.2 The face of the affidavit must show that the deponent is speaking of his/her own knowledge as required by Rule 162(2). If in interlocutory proceedings it is sought to make statements of belief under the exception to Rule 162(2), the deponent must depose to the source and grounds of each statement of belief. A statement to the effect, "I know the facts deposed in this my affidavit from my own knowledge except where otherwise appears", without properly identifying the sources and grounds of information and belief, is unacceptable.

3.1.3 Each page of an affidavit is to be signed by the deponent and the witness and dated.

3.1.4 A document which is already on the Court file or part of the Court Record in an action, or in another action which will be before the Judge or Master at the same time as the first action, is not to be exhibited to an affidavit.

When reference is to be made to such a document, it is to be described briefly using its file document number or with some other indication of where it is to be found on the Court file.

The object of this Direction is that a document should appear only once on a Court file, or on a set of related Court files.

3.1.5 In an affidavit of service the only documents to be exhibited to the affidavit are those which do not otherwise appear on the Court file. When the documents which have been served are on the Court file it is sufficient to describe them briefly and to state the file document numbers (if known).

3.1.6 If the total number of pages of an affidavit and its exhibits (excluding front sheets) is 50 or more, or there are five or more exhibits to the affidavit, the exhibits must be bound together into a volume or volumes with or separate from the body of the affidavit and:

3.1.6.1 each volume must be paginated and contain an index showing the page at which each exhibit commences;

3.1.6.2 each exhibit must be clearly marked with its exhibit designation and tagged so that its commencement can be seen without opening the volume;

3.1.6.3 the binding must be of an appropriate size and allow the volume to lie flat when opened at any page;

3.1.6.4 each volume (with any binding) must be no more than 3 cms thick; and

3.1.6.5 the authorised person before whom the affidavit is made is to make a single certification of the exhibits as a bundle, rather than making a separate certification that each exhibit is the exhibit produced by the deponent at the time of making the affidavit.

The single certification should be made on the front sheet of the volume of exhibits and, if there is more than one volume, should be reproduced and included as a front sheet on each volume together with a separate statement of the exhibit numbers contained in each volume.

3.1.7 A party may file an affidavit comprising less than 50 pages or less than five exhibits in the manner required by Direction 3.1.6, but is not obliged to do so.

3.1.8 When more than one affidavit from the same deponent is to be filed in the same action:

3.1.8.1 each affidavit after the first is to be entitled the Second, Third, Fourth, etc, affidavit from that deponent, as the case may be;

3.1.8.2 the numbering of the exhibits in the later affidavit should be consecutive to those in the earlier affidavit or affidavits, that is, without any repetition of the numbering of the exhibits used in an earlier affidavit from the same deponent.

3.1.9 Unless a lawyer forms the view that there is good reason not to, documents comprising a sequence of correspondence between the same or related persons, and other documents comprising a sequence of a similar kind, are to be made a single exhibit instead of being marked as separate exhibits.

Direction 3.2 – Attendance on Interlocutory Hearings

3.2.1 In relation to business in Judges'and Masters' general lists:

3.2.1.1 Subject to paragraph 3.2.3 below, lawyers must be in attendance at the listed time for the application.

3.2.1.2 A telephone message or email that a lawyer is unable to attend upon a hearing is not acceptable.

3.2.1.3 A party making an interlocutory application should file any supporting affidavit and minutes of order at the time of the filing of the application. Answering affidavits should be filed at the earliest opportunity, but not later than 12.00 noon on the day preceding the day fixed for hearing of the application. Failure to observe this Direction may result in the application being adjourned with costs against the party at fault or his/her lawyer personally.

3.2.2 When a lawyer appears as counsel on interlocutory matters he or she may be so described in the order, but this is not to be taken as implying that the matter was fit for the attendance of counsel. Entitlement to counsel fees will be determined solely on whether the Judge or Master has certified the attendance as fit for counsel which should continue to be indicated at the end of the order.

3.2.3 The commencement of a hearing before a Judge or Master will not be delayed because the lawyer for a party is engaged before another Judge or Master unless the first mentioned Judge or Master sees fit to delay it where:

3.2.3.1 The time set for the commencement of the hearing before the other Judge or Master is more than half an hour before the time set for the commencement of the first mentioned hearing; and

3.2.3.2 The practitioner concerned could reasonably have expected that the second mentioned hearing would have been completed within

sufficient time to allow him/her to attend on time for the first mentioned hearing.

3.2.4 In any other circumstances lawyers will be expected to arrange for another lawyer to attend on one or other of the applications. Where lawyers do not make proper arrangements for representation at a hearing, thus necessitating the application being adjourned, they can expect in the normal course to have costs ordered against them personally.

3.2.5 This Direction does not apply in respect of lawyer being delayed in lower Courts and commitments in lower Courts will not usually be accepted as a proper excuse for not attending at the appointed time in this Court.

3.2.6 Where a lawyer expects not to be available for an appointment before a Master because the list of a Judge or another Master is running more than 20 minutes late he or she should endeavour to warn the Master's staff in advance of his/her difficulties. Where a lawyer appearing before a Master has an appointment before a Judge which he or she could have expected to have attended upon under 3(a) and (b) above, but he or she is still before the Master at the time at which he or she is due before the Judge, he or she may request the Master to adjourn the application before him/her to a subsequent time.

Direction 3.2A – Adjournments by Consent of Applications, Status Hearings, Directions Hearings and Settlement Conferences before Masters

3.2A.1 When all interested parties consent to the adjournment of an application, status hearing, directions hearing or settlement conference listed before a Master, a party may seek that adjournment by sending a facsimile or e-mail to the Master's Personal Assistant at least one clear business day before the date on which the matter is listed for hearing.

3.2A.2 The consent to the adjournment by all other interested parties may be evidenced by attaching a copy of a letter, facsimile or e-mail from each party stating their consent.

3.2A.3 As soon as practicable after receipt of the facsimile or e-mail, the Master will, by facsimile or e-mail, inform the party requesting the adjournment whether or not the adjournment is granted.

3.2A.4 If no reply is received from the Master, the parties must attend at the appointed time for the hearing.

Direction 3.3 – Status Hearings (Rule 125)

3.3.1 Unless the Court otherwise directs all status hearings will be held in Adelaide. If a party seeks to have a status hearing held elsewhere, a written request should be made to the Registrar stating whether the other parties agree. If there is no agreement of all parties to a different location a Master will determine the location after a tele-conference (see Direction 3.10).

3.3.2 Whether the status hearing is directed to be held other than in Adelaide will depend upon the availability of an appropriate Judicial Officer or court officer to conduct a hearing in that place.

3.3.3 Where appropriate a status hearing may be conducted by a tele-conference (See Direction 3.10).

Direction 3.3A – Litigation Plans

3.3A.1 Subject to Rule 116(2), all parties are to file and serve a Litigation Plan in accordance with Form 55, with such adaptations as the circumstances of the case may require.

3.3A.2 Plaintiffs are to file and serve their Litigation Plans at least seven days before the Status Hearing fixed under Rule 125, and all other parties are to file and serve their Litigation Plans at least three days before the Status Hearing.

3.3A.3 Litigation Plans are intended:

3.3A.3.1 to inform the Court at an early stage of the parties' proposals with respect to a settlement conference, mediation or other form of dispute resolution;

3.3A.3.2 to identify at an early stage the issues in the case, and the interlocutory steps necessary to prepare the matter for trial;

3.3A.3.3 to enable the Court to make orders at an early stage which address in an integrated way all the necessary steps for the preparation of the matter for trial;

3.3A.3.4 to avoid or reduce the need for repetition of procedural steps and multiple directions hearings and adjournments which occurs if interlocutory steps are addressed in only a sequential way;

3.3A.3.5 to narrow the issues in dispute at an early stage; and

3.3A.3.6 to enable an early listing of a date for trial.

3.3A.4 The Court intends that each party will prepare its Litigation Plan using Form 55 with such insertions, modifications and additions as are necessary, so as to provide a complete statement of the interlocutory steps required or contemplated by that party before the trial. Parties are expected to ensure that the length and detail of their Litigation Plans is in proportion to the amount in dispute in the litigation, and to the nature and extent of the issues involved.

3.3A.5 The Court expects each party to give close attention to the preparation of its Litigation Plan. The course of the action to trial may be determined by reference to the respective Plans. Parties should assume that departures from the timetable fixed by the Court after consideration of the Litigation Plans will not readily be permitted.

Direction 3.4 – Settlement Conferences (Rule 126)

3.4.1 The time and place for the Settlement Conference will be directed at the status hearing.

3.4.2 Where appropriate Judicial Officers are available, Settlement Conferences may be fixed to be held at locations other than in Adelaide.

3.4.3 Other than in exceptional circumstances Settlement Conferences will not be conducted by tele-conferencing.

3.4.4 When the Court closes or defers a settlement conference, or directs that a settlement conference need not be held, the parties must be in a position to inform the Court whether the assignment of a special classification under Rule 115 to the

action is appropriate. In considering whether such a special classification is appropriate, the Court will consider all the circumstances of the action, including:

1. the subject matter;
2. the extent of the damages claimed or the value of the property in dispute;
3. the potential length of the trial;
4. the number of documents likely to be required to be disclosed;
5. the complexity of the issues involved;
6. the urgency of the matter;
7. whether or not it is a class action;
8. whether or not evidence from experts is to be led.

Direction 3.5 – Further Directions Hearings After Failed Settlement Conferences (Rule 130)

3.5.1 When closing a failed Settlement Conference, the Master will give such further directions as seem necessary to complete the interlocutory procedures and will adjourn the matter to a Directions Hearing on a date calculated to allow time for the parties to comply with the directions given.

3.5.2 At such further hearings the Court will expect that all interlocutory steps in the action will have been completed and a Certificate of Readiness (Form 25) will have been filed, so that an order may then be made under Rule 120 that the action proceed to trial.

Direction 3.6 – Interlocutory Applications (Rules 129 and 131)

3.6.1 As soon as any defendant has filed an address for service in any action invoking jurisdiction under the *Jurisdiction of Courts (Cross-Vesting) Act 1987* and its Commonwealth and interstate equivalents, the plaintiff is to request the Registrar in writing to convene a directions hearing in a Judge's general list.

3.6.2 Where parties need to seek interlocutory orders which cannot be conveniently and expeditiously dealt with on directions hearings for which dates have already been set, an application under Rule 131 should be taken out and set down for hearing at the earliest opportunity. If any other hearing for reference for the action for trial has to be adjourned because interlocutory issues need to be resolved which could have been dealt with earlier, the party in default will be ordered to pay the costs of any further hearing.

3.6.3 File principals of all parties are expected to attend at the hearing of any application under Rule 120 that the action proceeds to trial.

Direction 3.7 – Listing Conferences

3.7.1 Upon an order that an action proceed to trial no trial date will usually be set, but a Listing Conference will be convened to be conducted by the Registrar or his/her delegate.

3.7.2 Prior to the Listing Conference the parties are to ascertain the availability of their witnesses and counsel and to formulate a realistic estimated length of trial.

3.7.3 At the Listing Conference the Registrar or his/her delegate will set a date, usually not earlier than six weeks ahead other than where there is an order for urgent trial,

for the commencement of the trial after having taken into account as far as reasonably possible the availability of witnesses and counsel.

3.7.4 If any party fails to attend at the Listing Conference the Registrar or his delegate may proceed to fix a trial date in their absence.

3.7.5 Unless the Court otherwise orders the costs of a Listing Conference will be costs in the cause.

3.7.6 Matters unable to be listed at the first listing conference will not be adjourned to a further listing conference unless there is very good season, such as inability to ascertain availability of witnesses. In the ordinary course there will only be one adjournment of a listing conference. If a matter is not ready to be listed at the first listing conference, it will be returned to the Masters' list. If a matter has been given an adjourned listing conference and cannot be listed at the adjourned listing conference, it will also be referred back to the Masters' list.

Direction 3.8 – Trial Books (Rule 121)

3.8.1 Where there are cross-actions (whether by way of counterclaim or contribution notice) or third party actions (including subsequent party actions), which are to be determined in conjunction with the trial of the action, all originating processes and pleadings for them are to be included in the trial book.

3.8.2 When an action has proceeded on affidavits in lieu of pleadings under Rule 96 the affidavits which stand in lieu of pleadings are to be included in the trial book.

3.8.3 Other than by direction of the Court, or agreement of all parties, no other affidavits, notices of address for service, notices to admit, lists of documents, offers to consent to judgment or superseded versions of pleadings are to be included in a trial book.

3.8.4 The trial book is to be paginated and indexed.

Direction 3.9 – Electronic Interlocutory Applications (Rule 132(2))

Preliminary

3.9.1 The making and disposal of such applications are the equivalent of conducting a matter in an ordinary practice courtroom. This means that:

3.9.1.1 The system is to be used for issues requiring consideration and determination by a Master or Judge;

3.9.1.2 Communications between the relevant parties or their representatives, particularly in relation to matters of a confidential or otherwise sensitive nature, are not to be released to the Court;

3.9.1.3 The language and modes of address used must be the same as would be used if the matter were being dealt with in a Practice Court;

3.9.1.4 Undertakings given, in an e-mail communication, by a party or their representative to the Court or other parties are binding as if the undertakings were given in an ordinary courtroom; and

3.9.1.5 The Rules of contempt apply to such proceedings.

Types of Applications Which may be Dealt with Electronically

3.9.2.1 Such electronic applications can only be made where all parties involved have filed an address for service containing an email address.

3.9.2.2 Whether a application is to be dealt with electronically is in the discretion of the Court and will depend on the nature and complexity of the issues to be resolved, the number of parties, the views of the parties, the nature and extent of any evidence that may be required, and any urgency.

3.9.2.3 Examples of applications which will normally be accepted for electronic determination are:

- non contentious *ex parte* applications, including applications for final relief
- permission to serve a summons for Judicial Review;
- consent judgments or orders of any type;
- most non contentious applications under the *Corporations Act*; for example, seeking relief such as an extension of time to convene a second creditor's meeting, or approval or Directions in relation to the settlement of any matter, or to reinstate a deregistered company;
- renew a summons;
- extension of time;
- non contentious party or non party disclosure of documents or other interlocutory applications;
- non contentious amendments of pleadings;
- approval of compromises on behalf of persons under a disability

3.9.2.4 Consent orders for the adjournment of set hearing dates must be made well before the hearing date. It should not be assumed the Court will grant such adjournments.

Initiation and Termination of Electronic Processing

3.9.3.1 A legal representative of a party seeking the electronic processing of an application is to send the application as an attachment to an e-mail to the Registrar directed to:

supreme.efiling@courts.sa.gov.au (Supreme Court)

The e-mail should be in Form 17 in Part 2.

3.9.3.2 If the matter can be processed by the relevant Judicial Officer within 2 clear business days of the request, all relevant parties will be advised by the Registrar, by e-mail, of the terms of any order made.

3.9.3.3 If the application cannot be dealt with within that time, the Registrar will advise the applicant by a return message (see Annexure A) as to whether the application will be accepted and, if so, to which Judicial Officer it has been directed. If no response has been received to an e-mail within two working days after its transmission, the maker is to assume that it may not have been received and should contact the Registry to ascertain whether this is the situation. For an

annual cost of the order of $50 for up to 2000 messages, practitioners can subscribe to a service known as ReadNotify.com, which will, automatically, notify receipt of e-mail transmissions by addressees.

3.9.3.4 If an e-mail relates to a proceeding of which a specific Judicial Officer is already seized, that fact should be advised to the Registrar.

3.9.3.5 The Court may terminate the use of electronic processing of a matter, or any part of a matter, at any time, either at the request of a party or of its own motion.

Notification of Other Parties

3.9.4.1 In any case in which an application relates to a matter which is *inter partes* in nature, or as to which, in accordance with the practice and procedures of the court, any other party is to be given notice of it, a copy of the application should be transmitted by e-mail to such party, simultaneously with its transmission to the Registrar.

3.9.4.2 All subsequent documents transmitted to the Court shall, simultaneously, be transmitted to each other party referred to in 6.1 below. The date and time of each transmission will permanently be recorded on the relevant document file.

3.9.4.3 Due service of, or notice to, a party of any proceeding or document filed in a proceeding is deemed to be on the day following that on which it is transmitted to that party at the then correct e-mail address of the party, if that transmission occurs before or within normal business hours. If it occurs after normal business hours, it will be deemed to be on the day following the next business day after such transmission.

Transmission of Documents

3.9.5.1 All documents intended to be used and not already filed in the proceeding must be attached to the transmitting e-mail message, utilising one of the following application programs:

Word XP

Word 2000

Word 97

Adobe Acrobat

3.9.5.2 Any document so transmitted must utilise a font such as Arial or Times New Roman minimum size 12, and be in Rich Text Format (RTF), Portable Document Format (PDF), Tagged Image Format (TIF), Graphical Information Format (GIF), Joint Photographic Experts Group (JPG), or as a Word document. If there are documents not already filed which cannot be attached in electronic format, the e-mail to the Registrar should indicate that situation and advise when such document will, physically, be filed in the Registry.

3.9.5.3 Where an e-mail message refers to a document earlier filed in court, a copy of the filed document may be attached to the message for ease of reference.

3.9.5.4 In urgent matters a document that is to be filed may be attached as stipulated in 5.1 above with an undertaking, in the relevant e-mail message, that it will be filed in the Court on the next business day. Exhibits to an affidavit (if any) are to be scanned so as to convert them to an electronic image (*.tif) file.

3.9.5.5 All copy documents attached to an e-mail message shall, where applicable, have any ink signatures, dates or other additions to the original document typed in, so that they may be read as completed documents. Where a document has already been filed the e-mail message shall indicate the date of filing and, if known, its File Document Number (FDN).

3.9.5.6 The Courts word processing application is Microsoft Office 2000. Documents will be received using Standard Internet e-mail format (SMTP) and be compatible with that system. They should, preferably, be transmitted using Rich Text Format. Documents sent by the Courts will be transmitted in Microsoft Word 2000.

Mode of Use of e-mail Application Facility

3.9.6.1 Where an e-mail message has been transmitted by a lawyer who is a principal of, or employed by, a firm of lawyers, that e-mail message must clearly identify the name of the lawyer sending it and, where appropriate, the separate e-mail address of that person.

3.9.6.2 The Court will deem that messages and attached documents purporting to have been sent to it by a lawyer have, in fact, been sent by that lawyer, have been authorised for transmission by the party on whose behalf they have been sent, and are the responsibility of such lawyer.

3.9.6.3 A lawyer transmitting copies of documents not already filed will be deemed to accept personal responsibility for payment of any Court filing or other fees attaching to the matters being dealt with electronically.

3.9.6.4 The Court may give directions as to how a specific matter, or part of a matter is to be processed. For example, directions may be given as to:

3.9.6.4.1 the topic or topics to be dealt with and in what manner;

3.9.6.4.2 who may participate;

3.9.6.4.3 the maximum length of e-mail messages and attachments; and

3.9.6.4.4 the maximum time in which e-mail messages (including replies) must be sent to the Court.

3.9.6.5 Related e-mail messages sent on behalf of parties to the Court must be:

3.9.6.5.1 relevant to the topic or discussion thread in relation to which they are sent;

3.9.6.5.2 brief and to the point; and

3.9.6.5.3 timely

Consent Orders and Minutes of Order

3.9.7.1 Where a consent order or judgment is sought:

3.9.7.1.1 The consent of all parties other than that of the applicant is to be furnished to the Court by either:

3.9.7.1.1.1 the endorsement of the consents on minutes of order which may be lodged electronically;

3.9.7.1.1.2 by an e-mail to the Court from the solicitor for a party;

3.9.7.1.1.3 by such other means as are acceptable to the Court.

****

3.9.7.2 3.9.7.2.1 When the order will need to be sealed draft Minutes of the order in a form suitable for them being settled 'on screen' for ultimate signature must be attached to the email.

3.9.7.2.2 When the order sought is lengthy or complicated, Minutes of order should also be attached to the email.

3.9.7.2.3 In any other case Minutes need not be attached to the email, but the Court may respond to the application by requiring that Minutes be filed.

3.9.7.3 Orders made will be processed in the following manner:

3.9.7.3.1 those as to which a fiat only is required will be copied by the Court onto the court file and authenticated by the relevant Judicial Officers. A copy of the fiat will be transmitted electronically to the party or parties concerned;

3.9.7.3.2 those required to be sealed and entered will be settled "*on screen*" from the minutes sent to the Court, submitted electronically to the party or parties concerned for approval, and then hard copied and sealed and entered by the Registry. An e-mail message submitting settled minutes for approval of a party or parties will normally stipulate that, if no response is received from a party within 72 hours, that party will be deemed to have approved the settled minutes. The Court may review the form of a settled and sealed order if satisfied that a party did not receive the settled minutes and that they do not properly reflect the intention of the Judicial Officer who made the order.

3.9.7.3.3 any document so hard copied will bear the FDN allocated to it, as a means of cross reference.

Procedure where Information or Submissions Required

3.9.8.1 The e-mail transmitting the application may have attached to it brief submissions or representations to the Judicial Officer to whom the matter is assigned, without any direction requiring this to be done.

3.9.8.2 In any case in which the Court may desire further information or submissions to be made to it by a party in relation to a matter, such party will be advised by e-mail of the nature of the further information and submissions and the date by which it or they are to be supplied.

3.9.8.3 If such a request is not complied with in a timely manner the Court may, in its discretion, set the matter down for hearing in a normal chamber list, and advise the parties that attendance is required at the Practice Court at a stipulated time.

Conditions of Use, Privacy Aspects and Security

3.9.9.1 By transmitting an application to the Registrar in accordance with this Practice Direction, a lawyer represents to the Court that:

3.9.9.1.1 such lawyer has made due enquiry and that instructions received justify the making of the subject application;

3.9.9.1.2 insofar as the request attaches a copy of any affidavit not yet filed, the copy is a true copy of the original of the affidavit duly sworn which is held by the transmitter and that the original has duly been sworn or subscribed; and

3.9.9.1.3 the transmitter has taken all reasonable precautions to ensure that all material transmitted is virus free.

3.9.9.2 Each time the lawyer of any party transmits an e-mail message to a Court at one of the above addresses, the Court system will collect information as to:

3.9.9.2.1 the name of the transmitter;

3.9.9.2.2 the time at which the message has been received; and

3.9.9.2.3 the IP address of the transmitter

3.9.9.3 Such information will not be disclosed to any other person not entitled, by law, to it. However, any e-mail message sent to a Court may be monitored by its staff, or that of the Courts Administration Authority in order to facilitate decisions as to possible changes to its Web site, maintenance, or when e-mail abuse is suspected.

3.9.9.4 Any legal practitioner having concerns as to the security of information proposed to be transmitted should communicate those concerns to the Registrar prior to the transmission and confer with the proper officer of the Court as to such concerns.

3.9.9.5 For their part the Courts will take reasonable precautions to ensure that their transmissions are virus free. However, it is for lawyers dealing with them to adopt their own virus protection strategies.

Costs

3.9.10.1 The Adjudicating Officers will exercise their discretion to ensure that allowances made are fair and reasonable for the work done. Normally, the avoidance of a need to attend at court will result in some reduction in costs incurred.

3.9.10.2 One factor taken into account, in future, in the allowance or adjudication of costs, will be whether a matter which could have been processed as an e-application, has, unnecessarily, been set down in a list so as to require personal attendance at court.

Annexure A:

REGISTRAR'S RESPONSE TO APPLICATION FOR ELECTRONIC DISPOSAL

Title of Action:

Number of Action ..... of 20….. .

To: *[Return address of applicant for electronic processing.]*

1 Receipt is acknowledged of your e-mail dated .....……..... 20….. .

2 This matter has been referred to ...*[Judicial Officer]*.... for hearing and determination. That Judicial Officer will communicate with you in due course.

OR

This matter has been referred to a Judicial Officer for initial consideration. It has been determined that it is unsuitable for hearing and determination electronically. The matter has been set down for hearing in the normal manner in the Practice Court before..... on..... 20….., at .....am/pm.

Date: [DD/MM/YYYY]

Name and title of releasing officer, for Registrar:

Direction 3.10 - Tele-conferences (Rules 133 and 134 and the Definition of "Tele-conference" in Rule 4)

3.10.1 Where all parties to an application are represented by lawyers it may be set down for hearing by telephone.

3.10.2. The lawyers for all parties are to be available to receive a telephone call from the Court at the time appointed for the hearing and for the next 30 minutes.

3.10.3 The Judicial Officer has a discretion to adjourn any such hearing to a hearing in a Practice Court where the lawyers are to attend.

3.10.4 Where the Court cannot make telephone contact with a lawyer at the time appointed for the hearing the Judicial Officer may proceed with the hearing in the same way as if a party had not attended at a hearing in the Practice Court.

3.10.5 Where an application has been set down for a tele-conference any lawyer for a party is entitled to attend in person.

3.10.6 No person shall make a recording of a tele-conference other than with the prior express permission of the Judicial Officer conducting the hearing.

Direction 3.11 – Certificate Certifying a Pleading (Rule 98(1)(b))

3.11.1 Under Rule 98(1)(b)(i) the signature on the certificate must be that of an individual lawyer and not that of a firm or company. It is not necessary that the name or signature of any counsel who has settled the pleading must appear on the certificate.

3.11.2 The name of the person who gives the certificate must be clearly typed or printed alongside their signature.

3.11.3 A certificate under Rule 98(1)(b) is in addition to any other certificate or signature which is required to appear on a pleading.

3.11.4 Where the pleading is filed electronically Rule 47 applies.

3.11.5 The Registry will not accept a pleading for filing that does not bear the necessary certificate under Rule 98(1)(b).

Chapter 4 - Practice on Particular Types of Proceedings

Direction 4.1 – Possession Proceedings Under Part 17 of the *Real Property Act 1886* (Rule 204)

4.1.1 The summons for possession is to be in Form 5 of Part 2.

4.1.2 A return date for the summons must be obtained from the Registry which will allow adequate time to serve the summons so that the defendant is required to attend not earlier than 16 days from the date of service (section 193 *Real Property Act 1886*) ("RPA").

4.1.3 The summons must contain a proper description of the land and include a reference to the Certificate of Title and any other basic document of title (eg registered mortgage, registered lease).

4.1.4 The summons must be supported by an affidavit sworn by some person who can swear to the facts of his/her own knowledge and supported where appropriate by documents exhibited to the affidavit. The affidavit or affidavits in support must prove the plaintiff's title and also make out one of the grounds set forth in section 192 of the RPA. Normally, the affidavit should exhibit copies of the documents from which applicants derive title and upon which they base their claim for possession. It should state whether the provisions of the National Credit Code apply or not.

4.1.5 The summons and any affidavit in support must be served personally upon the defendant (unless otherwise ordered) and a proper affidavit of service must be filed before the hearing. Such affidavit should contain the means of knowledge of the deponent of the identity of the person served.

4.1.6 Plaintiffs seeking orders for possession must file with the affidavit of service of the proceedings an affidavit deposing to whether or not any person has possession of the relevant premises or any part thereof:

4.1.6.1 as a tenant under a residential agreement; or

4.1.6.2 as a former tenant holding over after the termination of a residential tenancy agreement.

4.1.7 4.1.7.1 A notice to defendants under R 204A(3)(a) is to be in Form 44.

4.1.7.2 A notice to occupiers under R 204A(3)(b) is to be in Form 45.

4.1.7.3 A request under R 204A(4) is to be in Form 46.

4.1.7.4 A certificate under R 204A(7) is to be in Form 47.

Direction 4.2 – Extension of Time for Removal of Caveats and Removal of Caveats Under the *Real Property Act 1886*.

4.2.1 Where such an application cannot be dealt with in sufficient time in the normal course of a general list the plaintiff may request to have the summons made specially returnable.

4.2.2. In any case where an order is sought on the summons to extend the time for the removal of a caveat and an address for service has not been entered by the

defendant, proof must be given of the service of the summons. Such service may be effected pursuant to section 191(g) of the RPA.

4.2.3 On an application for an extension of time for the removal of a caveat a copy of the caveat and of the notice from the Registrar-General requiring an extension to be obtained should be exhibited to a supporting affidavit.

4.2.4 Applications for extension of time for removal of caveats should be made as soon as possible after the receipt of the notice from the Registrar-General and not left until shortly before the 21 day period expires. A party (or his/her lawyer personally) may be penalised in costs where orders are sought to extend the time so that a formal application can later be dealt with.

Direction 4.3 – Search Orders (also known as Anton Piller type Orders) (Rule 148)

4.3.1 This Practice Direction supplements Rule 148 relating to search orders (also known as *Anton Piller* orders, after *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55).

4.3.2 This Practice Direction addresses (among other things) the Court's usual practice relating to the making of a search order and the usual terms of such an order. While a standard practice has benefits, this Practice Direction and Form 43 in Part 2 do not, and cannot, limit the judicial discretion to make such order as is appropriate in the circumstances of the particular case.

4.3.3 Words and expressions in this Practice Direction that are defined in Rule 148 have the meanings given to them in that Rule.

4.3.4 Ordinarily, a search order is made without notice and compels the respondent to permit persons specified in the order ("search party") to enter premises and to search for, inspect, copy and remove the things described in the order. The order is designed to preserve important evidence pending the hearing and determination of the applicant's claim in a proceeding brought or to be brought by the applicant against the respondent or against another person. The order is an extraordinary remedy in that it is intrusive, potentially disruptive, and made without notice and prior to judgment.

4.3.5 A form of search order is set out in Form 43 (the footnotes and references to footnotes in that form should not form part of the order as made). That form may be adapted to meet the circumstances of the particular case. It contains provisions which are aimed at achieving the permissible objectives of a search order, while minimising the potential for disruption or damage to the respondent and for abuse of the Court's process.

4.3.6 The search party must include an independent lawyer who will supervise the search and a lawyer or lawyers representing the applicant. It may be necessary that it include other persons, such as an independent computer expert, and a person able to identify things being searched for if difficulties of identification may arise. Ordinarily, the search party should not include the applicant or the applicant's directors, officers, employees or partners or any other person associated with the applicant (other than the applicant's lawyer).

4.3.7 The order should be clear about the maximum number of persons permitted to be in the search party. The number of people in the search party should be as small as is reasonably practicable. Form 43 contemplates that they will be named in the

order. This is desirable but if it is not possible the order should at least give a description of the class of person who will be there (eg "one lawyer employed by A, B and Co").

4.3.8 The affidavits in support of an application for a search order should include the following information:

4.3.8.1 a description of the things or the categories of things, in relation to which the order is sought;

4.3.8.2 the address or location of any premises in relation to which the order is sought and whether they are private or business premises;

4.3.8.3 why the order is sought, including why there is a real possibility that the things to be searched for will be destroyed or otherwise made unavailable for use in evidence before the Court unless the order is made;

4.3.8.4 the prejudice, loss or damage likely to be suffered by the applicant if the order is not made;

4.3.8.5 the name, address, firm, and commercial litigation experience of an independent lawyer, who consents to being appointed to serve the order, supervise its execution, and do such other things as the Court considers appropriate; and

4.3.8.6 if the premises to be searched are or include residential premises, whether or not the applicant believes that the only occupant of the premises is likely to be:

(i) a female; or

(ii) a child under the age of 18; or

(iii) any other person ("vulnerable person") that a reasonable person would consider to be in a position of vulnerability because of that person's age, mental capacity, infirmity or English language ability; or

(iv) any combination of (i), (ii) and (iii), and any one or more of such persons.

4.3.9 If it is envisaged that specialised computer expertise may be required to search the respondent's computers for documents, or if the respondent's computers are to be imaged (ie hard drives are to be copied wholesale, thereby reproducing documents referred to in the order and other documents indiscriminately), special provision will need to be made, and an independent computer specialist will need to be appointed who should be required to give undertakings to the Court.

4.3.10 The applicant's lawyer must undertake to the Court to pay the reasonable costs and disbursements of the independent lawyer and of any independent computer expert.

4.3.11 The independent lawyer is an important safeguard against abuse of the order. The independent lawyer must not be a member or employee of the applicant's firm of lawyers. The independent lawyer should be a lawyer experienced in commercial litigation, preferably in the execution of search orders. The Law Society has been requested to maintain a list of lawyers who have indicated willingness to be appointed as an independent lawyer for the purpose of executing search orders,

but it is not only persons on such a list who may be appointed. The responsibilities of the independent lawyer are important and ordinarily include the following:

4.3.11.1 serve the order, the application for it, the affidavits relied on in support of the application, and the originating process;

4.3.11.2 offer to explain, and, if the offer is accepted, explain the terms of the search order to the respondent;

4.3.11.3 explain to the respondent that he or she has the right to obtain legal advice;

4.3.11.4 supervise the carrying out of the order;

4.3.11.5 before removing things from the premises, make a list of them, allow the respondent a reasonable opportunity to check the correctness of the list, sign the list, and provide the parties with a copy of the list;

4.3.11.6 take custody of all things removed from the premises until further order of the Court;

4.3.11.7 if the independent lawyer considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically or printing out information in documentary form, remove the computer from the premises for that purpose, and return the computer to the premises within any time prescribed by the order together with a list of any documents that have been copied or printed out;

4.3.11.8 submit a written report to the Court within the time prescribed by the order as to the execution of the order; and

4.3.11.9 attend the hearing on the return date of the application, and have available to be brought to the Court all things that were removed from the premises. On the return date the independent lawyer may be required to release material in his or her custody which has been removed from the respondent's premises or to provide information to the Court, and may raise any issue before the Court as to execution of the order.

4.3.12 Ordinarily, the applicant is not permitted, without the permission of the Court, to inspect things removed from the premises or copies of them, or to be given any information about them by members of the search party.

4.3.13 Ordinarily, a search order should be served between 9:00 am and 2:00 pm on a business day in order to permit the respondent more readily to obtain legal advice. However, there may be circumstances in which such a restriction is not appropriate.

4.3.14 A search order must not be executed at the same time as the execution of a search warrant by the police or by a regulatory authority.

4.3.15 If the premises are or include residential premises and the applicant is aware that when service of the order is effected the only occupant of the residential premises is likely to be any one or more of a female, a child under the age of 18 years, or a vulnerable person, the Court will give consideration to whether:

4.3.15.1 if the occupants are likely to include a female or child, the independent lawyer should be a woman or the search party should otherwise include a woman; and

4.3.15.2 if the occupants are likely to include a vulnerable person, the search party should include a person capable of addressing the relevant vulnerability.

4.3.16 Any period during which the respondent is to be restrained from informing any other person (other than for the purposes of obtaining legal advice) of the existence of the search order should be as short as possible and not extend beyond 4.30 pm on the Return Date.

4.3.17 At the hearing of the application on the Return Date, the Court will consider the following issues:

(a) what is to happen to any things removed from the premises or to any copies which have been made;

(b) how any commercial confidentiality of the respondent is to be maintained;

(c) any claim of privilege by the respondent;

(d) any application by a party; and

(e) any issue raised by the independent lawyer.

4.3.18 Appropriate undertakings to the Court will be required of the applicant, the applicant's lawyer and the independent lawyer, as conditions of the making of the search order. The undertakings required of the applicant will normally include the Court's usual undertaking as to damages. The applicant's lawyer's undertaking includes an undertaking not to disclose to the applicant any information that the lawyer has acquired during or as a result of execution of the search order, without the permission of the Court. Release from this undertaking in whole or in part may be sought on the return date.

4.3.19 If it is demonstrated that the applicant has or may have insufficient assets within the jurisdiction of the Court to provide substance for the usual undertaking as to damages, the applicant may be required to provide security for the due performance of that undertaking. The security may, for example, take the form of a bank's irrevocable undertaking to pay or a payment into Court. Form 43 contains provision for an irrevocable undertaking.

4.3.20 An applicant for a search order made without notice to the respondent is under a duty to the Court to make full and frank disclosure of all material facts to the Court. This includes disclosure of possible defences known to the applicant and of any financial information which may cast doubt on the applicant's ability to meet the usual undertaking as to damages from assets within Australia.

4.3.21 The order to be served should be endorsed with a notice which meets the requirements of Rule 225.

4.3.22 A search order is subject to the Court's adjudication of any claim of privilege against self-incrimination. The privilege against self-incrimination is available to individuals but not to corporations. The Court will not make an order reducing or limiting that privilege in circumstances where the legislature has not indicated that it may do so.

Direction 4.4 – *Aged and Infirmed Persons' Property Act 1940* Applications (Rule 309)

4.4.1 An application for a protection order should be made by a inter partes summons in Form 2 of Part 2.

4.4.2 If the application is made by a person other than the proposed protected person, the husband, wife or near relative of the proposed protected person, or Public Trustee, the affidavit in support of the application should adduce proof of circumstances which render it proper for such other person to make the application.

4.4.3 The evidence in support of the application should show:

4.4.3.1 The age of the protected person and the nature of the alleged mental or physical infirmity, for which evidence of a medical practitioner is ordinarily required.

4.4.3.2 Particulars of the estate of the protected person, so far as they are known to the plaintiff or can be ascertained on reasonable enquiry.

4.4.3.3. The provisions of any will or codicil in existence given dates, the names of executors and particulars of any specific or demonstrative bequests or devises and where it is possible that the protected person was subject to any of the incapacities mentioned section 7 of the Act at the time of the making of the will, particulars should be given of any will or codicil made before the protected person became subject to such incapacity.

4.4.4 Evidence under paragraph 4.4.3.3 may be furnished by affidavit or by means of a copy of the will or codicil being exhibited to an affidavit. Any affidavit or exhibit containing information as to a will or codicil may be sealed up and filed in an envelope endorsed with a direction that it not be opened except by direction of a Judge or Master.

4.4.5 A knowledge of the names of the executors is of assistance in appointing a manager and fixing the amount of any security to be given. The other information required under paragraph 4.4.3.3 will be of assistance whenever the Court is asked to exercise jurisdiction under sections 16a and 16b of the Act.

4.4.6 When it is intended to seek an order restricting the testamentary capacity of the protected person or the circumstances indicate that such a course may be desirable, the summons should specifically ask for such an order.

4.4.7 On every application, minutes of order should be made available for the assistance of the Master. The minutes are to require service of the order on the manager, the protected person and the Registrar of Probate.

4.4.8 In cases having no special or unusual features, or when the estate is comparatively small, details of the amounts sought for costs should be available to the Master on the hearing of the application, to enable the fixation of a lump sum without adjudication.

Direction 4.5 – Freezing Orders (also known as "Mareva Orders" or "Asset Preservation Orders") (Rule 247)

4.5.1 This Practice Direction supplements Rule 247 relating to freezing orders (also known as "Mareva Orders" after *Mareva Compania Naviera SA v International Bulkcarriers SA ("The Mareva")* 2 Lloyd's Rep 509, or "asset preservation orders").

4.5.2 This Practice Direction addresses (among other things) the Court's usual practice relating to the making of a freezing order and the usual terms of such an order. While a standard practice has benefits, this Practice Direction and Form 42 in Part 2 do not, and cannot, limit the judicial discretion to make such an order as is appropriate in the circumstances of the particular case.

4.5.3 Words and expressions in this Practice Direction which are defined in Rule 247 have the meanings given to them in that rule.

4.5.4 A form of freezing order is in Form 42. This form may be adapted to meet the circumstances of the particular case. It may be adapted for a freezing order made on notice to the respondent as indicated in the footnotes to the form (the footnotes and references to footnotes should not form part of the order as made). The form contains provisions aimed at achieving the permissible objectives of the order consistently with the proper protection of the respondent and third parties.

4.5.5 The purpose of a freezing order is to prevent frustration or abuse of the process of the Court, not to provide security in respect of a judgment or order.

4.5.6 A freezing order should be viewed as an extraordinary interim remedy because it can restrict the right to deal with assets even before judgment, and is commonly granted without notice to the respondent.

4.5.7 The respondent is often the person said to be liable on a substantive cause of action of the applicant. However, the respondent may also be a third party, in the sense of a person who has possession, custody or control, or even ownership, of assets which he or she may be obliged ultimately to disgorge to help satisfy a judgment against another person. Subrule 148(5)(e) addresses the minimum requirements that must ordinarily be satisfied on an application for a freezing order against such a third party before the discretion is enlivened. The third party will not necessarily be a party to the substantive proceeding, (see *Cardile v LED Builders Pty Ltd* [1999] HCA 18, (1999) 198 CLR 380) but will be a respondent to the application for the freezing or ancillary order. Where a freezing order against a third party seeks only to freeze the assets of another person in the third person's possession, custody or control (but not ownership), the Form 42 will require adaptation. In particular, the references to "*your assets*" and "*in your name*" should be changed to refer to the other person's assets or name (eg "*John Smith's assets*", "*in John Smith's name*").

4.5.8 A freezing or ancillary order may be limited to assets in Australia or in a defined part of Australia, or may extend to assets anywhere in the world, and may cover all assets without limitation, assets of a particular class, or specific assets (such as the amounts standing to the credit of identified bank accounts).

4.5.9 The duration of a freezing order made without notice should be limited to a period terminating on the return date of the application, which should be as early as practicable (usually not more than a day or two) after the order is made, when the

respondent will have the opportunity to be heard. The applicant will then bear the onus of satisfying the Court that the order should be continued or renewed.

4.5.10 A freezing order should reserve liberty for the respondent to apply on short notice. An application by the respondent to discharge or vary a freezing order will normally be treated by the Court as urgent.

4.5.11 The value of the assets covered by a freezing order should not exceed the likely maximum amount of the applicant's claim, including interest and costs. Sometimes it may not be possible to satisfy this principle (for example, an employer may discover that an employee has been making fraudulent misappropriations, but does not know how much has been misappropriated at the time of the discovery and at the time of the approach to the Court).

4.5.12 The order should exclude dealings by the respondent with its assets for legitimate purposes, in particular:

4.5.12.1 payment of ordinary living expenses;

4.5.12.2 payment of reasonable legal expenses;

4.5.12.3 dealings and dispositions in the ordinary and proper course of the respondent's business, including paying business expenses bona fide and properly incurred; and

4.5.12.4 dealings and dispositions in the discharge of obligations bona fide and properly incurred under a contract entered into before the order was made.

4.5.13 When a freezing order extends to assets outside Australia, the order should provide for the protection of persons outside Australia and third parties. Such provisions are included in Form 42 for freezing orders.

4.5.14 The Court may make ancillary orders. The most common example of an ancillary order is an order for disclosure of assets. Form 42 provides for such an order and for the privilege against self-incrimination.

4.5.15 The Rules of Court confirm that certain restrictions expressed in The Siskina [1979] AC 210 do not apply in this jurisdiction. First, the Court may make a freezing order before a cause of action has accrued (a "prospective" cause of action). Secondly, the Court may make a free-standing freezing order in aid of foreign proceedings in prescribed circumstances. Thirdly, when there are assets in Australia, service outside of Australia is permitted under Rule 40(1)(l).

4.5.16 As a condition of the making of a freezing order, the Court will normally require appropriate undertakings by the applicant to the Court, including the usual undertakings as to damages.

4.5.17 If it is demonstrated that the applicant has or may have insufficient assets within the jurisdiction of the Court to provide substance for the usual undertaking as to damages, the applicant may be required to support the undertaking by providing security. There is provision for such security in Form 42.

4.5.18 The order to be served should be endorsed with a notice which meets the requirements of Rule 225.

4.5.19 An applicant for a freezing order without notice to the respondent is under a duty to make full and frank disclosure of all material facts to the Court. This includes disclosure of possible defences known to the applicant and of any information

which may cast doubt on the applicant's ability to meet the usual undertaking as to damages from assets within Australia.

4.5.20 The affidavits relied on in support of an application for a freezing or ancillary order should, if possible, address the following:

4.5.20.1 information about the judgment that has been obtained, or, if no judgment has been obtained, the following information about the cause of action:

(i) the basis of the claim for substantive relief;

(ii) the amount of the claim; and

(iii) if the application is made without notice to the respondent, the applicant's knowledge of any possible defence.

4.5.20.2 the nature and value of the respondent's assets, so far as they are known to the applicant, without and outside Australia;

4.5.20.3 the matters referred to in Rule 247(5); and

4.5.20.4 the identity of any person, other than the respondent, who, the applicant believes, may be affected by the order, and how that person may be affected by it.

Direction 4.6 – Proceedings under the *Serious and Organised Crime (Unexplained Wealth) Act 2009* (Rule 316A).

4.6.1 Applications under s 14 (Rule 316A(2)) and under ss 15, 16(1), 19(2) and 20 of the Act (Rule 316A(7)) are to be in Form 50.

4.6.2 A warrant for search and seizure under s 16 of the Act (Rule 316A(12)) is to be in Form 51.

4.6.3 A notice of objection under section 24 of the Act (Rule 316A(14) is to be in Form 52.

Direction 4.8 – Service Abroad Under the Hague Convention

4.8.1 A request for service abroad under Rule 41D is to be in Form 48.

4.8.2 A summary of the document to be served abroad as required by Rule 41D is to be in Form 49.

4.8.3 A certificate of service under Rule 41F is to be in the form of Part 2 of Form 48.

4.8.4 A request for service in this jurisdiction under Rule 41M is to be in the form of Part 1 of Form 48.

4.8.5 A summary of the document to be served in this jurisdiction as required by Rule 41M is to be in Form 49.

4.8.6 A certificate of service under Rule 41P is to be in the form of Part 2 of Form 48.

Direction 4.9 – Admission as Public Notaries – Section 91 *Legal Practitioners' Act 1981*

4.9.1 An application for admission as a public notary is to be made by summons using Form 4 in Part 2.

4.9.2 The summons may be made returnable before a Master.

4.9.3 The summons should be supported by an affidavit or affidavits deposing to:

4.9.3.1 the applicant's date of birth;

4.9.3.2. the applicant's qualifications and experience relevant to the application;

4.9.3.3 the applicant's knowledge of the functions and duties of public notaries, including any study undertaken by the applicant relevant to that knowledge;

4.9.3.4 the applicant's character;

4.9.3.5 the purpose for which the applicant seeks to be admitted as a public notary and the manner in which the applicant, if admitted, proposes to practise;

4.9.3.6 publication of notice of the making of the application for admission in the Public Notices section of The Advertiser Newspaper;

4.9.3.7 any other matter relevant to the Court's consideration of the application.

4.9.4 Copies of the summons (which should include the date and time for the hearing of the summons) and the supporting affidavits should be served, at least 14 days before the hearing, on each of the Law Society of South Australia and Notaries' Society of South Australia Inc.

4.9.5 Applicants should attend personally on the hearing of the summons, although they may be represented by a legal practitioner.

4.9.6 As soon as practicable after an order admitting the person as a public notary is made, the Notary must:

4.9.6.1 cause the order to be sealed; and

4.9.6.2 make the oath required by s 91(3) of the *Legal Practitioners Act 1981* and sign the Roll of Notaries at a time to be arranged with the Registrar.

4.9.7 Applicants are referred to *Re Bos* [2003] SASC 320; 230 LSJS 27.

Direction 4.10 – Probate Actions (Rule 205)

4.10.1 In a probate action in which a party seeks to have a will propounded or pronounced against, the Court may, on the application of any party or on its own motion, order that the original of the will be lodged in the Probate Registry pending the determination of the action.

4.10.2 A party wishing to use at a hearing an original will which is in the custody of the Probate Registry should, at least two business days before the hearing, request the Probate Registry to produce the will to the Judge or Master hearing the matter.

4.10.3 A party propounding a will in solemn form or seeking an order pronouncing against a will in solemn form must produce or arrange for the production of the original will for marking by the Judge or Master hearing the matter.

4.10.4 A party propounding a will in solemn form must prove due execution of the will. If due execution is to be proved by affidavit, a true copy of the will should be made an exhibit to the affidavit(s).

The content of Form 1 of *The Probate Rules 2004* may be a useful guide to the preparation of such affidavits.

4.10.5 If the document sought to be propounded or pronounced against is said to be a copy or a reconstruction of a will:

4.10.5.1 the particular copy or reconstruction the subject of the action must be produced;

4.10.5.2 due execution of the original will must be proved;

4.10.5.3 the accuracy of the copy or reconstruction must be proved; and

4.10.5.4 the facts giving rise to any presumption of revocation and the facts (if any) said to rebut any such presumption must be proved.

Chapter 5 - Proceedings in Court and Trials

Direction 5.1 – Special Classification List (Rule 115)

5.1 This Practice Direction lays down a broad framework within which the interlocutory procedures involved in cases in the special classification are to be handled. Cases are assigned usually to this list if the estimated length of the hearing exceeds 15 days or if the case raises issues of particular complexity.

5.1.1 The management of cases in this list will be allocated to a pool of judges assisted by the masters who between them will have the ongoing conduct of the interlocutory proceedings. The masters will be involved as much as is feasible. Extensive utilisation of their assistance will be made. Where a matter is assigned to a judge of the management pool/panel, that matter should be dealt with by that judge for management purposes at all times until that matter goes to trial, except where the judge is unavailable due to leave, illness or other commitments.

5.1.2 The panel of assigned judges will be rostered to have up to one week set aside every two months, within which to deal with the lengthier directions hearings.

5.1.3. Apart from applications heard during the week set aside for that purpose, all other interlocutory applications will be dealt with by the assigned judge working in conjunction with an assigned master.

5.1.4 Except when there appears to be good reason to proceed otherwise, all interlocutory matters will proceed by way of general directions hearings. In the ordinary course the general directions hearing will be brought on as frequently as necessary, commonly at a time such as 8.30 or 9.00 am, ahead of the time at which civil and criminal trials are regularly listed. Those regular directions hearings will not be expected to occupy more than an hour.

5.1.5 The general directions hearings will be conducted in accordance with Rule 115, with such refinements to that procedure as is indicated in this Practice Direction or as may be required in a particular case. The need to make a discrete application pursuant to Rule 131 will generally only arise if an order is sought against a person not a party to the action. In all other cases the parties should simply exchange a notice or suggested agenda (with a copy for the judge's associate or master) at least one week before the date scheduled for a directions hearing, indicating what applications will be made and what orders will be sought, in each case specifying the court file number of the documents which will be referred to with respect to each application.

5.1.6 No affidavit shall be used on the hearing of an application for directions unless with the leave of the Court or in certain other limited circumstances. On a directions hearing the Court may inform itself on any matter without requiring formal proof of the same. But if it is felt that it might assist the Court to file an affidavit, this should be done ahead of the hearing and before leave is given. Leave will ordinarily be granted if time is saved, or if it is anticipated that there

will be a factual dispute, or the Court would otherwise be best assisted by the use of an affidavit.

5.1.7 At the general directions hearings, dependent upon the stage of pre-trial preparation, parties can expect attention to be given to some or all of the following matters, which they may care to use as a checklist:

5.1.7.1 Pleadings:

- nature and extent required
- timetable
- mode of seeking/supplying particulars
- third party proceedings/directions

5.1.7.2 Disclosure of documents:

- scope/mode
- non-party disclosure
- phases
- timetable
- inspection arrangements
- production of document lists and numbering system.

5.1.7.3 Other interlocutory aspects:

- expert's reports
- number
- timetable
- conference of experts/documentation of outcome
- notices to admit/interrogatories
- other likely matters

5.1.7.4 ADR aspects:

- nature
- timing
- detailed arrangements

5.1.7.5 Pre-trial preparations:

- possible agreed facts
- section 59J orders
- possible exchange/tender of witness statements, particularly in relation to evidence in chief
- nature and extent of computer litigation support required
- preparation of tender lists
- preparation and use of document books
- desirability of trial of successive issues
- desirability of note form openings by both plaintiff and other parties.
- determination of trial length and outline witness programme

- final review of possible need to amend pleadings
- need/arrangements for locus inspections

5.1.7.6 Other matters:

5.1.7.6.1 arranging trial dates/periods

5.1.8 Entry for Trial

5.1.8.1 Ordinarily, before a matter is entered for trial a Certificate of Readiness will be required in accordance with Rule 120.

5.1.8.2 It is particularly important to note that the Court expects all avenues of alternative dispute resolution to be exhausted before entry for trial. Much instability is caused to the Court lists if matters settle after entry for trial. Counsel will be asked to give an assurance that all such avenues have been pursued to no avail, before a matter will be listed for trial. Whilst alternative dispute resolution aspects such as mediation will normally be an issue addressed at an early stage of management, nevertheless, this topic will need to be dealt with with some flexibility according to the exigencies of the particular case.

5.1.8.3 The Court is most concerned to obtain an accurate estimate of the likely length of trial. Parties will be obliged to provide a schedule of the probable course of the trial including a list of all witnesses to be called, the estimated length of each witness's evidence and the time which is likely to be spent on all other aspects of the presentation of the case, including addresses.

5.1.8.4 While generally speaking a date for hearing will not be allocated before the interlocutory processes are completed and a Certificate of Readiness has been signed, the Court reserves the right to allocate a hearing date to particular matters when the interlocutory proceedings are sufficiently advanced for a reasonable estimate to be made as to the length of time likely to be occupied in completing the pre-trial processes, and where it seems otherwise desirable to do so.

Direction 5.2 – Interpreters in Court

5.2.1 An interpreting service to the Courts is provided by the Interpreting and Translation Centre, a branch of the Office of Multicultural & Ethnic Affairs.

5.2.2 The service provides interpreting facilities during Court hearings for persons accused of criminal offences, parties in civil proceedings and persons required to give evidence as witnesses in either criminal or civil proceedings in Court.

5.2.3 The service does not provide interpreters for lawyers taking instructions from clients or for parties in proceedings requiring to communicate with the lawyers.

5.2.4 Practitioners should notify the Court of the requirement for interpreting services in any conference, hearing or trial in both criminal and civil matters at the earliest possible time to the Listing Section of the Court. It is essential for such requests to be made immediately the need arises to allow the maximum possible time for the necessary arrangements to be put into effect.

Direction 5.3 – Noting of Appearances of Counsel and Lawyers

Counsel and lawyers appearing in cases listed before the Court must fill in and hand to the associate prior to the hearing a form indicating his/her name, the party for whom he/she appears and the name of his/her instructing lawyer. A specimen form appears below and supplies of the forms will be placed on all bar tables.

A P P E A R A N C E S

_____	V	_____
Crown/Plaintiff/Appellant		* Accused/Defendant/Respondent/ Third Party
_____		_____
with		with
_____		_____
instructed by		instructed by
_____		_____
_____		_____

Where counsel is not an admitted practitioner in this State, the following must each be answered:

- What is the full name of counsel, and if a QC or SC elsewhere stating that?

  ……..

  ……..

- What is the ground (identifying the Statute or Regulation and the relevant provision thereof) on which such counsel exercises a right of appearance before the Court?

  ……
  ……
  ……
  ……..

- Is there any restriction on his/her right to practice in his/her home jurisdiction and if so what restriction?

……
……
……
……..

To be completed and handed to the Associate before the commencement of the hearing

* If more than one - indicate for whom you are appearing

PLEASE PRINT PLAINLY

……..

Signed by counsel/solicitor

Direction 5.4 – Expert Witnesses (Rule 160)

5.4.1 These guidelines are not intended to address exhaustively all aspects of an expert's report and an expert's duties. Reference should also be made to Rule 160

5.4.2 These guidelines, however, must be complied with for an expert to comply with Rule 160(3)(e).

5.4.3 **General Duty to the Court:**

5.4.3.1 An expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise.

5.4.3.2 An expert witness is not an advocate for a party.

5.4.3.3 An expert witness's paramount duty is to the Court and not to the person retaining the expert.

5.4.4 **The Form of the Expert Report:**

5.4.4.1 If any tests or experiments are relied upon by the expert in compiling the report, the report should contain details of the qualifications of the person who carried out any such tests or experiments.

5.4.4.2 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the delivery of the report.

5.4.4.3 The report should set out separately from the factual findings or assumptions each of the opinions which the expert expresses.

5.4.4.4 The expert should give reasons for each opinion.

5.4.4.5 If an expert opinion is not fully researched because the expert considers that insufficient data is available - or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a

report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.

5.4.4.6 The expert should make it clear when a particular question or issue falls outside his/her field of expertise.

5.4.4.7 The expert's report will contain an acknowledgement at the commencement of the expert's report that the expert has been provided with copies of Rule 160 and this Practice Direction prior to preparing the expert's report and that the expert has read it and understood it.

5.4.4.8 At the end of the report the expert should declare that (the expert) has made all the inquiries which "*(the expert) believes are desirable and appropriate and that no matters of significance which (the expert) regards as relevant have, to (the expert's) knowledge, been withheld from the Court.*"

5.4.5 **The Further Obligations of an Expert and the Party Retaining the Expert:**

5.4.5.1 If, after exchange of reports or at any other stage, an expert witness changes his/her view on a material matter, having read another expert's report or for any other reason, the change of view should be communicated in writing (through legal representatives) without delay to each party to whom the expert witness's report has been provided and, when appropriate, to the Court.

5.4.5.2 If a draft of the expert's report (in whole or in part) or any of the content of a draft report has been provided or communicated to a party, a party's representative or a 3rd party a copy of the draft so provided or communicated must be retained by the expert.

5.4.6 **Consequences of Non Disclosure**

If a party fails to comply with the Rules of Court or this Practice Direction in respect of an expert's report:

5.4.6.1 The Court may adjourn the hearing or trial at the cost of the party in default or his/her lawyer.

5.4.6.2 The Court may direct that evidence from that expert not be adduced by that party at the trial in the action.

5.4.6.3 The Trial Judge may award costs to the other parties or reduce costs otherwise to be awarded to the party in default.

5.4.7 **Expert's Conference**

If experts retained by the parties meet at the direction of the Court, or at the request of lawyers for the parties, it would be improper conduct for an expert to be given or to accept instructions not to reach agreement. If, at a meeting directed by the Court, the experts cannot reach agreement on matters of expert opinion, they should specify their reasons for being unable to do so.

5.4.8 **Experts Employed by a Party to the Action**

The provisions and requirements of Rule 160 and this Practice Direction apply to any person called as an expert in the action, even if the expert is employed by a party to the action.

Direction 5.5 – Shadow Experts (Rule 161(2))

A Certificate under Rule 161(2) is to be in Form 19.

(As to service of such certificate see Rules 161(4) and (5)).

Direction 5.6 – Lists, Citations & Copies of Authorities

Format

5.6.1 Lists of authorities should contain:

5.6.1.1 the full heading of the action;

5.6.1.2 the anticipated date of hearing;

5.6.1.3 the names or name of the Judges, Judge or Master who will hear the case (if known).

5.6.2 Lists of authorities should be divided into two parts:

5.6.2.1 PART I to be headed "Authorities to be Read" is to contain the authorities from which counsel will read passages to the Court;

5.6.2.2 PART II to be headed "Authorities to be Referred To" is to contain the authorities which are relied upon but from which counsel does not expect to read;

5.6. 3 Care should be taken in compiling Part I to ensure that it contains only the cases from which counsel will read.

5.6.4 **Citations to be Provided**

When a case is reported in an authorised series of reports such as the South Australian State Reports, Commonwealth Law Reports, Federal Court Reports, the English authorised reports (The Law Reports) or in a series of reports containing only the decisions of a State or Territory Supreme Court, the citation of the report of the case in those Reports or in that series must be used. In addition, the medium neutral citation, when available, is to be provided for all judgments, whether reported or unreported.

5.6.5 **Electronic Delivery of Lists of Authorities**

The Court requires parties to provide lists of authorities to the Court by email in accordance with the following paragraphs of this Direction.

5.6.5.1 In the case of proceedings to be heard by the Full Court, the email should be sent to submissions@courts.sa.gov.au with a subject line which contains, and contains only, the action number and the names of the parties.

Example – Action No 2012-1234 Jones v Bloggs

5.6.5.2 In the case of proceedings to be heard by a single Judge or Master whose identity is known, the email should be sent to the chambers

email addresses of that Judge or Master. The chambers email address of the members of the Court may be ascertained from the link to the Supreme Court on the Courts Administration Authority's website (http://www.courts.sa.gov.au).

In those cases in which the identity of the single Judge or Master is not known (and only in those cases), the email should be sent to submissions@courts.sa.gov.au with the subject line required by Direction 5.6.5.1

5.6.5.3 Each authority in a list provided by email must be hyperlinked to a page from which the authority in Rich Text Format (RTF), Portable Document Format (PDF), or other comparable format can be accessed, so as to facilitate access by the Court to that authority.

If alternatives are available, a searchable format of the authority is to be preferred over a non-searchable format. In the case of reports provided by Thomson Reuters (eg CLR, SASR or NSWLR) or LexisNexis (eg VLR), the link should be to the HTML version (and not the PDF version) of the authorised report. In the case of reports sourced from Austlii (the medium neutral version), the link should be directly to the RTF version of the report.

If an online authorised series of reports is available to the party delivering the list, the hyperlink should be to the report of the case in that series as well as to a freely available medium neutral version of the case (if available).

If hyperlinking is not possible because, for example, an electronic report of the authority is not available, that authority should be marked in the list with the words "hyperlinking unavailable".

If a hyperlink comprises more than 75 characters, parties should use a hyperlink shortening service such as http://goo.gl, http://bit.ly, or http://tinyurl.com to shorten the hyperlink to a manageable form.

In all cases, the hyperlink provided should be in addition to, and not in place of, a citation in conformity with Practice Direction 5.6.4.

The authorities are not to be provided as an attachment to the email.

5.6.5.4 In the case of appellate proceedings, the list of authorities is to be provided electronically no later than the time for delivery of the summary of argument specified in Directions 6.33 and 6.38. In all other cases the list of authorities is to be provided at least two business days prior to the date set for the hearing of the matter.

5.6.5.5 In all cases, a copy of the emailed list of authorities must be emailed to each other party to the proceedings at the same time at which it is sent to the Court. In those cases in which an email address for another party is not known and cannot be reasonably ascertained, the

copy of the list must be served on the other party no later than 5.00 pm on the same day on which the document is delivered to the Court.

5.6.6 **Photocopies of Authorities**

The Court discourages the handing up of photocopies of decisions readily available in the Supreme Court library or available electronically. The cost of those photocopies is not to be a cost to the client unless the client consents or the court so directs. Their cost will not be recoverable as an item of party and party costs except in those cases in which, before the hearing, the Court has authorised the handing up of the photocopies. If a party proposes to rely on a case not contained in the list of authorities, the existing practice of making a copy available to the court and to the other party should continue. The cost of the copying in such cases will not be recoverable either from the client or as an item of party and party costs. It is only in exceptional cases that copies of cases in Part II of the list are to be handed up.

5.6.7 **Copies for Reporters**

5.6.7.1 A paper copy of the list of authorities must be handed to the reporters in Court prior to the commencement of the hearing.

5.6.7.2 Copies of medical or expert reports to be tendered at the hearing should also be handed to the reporters in Court at the time at which they are tendered.

Direction 5.7 – Barristers' Attire

5.7.1 The dress of barristers appearing in Court is to be black court coat or bar jacket, white jabot and gown (silk for Queen's Counsel and Senior Counsel and stuff for junior counsel), dark trousers for men and dark skirt or slacks/trousers for women. As an alternative to the jabot, white bands may be worn with white shirt and winged collar.

5.7.2 Wigs will be worn only when the Court is hearing criminal proceedings (including appeals) and on ceremonial occasions. Wigs will not be worn in civil proceedings.

5.7.3 Barristers' attire should be at all times in a clean and neat condition.

Direction 5.8 – Delivery of Reserved Judgments

5.8.1 In ordinary cases, the Courts aim to deliver judgment no later than 60 days from the reservation of judgment. However, the Courts recognise that there will be particular cases in which that target is not appropriate. The Courts also recognise that due to workloads and other matters there may be occasions when it is not practicable for a Judge to observe the target.

5.8.2 Notwithstanding those comments, which are offered by way of explanation, in any case, after 60 days from the reservation of judgment, parties are at liberty to invoke the following protocol:

5.8.2.1 Where, following the hearing of any matter, the judgment is not delivered within 60 days of the date upon which judgment was reserved, any party may by letter addressed to the Chief Justice for the Supreme Court or the Chief Judge for the District Court, inquire about progress of the judgment.

5.8.2.2 The party making such an inquiry will deliver a copy of the letter to all other parties to the action.

5.8.2.3 The identity of a party making such an inquiry is not to be disclosed other than to –

5.8.2.3.1 the Chief Justice for the Supreme Court or the Chief Judge for the District Court; and

5.8.2.3.2 the other parties to the action.

Direction 5.9 – Pre-Trial Directions Hearings

5.9.1 Ordinarily, the judge allocated to the trial of an action in the civil list will conduct a pre-trial directions hearing approximately 3 or 4 weeks before the date on which the trial is to commence.

5.9.2 A trial judge may decide not to hold a pre-trial directions hearing in those cases which have been managed in the long and complex trial list (Rule 115).

5.9.3 A trial judge may, without hearing from the parties, dispense with the holding of a pre-trial directions hearing if satisfied that such a hearing is unnecessary in the circumstances of the particular case.

5.9.4 Other than for good reason, counsel retained for the trial should attend at the pre-trial directions hearing.

5.9.5 The parties should be prepared to address all matters concerning the conduct of the trial including:

5.9.5.1 the provision of an agreed statement of the issues to be determined at trial;

5.9.5.2 use of an agreed tender book of documents;

5.9.5.3 any late applications to amend pleadings;

5.9.5.4 any late requests for particulars;

5.9.5.5 the provision of written openings;

5.9.5.6 possible agreement on facts;

5.9.5.7 the identification of the witnesses (both lay and expert) who are to be called at the trial and whether it is necessary for all such witnesses to be called;

5.9.5.8 identifying the means by which the evidence of a particular witness may be shortened;

5.9.5.9 the order in which the witnesses are to be called (including any questions of interposition) and whether all lay evidence should be called before any expert witness is called by any party;

5.9.5.10 ensuring that there has been compliance with all the rules relating to expert evidence;

5.9.5.11 the appropriateness in the case of written witness statements;

5.9.5.12 identifying whether there are any witnesses who are able to attend to give evidence only at particular times;

5.9.5.13 the manner of taking expert evidence;

5.9.5.14 arrangements for any view/inspection in the course of the trial;

5.9.5.15 whether all attempts at settlement, including mediation, have been exhausted;

5.9.5.16 whether any interpreters are required for the trial;

5.9.5.17 requirements for disability access, hearing loops etc;

5.9.5.18 confirmation that counsel have been briefed;

5.9.5.19 updating the trial length estimate;

5.9.5.20 ensuring that all necessary subpoenas have been issued and served;

5.9.5.21 objections to witness statements or documentary evidence;

5.9.5.22 requiring counsel to confer in relation to any known objections to witness statements or documentary evidence;

5.9.5.23 provision of lists of authorities including the provision of such lists electronically with hyperlinks to the authorities themselves, or with the authorities on a compact disk or DVD;

5.9.5.24 whether the evidence of any witnesses should be heard by means of an audio-visual link.

5.9.6 Litigants who propose making any application at the pre-trial directions hearing are reminded of Rules 120(5) and 131(5) and (6).

Direction 5.10 – Tender Books

Introduction

5.10.1 The Court expects the parties to cooperate in the preparation of a joint tender book of documents for use at trial. Ordinarily a joint tender book should be prepared whenever the number of documents to be tendered at the trial (excluding experts' reports) will exceed 25.

5.10.2 The purpose of this Practice Direction is to provide a set of standard directions for the preparation of a joint tender book of documents for use at trial.

5.10.3 The parties are to comply with the standard directions unless the Court otherwise directs, or the parties otherwise agree.

5.10.4 The Court may direct, or the parties may agree, that the standard directions do not apply, or should be varied, to suit the circumstances of a particular case, including those cases:

5.10.4.1 which do not involve significant documentary evidence;

5.10.4.2 which are large and complex matters;

5.10.4.3 which involve multiple parties;

5.10.4.4 in which it is a defendant or third party who will be tendering more documents than the plaintiff; or

5.10.4.5 in which the plaintiff lacks the capacity or facilities with which to prepare a tender book.

Standard Directions

5.10.5 The plaintiff is, by no later than 28 days before the date fixed for the trial to commence, to provide to each other party:

5.10.5.1 a draft index to a tender book listing all the documents, other than experts' reports, which the plaintiff intends tendering at trial. The documents are to be listed in chronological sequence, or arranged in some other order appropriate for convenient use at the trial;

5.10.5.2 a copy of each of the documents listed in the draft index.

5.10.6 Each defendant is, by no later than 21 days before the date fixed for the trial to commence, to provide each other party with:

5.10.6.1 a list, in an appropriate sequence, of any additional documents, other than experts' reports, which the defendant intends tendering at trial; and

5.10.6.2 a copy of each of the documents in the defendant's list.

5.10.7 When there is a third party to the proceedings, the third party is, no later than 16 days before the date fixed for the trial to commence, to provide each other party with:

5.10.7.1 a list, in an appropriate sequence, of any additional documents, other than experts' reports, which the third party intends tendering at trial; and

5.10.7.2 a copy of the documents in the third party's list.

5.10.8 The plaintiff is, by no later than 10 days before the date fixed for the trial to commence, to provide each other party with one copy, and the Court with two copies, of the joint tender book.

5.10.9 The joint tender book is to contain in an appropriate sequence a paginated and indexed copy of each of the documents listed in the plaintiff's draft index and in any list of additional documents provided to the plaintiff.

5.10.10 Each party is, by no later than four business days before the date fixed for the trial to commence, to serve on each other party a document indicating which, if any, of the documents in the joint tender book will be the subject of an objection to the tender, together with a brief statement of the basis for objection.

5.10.11 The plaintiff is, at least one business day before the trial commences, to provide to the Court and to each other party a consolidated list of all the objections to the tender of documents in the joint tender book.

Direction 5.11 – Titles of Amended Pleadings (Rule 54(2))

5.11.1 An amended pleading filed under Rule 54(2) should be entitled as either the Second, Third, Fourth, etc, version of that pleading, as the case may be. The terms 'Amended', 'Further', 'Revised' or the like are not to appear in the title.

Example: If a Statement of Claim is being amended for the third time, the document should be entitled 'Fourth Statement of Claim'.

Direction 5.12 – Summaries of Argument: Non Appellate Proceedings

5.12.1 For all hearings other than appellate proceedings to which Chapter 6 of these Directions applies the Court may direct that summaries of argument be provided by the parties.

5.12.2 Unless contrary directions are given such summaries are to be delivered by email to the Court and emailed to, or served on, each other party in the manner set out in Direction 6.38:

5.12.2.1 by applicants at least 4 business days before the date set for the hearing; and

5.12.2.2 by respondents at least 2 business days before the date set for the hearing.

5.12.3 The summary should comply so far as is practicable with Directions 6.28 and 6.29. Unless there is a special reason, the summary should not contain quotations from the evidence, statutes, rules or authorities, but should instead give the references to them.

5.12.4 As the preparation of such a summary is a usual incident of preparation, it will not usually be appropriate for counsel to charge an additional fee for its preparation.

Chapter 6 – Appellate Proceedings

Introduction

6.1 Chapter 13 of the Rules and Chapter 6 of these Directions:

6.1.1 apply to all appeals and questions of law reserved for determination by the Court (Rule 293) except those under Part X of the *Criminal Law Consolidation Act* and others governed by Special Rules;

6.1.2 apply to all appeals from the Magistrates Court in both its civil and criminal jurisdictions;

6.1.3 apply to all appeals from the Youth Court;

6.1.4 apply to all appeals under the *Serious and Organised Crime (Control) Act 2008* and under the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.

Notice of Appeal

6.2 A notice of appeal (Rule 282(2)(a)) is to be in Form 29.

Applications for Permission to Appeal (Rules 289-292)

6.3 An interlocutory application under Rules 289(1)(c) and 291(2)(b) to a Judge or Master of the Court for permission to appeal against a judgment of that Judge or Master is to be made in accordance with Rule 131 in the proceeding in which the judgment was given.

6.4 A summons for permission to appeal in respect of a judgment of a lower court or tribunal under Rules 289(1)(b) and 291(1) is to be in Form 29A. There is no need also to issue an application under Rule 131.

6.5 When permission to appeal from a lower court or tribunal is granted on a summons issued under Direction 6.4, the notice of appeal pursuant to that permission is to be issued in the proceeding commenced by the summons.

6.6 If an appellant includes a request for permission in the notice of appeal (Rule 292(1)(a)), the appellant may, when filing the notice of appeal, also issue an interlocutory application under Rule 131 seeking a hearing of the application for permission in advance of the hearing of the appeal. In that event, the application will be listed in the chamber list for hearing by a Judge. If the appellant does not file an interlocutory application with the notice of appeal, the appeal will be listed for hearing in accordance with Directions 6.35 to 6.37 and, subject to any contrary order of the Judge, the application for permission and the substantive appeal will be heard at the same time.

Application Books Under Rule 290(1)(b)(ii)

6.7 The application books lodged under Rule 290(1)(b)(ii) in relation to an application for permission to appeal:

6.7.1 must contain a copy of the notice of appeal, a copy of each affidavit filed under Rule 290(1)(a), and a copy of any other document (other than the summary of argument) which it is necessary for the Court to consider in relation to the application;

6.7.2 should not include a copy of the transcript of the evidence, or of the exhibits tendered at trial, unless the inclusion of such documents is essential for the determination of the application. In those cases in which it is necessary for the Court to consider some evidence, the appellant should include copies only of the relevant pages of the evidence or of the exhibits;

6.7.3 should be paginated and contain a simple index identifying each document in the book, and the page at which the document commences;

6.7.4 should comply with Direction 6.9.

Case Books for Appellate Proceedings Before the Full Court (Rule 298)

Time for Lodgement

6.8 Case books must be lodged within two months of the commencement of the appellate proceeding and before it is set down for hearing.

Presentation

6.9 Case books should comply with the following:

6.9.1 the books must have a title page;

6.9.2 the books should be paginated and indexed;

6.9.3 documents in case books are to be copied using both sides of good quality A4 sized bond paper and their contents must be clear and legible;

6.9.4 case books are to be bound so that when opened they lie flat, eg, bound with spiral binding. Staples are not to be used in the binding;

6.9.5 the cover should be of manila type board not heavier than 300gsm;

6.9.6 a short description of the nature of each document should precede each document (eg, statement of claim).

The Index

6.10 This Direction applies to the index to be included in the case book:

6.10.1 the index is to be located immediately after the title page;

6.10.2 the index should contain columns for an item number, a short description of each document, and the document's date and page number. If a document has been amended the original date is to be shown in the date column with the amended date appearing with the document description;

6.10.3 in relation to each exhibit, including exhibits to affidavits, the index is to state the exhibit number or mark (including the letters “MFI” when appropriate) and the date of the document, and is to give a brief description of the document. Apart from those cases to which Direction 6.13.5 applies, if an exhibit tendered at trial or a trial book of documents contains more than one separate document, each document within the exhibit or trial book is to be separately identified

in the index, with a short description of each document, the date of the document and the page number in the case book of the document;

6.10.4 documents are to be numbered consecutively in the "Item Number" column of the index and these numbers are to appear in the body of the book at the head of the corresponding document;

6.10.5 in relation to the evidence of witnesses, the index is to show the surname, typed in capital letters, preceding the full given names and to provide the detail shown in the following example;

Example:

JONES John James	Pages
Examination	1-4
Cross Examination	4-8
Re-examination	8-9
Further Cross-examination	9-10

6.10.6 the Registrar may give directions requiring that the index be approved by him or her, and in any other case the index may be settled by the Registrar on request. See Rule 298(4);

6.10.7 subject to Direction 6.13.5, when the case book comprises more than one volume, a full index is to be included in each volume.

The Sequence of Documents

6.11 The documents in the case book should be arranged in the following order:

6.11.1 originating process and pleadings;

6.11.2 subject to Direction 6.14 the evidence, whether oral or by affidavit;

6.11.3 subject to Direction 6.14 the evidence taken on commission or before an examiner;

6.11.4 subject to Direction 6.13.5 the exhibits;

6.11.5 reasons for judgment of the primary Court or Judge;

6.11.6 formal judgment or sealed order of the primary Court or Judge;

6.11.7 the sealed order granting permission to appeal (if permission was necessary);

6.11.8 the notice of appeal to the Full Court;

6.11.9 any order referring a case or a point in a case to the Full Court for determination.

6.12 If the judgment or order appealed against was made by a Judge of the Court on appeal, the following additional documents are to be included in the case book before the notice of appeal:

6.12.1 the reasons for judgment given by the Judge on appeal;

6.12.2 the formal order of the Court on appeal;

6.12.3 any formal order granting permission to appeal (if permission was necessary).

The Exhibits

6.13 This Direction applies to the exhibits to be included in the case book:

6.13.1 the exhibits should be arranged in the order in which they were lettered or numbered at trial;

6.13.2 a note should be made at the foot of the first page of each exhibit of the page of transcript which records the tender of the exhibit;

6.13.3 at the top of the first page of each document copy a short description of the nature of the document is to be inserted;

6.13.4 if it is not practical to include colour copies of photographs exhibited at trial in the case book, the exhibited photographs are to be placed in a pocket inside the back cover. The exhibit number and the page of transcript at which the tender of the photograph is recorded is to be marked on the back of each photograph in the pocket;

6.13.5 when an exhibit tendered at trial contains several documents which were bundled, paginated and identified separately in an index (as in the case of a tendered book of documents containing a complete index of its contents) that exhibit may be replicated for the appeal in a separate volume or volumes of the case book without repagination and without incorporation of the content of the index in the case book index. Documents in the tender book which were not admitted at trial, or which are not relevant to the grounds of appeal, should be omitted, without there being any need to re-paginate or re-index the tender book. This Direction is not applicable if individual documents within a tender book were tendered and marked as separate exhibits.

The Evidence

6.14 This Direction applies to the provision of transcript in appellate proceedings before the Full Court:

6.14.1 in the case of appellate proceedings arising from judgments or proceedings of the Supreme Court, the District Court, or the Environment, Resources and Development Court, it is not necessary for the parties to include in the case book a copy of the transcript of the witnesses' evidence or of the proceedings. The Court will itself arrange for the transcript to be provided electronically to the members of the Full Court;

6.14.2 in the case of appellate proceedings arising from judgments or proceedings from any other court or tribunal, the party responsible for the carriage of the appellate proceeding is to seek directions from the Registrar as to whether it is necessary for that party to provide a paper copy of the transcript of the proceedings in the case book. In some cases, the Court may be able to arrange for the transcript to be provided electronically to the members of the Full Court;

6.14.3 whether or not the transcript of the evidence of witnesses is provided electronically, the index to the case book is to comply with Direction 6.10.5;

6.14.4 if a paper copy of the transcript of evidence is not included in the case book, the party responsible for the carriage of the appellate proceeding must, on request and upon receiving the appropriate fee for copying, provide another party to the proceeding with a supplementary case book containing a copy of the transcript;

6.14.5 In those cases in which the transcript of evidence is not available electronically, the transcript is to be provided in a separate volume of the case book maintaining the trial page numbering.

General

6.15 With a view to reducing the bulk of the case book, the parties should exclude all documents and parts of documents (especially parts which are merely formal) which are not relevant to the matter before the Full Court. For example, if the only issue on appeal is that of liability, evidence relating to damages must not be copied, and vice versa. As far as practicable parties should avoid the duplication of documents. Unnecessary repetition of formal headings is to be avoided in the body of the book, and merely formal parts of documents, such as jurats, formal identification of exhibits and the like, should be omitted unless there is special reason for including them. However, if documents have been copied in a way which makes it more convenient to include copies of the formal parts, that may be done. A concise summary of the excluded parts of documents may be included when necessary for purposes of clarity.

6.16 Lists of documents, pre-trial questions and their answers, affidavits and correspondence should not be included in the case book unless they were put in evidence. If pre-trial questions and answers are included they should be copied in parallel columns so that each answer appears opposite the corresponding question.

6.17 Addresses by counsel, argument and submissions are not to be included, unless there is a particular reason to do so. Directions are to be sought from the Registrar if the inclusion of any such material is proposed.

The Certificate

6.18 The party lodging the case books is to have a certificate signed by the lawyers for all parties, or by such of the parties personally as are not represented by lawyers, certifying that the books have been examined by them and that they are satisfied that the books have been prepared in accordance with the Practice Directions and are complete. This certificate is to be included as the last document in the case book. Even when such a certificate is provided, the Registrar may reject any case book which he or she considers to be unsatisfactory. The Registrar may waive the requirement for the certificate to be signed by those parties who have informed the Registrar in writing that they do not wish to participate in any way in the appeal.

Setting Down of Appellate Proceedings Before the Full Court

6.19 An appellate proceeding to be heard by the Full Court is to be set down by the appellant or the party having carriage of the proceeding within two months of the commencement of the proceeding. If permission has been granted to another

party under Rule 296(1) to set the proceeding down for hearing, that party is to set the proceeding down within 4 weeks of the grant of permission.

6.20 In order to set an appellate proceeding down (Rule 296) the party having the carriage of the matter must file two requests to set down (Form 30), three sets of case books and a completed 'Information Sheet' (Form 30A).

6.21 Once set down, the appellate proceeding will be entered in the list of matters for the next callover.

Listing of Hearing of Appellate Proceedings in the Full Court

6.22 Except in the month of December when there will be no callover, a callover of cases in the Full Court list will usually be heard at 9.15 am on the Friday fortnight preceding the first day of each sitting, ie, about 17 days before each sitting commences. The date and time of the callover in each month and the list of cases to be called over will be published in advance of the callover in the Court's case list.

6.23 At the callover, the Court will attempt to allocate a date and time for hearing of each case in the list. Cases not listed at a callover will be included in the list for the next callover.

6.24 The counsel or solicitors involved in each case should attend the callover with information concerning the availability of counsel and an estimate of the time which will be required for the hearing. Cases will be listed for hearing even if counsel, solicitors or the parties do not attend.

6.25 After the callover, the date and time for hearing of the matters listed will be published in the Court's case list.

6.26 If an urgent hearing of an appeal set down after the callover is required, the parties may seek a special listing by request made to the Registrar.

Proceedings other than Appellate Proceedings which are to be heard by the Full Court

6.27 An application which is to be heard by the Full Court must be filed in the Registry in the usual way. It will then be referred to the Appeals Clerk who will, if the matter is in order and is an appropriate for Full Court consideration, enter it in the list of matters for the next Full Court sittings. Applications for admission to practice as a legal practitioner will automatically be listed before the Full Court.

Summaries of Argument for Hearing of the Appeal (Rule 297)

6.28 The summary of argument for the hearing of an appellate proceeding should be as brief as possible and, without the permission of the Court granted prior to the filing of the document, is not to exceed ten pages. It should not be in the nature of a written submission.

6.29 The summary should:

6.29.1 contain a concise statement of the issues raised by the appeal;

6.29.2 provide the Court with an outline of the steps in the argument to be presented on each issue;

6.29.3 provide each other party with notice of the contentions to be advanced by that party;

6.29.4 contain a succinct statement of each contention followed by a reference to the authorities (giving page or paragraph numbers) and to the legislation (giving section numbers), relevant passages of the evidence and exhibits, and to the judgment under appeal;

6.29.5 Hyperlink each authority referred to in the summary to a page from which the authority in Rich Text Format (RTF), Portable Document Format (PDF), or other comparable format can be accessed, so as to facilitate access by the Court to that authority.

If alternatives are available, a searchable format of the authority is to be preferred over a non-searchable format. In the case of reports provided by Thomson Reuters (eg, CLR, SASR or NSWLR) or LexisNexis (eg, VLR) the link should therefore be to the HTML version (and not the PDF version) of the authorised report. In the case of reports sourced from Austlii (the medium neutral version), the link should be directly to the RTF version of the report.

If an online authorised series of reports is available to the party providing the list the hyperlink should be to the report of the case in that series, as well as to a freely available medium neutral version of the authority (if available).

If hyperlinking is not possible because, for example, an electronic report of the authority is not available, that authority should be marked in the summary with the words "hyperlinking unavailable".

If a hyperlink comprises more than 75 characters, parties should use a hyperlink shortening service such as http://goo.gl, http://bit.ly, or http://tinyurl.com to shorten the hyperlink to a manageable form.

In all cases, the hyperlink provided should be in addition to, and not in place of, a citation in conformity with Practice Direction 5.6.4.

The authorities are not to be provided as an attachment to the email.

6.29.6 and, if a party intends challenging any finding of fact:

6.29.6.1 identify the error relied upon (including any failure to make a finding of fact);

6.29.6.2 identify the finding which the party contends ought to have been made;

6.29.6.3 state concisely why, in the party's submission, the finding, or failure to make a finding, is erroneous;

6.29.6.4 give references to the evidence to be relied upon in support of the argument.

6.30 Subject to Rule 297(3)(b) and (c), ordinarily the summary should not set out passages from the judgment under appeal, from the evidence, or from the authorities relied upon but is to be a guide to these materials.

6.31 In an appropriate case, a separate chronology or a summary of the evidence concerning a particular issue may be helpful.

6.32 As preparation of a summary of argument is a necessary element in the preparation of an argument, it is usually not appropriate for counsel to charge an additional fee for its preparation.

Provision of Summaries of Argument, Chronologies and Summaries of Evidence – Full Court

6.33 The appellant's summary of argument and any chronology or summary of evidence must be delivered to the Court by emailing it to submissions@courts.sa.gov.au no later than 5.00 pm, four business days before the listed hearing date. The respondent's summary of argument and any chronology or summary of evidence must be delivered to the Court by emailing it to the same email address no later than 5.00 pm, two business days before the listing hearing date. In each case the email should have the subject line required by Direction 5.6.5.1.

6.34 A copy of each document must be emailed to each other party at the same time at which it is sent to the Court. In those cases in which an email address for another party is not known and cannot be reasonably ascertained, a copy of each document must be served on the other party as soon as practicable and, in any event, no later than 5.00 pm on the same day upon which the document is delivered to the Court.

A hard copy of the summary of argument must also be provided to the Court reporters prior to the commencement of the hearing.

Appellate Proceedings before a Single Judge

6.35 An appeal which is to be heard by a single Judge will be allocated a nominal hearing date no sooner than 21 days after the date of filing. This date will be the first day of the next single Judge Appeal Sittings (apart from January, usually the first Monday in each month). The Registrar will forward a notice to the parties confirming the nominal hearing date. A party is not required to set the appeal down.

6.35A Any party wishing to have the Court take into account the party's or counsel's availability when listing an appeal should make their request in writing as soon as practical after receiving notification of the nominal hearing date.

6.36 Approximately 10 days before the commencement of the single Judge Appeal Sittings, a warning list will be published in the Court's case list.

6.37 Parties should read the case lists in order to ascertain the date and time for the hearing of each appeal. The parties may contact the Associate to the named Judge to seek a different date and time for the hearing of the appeal but should not assume that the Court will be able to accommodate such a request.

Provision of Summaries of Argument, Chronologies and Summaries of Evidence – Single Judge Appeals

6.38 In the case of appeals to be heard by a single Judge whose identity is known, the appellant's summary of argument and any chronology or summary of evidence must be emailed to the chambers email address of the Judge who is to hear the appeal, no later than 5.00 pm, four business days before the listed hearing date. The respondent's summary of argument and any chronology or summary of

evidence must be emailed to the chambers email address of the Judge who is to hear the appeal no later than 5.00 pm, two business days before the hearing date. The chambers email addresses of the members of the Court may be ascertained from the link to the Supreme Court on the Courts Administration Authority's website (http://www.courts.sa.gov.au).

In those cases in which the identity of the single Judge is not known (and only in those cases), the email should be sent to submissions@courts.sa.gov.au with the subject line required by Direction 5.6.5.1.

In each case, a copy of each document must be emailed to each other party at the same time at which it is sent to the Court. In those cases in which an email address for another party is not known and cannot be reasonably ascertained, a copy of each document must be served on the other party no later than 5.00 pm on the same day upon which the document is emailed to the Court.

A hard copy of the summary must also be provided to the Court reporters prior to the commencement of the hearing.

Appeals from the Magistrates Court

6.39 In appeals under s 42 of the *Magistrates Court Act 1991*, the South Australian Police, whether as an appellant or respondent, are to be referred to as "Police", as in "Jones v Police" or "Police v Jones". They are not to be referred to as "South Australian Police" or "SA Police".

6.40 If by order of the Court an appeal under s 42 of the *Magistrates Court Act 1991* is to be heard by the Full Court, the appeal may be listed during either the monthly sittings of the Full Court or during the monthly sittings of the Court of Criminal Appeal. In either event, the party having the carriage of the appeal will be required to set the matter down for hearing and to supply the Court with case books in the normal manner.

Appeals Under the *Taxation Administration Act 1996* (SA)

6.41 Appeals under Division 2 of Part 10 of the *Taxation Administration Act 1996* (SA) should be commenced using Form 29 but with such modifications as are necessary for the circumstances of the case.

6.42 The respondent to the appeal is to be the Commissioner of State Taxation.

6.43 Insofar as such details are not set out in the body of the notice of appeal, the appellant is to attach to the notice a schedule setting out:

6.43.1 a statement of the facts giving rise to the assessment of the tax which is the subject of the appeal;

6.43.2 a statement of the facts said by the appellant to be relevant to the assessment of the tax;

6.43.3 a list of the documents said by the appellant to be relevant to the assessment of the tax; and

6.43.4 a statement of contention by the appellant as to why the tax should not be payable.

6.44 When filing the notice of appeal, the appellant is also to file an application for directions under Rule 131. That application will be made returnable before a

Judge or Master as soon as practicable, and, in any event, before any date is set for the hearing of the appeal.

6.45 The Commissioner of State Taxation is to file an address for service.

6.46 At the directions hearing the Court will give directions as to the response (if any) to the matters contained in the notice of appeal which should be filed by the Commissioner of State Taxation.

6.47 When the appeal is ready for hearing, it will be referred for hearing by a single Judge or Master.

6.48 If the principal issue on the appeal is one of valuation, the appeal will be referred to be heard in the LVD List.

Chapter 7 – Proceedings under the *Corporations Act 2001*

Direction 7.1 – Release and Remuneration of Liquidators

7.1.1 On an application for release of a liquidator the particulars provided should show:

7.1.1.1 The means by which the liquidator's, and any provisional liquidator's, remuneration has been fixed.

7.1.1.2 The amount and date of each payment of remuneration to the liquidator.

7.1.1.3 The amount and date of each payment of costs to lawyers and other agents made by the liquidator and whether the amounts of such costs have been fixed by this Court.

7.1.2 When a provisional liquidator or a liquidator seeks to have his/her remuneration fixed by the Court pursuant to section 473 of the *Corporations Act*:

7.1.2.1 The appropriate originating process should be issued and lodged with the Court.

7.1.2.2 An affidavit should be filed:

7.1.2.2.1 Detailing the work for which the remuneration is sought and the means by which the remuneration sought has been calculated.

7.1.2.2.2 When the application is made by a liquidator pursuant to section 473(3) it should state why remuneration cannot be fixed by a Committee of Inspection or a meeting of creditors.

7.1.3 An application for remuneration will usually be considered by a Master without the attendance of the liquidator. If a Master requires to hear a liquidator on the application, he or she will fix a date and time.

Direction 7.2 – Lump Sum Costs on Windings Up of Companies

7.2.1 When an application for the winding up of a company has been issued on or after the commencement of the *Supreme Court Civil Rules 2006*, and where a winding up order for a company has been made, the plaintiff or a supporting creditor may seek to have the amount of its costs and disbursements fixed in one of the following three ways:

7.2.1.1 By the Master making the winding up order at the time of the making of that order.

7.2.1.2 By a lump sum adjudication in the manner set out in paragraph 7.2.3 below.

7.2.1.3 In the ordinary way by lodging a bill in the usual form for adjudication.

7.2.2 Under paragraph 7.2.1.1 the total of the costs and disbursements will be fixed at the following amounts without the need to present any details of the costs or disbursements to the Court:

7.2.2.1 Plaintiff's costs where the plaintiff is not the company being wound up and that company was trading in South Australia - $3,750.

7.2.2.2 Plaintiff's costs where the plaintiff company is not the company being wound up and that company was not trading in South Australia - $4,100.

7.2.2.3 Plaintiff's costs where the plaintiff is the company being wound up - $3,400.

7.2.2.4 Plaintiff's costs where the plaintiff is not the company being wound up and that company was trading in South Australia and the plaintiff has an order for the costs of the appointment of a provisional liquidator - $4,500 (which includes all of the costs relating to the appointment of the provisional liquidator).

7.2.2.5 Plaintiff's costs when the plaintiff is not the company being wound up and that company was not trading in South Australia and the plaintiff has an order for the costs of the appointment of a provisional liquidator - $4,750 (which includes all of the costs relating to the appointment of the provisional liquidator).

7.2.2.6 Plaintiff's costs when the plaintiff is the company being wound up and the plaintiff has an order for the costs of the appointment of a provisional liquidator - $4,200 (which includes all of the costs relating to the appointment of the provisional liquidator).

7.2.2.7 Supporting creditor awarded costs - $750. (when one set of costs is awarded to more than one supporting creditor there is to be no increase in this item).

7.2.3 To obtain an adjudication for a lump sum under paragraph 7.2.1.2 the party should lodge a bill in the Registry in the following form:

Front Sheet in Accordance with Form 1 in Part 2

Under "DESCRIPTION OF DOCUMENT",

SCHEDULE OF COSTS OF THE PLAINTIFF FOR ADJUDICATION PURSUANT TO THE ORDER OF JUDGE X MADE ON 20 .
is to appear.

Lump sum costs and disbursements claimed pursuant to

Practice Direction "$ Y"
Add adjudication Fee
Allowed at =======
Allocatur

The bill of costs of the plaintiff (or as the case may be) has been adjudicated pursuant to the order made herein on 20 and has been allowed at $.

DATED 20 .

Registrar

THIS SCHEDULE OF COSTS is lodged by lawyers for the
whose address for service is ,

Phone

7.2.4 Any percentage increase which may be allowed on Schedule 1 to the *Supreme Court Civil Rules 2006* will not apply to the lump sum amounts in this Practice Direction.

7.2.5 When a party seeks that costs be fixed under paragraph 7.2.1.1 or 7.2.1.2 above, the Court will always retain a discretion to require that the costs be fixed by adjudication under paragraph 7.2.1.3 where the circumstances so require. When the costs have been fixed under paragraphs 7.2.1.1 or 7.2.1.2 the Court may permit a liquidator or other interested party to seek to have the order or Allocatur fixing such costs set aside and to have the costs adjudicated under paragraph 7.2.1.3 where it appears that the costs fixed may have been excessive.

7.2A – Lump Sum Costs on Windings up of Companies for Actions Commenced after 1 November 2008

7.2A.1 When an order for the winding up of a company is made in proceedings commenced on or after 1 November 2008 the plaintiff or a supporting creditor may apply to have the amount of its costs and disbursements fixed as follows:

7.2A.1.1 by the Judge or Master making the winding up order, at the time of the making of that order; or

7.2A.1.2 by a lump sum adjudication in the manner set out in paragraph 7.2.3; or

7.2A.1.3 in the ordinary way under Part 3 of Chapter 12 of the *Supreme Court Civil Rules 2006*

7.2A.2 Under paragraph 7.2A.1.1 the total of the costs and disbursements will be fixed at the following amounts without the need to present any details of the costs or disbursements to the Court:

7.2A.2.1 Plaintiff's costs when the plaintiff is not the company being wound up and that company was trading in South Australia - $5,950;

7.2A.2.2 Plaintiff's costs when the plaintiff is not the company being wound up and that company was not trading in South Australia - $6,300; (allowance for advertising)

7.2A.2.3 Plaintiff's costs when the plaintiff is not the company being wound up and that company was trading in South Australia and the plaintiff has an order for the costs of the appointment of a provisional liquidator - $6,700 (which includes all of the costs relating to the appointment of the provisional liquidator);

7.2A.2.4 Plaintiff's costs when the plaintiff is not the company being wound up and that company was not trading in South Australia and the plaintiff has an order for the costs of the appointment of a provisional liquidator - $6,950 (which includes all of the costs relating to the appointment of a provisional liquidator);

7.2A.2.5 Plaintiff's costs when the plaintiff is the company being wound up - $5,590.

7.2A.2.6 Plaintiff's costs when the plaintiff is the company being wound up and the plaintiff has an order for the costs of the appointment of a

provisional liquidator - $6,400 (which includes all of the costs relating to the appointment of the provisional liquidator);

7.2A.2.7 Supporting creditor awarded costs - $1,160 (when one set of costs is awarded to more than one supporting creditor there is to be no increase in this item);

7.2A.2.8 Supporting creditor is substituted as plaintiff— any amount fixed under 7.2A.2.7 plus $1,390.

7.2A.3 To obtain an adjudication for a lump sum under paragraph 7.2A.1.2, Practice Direction 7.2.3 applies.

7.2A.4 When any percentage increase is allowed on Schedule 1 to the Supreme Court Civil Rules 2006 that percentage increase, less 6.1%, is to be added to the lump sum amounts in this Practice Direction when orders for winding up are made on or after the date on which the increase takes effect.

7.2A.5 When a party seeks that costs be fixed under paragraphs 7.2A.1.1 or 7.2A.1.2 above, the Court retains a discretion to require that the costs be fixed under paragraph 7.2A.1.3.

7.2A.6 When the costs have been fixed under paragraphs 7.2A.1.1 or 7.2A.1.2 a liquidator or other interested party may apply to have the order or allocation set aside on the grounds that the costs fixed are excessive, and to have the costs fixed under paragraph 7.2A.1.3.

7.2B – Lump Sum Costs on Windings up of Companies for Actions Commenced after 1 November 2011

7.2B.1 When an order for the winding up of a company is made in proceedings commenced on or after 1 November 2011 the plaintiff or a supporting creditor may apply to have the amount of its costs and disbursements fixed as follows:

7.2B.1.1 by the Judge or Master making the winding up order, at the time of the making of that order; or

7.2B.1.2 by a lump sum adjudication in the manner set out in paragraph 7.2.3; or

7.2B.1.3 in the ordinary way under Part 3 of Chapter 12 of the *Supreme Court Civil Rules 2006*

7.2B.2 Under paragraph 7.2B.1.1 the total of the costs and disbursements will be fixed at the following amounts without the need to present any details of the costs or disbursements to the Court:

7.2B.2.1 Plaintiff's costs when the plaintiff is not the company being wound up and that company was trading in South Australia - $4,900 plus the filing fee;

7.2B.2.2 Plaintiff's costs when the plaintiff is not the company being wound up and that company was not trading in South Australia - $5,276 plus the filing fee; (allowance for advertising)

7.2B.2.3 Supporting creditor awarded costs - $1,250 (when one set of costs is awarded to more than one supporting creditor there is to be no increase in this item);

7.2B.2.4 Supporting creditor is substituted as plaintiff— any amount fixed under 7.2B.2.3 plus $1,500.

7.2B.3 Where the work done in obtaining a winding up order varies significantly from that generally described in paragraph 7.2B.2, the party seeking a costs order may request the Court on the making of the winding up order to allow a lump sum either more or less than those set out in paragraph 7.2B.2, to reflect the work actually done in obtaining the order.

7.2B.4 To obtain an adjudication for a lump sum under paragraph 7.2B.1.2, Practice Direction 7.2.3 applies.

7.2B.5 When any percentage increase is allowed on Schedule 2 to the Supreme Court Civil Rules 2006 that percentage increase is to be added to the lump sum amounts in this Practice Direction (not including filing fees) when orders for winding up are made on or after the date on which the increase takes effect.

7.2B.6 When a party seeks that costs be fixed under paragraphs 7.2B.1.1 or 7.2B.1.2 above, the Court retains a discretion to require that the costs be fixed under paragraph 7.2B.1.3.

7.2B.7 When the costs have been fixed under paragraphs 7.2B.1.1 or 7.2B.1.2 a liquidator or other interested party may apply to have the order or allocatur set aside on the grounds that the costs fixed are excessive, and to have the costs fixed under paragraph 7.2B.1.3.

Chapter 8 – Costs and Adjudications

Direction 8.1 – Costs in Estate Matters (Rule 263)

8.1 The Judges have been concerned at the relatively high costs which are being run up in litigation involving estates, particularly when there are a number of separately represented parties. In the past the Court has often as a matter of course tended to allow costs as between lawyer and client on the full Supreme Court scale to all parties out of the estate. Practitioners are reminded that the Court will exercise its general discretion as to costs under Rule 263 as appropriate in the circumstances of a particular case, but having particular regard to:

8.1.1 ordering costs against parties who have not succeeded;

8.1.2 ordering costs in the light of whatever offers have been made under Rule 187;

8.1.3 not giving full costs to separately represented parties where they could have properly been jointly represented;

8.1.4 awarding less than full costs where the amount in issue is relatively small.

Direction 8.2 – Schedules of Costs for Adjudications (Rule 273)

8.2.1 Evidence in letter form is to be lodged confirming service of the Schedule sought to be adjudicated.

8.2.2 Lawyers need not lodge their files and other supporting documents at the Registry when lodging Schedules of Costs for adjudication. If the Court requires the lawyer's file and supporting documents for an adjudication without attendance, or for inspection prior to the time set for an adjudication, a written notice to that effect will be given to the lawyer by leaving the same for collection by him/her in the Registry. When a lawyer has not lodged his/her file and other supporting documents prior to an appointment for an adjudication he or she must be able to produce them on request to the Adjudicating Officer at the adjudication.

8.2.3 Schedules of Costs under Rule 273 must:

8.2.3.1 Show the individual items for profit costs in the schedule without any percentage increases being added to those individual items.

8.2.3.2 Have each item in the schedule numbered consecutively.

8.2.3.3 Have each page in the schedule numbered.

8.2.3.4 Show the year in which the work claimed for was done at least once on each page of the schedule.

8.2.3.5 Be divided into parts which correspond to the period over which any particular percentage increase is applicable and make provision for the amount of the percentage increase that is to be added at the end of each such part.

8.2.4 Schedules of costs which are not in this form will not be accepted for adjudication.

8.2.5 Any notice of dispute filed pursuant to Rule 273(2) is to contain brief grounds for each item of dispute. Lawyers involved in any disputed adjudication shall confer

prior to the adjudication appointment with a view to resolving, limiting or clarifying the items in dispute. A date for adjudication of the schedule will not be fixed until written confirmation that the parties have conferred has been received by the Court.

Direction 8.3 – Application for Solicitor and Own Client Adjudication

An application for an adjudication for costs under Rule 272 (1) is to be in Form 54.

Chapter 9 – Mediations

Court-referred Mediations (Rule 220)

This Practice Direction applies to mediations under section 65 of the *Supreme Court Act 1935* and section 32 of the *District Court Act 1991*, but subject to any contrary directions given in a particular action.

Direction 9.1 – Panel of Mediators

9.1.1 The President of the Law Society of South Australia, The President of the Bar Association of South Australia and the President of the Institute of Arbitrators and Mediators Australia will establish, and review at least annually, a panel of suitable persons to whom the Courts may refer mediations ("the Panel").

9.1.2 Persons may only be admitted to the Panel if they:

9.1.2.1 have applied to be admitted to it; and

9.1.2.2 are suitable to be appointed under section 65 of the *Supreme Court Act 1935* or section 32 of the *District Court Act 1991*; and either:

9.1.2.2.1 have undertaken a course approved by the Chief Justice and the Chief Judge as set out in Appendix A and can demonstrate experience as Mediators; or

9.1.2.2.2 have established substantial practical experience in the conduct of mediations such that it is appropriate for them to be admitted to the Panel without having undertaken an approved course; or

9.1.2.2.3 are former Judges of the Supreme Court or of the District Court; or

9.1.2.2.4 are accredited as mediators by a Recognised Mediation Accreditation Body under the National Mediator Accreditation System.

9.1.3 Members of the Panel undertake to accept appointment by the Courts as Mediators for mediations proceeding under the terms of this Practice Direction.

9.1.4 The Law Society of South Australia will send to the Chief Justice and the Chief Judge by 1 July in each year, and at such other times as are requested, a list of the members of the Panel with such information about them as they may require.

9.1.5 The Chief Justice and the Chief Judge may at any time terminate the appointment of any person to the Panel.

9.1.6 An appointment to the Panel is no guarantee that any member of it will be nominated for a mediation.

Direction 9.2 – Mediation Officer

9.2.1 The Chief Justice and the Chief Judge will appoint a Mediation Officer ("the Mediation Officer").

9.2.2 The Mediation Officer will:

9.2.2.1 provide information to the parties to the proceedings;

9.2.2.2 contact nominated Mediators and provide information to them;

9.2.2.3 receive Mediators' reports at the conclusion of mediations; and

9.2.2.4 monitor the Court's file management system and contact the Mediator and/or the parties in the event of delay.

Direction 9.3 – Fees of Mediators

9.3.1 Mediators who are legal practitioners are entitled to charge fees for their work in accordance with the Supreme and District Courts' Indicator on Counsel Fees.

9.3.2 The fee charged under paragraph 9.3.1 must not exceed the Indicator unless a higher fee has been approved by a Judge or Master.

9.3.3 The fees for Mediators who are not legal practitioners are not to exceed those in the Indicator.

9.3.4 The parties to the action are jointly and severally liable for the payment of the Mediator's fees and the lawyers on the Court record for the parties are to use their best endeavours to ensure prompt payment of those fees.

Direction 9.4 – Security for Mediator's Fees

9.4.1 Where, by a term in the Mediation Agreement the Mediator is entitled to secure payment of an amount specified in that Agreement, that may be done in accordance with that Agreement by the deposit of that amount by a specified date into:

9.4.1.1 the Mediator's trust account;

9.4.1.2 the trust account operated by the Institute of Arbitrators and Mediators Australia; or

9.4.1.3 the trust account of a lawyer for one of the parties.

9.4.2 Unless the parties to the action agree otherwise they are jointly and severally liable for the payment of any security for the Mediator's fees.

9.4.3 In the event that the trust account of a lawyer for a party is used that lawyer undertakes that such funds are held in trust and will be used to pay the Mediator in accordance with the Mediation Agreement.

9.4.4 In the event that any fee is charged by the Institute of Arbitrators and Mediators Australia for the use of its trust account such fee is payable by the parties equally.

Direction 9.5 – Referral to Mediation

9.5.1 In any action the Court, in exercising its powers under Statute or the Rules, may refer the action, or any issues arising in the action, for mediation by a named member of the Panel ("the Mediator").

9.5.2 The Mediator is to be a member of the Panel agreed upon by the parties, but if they cannot agree it may be a member nominated by the Court.

9.5.3 Prior to the referral of an action for trial the parties may initiate a mediation by filing a consent order under Rule 227(4) signed by or on behalf of all parties substantially in the form in Appendix B.

9.5.4 The Court may give directions requiring a party to provide materials to the Mediator.

Direction 9.6 – Informing the Mediator

9.6.1 The Mediation Officer will advise the Mediator of the Order made and of other relevant details.

9.6.2 The Court will not provide its file to the Mediator.

Direction 9.7 – Mediation Agreement

9.7.1 The Mediator and all of the parties must as soon as practicable execute a written Mediation Agreement in such terms as are mutually agreed between them ("the Mediation Agreement").

9.7.2 The last of the Mediator and the parties to execute the Mediation Agreement is forthwith to lodge a copy of it with the Mediation Officer.

Direction 9.8 – Convening the Preliminary Conference

9.8.1 As soon as practicable after the reference for mediation each party is to notify the Mediator of an appropriate contact person for that party.

9.8.2 Within 10 business days of being advised of the reference the Mediator will convene a Preliminary Conference and notify all parties of its date, time and place.

9.8.3 If a Preliminary Conference is not convened in accordance with 9.1.9.2 above, the Mediation Officer is to be notified and is to liaise with the parties about any further arrangements for the mediation.

9.8.4 Prior to the Preliminary Conference the parties are to deliver to the Mediator a copy of the Court record for the action and all pleadings filed in the action, or if no pleadings have been filed, a summary of the issues said to create the dispute and a statement of the relief claimed or outcome desired from the proceedings.

Direction 9.9 – Preliminary Conference

9.91 At the Preliminary Conference the Mediator will:

9.9.1.1 address the matters to be dealt with in the Mediation Agreement, including the basis of the fees to be charged by the Mediator and the liability of the parties for such fees;

9.9.1.2 ensure that the Mediation Agreement is signed;

9.9.1.3 give directions for the preparation of any documents for use at the mediation;

9.9.1.4 obtain agreement from the parties on any documents to be provided for use during the mediation;

9.9.1.5 set a timetable for the mediation with an expectation that it will be conducted within 4 weeks of the Preliminary Conference;

9.9.1.6 ensure that where required proper security has been made for payment of the Mediator's fees.

9.9.2 The parties will attend the Preliminary Conference and co-operate with the mediation process including:

9.9.2.1 signing the Mediation Agreement;

9.9.2.2 preparing any documents for use of the Mediator as may be required by the Court or the Mediator;

9.9.2.3 complying with all directions as to conduct of the Mediation as may be given by the Court or the Mediator;

9.9.2.4 ensuring prompt payment of the Mediator's fees.

Direction 9.10 – Premises and Facilities

9.10.1 If the Court has premises and facilities available for the Preliminary Conference or the mediation, the Mediator may book the premises and facilities with the Mediation Officer.

9.10.2 If the Preliminary Conference, or the mediation, exceeds the time allocated by the booking, and the premises and facilities are required for other purposes, either the mediation must be adjourned or the venue shifted to other premises arranged by the Mediator and the parties.

Direction 9.11 – Change or Discharge of the Mediator

9.11.1 If the Mediator nominated is unable to conduct, or complete, the mediation, the parties may obtain the appointment of an agreed alternative Mediator from the Panel by filing at Court a Consent Order under Rule 227(4) in substantially the form of the order in Appendix B.

9.11.2 If, prior to the completion of the mediation, the Mediator and all parties agree that the mediation should not be pursued to its conclusion, the Order for the mediation may be discharged by a Consent Order under Rule 227(4) being filed at Court in substantially the form of the Order set out in Appendix B.

9.11.3 Where there is any delay in the completion of the mediation the Mediator, or any party, may apply to the Court for further directions.

Direction 9.12 – Conduct of the Mediation

The mediation will be conducted as required by the relevant legislation and Rules, and in accordance with the Orders of the Court and the Mediation Agreement.

Direction 9.13 – Report on Progress of the Mediation

9.13.1 The Mediator will:

9.13.1.1 within 2 days of the completion of the mediation;

9.13.1.2 no later than 7 weeks after the referral for mediation; and

9.13.1.3 as requested by the Court or the Mediation Officer, report in writing to the Court on the result or progress of the mediation and, if it is not completed, on how long it is expected to take to complete it.

9.13.2 A report from a Mediator in the form in Appendix C may be sent to the Mediation Officer by post, fax or email.

Direction 9.14 – Implementing Settlements

If the mediation results in the settlement of the action or its outcome requires orders to be made, the parties may, as appropriate:

9.14.1 obtain a consent judgment under Rule 227(4) above by filing at Court a duly executed consent to judgment;

9.14.2 request the Mediation Officer to list the action before a Master or a Judge for such orders as are required; or

9.14.3 discontinue the action.

Direction 9.15 – Review Date

The Court file management system may create a review date approximately 8 weeks after the referral to mediation to review the report from the Mediator and the progress of the action.

Direction 9.16 – Questionnaire

The Mediation Officer may invite the parties and their lawyers to respond to a questionnaire setting out their views of the mediation experience. The responses may be used when reviewing the Panel of Mediators or any changes to the scheme.

APPENDIX A

APPROVED COURSES FOR THE PURPOSES OF ADMISSION TO PANEL OF MEDIATORS

1. An approved course is one that meets the following minimum criteria:
   (a) the course comprises at least 3 days of training;
   (b) the course includes a theoretical background to mediation and negotiation as well as practical training sessions;
   (c) the course provides the opportunity for each participant to undertake at least two simulated exercises as Mediator, with one of those exercises being assessed by a trained Mediator who provides direct written feedback to the Mediator on their performance;
   (d) the course has been approved by the Chief Justice or nominee.
2. Currently approved courses are those of the following institutions:
   (a) University of South Australia
      - Graduate Certificate in Mediation (Family)
      - Graduate Certificate in Mediation (Workplace Relations)
      - Graduate Diploma in Conflict Management
      - Master of Conflict Management

   (b) Adelaide University in Conjunction with IAMA
      - Three day Basic Mediation Workshop and Mediation Accreditation session (as an adjunct to the Professional Certificate in Arbitration and Mediation)

   (c) LEADR (Leading Edge Alternate Dispute Resolvers)
      - Four day mediation workshop

   (d) Bond University
      - Three day Basic Mediation Course

   (e) The Accord Group
      - Four day Commercial Mediation Training Course

   (f) The Institute of Arbitrators and Mediators
      - National Mediation and Conciliation Course

   (g) Harvard Law School – Mediation Workshop
   (h) Optima Psychologists & Mediators
      - Mediation Intensive May 6-9 and May 21-23 2004

   (i) The Trillium Group
      - Negotiation & Mediation Workshops

(j) Adelaide University

- The Professional Certificate in Mediation/ Deans Certificate in Mediation held on 20 & 21 September 2003
- Accreditation for Mediators 2 day course held in December 2004

APPENDIX B

CONSENT ORDERS

ACTION FRONT SHEET
CONSENT ORDER TO BE MADE UNDER RULE 227

By consent and pursuant to Direction 9.1 THE COURT ORDERS AS FOLLOWS:

(*vary or supplement the following as appropriate and delete as required)*

- Pursuant to section 65 of the *Supreme Court Act 1935* (or section 32 of the *District Court Act 1991*) the Court appoints *AB* as a Mediator and refers the action (*or specified issues)* to mediation.
- The Order made on …… 200X appointing *AB* as Mediator is varied by substituting *XY* as the Mediator as from the date of this Order and *AB* is released as the Mediator.
- The Order made on …….. 200... for mediation is discharged and *AB* is released as the Mediator.

DATED 200

…….
Mediator

……..
Lawyers for the Plaintiff

……..
Lawyers for the Defendant

APPENDIX C

REPORT BY MEDIATOR TO THE MEDIATION OFFICER

Supreme/District Court

I, *AB*, the Mediator appointed by the Court in this action, report to the Court as follows:

1 (*Set out the result of the mediation or progress made in it.)*

2 *(If applicable)* I anticipate the mediation will be completed by 20XX.

DATED 20XX.

……

Mediator

Chapter 10 – Proceedings to be Dealt with in the LVD Division

Direction 10.1 – Appeals and Applications under Section 30 of the *Environment, Resources and Development Court Act 1993*

10.1.1. Appeals as of right under section 30(1)(a)-(d) inclusive and section 30(4) of the Act will be heard by a Judge of the Land and Valuation Division, and will be listed for hearing and determination by a single Judge in the first available list in the Land and Valuation Division.

10.1.2 Applications for permission to appeal under section 30(2) of the Act will be heard by a single judge in the Land and Valuation Division.

10.1.3 Upon the filing of the application for permission, the applicant, or the lawyers acting for the applicant, shall contact the Listing Co-ordinator to obtain a hearing date.

Chapter 11 –Admissions and Roll of Practitioners

Direction 11.1 – Oath or Affirmation of Admission

The Oath or Affirmation of Admission to be administered to newly admitted practitioners of the Court is as follows:

> "I …… (state full name) do promise and swear that I will diligently and honestly perform the duties of a practitioner of this Court and will faithfully serve and uphold the administration of justice under the Constitution of the Commonwealth of Australia and the laws of this State and of the other States and Territories of Australia. So help me God. I swear."
>
> "I …….. (state full name) do solemnly and truly declare promise and affirm that I will diligently and honestly perform the duties of a practitioner of this Court and will faithfully serve and uphold the administration of justice under the Constitution of the Commonwealth of Australia and the laws of this State and of the other States and Territories of Australia."

Direction 11.2 – Re-Subscription of Roll of Practitioners

11.2.1 **Female Practitioners Who Marry**

When the name of a female practitioner is changed in consequence of marriage she will be permitted to re-subscribe the Roll of Practitioners, without moving the Full Court for that purpose, upon production of evidence of her change of name. Such evidence should normally be given by affidavit or statutory declaration sworn, affirmed or declared and filed in the same matter as that in which the original order for her admission was made and exhibiting a certified copy of the marriage certificate.

11.2.2 **Practitioners who have Changed their Names and Female Married Practitioners who Desire to Practise in their Maiden Names**

When a practitioner has changed his/her name, or where a female practitioner has subscribed the Roll of Practitioners in her married name wishes to practise in her maiden name, the practitioner will be permitted to re-subscribe the Roll of Practitioners, without moving the Full Court for that purpose, upon production of evidence of the change of name.

11.2.3. In the case of a change of name such evidence should normally be given by affidavit or statutory declaration sworn affirmed or declared and filed in the original admission matter and exhibiting a copy of the certificate of change of name or a copy of the birth certificate on which the notation of change has been made.

11.2.4 In the case of a married female practitioner who desires to practise in her maiden name such evidence should normally be given by affidavit or statutory declaration sworn affirmed or declared and filed in the original admission matter deposing to the fact that she proposes to practise in her maiden name and to use that name for all professional purposes.

Direction 11.3 – Signing of The Roll of Practitioners by Interstate Practitioners who have been Permitted To Practise In South Australia

11.3.1 This Practice Direction shall take effect on and from its publication.

11.3.2 The aim of this Practice Direction is to provide a procedure whereby interstate and overseas practitioners, who have been admitted to practice in South Australia, whether under the provisions of *the Mutual Recognition Act 1992* (Cth), the *Trans-Tasman Mutual Recognition Act 1997* (Cth) or otherwise, may sign a supplementary Roll of Practitioners and take the oath or affirmation of admission.

11.3.3 The name of the practitioner admitted to practice in South Australia will be entered on the Roll of Practitioners in the usual order and manner but the following endorsement will appear alongside the practitioner's name: "see supplementary Roll of Practitioners".

11.3.4 The practitioner shall take the oath (affirmation) of admission by affidavit (declaration) in the following terms:

"I …….. of ……...:

do promise and swear (do sincerely and truly declare, promise and affirm) that I will diligently and honestly perform the duties of a practitioner of this Court and will faithfully serve and uphold the administration of justice under the Constitution of the Commonwealth of Australia and the laws of this State and of the other States and Territories of Australia. So help me God. (Delete the passage 'o held me God' if affirmation).

Sworn (affirmed) at …… the ……day of…… 20…. before me."

11.3.5 After the practitioner has been admitted to practice in South Australia, the Secretary to the Board of Examiners will cause to be forwarded to the admittee the document to be signed by the admittee, which, when signed and returned, will be included by the Registrar of the Supreme Court in the supplementary Roll of Practitioners.

11.3.6 At the time of signing the supplementary Roll the practitioner must swear or affirm two affidavits, the first containing the oath (or affirmation) of admission and the second in relation to the signing of a supplementary Roll. The form of the latter affidavit is as follows:

"I …… of …… make oath and say (do solemnly and truly declare and affirm) that contemporaneously with the swearing (affirming) of this my affidavit I did:

11.3.6.1 take the oath (affirmation) of admission as appears by affidavit, a copy of which is now produced to me and marked "(initials of deponent) 1"; and

11.3.6.2 signed my name in the supplementary Roll of Practitioners.

Sworn (affirmed) at …….. the …… day of …….. 20….. before me."

11.3.7 The right-hand column of the relevant portion of the supplementary Roll of Practitioners contains the following endorsement:

"The within named …….. appeared before me on the …….. day of …… 20…… and signed his/her name as hereinbefore appears in my presence.

……"

The person before whom the supplementary Roll is signed must complete this endorsement after the practitioner has signed the supplementary Roll.

11.3.8 The supplementary Roll and the two affidavits must be respectively signed and sworn or affirmed before the same person at the same time. The original signed document and the two affidavits must be returned to the Secretary to the Board of Examiners, c/- Law Society of South Australia, 124 Waymouth Street, Adelaide 5000.

11.3.9 In every case the person before whom the supplementary Roll is signed and the affidavits are sworn or affirmed must provide the following information beneath his/her her signature:

"Please print name ……...

Authority pursuant to which oath or affirmation administered ……"

11.3.10 A practising certificate will not be issued to an admittee until the requirements of this Practice Direction are complied with.

Direction 11.4 - Supreme Court Admission Rules

The following practice direction is published in order to make the profession aware of a number of requirements relating to the preparation of the documentation forming part of an application to be admitted, particularly where interstate and overseas applications are concerned.

11.4.1 Each page of any statutory declaration filed in relation to an application for admission must be signed by the deponent and the person before whom the declaration is made. Each page must bear the date upon which the declaration is made. The person before whom the declaration was made must state their entitlement to take the declaration and set out their name in full. The provision for the signatures of the declarant and the person before whom the declaration is made must not be on a page separate from the conclusion of the matters contained in the declaration.

11.4.2 Proof of service must be by statutory declaration made by the person who actually served the document required to be served.

11.4.3 When filing the newspaper advertisement containing notice of the applicant's intention to apply for admission as a practitioner in South Australia, the relevant page of the newspaper bearing the date of publication must be provided.

11.4.4 When filing the Board of Examiners Report, a filing clause does not need to be included in the Report.

11.4.5 At least 14 days prior to the date on which the Court will be moved to admit the applicant, the applicant or his/her solicitor must advise by letter the Secretary to the Board of Examiners as to whether the applicant has been exempted from the requirement to attend the Full Court sittings at which his/her application for admission will be listed. If the applicant has been so exempted he or she must request that the Supplementary Roll sheet be forwarded after the Court has

approved their admission to enable the Roll to be signed in accordance with Practice Direction 11.3. In the event that the above notification is not received it will be assumed that the applicant intends to attend personally at the relevant sittings.

Direction 11.5 – *Mutual Recognition (South Australia) Act 1993*

Guidelines and information promulgated by the Board of Examiners of the Supreme Court of South Australia pursuant to section 39 of the *Mutual Recognition Act 1992* (Cth) and the *Trans-Tasman Mutual Recognition Act 1997* (Cth)

11.5.1 The following guidelines are published pursuant to section 39(2) of the *Mutual Recognition Act 1992* (Cth) and section 39(2) of the *Trans-Tasman Mutual Recognition Act 1997* (Cth) ("the Acts").

11.5.2 All previous guidelines are revoked.

11.5.3 In dealing with application for registration under the Acts pursuant to Rules 15 and 16 of the *Supreme Court Admission Rules 1999*, the Board of Examiners will have regard to the following considerations, insofar as they may be relevant to the particular application, while reserving the right to deal with the application in such other manner as may appear to be proper, having regard to the Board's statutory and other responsibilities.

11.5.4 In these guidelines, the definitions in Rules 15 and 16 apply.

11.5.5 The Board might impose as a condition of registration

11.5.5.1 a condition on registration equating with a condition applying to the applicant's practice in the first State or New Zealand; or

11.5.5.2 a condition equating with a condition or restriction which would be imposed in South Australia upon a practitioner of similar standing and experience; or

11.5.5.3 both of 11.5.5.1 and 11.5.5.2.

11.5.6 The discretion as to the imposition of conditions will generally be exercised so as to impose conditions on the right to and the manner of practice in South Australia which equate with conditions applying to the applicant's registration in the first State or New Zealand, although in a particular case, if thought fit, other conditions, either in lieu or in addition to any condition applying to the applicant's registration in the first State or New Zealand, will be imposed within the limits prescribed by section 20(5) of the *Mutual Recognition Act* and section 19(5) of the *Trans-Tasman Mutual Recognition Act*.

11.5.7 Applicants will be granted registration to practise as a barrister and solicitor in South Australia irrespective of whether or not the applicant practises solely as either in the first State or New Zealand.

11.5.8 A practitioner who, at the time of filing an application, has in any State or Territory or in New Zealand carried on practice for a continuous period of not less than three years following admission to practice, or for aggregate periods of practice amounting to no less than three years during any period of five years immediately preceding the filing of an application will normally be entitled to registration in South Australia free of any conditions or restrictions, if at the time of the application for registration no condition or restriction applies to his/her practice in the first State or in New Zealand.

11.5.9 Each application for registration pursuant to the *Mutual Recognition Act* must be made in accordance with Form 6 or 7 of the *Supreme Court Admission Rules 1999*, and be filed with a backsheet.

11.5.10 An applicant is required to include within paragraph 6 of the application for registration full details of any condition or restriction on admission imposed by the admitting authority and (where applicable) any condition (including the terms of any pupillage) imposed by Act of Parliament, Rule of Regulation or by the authority charged with the responsibility for issuing practising certificates, in the first State or New Zealand and any other State or Territory where the applicant is admitted.

11.5.11 The application for registration must be accompanied by the relevant filing fee.

11.5.12 Upon the Board of Examiners approval of an applicant's registration in South Australia the Secretary to the Board of Examiners will forward to the applicant a Notification of Registration Certificate, a Supplementary Roll sheet and a copy of Practice Direction 11.3 and will enter his/her name into the Roll of Practitioners.

11.5.13 The supplementary Roll sheet must be signed and witnessed and the two (2) affidavits referred to in Practice Direction 11.3 above must be prepared and, together, posted to the Secretary to the Board of Examiners. A registrant pursuant to these Acts is not entitled to be issued with a practising certificate by the Registrar of the Supreme Court until the Secretary to the Board of Examiners has received his/her Supplementary Roll sheet and accompanying affidavits.

Direction 11.6 – Guidelines for LPEAC Rule 9 Applications To Board of Examiners for Re-Issue of a Practising Certificate

11.6.1 An Application for the re-issue of a practising certificate when a current South Australian certificate has not been held for three or more years, is to be made by way of statutory declaration and forwarded to the Legal Practitioners' Registry for consideration by the Board of Examiners. The following matters must be addressed in the statutory declaration:

11.6.1.1 Date of first admission in South Australia and of any other jurisdiction in which admitted.

11.6.1.2 Period(s) during which a South Australian practising certificate was held including the period when the last practising certificate was held.

11.6.1.3 Details of practice during the period when a practising certificate was held including, whether work was full or part-time, and details of the type of work carried out (or nature of employment).

11.6.1.4 Details of practice or other employment (particularly law-related employment) since the last South Australian practising certificate was held.

11.6.1.5 A statement providing evidence that the practitioner has not practised the profession of law without holding a practising certificate and has not committed any other act that might constitute a proper ground for disciplinary action, or, if otherwise, details of practice without a practising certificate.

11.6.1.6 Details of any disciplinary matters.

11.6.1.7 Details of intended future practice, eg whether the applicant proposes to practise on his/her own account or as partner or employee in law firm or government department or in some other capacity.

11.6.2 A Certificate of Good Standing from the Legal Practitioners Conduct Board must be provided to the Board of Examiners.

11.6.3 When the applicant has been admitted in other jurisdictions, the Board requires a Certificate of Fitness/Certificate of Good Standing from the appropriate authority in each of the jurisdictions in which the practitioner has been admitted.

11.6.4 The Board takes into account requirements affecting all practitioners which may have changed since the applicant last practised. In this regard the Board has imposed conditions, when appropriate, that an applicant within a specified period, usually twelve months, of the date of issue of the first renewed practising certificate:

11.6.4.1 is to attend and complete any course work for either the trust account element of the GDLP Law Practice Course or of the Trust Account Bridging Course conducted by the Law Society of South Australia;

11.6.4.2 is to attend and complete any course work the GDLP Risk Management Education Programme.

11.6.5 The Board may further impose conditions restricting the right of practice of the applicant to that of an employed solicitor under the supervision of a legal practitioner who has been admitted in South Australia for at least five years for a period specified by the Board and/or requiring the applicant to attend a specified number of hours of structured continuing legal education within a specified period (and when areas of future legal practice are nominated, possibly within those areas).

11.6.6 Further, when an applicant wishes to act for an employer who is not a legal practitioner the Board has, in appropriate circumstances, required an applicant to restrict his/her rights of practice to acting only for his/her current employer.

11.6.7 Applicants should consider these possible conditions or restrictions when preparing their application and address them if necessary.

11.6.8 Each applicant who is required to attend or complete course work, or structured continuing legal education, or to work under supervision for a specified period shall, prior to the further renewal of any practising certificate, provide evidence to the Legal Practitioners' Registry that the conditions imposed have been complied with within the specified period.

All documentation and enquiries should be directed to:

Board of Examiners
Legal Practitioners' Registry
124 Waymouth Street OR GPO Box 2066
ADELAIDE SA 5000 ADELAIDE SA 5001

Tel: (08) 8229 0251

Fax: (08) 8231 1919

Direction 11.7 – Applications Under Sections 89 and 89A of the *Legal Practitioners Act 1981*

11.7.1 Actions brought pursuant to Sections 89(1) and 89A of the *Legal Practitioners Act* shall be commenced by Summons (Form 2) seeking orders contemplated by Sections 89(2) and 89A(c) of the Act. For example:

"That the name of the defendant be struck off the Roll of Practitioners maintained by the Court pursuant to the provisions of the *Legal Practitioners Act 1981*."

11.7.2 The Summons should be supported by affidavit to which is exhibited any Report of the Legal Practitioners Disciplinary Tribunal.

11.7.3 At the time of the filing the Summons, the plaintiff shall file an interlocutory application seeking general directions. The Registrar will make the application returnable before a Master. The duplicate of the application for directions must be served on the defendant with the Summons and supporting affidavit.

11.7.4 On the hearing of the application for directions the Court will give such directions as are necessary including a direction as to whether or not the hearing of the Summons is to be referred to a single Judge or to the Full Court.

11.7.5 Upon a Summons being referred to the Full Court for hearing, with respect to setting the matter down for hearing and in all other relevant aspects, the provisions of Practice Direction 6 shall apply *mutatis mutandis*.

Chapter 12 – Appointment of Senior Counsel

Direction 12.1 – Introduction

This is Supreme Court Practice Directions 2006 Amendment No 4. This Practice Direction takes effect on the 12th day of May.2008. Practice Direction 12 of 2006 is hereby revoked.

Direction 12.2

The purpose of this Practice Direction is to establish a procedure for the appointment of Senior Counsel in the State of South Australia.

Direction 12.3

Appointment to the office of Senior Counsel shall be by the Chief Justice on behalf of the Court.

Direction 12.4 – Criteria for Appointment

12.4.1 Appointment as Senior Counsel will be made on the basis of a combination of the following qualities:

- 12.4.1.1 sufficient standing, evidenced by a high level of professional eminence and distinction;
- 12.4.1.2 wide experience in advocacy;
- 12.4.1.3 highly developed advocacy skills;
- 12.4.1.4 legal learning, such that the applicant may properly be described as learned in the law;
- 12.4.1.5 integrity, such that the applicant's honesty and candour is beyond question;
- 12.4.1.6 availability;
- 12.4.1.7 independence.

12.4.2 **Integrity** includes:

- 12.4.2.1 a reputation for honesty, discretion and plain dealing with the courts, professional colleagues and clients;
- 12.4.2.2 independence of mind;
- 12.4.2.3 professional standing, namely, having the respect of the judiciary and the profession with respect to observing duties to the courts and to the administration of justice, while preparing and presenting a client's case with dedication and skill, and having the trust and confidence of professional colleagues.

12.4.3 **Availability** involves a practitioner adopting a mode of practice which ensures that his or her services are available generally to prospective clients and are not unduly restricted by client or business relationships. This does not preclude the acceptance of a general or special retainer on behalf of a client. Senior Counsel must honour the duty to accept briefs to appear within their area of practice and for which they are available, regardless of any personal opinions about the parties or about the causes, and subject only to exceptions relating to appropriate fees and conflicting obligations. The criterion of availability does not apply to counsel

holding a statutory office or in the employment of the Crown or the Legal Services Commission.

12.4.4 **Independence** includes objectivity and detachment. Besides absence of connections which restrict availability, it involves the ability and courage to give advice and to make decisions which serve the best interest of the client and the administration of justice.

Direction 12.5 – Application

12.5.1 Application must be made to the Chief Justice by completing Form 41 to these Practice Directions. A copy of the form may be downloaded from the Courts Administration Authority website. The completed application is to be emailed in pdf format to chambers.chiefjustice@courts.sa.gov.au. No other documents, such as references, are to be included.

12.5.2 In order to be considered in any calendar year, an application must be emailed by 30 June in that year.

12.5.3 An applicant must disclose in the application whether he or she is the subject of any disciplinary proceedings and any other fact that might disqualify the applicant from appointment as senior counsel and is subject to a continuing obligation to do so until he or she has been appointed.

12.5.4 An applicant who is unsuccessful in the year of application will be reconsidered in the following year, but not in subsequent years, without further application being made. An applicant may submit a revised application for consideration before 30 June of the following year if relevant information has changed. An applicant who is unsuccessful in two consecutive years may submit a fresh application in a subsequent year.

Direction 12.6 – Consultation

12.6.1 As soon as practicable after 30 June in each year the Chief Justice will provide a list of the current year's applicants and copies of the relevant applications, including revised applications, to:

12.6.1.1 the Attorney-General;

12.6.1.2 Judges of the Supreme Court;

12.6.1.3 Masters of the Supreme Court;

12.6.1.4 the senior resident Judge of the Federal Court of Australia;

12.6.1.5 the senior resident Judge of the Family Court of Australia;

12.6.1.6 the Chief Judge of the District Court;

12.6.1.7 the Senior Judge of the Industrial Relations Court;

12.6.1.8 the Chief Magistrate of the Magistrates Court;

12.6.1.9 the Senior Resident Member of the Administrative Appeals Tribunal;

12.6.1.10 the Solicitor-General;

12.6.1.12 the President of the South Australian Bar Association;

12.6.1.13 the President of the Law Society of South Australia;

12.6.1.14 the President of the Women Lawyers Association;

12.6.1.15 the Director of Public Prosecutions;

12.6.1.16 the Chief Counsel of the Legal Services Commission.

12.6.2 It is expected that the persons referred to below will consult as specified in the following sub-paragraphs:

12.6.2.1 in the case of the senior resident Judge of the Federal Court and the Family Court, the other Judges of those courts resident in the jurisdiction and the other Judges of those courts before whom the applicant has appeared, if thought fit;

12.6.2.2 in the case of the Chief Judge of the District Court, the Judges of the District Court;

12.6.2.3 in the case of the Presidents of the South Australian Bar Association and the Law Society of South Australia, their respective council or executive as the case may be and such other members of those bodies as the respective Presidents consider appropriate;

12.6.2.4 in the case of the head of another jurisdiction, judicial officers of that jurisdiction before whom the applicant has appeared.

12.6.3 The fact that an application has been made, and its terms, shall be treated as confidential, and shall only be disclosed to the extent necessary to enable the processes of consultation referred to in this Practice Direction. All consultations should be undertaken with discretion, respecting as far as possible the privacy of applicants.

12.6.4 As soon as practicable after providing a copy of the applications, the Chief Justice will appoint a time for the following persons to meet as a group with the Chief Justice for the purpose of consultation on the applications:

- The Attorney-General or the Attorney-General's nominee;
- The Solicitor-General;
- The President of the Law Society of South Australia or the President's nominee;
- The President of the South Australian Bar Association or the President's nominee;
- The President of the Women Lawyers' Association or the President's Nominee;
- The Director of Public Prosecutions (SA);
- The Chief Counsel of the Legal Services Commission.

12.6.5 As soon as practicable after consulting with the persons referred to in 12.6.4, the Chief Justice will appoint a time for the following persons to meet as a group with the Chief Justice for the purpose of consultation on the applications:

- The senior puisne Judge of the Supreme Court and the junior puisne Judge of the Supreme Court;
- The Chief Judge of the District Court;
- The Chief Magistrate;

- The senior resident Judge of the Federal Court of Australia;
- The senior resident Judge of the Family Court of Australia;
- The senior Judge of the Industrial Relations Court
- The senior resident member of the Administrative Appeals Tribunal.

12.6.6 The Judges and Masters of the Supreme Court may comment to the Chief Justice on the applications if they wish. The Chief Justice will meet with any of the Judges or Masters who wish to comment.

12.6.7 If an applicant nominates for consultation a head of another jurisdiction in which the applicant practises, the Chief Justice will forward a copy of the application to the head of that jurisdiction, and will invite that person to comment on the application.

Direction 12.7 – Appointment

12.7.1 After taking account of the opinions of the persons consulted pursuant to this Practice Direction, the Chief Justice will decide which applicants will be appointed to the office of Senior Counsel, and will advise each applicant in writing of the outcome of their application. The appointment of Senior Counsel shall be announced publicly, and shall be published in the South Australian Government Gazette.

12.7.2 The Chief Justice will not usually provide reasons for declining to appoint an applicant. However, the Chief Justice may, of his or her own volition, or at the request of a person with whom the Chief Justice is required to consult, offer to meet with an unsuccessful applicant to discuss the application and the reason for its refusal. An unsuccessful applicant may request such a meeting.

12.7.3 Appointments will be made under the hand of the Chief Justice by an instrument in writing bearing the seal of the Supreme Court and will, if practicable, be announced no later than the 30th day of November in each year.

Direction 12.8 – Attire

12.8.1 Subject to the requirements and permission of particular courts, tribunals and other jurisdictions, Senior Counsel shall wear the court dress generally worn by Senior Counsel [see Practice Direction No 5.7].

Direction 12.9 – Title and Use of Post Nominals

12.9.1 A person appointed as Senior Counsel will be entitled to the appellation of Senior Counsel, and to the use of the abbreviation "SC" after his or her name.

12.9.2 Any person holding the office of Queen's Counsel in and for the State of South Australia shall be entitled to adopt the appellation of Senior Counsel and to be recognised as such upon giving notice of such adoption and upon giving notice of resignation from the office of Queen's Counsel to the Chief Justice for transmission to His Excellency the Governor. Any such Queen's Counsel shall be entitled to be recognised as Senior Counsel from the date of such notice, but shall take precedence as and be deemed to hold office as Senior Counsel in accordance with the date of his or her appointment as Queen's Counsel.

12.9.3 Any person holding the office of Queen's Counsel in and for the State of South Australia shall be entitled to retain the style or appellation of Queen's Counsel,

and shall take precedence in accordance with the date of his or her appointment as Queen's Counsel.

Direction 12.10 – Undertaking

12.10.1 Senior Counsel, by seeking and achieving appointment, undertake;

12.10.1.1 to confine the nature of their practice to the type of work usually performed by Senior Counsel and to do so in a manner consistent with the standards reflected in the criteria for appointment;

12.10.1.2 to use the designation only while they remain practising barristers in sole practice or retained under statute by the Crown, or during temporary appointments in a legal capacity to a court, tribunal or statutory body, or in retirement from legal practice; and

12.10.1.3 that if they practise in future as a solicitor or in partnership or association with a solicitor they will not, while so practising, permit their partners or associates to attribute to them, in connection with such legal practice, the title SC or Senior Counsel or any other indicia of the Office of Senior Counsel.

12.10.1.4 to disclose in writing to the Chief Justice as soon as practicable the result of any disciplinary proceedings taken against them after their appointment.

Direction 12.11 – Seniority

12.11.1 Senior Counsel will rank in seniority according to the date of their appointment, and in the case of persons appointed on the same day, in order determined by the instrument of appointment.

Direction 12.12 – Interstate Queen's Counsel or Senior Counsel

12.12.1 Queen's Counsel and Senior Counsel, appointed as such elsewhere in Australia, will be accorded in the courts of this State the title under which they practise in the jurisdiction in which they were appointed and the status and privileges of Senior Counsel in this State, without the necessity of obtaining a separate appointment as Senior Counsel or Queen's Counsel in South Australia.

12.12.2 If admitted as a legal practitioner in this State, such a person will rank in seniority, if already Queen's Counsel or Senior Counsel at the time of admission in South Australia, as though appointed Senior Counsel on the date of admission, and if appointed Queen's Counsel or Senior Counsel after the date of South Australian admission, from the date of the appointment.

Direction 12.13 – Revocation and Resignation

12.13.1 A Senior Counsel may resign his or her appointment by writing, signed by counsel and delivered to the Chief Justice.

12.13.2 The Chief Justice may revoke an appointment as Senior Counsel, including that of a person previously appointed as Queen's Counsel in and for the State of South Australia who has adopted the style or appellation of Senior Counsel, if in disciplinary proceedings the Supreme Court or the Legal Practitioners Disciplinary Tribunal or the Legal Practitioners Conduct Board finds the person guilty of conduct which, in the opinion of the Chief Justice, is incompatible with

the office of Senior Counsel, or if in the opinion of the Chief Justice that person has acted or practised in a manner incompatible with the office of Senior Counsel or if in the opinion of the Chief Justice that person is otherwise unfit to hold the office of Senior Counsel. Before exercising the powers conferred by this provision the Chief Justice will give the person concerned an opportunity to show cause why his or her appointment or recognition should not be revoked.

12.13.3 Without limiting the power of the Chief Justice under para 12.13.2, any Senior Counsel who changes his or her manner of practice will be expected to offer to resign his or her appointment. The Chief Justice may accept the resignation if the Chief Justice considers that, in the changed circumstances, the person does not qualify for appointment.

12.13.4 The revocation or resignation of an appointment shall be published in the South Australian Government Gazette.

Direction 12.14 – Interpretation

12.14.1 In this Practice Direction a reference to the Chief Justice includes an Acting Chief Justice. If the Chief Justice is temporarily unable to perform the duties of the office, or is disqualified from discharging his or her functions under this Practice Direction, the powers of the Chief Justice shall devolve upon the senior puisne judge, or the next most senior judge who is available.

12.14.2 If the senior puisne judge or the junior puisne judge is temporarily unable to discharge their respective functions under this Practice Direction or are disqualified from discharging their respective functions under this Practice Direction, their function shall devolve upon, as the case may be, the next most senior judge or next most junior judge who is available.

Chapter 13 – Miscellaneous

Direction 13.1 – Titles of Judges

13.1.1. The Chief Justice of the Supreme Court is to be addressed and referred to by the title "Chief Justice", eg, "Chief Justice Doyle."

13.1.2 The other Judges of the Supreme Court are to be addressed and referred to by the title "Justice", eg, "Justice Brown".

13.1.3 In hearings, a Judge of the Supreme Court should be addressed as "Your Honour".

13.1.4 In draft orders, documents filed in the Court and in correspondence Judges of the Supreme Court are to be referred to as "The Honourable Chief Justice…." or as "The Honourable Justice….", as the case may be.

Direction 13.2 – Titles of Masters

As all Masters of the Supreme Court now hold Commissions as Judges of the District Court, lawyers are requested to note:

13.2.1 In correspondence a Master should be addressed as "Judge X, Master of the Supreme Court".

13.2.2 In interlocutory hearings a Master should be addressed as "Judge", "Your Honour" or "Master".

13.2.3 In trials a Master should be addressed as "Your Honour".

13.2.4 In the drawing of orders the heading should read as set out in Direction 1.5 above.

Direction 13.3 – Pre-Judgment Interest

13.3.1 The appropriate rate for the calculation of interest on pre-judgment economic losses under s 30C of the Supreme Court Act 1935 is a matter for determination by the Judge or Master in each case. However, as a guide only, and subject to any contrary legislative provision, the Court may calculate interest in such cases as follows:

13.3.1.1 in respect of the period from 1 January to 30 June in any year or any part of that period in any year, the cash rate of interest last set by the Reserve Bank of Australia prior to that 1 January, plus 4%;

and

13.3.1.2 in respect of the period from 1 July to 31 December in any year or any part of that period in any year, the cash rate of interest last set by the Reserve Bank of Australia prior to that 1 July, plus 4%.

Chapter 14 – Approved Forms

14.1 The Forms approved for documents to be filed in the Court (Rule 42) are those contained in Part 2 of these Practice Directions.

History of Amendment

The *Supreme Court Practice Directions 2006*, Part I – Practice Directions, have been amended as set out in the table below.

Practice Direction		Effective Date
1.2.1	amended am12	31 August 2009
1.7	inserted am15	1 October 2010
2.1	substituted am2	1 May 2007
2.2.14	amended am2	1 May 2007
2.2 Annexure	inserted am2	1 May 2007
3.1	renumbered am3	1 January 2008
3.1.4	inserted am3	1 January 2008
3.1.5	inserted am3	1 January 2008
3.1.6	inserted am13	1 May 2010
	substituted am22	1 April 2012
	amended am23	**1 December 2012**
3.1.6.3	**substituted am23**	**1 December 2012**
3.1.7	inserted am13	1 May 2010
	substituted am22	1 April 2012
3.1.8	inserted am22	1 April 2012
3.1.8.1	inserted am22	1 April 2012
3.1.8.2	inserted am22	1 April 2012
3.1.9	**inserted am23**	**1 December 2012**
3.2	renumbered am3	1 January 2008
3.2A	inserted am6	1 June 2008
3.3	renumbered am3	1 January 2008
3.3A	**inserted am23**	**1 December 2012**
3.4.4	inserted am11	1 July 2009
3.9.7.1.2	deleted am3	1 January 2008
3.9.7.2	substituted am3	1 January 2008
3.9.10.1	amended am6	1 June 2008
3.9.10.2	amended am6	1 June 2008
4.1.4	amended am15	1 October 2010
4.3	substituted am2	1 May 2007
4.4.8	amended am6	1 June 2008
4.5	inserted am2	1 May 2007
4.5.7	amended am6	1 June 2008
4.6	inserted am13	1 May 2010
4.8	inserted am11	1 November 2010
4.9	inserted am18	1 April 2011
4.10	**inserted am23**	**1 December 2012**
5.1 (heading)	amended am17	1 February 2011
5.1	amended am17	1 February 2011
5.4.5	renumbered am2	1 May 2007
5.4.5.2	inserted am2	1 May 2007
5.6	substituted am14	1 July 2010
5.6.4	amended am21	1 February 2012
5.6.5	substituted am21	1 February 2012
5.6.5.1	amended am6	1 June 2008

Practice Direction		Effective Date
5.6.6	deleted am21	1 February 2012
5.6.7	renumbered am21	1 February 2012
5.6.8	renumbered am21	1 February 2012
5.7.1	amended am5	12 May 2008
5.9	inserted am11	1 July 2009
5.9.5	**amended am23**	**1 December 2012**
5.9.5.24	**inserted am23**	**1 December 2012**
5.10	inserted am13	1 May 2010
5.11	inserted am13	1 May 2010
5.12	inserted am14	1 July 2010
5.12.2	amended am21	1 February 2012
6 (whole chapter)	substituted am14	1 July 2010
6 preliminary note	amended am7	1 July 2008
6.1.1	amended am2	1 May 2007
6.1.2	amended am2	1 May 2007
6.1.3	amended am2	1 May 2007
	amended am9	1 January 2009
6.1.5.1	amended am2	1 May 2007
6.1.8	inserted am2	1 May 2007
6.2.2.1	substituted am7	1 July 2008
6.2.4.1	renumbered am1	7 December 2006
6.2.4.2	inserted am1	7 December 2006
6.3.9	amended am6	1 June 2008
6.3.11	amended am6	1 June 2008
6.3.12	amended am6	1 June 2008
6.29.5	substituted am21	1 February 2012
6.29.5	renumbered am21	1 February 2012
6.33	substituted am21	1 February 2012
6.34	substituted am21	1 February 2012
6.35A	**inserted am23**	**1 December 2012**
6.38	substituted am21	1 February 2012
7.2.1.2	amended am2	1 May 2007
7.2.1.3	amended am2	1 May 2007
7.2.3	amended am2	1 May 2007
7.2.3 (form)	amended am2	1 May 2007
7.2.5	amended am2	1 May 2007
7.2A	inserted am8	1 November 2008
7.2B	inserted am20	1 December 2011
8	amended am2	1 May 2007
8.2.1	amended am6	1 June 2008
8.2.2	amended am2	1 May 2007
8.2.4	amended am2	1 May 2007
8.2.5	amended am2	1 May 2007
8.3	inserted am17	1 February 2011
9.1.2.2.3	amended am13	1 May 2010
9.1.2.2.4	inserted am13	1 May 2010
9.2.2.3	deleted am12	31 August 2009
9.2.2.4	renumbered am12	31 August 2009
9.2.2.5	renumbered am12	31 August 2009
9.10.1	amended am12	31 August 2009

Practice Direction		Effective Date
9.10.2	amended am12	31 August 2009
9 Appendix A	amended am13	1 May 2010
12	substituted am4	12 May 2008
12.3.2	amended am3	1 January 2008
12.3.3	amended am3	1 January 2008
12.4.1	amended am3	1 January 2008
12.4.3	amended am3	1 January 2008
12.5.1	amended am3	1 January 2008
	substituted am23	**1 December 2012**
12.5.2	**substituted am23**	**1 December 2012**
12.6.1.14	**amended am23**	**1 December 2012**
12.6.1.15	**inserted am23**	**1 December 2012**
12.6.1.16	**inserted am23**	**1 December 2012**
12.6.4	**amended am23**	**1 December 2012**
12.6.4 (2 dot points)	**inserted am23**	**1 December 2012**
13.1 (heading)	deleted am10	1 April 2009
13.1.1	deleted am10	1 April 2009
13.1	inserted am10	1 April 2009
13.1.2 (heading)	deleted am10	1 April 2009
13.1.2.1	renumbered am10	1 April 2009
13.1.2.2	renumbered am10	1 April 2009
13.1.2.3	renumbered am10	1 April 2009
13.1.2.4	renumbered am10	1 April 2009
13.2 (heading)	inserted am10	1 April 2009
13.3	inserted am13	1 May 2010
14.2	amended am2	1 May 2007