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**THE SOUTH AUSTRALIAN  
GOVERNMENT GAZETTE**

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**All instruments appearing in this gazette are to be considered official, and obeyed as such**

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# RULES OF COURT

SUPREME COURT ACT 1935

DISTRICT COURT ACT 1991

MAGISTRATES COURT ACT 1991

YOUTH COURT ACT 1993

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT ACT 1993

LOCAL GOVERNMENT (ELECTIONS) ACT 1999

FIRST NATIONS VOICE ACT 2023

SOUTH AUSTRALIA

*Uniform Civil (No 13) Amending Rules 2024*

By virtue and in pursuance of the *Supreme Court Act 1935*, the *District Court Act 1991*, the *Magistrates Court Act 1991*, the *Youth Court Act 1993*, the *Environment, Resources and Development Court Act 1993*, the *Local Government (Elections) Act 1999*, the *First Nations Voice Act 2023* and all other enabling powers, we, the Chief Justice of the Supreme Court, the Chief Judge of the District Court (in respect of the District Court and the Court of Disputed Returns), the Acting Chief Magistrate of the Magistrates Court, the Judge of the Youth Court, and the Senior Judge of the Environment, Resources and Development Court, make the following *Uniform Civil (No 13) Amending Rules 2024*.

1. These rules may be cited as the *Uniform Civil (No 13) Amending Rules 2024*.
2. The amendments made by these rules come into effect on the later of—
  - (a) Wednesday, 1 January 2025; or
  - (b) the date of their publication in the Gazette.
3. In these rules—

the **commencement date** means the date on which these rules come into effect under rule 2;

the **Previous Rules** means—
  - (a) the *Environment, Resources and Development Court Reinstated Rules 2024*;
  - (b) the *Environment, Resources and Development Court (Native Title) Reinstated Rules 2024*;
  - (c) the *First Nations Voice Court of Disputed Returns Reinstated Rules 2024*;
  - (d) the *Probate Rules 2015*; and
  - (e) the *Supplementary Probate Rules 2015*.

the **Rules** means the *Uniform Civil Rules 2020*.
4. The Previous rules are repealed.
5. Unless the Environment, Resources and Development Court otherwise orders—
  - (a) these rules apply to—
    - (i) a proceeding commenced; and
    - (ii) a step in a proceeding taken, in the Environment, Resources and Development Court on or after the commencement date; and
  - (b) the Previous rules continue to govern a step in a proceeding taken before the commencement date.
6. Unless the Supreme Court in its testamentary jurisdiction otherwise orders—
  - (a) these rules apply to—
    - (i) proceedings commenced on or after the commencement date; and
    - (ii) steps taken or required to be taken on matters occurring on or after the commencement date in proceedings commenced before the commencement date.
  - (b) The Court may direct that these rules, or the rules in force before these rules were made, apply to a transitional proceeding or a particular step or matter in a transitional proceeding.
7. In case of doubt or difficulty about whether these rules or the Previous rules apply to a step in a proceeding or any other aspect of a proceeding, the Court may order that either these rules or the Previous rules do apply regardless of the operation of rule 5 or rule 6.
8. The rules are amended as set out below.
9. The preamble of the rules is deleted and replaced as follows:

“By virtue and in pursuance of the *Supreme Court Act 1935*, the *District Court Act 1991*, the *Magistrates Court Act 1991*, the *Youth Court Act 1993*, the *Environment, Resources and Development Court Act 1993*, the *Local Government (Elections) Act 1999*, the *First Nations Voice Act 2023* and all other enabling powers, we, the Chief Justice of the Supreme Court, the Chief Judge of the District Court (in respect of the District Court and the Court of Disputed Returns), the Acting Chief Magistrate of the Magistrates Court, the Judge of the Youth Court, and the Senior Judge of the Environment, Resources and Development Court make the following Uniform Civil rules 2020.”
10. The list of Acts under which the rules are made immediately before the Table of Contents is amended to insert “*Environment, Resources and Development Court Act 1993*”, “*Local Government (Elections) Act 1991*” and “*First Nations Voice Act 2023*” immediately after “*Youth Court Act 1993*”.
11. Subrule 1.6(1) is amended by deleting the words “and Youth Court” and inserting the words “, Youth Court, Environment, Resources and Development Court and Court of Disputed Returns” before the words “other than an excluded proceeding”.

12. In Subrule 2.1(1) the definition of “the Act” is amended by inserting after subparagraph (d) a new definition (e) as follows:  
“(e) in the context of or in respect of the Environment, Resources and Development Court—the *Environment, Resources and Development Court Act 1993*;”
13. In subrule 2.1(1) new definitions of “associate judge” and “associate justice” are inserted after the definition of “applicant” as follows:  
“*associate judge* includes an auxiliary associate judge;  
“*associate justice* includes an auxiliary associate justice;”
14. In subrule 2.1(1) the definition of “Chief Judicial Officer” is amended by inserting after subparagraph (d), 2 new definitions, (e) and (f) as follows:  
“(e) in respect of the Environment, Resources and Development Court—the Senior Judge of the Environment, Resources and Development Court;  
(f) in respect of the Court of Disputed Returns—the Chief Judge of the District Court;”
15. In subrule 2.1(1) a new definition of “commissioner” is inserted after the definition of “commencement date” as follows:  
“*commissioner* includes an auxiliary commissioner;”
16. In subrule 2.1(1) the definition of “the Court” is amended by deleting the words “or Youth Court” and inserting the words “Youth Court, Environment, Resources and Development Court or Court of Disputed Returns” immediately before the words “as applicable”.
17. In subrule 2.1(1) a new definition of “court officer” is inserted after the definition of “the Court of Appeal” as follows:  
“*court officer* means a judicial officer or a non-judicial officer of the Court;”
18. In subrule 2.1(1) a new definition of “ERD Court or Environment, Resources and Development Court” is inserted after the definition of “enforcement process” as follows:  
“*ERD Court or Environment, Resources and Development Court* means the Environment, Resources and Development Court of South Australia;”
19. In subrule 2.1(1) a new definition of “judge” is inserted after the definition of “joint interest” as follows:  
“*judge* includes an auxiliary judge;”
20. In subrule 2.1(1) the definition of “judicial officer” is amended by inserting after subparagraph (d), 2 new definitions “(e)” and “(f)” as follows:  
“(e) in respect of the ERD Court—a Judge, Auxiliary Judge, Associate Judge, Auxiliary Associate Judge, Commissioner or Judicial Registrar of the Court or a Registrar exercising judicial power of the Court conferred by rule 11.5;  
(f) in respect of the Court of Disputed Returns—a Judge or Auxiliary Judge;”
21. In subrule 2.1(1) a new definition of “justice” is inserted after the definition of “judicial officer” as follows:  
“*justice* includes an auxiliary justice;”
22. In subrule 2.1(1), a new definition of “Magistrate” is inserted after the definition of “LPEAC” as follows:  
“*Magistrate* includes an auxiliary magistrate;”
23. In subrule 2.1(1), a new definition of “Probate Registrar” is inserted after the definition of “Previous rules” as follows:  
“*Probate Registrar* means Registrar of Probates or an acting Registrar, a deputy Registrar of Probates or an acting deputy Registrar;”
24. In subrule 2.1(1), the definition of “proceeding” is amended by:
  - (a) inserting a new subparagraph “(c)” as follows:  
“(c) an online application, a caveat, renunciation or citation governed by Chapter 25;” and
  - (b) renumbering existing subparagraphs “(c)” and “(d)” as subparagraphs “(d)” and “(e)”.
25. In subrule 2.1(1) the definition of “a Registrar” is amended by inserting after subparagraph (d), 2 new definitions “(e)” and “(f)” as follows:  
“(e) in respect of the ERD Court—the Registrar, a Deputy Registrar, or a person acting as the Registrar or a Deputy Registrar of the Court;  
(f) in respect of the Court of Disputed Returns—the Registrar, a Deputy Registrar, or a person acting as the Registrar or a Deputy Registrar of the District Court;”
26. In subrule 2.1(1) the definition of “the Registrar” is amended by inserting after subparagraph (d), 2 new definitions “(e)” and “(f)” as follows:  
“(e) in respect of the ERD Court—the Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;  
(f) in respect of the Court of Disputed Returns—the Registrar of the District Court and includes a person to whom a function of the Registrar has been delegated;”
27. In subrule 2.1(1) a new definition “Senior Judge” is inserted after the definition of “search order” as follows:  
“*Senior Judge* means the Senior Judge of the ERD Court;”
28. Rule 11.1 is amended by:
  - (a) Inserting a new subrule (3) as follows:  
“(3) The testamentary causes jurisdiction of the Supreme Court may be exercised by the Probate Registrar.”
  - (b) Renumbering the existing subrules (3), (4), (5), (6), and (7) as subrules (4), (5), (6), (7) and (8).

29. New rules 11.4, 11.5 and 11.6 are inserted immediately after rule 11.3 as follows:

**“11.4—Original jurisdiction—Youth Court**

The jurisdiction of the Youth Court, except the jurisdiction to hear a contempt charge or when a statute otherwise provides, may be exercised by a Judicial Registrar in all proceedings.

**Note—**

Section 15(1) of the *Youth Court Act 1993* provides that, subject to the Act, the Court, when sitting to adjudicate on any matter, must be constituted of the Judge of the Court, a magistrate or a judicial registrar.

Section 10C of the *Youth Court Act 1993* provides that judicial registrars may exercise such jurisdiction of the Court as assigned by the Judge of the Court or the rules.

Section 14(7) of the *Youth Court Act 1993* provides that a registrar may issue summonses and warrants on behalf of the Court; *adjourn proceedings or exercise any procedural or non-judicial powers assigned by the rules.*

**11.5—Original jurisdiction—ERD Court**

- (1) In addition to any other powers conferred upon an Associate Judge by these rules or otherwise, an Associate Judge of the Court has jurisdiction to—
- (a) with the consent of all parties to the action, make any order which the Court is empowered to make in that action;
  - (b) make an interim or interlocutory order or issue an interim or interlocutory injunction;
  - (c) make an order requiring a party to produce particulars, a list of relevant documents or specified documents pursuant to Part 4 of Chapter 15;
  - (d) make an order for substituted service or any other order relating to the service of documents;
  - (e) when the Court has made an order for costs against a party, tax the costs to be paid pursuant to such order;
  - (f) order any party to a proceeding before the Court to give security for the payment of costs or make any other order in relation thereto or pursuant to section 39 of the *Environment, Resources and Development Court Act 1993*;
  - (g) make an order remitting or reducing any court fees to be paid by a party in accordance with subsection 45(2) of the *Environment, Resources and Development Court Act 1993*;
  - (h) preside at a conference conducted pursuant to section 16 of the *Environment, Resources and Development Court Act 1993*, and may, whilst so presiding, refer any questions of law to a Judge of the Court for determination;
  - (i) adjourn any matter set for hearing or list any matter for hearing, including making an order for the early hearing of any matter;
  - (j) settle an order of the Court (either final, interlocutory or interim) and direct that such order be sealed.
- (2) When exercising any of the powers conferred by this rule or by any of these rules, an Associate Judge shall constitute the Court.

**Note—**

Section 14(1) of the *Environment, Resources and Development Court Act 1993* provides that, subject to that section the Senior Judge may determine that the Court be constituted of a Judge, Magistrate, Commissioner or Judicial Registrar sitting alone; or by two or more Commissioners sitting together; or by a Judge, a Commissioner and a Magistrate or another Commissioner.

**11.6—Original jurisdiction—Court of Disputed Returns**

**Note—**

Section 103(1) of the *Electoral Act 1985* provides that the Supreme Court is the Court of Disputed Returns. Section 103(2) of the *Electoral Act 1985* provides that the jurisdiction of the Supreme Court when sitting as the Court of Disputed Returns is exercisable by a single judge.

Section 67(2) of the *Local Government (Elections) Act 1993* provides that the Court of Disputed Returns is constituted of a District Court Judge.

Clause 18(2) of Schedule 1 to the *First Nations Voice Act 2023* provides that the Court of Disputed Returns is constituted of a District Court Judge.”

30. Existing rules 11.4 and 11.5 are renumbered as rules 11.7 and 11.8.  
 31. New rules 11.9 and 11.10 are inserted immediately after renumbered rule 11.8 as follows:

**“11.9—Assessors and arbitrators—Supreme, District and Magistrates Courts**

The Court may make orders in a proceeding for the appointment of—

- (a) an assessor when a statute authorises or requires the appointment of an assessor, including the manner in which the assessor is to assist in the decision-making function of the Court;
- (b) an arbitrator, including the scope of the matter referred to the arbitrator for trial and the powers of the Court that may be exercised by the arbitrator;

**Notes—**

Section 71 of the *Supreme Court Act 1935* provides that the Court may in any matter call in the aid of one or more assessors and try and hear such matter wholly or partially with the assistance of such assessors. Section 20(4) of the *District Court Act 1991* and section 7B of the *Magistrates Court Act 1991* address the appointment of assessors when an Act conferring jurisdiction provides that the Court is to sit with assessors in exercising that jurisdiction.

Section 66 of the *Supreme Court Act 1935*, section 33 of the *District Court Act 1991* and section 28 of the *Magistrates Court Act 1991* provide that the Court may refer a civil proceeding or any issues arising in a civil proceeding for trial by an arbitrator.

**11.10—Experts—Supreme, District, Magistrates and ERD Courts**

The Court may make orders in a proceeding for the appointment of an expert, including the scope of the matter referred to the expert for investigation and report and the powers of the Court that may be exercised by the expert.

**Notes—**

Section 67 of the *Supreme Court Act 1935*, section 34 of the *District Court Act 1991*, section 29 of the *Magistrates Court Act 1991* and section 27 of the *Environment, Resources and Development Act 1993* provide that the Court may refer any question arising in a proceeding for investigation and report by a referee who is an expert in the relevant field.”

32. The note to rule 13.1 is amended by inserting the following below the last note:  
 “Section 10(1) of the *Youth Court Act 1993* provides that the Judge is responsible for the administration of the Court. Section 10(8) of the *Youth Court Act 1993* provides for the Governor to appoint a District Court Judge as Acting Judge of the Court.  
 Section 8(3) of the *Environment, Resources and Development Act 1993* provides that the Senior Judge is responsible for the administration of the Court. Section 8(7) of the *Environment, Resources and Development Court Act 1993* provides for the Governor to appoint a District Court Judge as Acting Judge of the Court.”
33. The note to rule 13.2 is amended by inserting the following below the last note:  
 “Section 12(1) of the *Youth Court Act 1993* provides that the Registrar is the Court’s principal administrative officer. Section 13 of the *Youth Court Act 1993* provides that the administrative staff are responsible to the Judge of the Court.  
 Section 14(1)(a) of the *Environment, Resources and Development Act 1993* provides that the Registrar is the Court’s chief administrative officer. Section 14(4) of the *Environment, Resources and Development Act 1993* provides that the administrative staff are responsible to the Senior Judge for the proper and efficient discharge of their duties.”
34. Subrule 13.4(4) is amended by inserting after subrule 13.4(4)(c) new subrules (d), (e), and (f) as follows:  
 “(d) a Magistrate in the Youth Court;  
 (e) an Associate Judge in the ERD Court;  
 (f) a Judge in the Court of Disputed Returns.”
35. Rule 32.2 deleted and a new rule 32.2 is inserted as follows:  
**“32.2—Filing of documents on restricted access basis**  
 (1) In this rule, *access* means access to view, download or copy a document.  
 (2) Subject to section 131 of the *Supreme Court Act 1935*, a party may, at the same time as filing a document, apply by interlocutory application for an order:  
 (a) to restrict access to a filed document to judicial officers and chambers staff; or  
 (b) to restrict access by a party or any other person to a filed document.  
**Note—**  
 Section 131(1) of the *Supreme Court Act 1935* provides for access to certain court records by members of the public. Section 131(2)(ba) of the *Supreme Court Act 1935* provides for inspection of sensitive material in the custody of the Court only with the permission of the Court.  
 (3) The Court may order that a document to be filed be filed, or if already filed be treated as filed, on a restricted access basis.  
 (4) Access to a formal offer (other than one expressed to be open) filed under rule 132.4 or a pre-action document filed under rule 61.7, 61.9 or 61.10 is to be restricted from the judicial officer assigned or expected to hear and determine the proceeding and the chambers staff assigned to that judicial officer.  
 (5) If a party files an interlocutory application under subrule (2) and at the same time makes a request for interim treatment of the document the subject of the interlocutory application, the document will be treated as filed on the basis that access is restricted to judicial officers and chambers staff until the Court hears and determines the interlocutory application.”
36. Rule 84.4 is amended by inserting the words “in a proceeding in which costs are generally recoverable by a successful party,” after the words, “Unless the Court otherwise orders.”
37. Subrule 102.1(4) is amended by inserting the words “as an editable Word document” after the words “prescribed form”.
38. Subrule 103.1(2) is amended by inserting the words “as an editable Word document” after the words “prescribed form”.
39. Subrule 113.2(a) is amended by inserting immediately after subrule (ii) a new subrule (iii) as follows:  
 “(iii) to the ERD Court under section 6 of the *Native Title (South Australia) Act 1994*.”
40. Rule 113.2 is amended by inserting immediately after subrule (b), new subrules (c), (d), (e), and (f) as follows:  
 “(c) from the Magistrates Court to the District Court under section 19(2) of the *Magistrates Court Act 1991*;  
 (d) from the ERD Court to the Supreme Court under section 6 of the *Native Title (South Australia) Act 1994*;  
 (e) from the Warden’s Court to the ERD Court under section 66A of the *Mining Act 1971*; or  
 (f) from the Court to another court under any other statutory provision,”
41. In subrule 113.3(a)(ii) the words “Environment Resources and Development” are replaced by the word “ERD”.
42. Rule 113.3 is amended by inserting immediately after subrule 113.3(b), two new subrules (c) and (d) as follows:  
 “(c) into the ERD Court from the Warden’s Court under section 66A of the *Mining Act 1971*; or  
 (d) into the Court from another court under any other statutory provision,”
43. Rule 116.1 is amended by:  
 (a) inserting a new subrule 116.1(2) as follows:  
 “(2) An application under subrule (1) must be served on the non-party (as well as the other parties).”  
 (b) Renumbering the existing subrule 116.1(2) as subrule 116.1(3).

44. Rule 117.4 is amended by inserting the words “in a proceeding in which costs are generally recoverable by a successful party,” immediately after the words, “Unless the Court otherwise orders,”.
45. The heading to subrule 131.3(7) is amended by replacing the word “and” after “Supreme Court” with a comma and adding the words “and ERD Court” immediately after the words “District Court”.
46. Subrule 132.4(1) is amended by inserting the word “or” immediately after the semicolon at the end of subrule (b) and a new subrule (c) as follows:
  - (c) in terms of both a judgment to be entered upon acceptance and a contract to come into existence upon acceptance including terms for the disposition of the proceeding (a *hybrid offer*).
47. Subrule 132.10(1)(f) is amended by adding the words “or to the extent that a hybrid offer is a contract offer” immediately after the words “if it is a contract offer”.
48. Subrule 132.10(2)(e) is amended by adding the words “in a proceeding in which costs are generally recoverable by a successful party,” after the words “subject to the overriding discretion of the Court,”.
49. Subrule 132.10(3)(e) is amended by adding the words “in a proceeding in which costs are generally recoverable by a successful party,” after the words “subject to the overriding discretion of the Court,”.
50. Subrule 132.11(2) is amended by adding the words “in a proceeding in which the Court is contemplating making an order for costs of the action or proceeding,” immediately before the words, “the Court is to take these matters into account on the question of costs.”
51. Rule 151.2 is amended by inserting, immediately after subrule 151.2(3) two new subrules (4) and (5) as follows:

“*Youth Court*

  - (4) The Court constituted of the Judge, a Magistrate or Judicial Registrar may order that a trial proceed before the Judge, a Magistrate or Judicial Registrar.

“*ERD Court*

  - (5) Subject to rule 11.5, the Court constituted of the Senior Judge, or a Judge, Magistrate, Commissioner, Associate Judge or Judicial Registrar acting in accordance with a direction by the Senior Judge under section 15 of the Act, may order that a trial proceed before—
    - (a) a Judge, Magistrate, Commissioner or Judicial Registrar;
    - (b) two or more Commissioners;
    - (c) if so determined by the Senior Judge under section 15(2) of the Act—a Judge and two or more Commissioners; or
    - (d) if so determined by the Senior Judge under section 15(2) of the Act—a Judge, a Magistrate and one or more Commissioners.”
52. The sub-heading to rule 151.3 is amended by replacing the word “and” with a comma and inserting the following words immediately after the words “District Court”:

“, *Youth Court, ERD Court and Court of Disputed Returns*”
53. The heading to rule 151.4 is amended by inserting, immediately after the word “expert” the words “-Supreme Court, District Court and Magistrates Court”.
54. The heading to subrule 154.1(3), “Magistrates Court” is replaced with the heading “Other Courts”.
55. The heading to Chapter 13 Part 5 is amended by inserting the words “-Supreme Court, District Court and Magistrates Court” immediately after the word “examiner”.
56. Subrule 156.3(1) is amended by:
  - (a) Immediately after the words “Supreme Court”, replacing the word “and” with a comma and inserting the words, “, ERD Court and Court of Disputed Returns” after the words, “District Court; and
  - (b) Immediately after the words, “Magistrates Court”, inserting the words, “and Youth Court”.
57. The heading to subrule 156.7(1) is amended by replacing the word “and” immediately after the words “Supreme Court” with a comma and inserting the words, “, ERD Court and Court of Disputed Returns” immediately after the words, “District Court”.
58. The heading to subrule 156.7(2) is amended by inserting the words “and Youth Court” immediately after the words “Magistrates Court”.
59. The note to rule 157.1 is amended by inserting, immediately before the last sentence of the note, the words, “section 21 of the *Youth Court Act 1993* empowers the issue of a warrant or summons to produce a person held in custody in the State. Section 25 of the *Environment, Resources and Development Court Act 1993* empowers the issue of a warrant or summons to produce a person held in custody in the State.”
60. The heading to Chapter 14 Part 4 is amended by inserting the words “-Supreme Court, District Court and Magistrates Court” immediately after the word “arbitrator”.
61. The heading to rule 193.1 is amended by replacing the word “and” immediately after the words “Supreme Court” with a comma and inserting the words “and ERD Court” immediately after the words “District Court”.
62. Subrule 194.4(1) is amended by inserting the words “in which costs are ordered” immediately after the words “before the Court”.
63. The heading to rule 194.5 is amended by inserting the words “when costs ordered” immediately after the word, “principles”.
64. The note to rule 196.1 is deleted and replaced with the note, “See rule 212”.
65. The heading to Chapter 17 Part 3 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “judgments”.
66. Subrule 203.16(1) is amended by inserting the words “as an editable Word Document” immediately after the words, “in the prescribed form”.
67. Subrule 203.16(2) is amended by inserting the words “as an editable Word Document” immediately after the words, “in the prescribed form”.

68. Subrule 203.18(1) is amended by inserting the words “as an editable Word Document” immediately after the words, “in the prescribed form”.
69. The heading to Chapter 17 Part 4 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the words, “(except contempt)”.
70. Subrule 204.1(1) is amended by inserting the words “as an editable Word Document” immediately after the words, “in the prescribed form”.
71. Subrule 212.5(2) is deleted and replaced with the following:
- “(2) For example, a Judge may make orders relating to—
- (a) the constitution of an appellate proceeding;
  - (b) the filing, service or amendment of an appellate document;
  - (c) striking out an appellate document or summarily dismissing an appellate proceeding if—
    - (i) the appellate proceeding is incompetent or has not been validly commenced;
    - (ii) none of the grounds has a reasonable prospect of succeeding; or
    - (iii) the appellant has not obeyed these rules or any order made under them;
  - (d) striking out any ground that does not have a reasonable prospect of succeeding or does not comply with these rules or any order made under them;
  - (e) the identification of issues in an appellate proceeding;
  - (f) security for costs;
  - (g) evidence that is or may be adduced on the appellate proceeding;
  - (h) conduct of and preparation for hearing of an appellate proceeding;
  - (i) the grant or referral to the Court of Appeal of leave to appeal;
  - (j) the grant or referral to the Court of Appeal of an extension of time to appeal; or
  - (k) the hearing by the Court of Appeal of the appellate proceeding or any issue related to it (including leave to appeal, or an extension of time to appeal or to seek leave to appeal).”
72. Subrule 212.5(3) is deleted.
73. Existing subrule 212.5(4) is renumbered subrule 212.5(3).
74. Chapter 18 Part 2 is amended by inserting, immediately after Division 3, new Division 4 and new Division 5 as follows:
- “Division 4—Youth Court**
- 212.9—Jurisdiction of Magistrate**
- Unless the Judge otherwise orders, the jurisdiction of the Youth Court to hear and determine a review of a decision of a Registrar of the Youth Court under rule 195.12(3) is to be exercised by a Magistrate.
- 212.10—Jurisdiction of single Judge**
- Subject to any statute to the contrary and to rule 212.9, the jurisdiction of the Youth Court to hear and determine an appeal is to be exercised by the Judge.
- Note—**
- Section 22(2)(b) of the *Youth Court Act 1993* provides that an appeal against an interlocutory judgment of a Magistrate lies to the Judge.
- Division 5—ERD Court**
- 212.11—Jurisdiction of Associate Judge**
- Unless a Judge or Associate Judge otherwise orders, the jurisdiction of the ERD Court to hear and determine a review of a decision of a Registrar of the ERD Court under rule 195.12(3) is to be exercised by an Associate Judge.
- 212.12—Jurisdiction of single Judge**
- Subject to any statute to the contrary and to rule 212.11, the jurisdiction of the ERD Court to hear and determine an appeal is to be exercised by a Judge.
- Note—**
- Section 65(3) of the *Mining Act 1971* provides that an appeal against a judgment or order of the Warden’s Court lies to the ERD Court.”
75. Subrule 213.3(1) is amended by:
- (a) Inserting the words, “Subject to rule 213.3(2),” at the commencement of the subrule;
  - (b) Inserting the words “of the District Court” immediately after the words “Associate Judge”;
  - (c) Inserting the words “of the Supreme Court” immediately after the words, “Associate Justice”; and
  - (d) Replacing the word “or” immediately after the words “that Associate Judge” with a comma.
76. A new subrule 213(2) is inserted immediately after subrule 213.3(1)(b) as follows:
- “(2) Any application for leave to appeal made pursuant to rule 213.3(1) must be made within 21 days after the date of the judgment or order the subject of the appeal.”
77. Existing subrule 213.3(2) is renumbered subrule 213.3(3).

78. Existing subrule 213.3(3) is renumbered subrule 213.3(4).
79. Subrule 214.1(1) is amended by inserting the words “and the following subrules,” immediately after the words, “rule to the contrary”.
80. New rules 215.6 and 215.7 are inserted immediately after rule 215.5 as follows:

**“215.6—Discontinuance—ERD Court**

- (1) An appellant may at any time file and serve a notice of discontinuance of appeal in the prescribed form and upon its being filed the appeal shall be abandoned.

**Prescribed form—**

Form 125 Notice of Discontinuance

- (2) A notice of discontinuance filed under subrule (1) by one of several appellants shall not affect any other appellant in the appeal.
- (3) Unless the Court otherwise orders, if a party files a notice of discontinuance under subrule (1), each party shall bear their own costs of the appeal.

**215.7—Dismissal of Appeal as Incompetent—ERD Court**

- (1) A respondent to an appeal may apply on notice at any time to a Judge for an order dismissing an appeal as incompetent or for want of prosecution.
- (2) Upon the hearing of the application, the burden of establishing the competency of the appeal is on the appellant.”
81. The heading to Chapter 18 Part 7 is amended by replacing the word, “and” immediately after the words “Supreme Court” with a comma and inserting the words “, Youth Court and ERD Court” after the words, “District Court”.
82. The note immediately below the heading to Chapter 19 Part 2 is amended by deleting the words, “Administration and Probate Act 1919” and inserting the words, “Succession Act 2023” and by deleting the words, “the Probate rules 2015” and inserting the words, “Chapter 25”.
83. Subrule 232.2(6) is amended by deleting the words, “section 69 of the Administration and Probate Act 1919” and inserting the words, “section 95 of the *Succession Act 2023*”.
84. The note to subrule 232.2(6) is amended by deleting the words, “Probate rules 2015” and inserting the words, “rules in Chapter 25”.
85. The heading to Chapter 19 Part 3 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “proceedings”.
86. The heading to Chapter 19 Part 4 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “claim”.
87. The heading to Chapter 19 Part 6 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “proceedings”.
88. The heading to Chapter 19 Part 7 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “proceedings”.
89. The heading to Chapter 19 Part 8 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “Declarations”.
90. The heading to Chapter 19 Part 9 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “disputes”.
91. The heading to Chapter 19 Part 10 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “Interpleader”.
92. The heading to Chapter 19 Part 11 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “land”.
93. The heading to Chapter 19 Part 15 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “adjudications”.
94. The heading to Chapter 19 Part 16 is amended by inserting the words, “-Supreme Court, District Court and Magistrates Court” immediately after the word, “court”.
95. Chapter 19 is amended by inserting a new Part 18 as follows:

**“Part 18—Supreme Court and Court of Disputed Returns**

**248.1—Interpretation**

- (1) In this Part, unless the contrary intention appears—

*Act* means the *Electoral Act 1985*, the *Local Government (Elections) Act 1999* or the *First Nations Voice Act 2023* as applicable;

*Court* means—

- (a) in respect of a proceeding under the Electoral Act—the Supreme Court sitting as the Court of Disputed Returns under section 103 of the Electoral Act;
- (b) in respect of a proceeding under the Local Government Act—the Court of Disputed Returns constituted by section 67 of the Local Government Act;
- (c) in respect of a proceeding under the Voice Act—the Court of Disputed Returns constituted by Clause 18 of Schedule 1 to the Voice Act;

*Electoral Act* means the *Electoral Act 1985*;

*Local Government Act* means the *Local Government (Elections) Act 1999*;

*Voice Act* means the *First Nations Voice Act 2023*.



- (2) In this Part, unless the contrary intention appears, in respect of a proceeding governed by this Part—
  - (a) when the Act refers to a petitioner, a reference in these rules to an applicant is to be understood as a reference to a petitioner;
  - (b) when the Act refers to a petition, a reference in these rules to an Originating Application—Petition is to be understood as a reference to a petition;
  - (c) when the Act refers to a reply, a reference in these rules to a Response—Reply is to be understood as a reference to a reply.

#### **248.2—Institution of proceeding**

- (1) A proceeding under Division 1 of Part 12 of the Electoral Act, Part 13 of the Local Government Act or Part 8 of Schedule 1 to the Voice Act must be instituted by filing an Originating Application-Petition in the prescribed form in accordance with rule 82.1.

##### **Prescribed form—**

Form 2V Originating Application Petition—Court of Disputed Returns

Form 2W Originating Application Petition—Court of Disputed Returns—State Parliamentary Election

- (2) The applicant must join as respondents—
  - (a) any person declared elected in the disputed election;
  - (b) in the case of an election conducted pursuant to the Electoral Act—the Electoral Commissioner.
  - (c) in the case of an election conducted pursuant to the Local Government Act or the Voice Act—
    - (i) if it is alleged that the election is invalid on account of an act or omission of an electoral officer or electoral official—the returning officer; and
    - (ii) the relevant council or Local First Nations Voice as applicable.
- (3) An originating application-petition must be accompanied by a supporting affidavit in the prescribed form.

##### **Prescribed forms—**

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (4) A supporting affidavit must—
  - (a) comprise evidence admissible at the final hearing of the originating application-petition; and
  - (b) set out the facts on which the applicant relies in relation to the orders sought.
- (5) The application must be accompanied by payment into Court of the prescribed amount as security for costs in accordance with the Act.

##### **Prescribed form—**

Form 85 Notice of Payment into Court

#### **248.3—Reply**

- (1) If a respondent proposes to contest the petition, they must, within the time fixed by the Act, or if not so prescribed, within 14 days, file a Response-Reply in the prescribed form.

##### **Prescribed form—**

Form 56A Response—Reply-Court of Disputed Returns

Form 56B Response—Reply-Court of Disputed Returns—State Parliamentary Election

- (2) If a respondent wishes to rely on any facts in addition to or contrary to those relied on by the applicant, they must within the time for filing a Response-Reply file a responding affidavit in the prescribed form.

##### **Prescribed forms—**

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (3) A responding affidavit must—
  - (a) comprise evidence admissible at the final hearing of the Originating Application-Petition; and
  - (b) set out the facts on which the respondent relies in relation to the orders sought.
- (4) A respondent who files a Response—Reply must serve it as soon as practicable on each other party.

#### **248.4—Further evidence by applicant**

If an applicant wishes to rely on any facts in response to a responding affidavit, they must within 14 days after service of the responding affidavit file a reply affidavit in the prescribed form.

##### **Prescribed forms—**

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

#### **248.5—Court fees**

- (1) Court fees payable in respect of a proceeding under Part 13 of the Local Government Act are to be the equivalent of the fees charged in the Administrative and Disciplinary Division of the District Court.
- (2) The fees set out in Part 7 of Schedule 6 are charged in respect of a proceeding under Part 8 of Schedule 1 to the Voice Act.”

96. Subrule 253.1(2) is amended by inserting the words, “as an editable Word document” immediately after the words, “in the prescribed form”.
97. Rule 254.1 is amended by:
- Deleting the definition of the Administration Act;
  - Inserting a new definition of “The Act” immediately after the preamble to the rule with the following:  
“The Act means the *Succession Act 2023*;”
  - Inserting immediately after the definition of “The Act” a new definition of “administration” as follows:  
“*administration means probate of the will of a deceased person or letters of administration of the estate of a deceased person whether with or without the will annexed and whether granted for general, special or limited purposes;*”
  - Deleting the existing definition of “administrator” with its accompanying note and inserting a new definition as follows:  
“*administrator means any person to whom administration has been granted;*”
  - Deleting the definition of “Family Provision Act”;
  - Amending the definition of “family provision action” by replacing the words “the Family Provision Act” with the words, “Part 6 of the Act;”
  - Amending the definition of “will” by deleting the words, “Wills Act 1936” and inserting the word, “Act” and replacing the words “section 12(2) of that Act” with the words “section 112(2) of the Act.”
98. Subrule 254.6(5) is amended by replacing the words “section 27 or 28 of the Administration Act” with the words, “section 63 of the Act”.
99. A new rule 254.8A is inserted immediately after rule 254.8 as follows:
- “254.8A—Grants pendente lite**
- An application for a grant to preserve the estate assets pending a contested proceeding over a grant in solemn form in a probate action must be made by filing an interlocutory application in the prescribed form supported by an affidavit in the prescribed form.
  - The supporting affidavit must—
    - identify the probate action;
    - identify why the limited grant is required;
    - identify who is the proposed administrator of the limited grant and why.”
100. Rule 254.10 is amended by deleting the words, “Family Provision”.
101. Subrule 254.11(1) is amended by inserting the following note:
- Prescribed form—**  
Form 2 Originating Application
102. Subrule 254.11 is amended by replacing the words, “the Family Provision Act” with the words, “Part 6 of the Act”, each time appearing.
103. Subrule 254.12(2) is amended by deleting the words, “Family Provision”.
104. Rule 254.16 is amended by replacing the words, “section 9(4) of the Family Provision Act” with the words, “section 119(4) of the Act”.
105. Chapter 20 Part 13 is amended by replacing the word, “Queen’s” with “King’s” wherever appearing.
106. Subrule 263.1(2) is amended by inserting the words, “regardless of whether the Sovereign is now a King or a Queen” immediately after the words, “Legal Practitioners Act 1981”.
107. Subrule 263.12(2) is amended by replacing the abbreviation, “QC” with the abbreviation, “KC”.
108. Subrule 265.1(1) is amended by replacing the words, “Form 3—Originating Application—Notice of Objection” with the words, “Form 3C—Plaint Note—Originating Application—Notice of Objection”.
109. Subrule 265.1(3) is amended by replacing the words “section 58A(4)” with the words, “section 58A(10)”.
110. Chapter 20 Part 16 is deleted.
111. Subrule 269.2(1)(l) is amended by replacing the words, “section 70 of the Administration and Probate Act 1919” with the words, “section 96 of the Succession Act 2023”.
112. Subrule 282.1(1) is amended by inserting the words, “as an editable Word document” after the words, “in the prescribed form”.
113. Chapter 21 Part 4 is deleted.
114. Chapter 23 Part 7 is deleted.
115. Rule 331.3 is amended by inserting a new subrule (s) as follows:
- Chapter 16 insofar as it refers to costs in the minor civil jurisdiction;
116. Rule 331.3 is amended by renumbering existing subrules (s), (t), (u), (v) and (w) as subrules (t), (u), (v), (w) and (x).
117. Rule 341 is deleted and replaced with the following:
- 341.1—Costs**
- A successful party in a minor civil action is ordinarily entitled to costs on the Minor Civil costs scale in Schedule 6 Part 4.
  - Subrule (1) is subject to the discretion of the Court under rule 193.2.
  - Subrule (1) is subject to the Court finding proper cause exists to make no order as to costs for failure to comply with Part 2 of this Chapter.

118. A new Chapter 25 is inserted as follows:

**“Chapter 25—Probate—Supreme Court**

**Part 1—General**

**Division 1—Preliminary**

**351.1—Introduction**

- (1) This Chapter contains rules relating to the testamentary causes jurisdiction of the Supreme Court involving wills and deceased estates.
- (2) However, contentious actions relating to a grant or revocation of a grant or a claim under Part 6 of the Act or the administration of a deceased estate are not governed by this Chapter but by Chapter 19 Part 2 or Chapter 20 Part 4.
- (3) Subject to subrule (4), the other provisions of these rules applicable to an originating application proceeding apply to a proceeding the subject of this Chapter.
- (4) If a provision in this Chapter is inconsistent with a provision in another Chapter of these rules, the provision in this Chapter prevails to the extent of the inconsistency.
- (5) The Court may dispense with the observance of any rule in this Chapter.

**351.2—Interpretation**

- (1) In this Chapter, unless the contrary intention appears—

*the Act* means the *Succession Act 2023*;

*authorised witness* means:

- (a) the Registrar of the Court;
- (b) a justice of the peace;
- (c) a notary public;
- (d) a Commissioner for taking affidavits;
- (e) a police officer, other than a police officer who is a probationary constable; and
- (f) any other person authorised by law to take affidavits;

*body corporate* means a corporation or other body corporate recognised under South Australian law as a legal entity but excludes a trust corporation;

*caveator*—see rule 354.1(1);

*citee*—see rule 354.8(10);

*citor*—see rule 354.8(3);

*the Court* means the Supreme Court exercising the testamentary causes jurisdiction governed by this Chapter and includes a Justice, Associate Justice and the Registrar;

*court sealed copy of the record of the Court* means an exemplification being a hard copy of a grant certified by the Court;

*a Deemed Grant* means a grant taken to have been issued under section 73 of the Act

*domestic partner* means a domestic partner within the meaning of Part 3 of the *Family Relationships Act 1975*;

*grant* means a grant of probate or administration (with or without will annexed) or registration of an interstate grant or sealing of a foreign grant of probate or administration;

*external litigation*—see rule 355.6(1);

*grant proceeding* means a proceeding initiated by an applicant for a grant governed by Part 6;

*oath* means the oath required to be sworn or affirmed by an applicant for a grant;

*online application* means an application that initiates a proceeding that is entered directly on the Electronic System that is not initiated by an Originating Application and includes an application for probate or letters of administration under Part 6 Division 2, 3 or 4 and an application to amend or revoke a grant under Part 7 Division 2;

*personal applicant* means an applicant who seeks a grant, order, certificate or other document from the Court other than through a lawyer;

*personal application* means an application lodged by a personal applicant;

*person under a disability*—see rule 355.2(1);

*Probate Action* means a probate action within the meaning of rule 254.2;

*Public Trustee* means the Public Trustee under the *Public Trustee Act 1995*;

*Registrar* means the Registrar of Probates, an acting Registrar of Probates or a deputy Registrar of Probates;

*Registry* means the Probate Registry of the Court;

*Seal* means the electronic Court seal affixed to an eCourt document or, where applicable, the physical Court seal affixed to a physical document;

*single person* means a person who has never married or had a domestic partner at date of death;

*statutory guardian* means a person who is a guardian of a child by virtue of an enactment or order of a court of competent jurisdiction;

*testamentary document* means a document being or purporting to be a formal or informal will or codicil or revocation or variation of such a will or codicil;

**trust corporation** means a body corporate authorised by the *Trustee Companies Act 1988* or other special Act to administer the estates of deceased persons;

**warnor**—see rule 354.4(1).

- (2) In this Chapter, unless the contrary intention appears, an expression used in the Act that is not defined in this Chapter has the same meaning when used in this Chapter as it has in the Act (as in force from time to time).
- (3) In an application governed by this Chapter, the description “testator”, “executor” or “administrator” should be used whatever the person’s gender.
- (4) For the purposes of this Chapter, it is immaterial whether a relationship is of whole blood or half blood.

#### **Division 2—The Court**

##### **Note—**

The Court is addressed generally in Chapter 2.

#### **351.3—Registrar may refer to Justice or Associate Justice**

##### **Note—**

Under rule 11.1(3) the Registrar has power to exercise the jurisdiction of the Court governed by this Chapter. In most cases that jurisdiction will be exercised by the Registrar but on occasions it may be exercised by a Justice or Associate Justice.

- (1) The Registrar may refer to a Justice or Associate Justice a proceeding or a question arising in the course of a proceeding (including whether and how any power or discretion should be exercised).
- (2) A Justice or Associate Justice may on such referral—
  - (a) give such directions as they think fit; or
  - (b) assume conduct of the matter.
- (3) If a rule in this Chapter refers to exercise of a power or discretion by the Registrar, the power or discretion may be exercised by a Justice or Associate Justice if they think fit.

#### **351.4—Practice Notes**

The Registrar may publish Practice Notes for the guidance of lawyers and personal applicants.

#### **Division 3—The Electronic System**

##### **Note—**

The Electronic System is addressed generally in Chapter 2 Part 3 Division 2.

#### **351.5—Requirement to use the Electronic System**

- (1) Unless the Court otherwise orders or a rule in this Chapter otherwise provides, all probate applications or documents must be filed via the Electronic System.

##### **Note—**

Payment will be accepted by credit card only. Cheques or cash will not be accepted.

- (2) The Court may order that an application or a document be filed in any other manner that the Court considers appropriate.

#### **351.6—Copy of a testamentary document uploaded to the Electronic System**

- (1) A scanned copy of a testamentary document must be uploaded to the Electronic System in the following format and comply with the following requirements—
  - (a) it must be in PDF format;
  - (b) it must not include the front sheet or the back sheet of the testamentary document;
  - (c) it must include all pages of the body of the testamentary document and no text or signatures may be omitted;
  - (d) all pages must be straight with no shadowing and all text must be readable;
  - (e) there must be no leaching from a stamp on any part of the testamentary document;
  - (f) it must be a full and complete copy of the original testamentary document;

##### **Note—**

If there is a seal, staple or ribbon, these should appear on the scan.

- (g) it should not include any marking by an executor or administrator;
- (h) if the testamentary document is a will kit will or an unusually sized testamentary document—the number of pages scanned must be a true and complete copy of the original testamentary document;
- (i) if the testamentary document consists of a will and a codicil—the documents must be scanned and uploaded as one PDF document and not separate documents, and the codicil must follow the will and multiple codicils must be in chronological order;
- (j) if a document is incorporated—it must be scanned and uploaded with the testamentary document as one PDF document and not separate documents and the incorporated document must follow the will and any codicils;

##### **Note—**

See rule 356.10 and 356.11 regarding the incorporation of trust deeds and other documents.

(k) any other requirement the Court may order or require.

**Note—**

Do not remove any staples or clips from a testamentary document. If staples or clips have already been removed, do not re-staple or re-clip the testamentary document.

If the testamentary document was originally contained in a will kit booklet, the will kit booklet should be lodged in the Registry. If the original will kit booklet cannot be provided, a letter should be uploaded to the application explaining what searches have been conducted and why the original will kit booklet cannot be produced.

**Division 4—Parties and representation**

**Note—**

Parties and representation are addressed generally in Chapter 3.

**351.7—Representation orders and procedure when no personal representative**

The Court may appoint one or more persons in a proceeding to represent a person (including an unborn person) (whether presently or for any future, contingent or unascertained interest) who may have a relevant interest or who may be affected by the proceeding if—

- (a) the person, class or a member of the class cannot be ascertained or cannot readily be ascertained;
- (b) the person, class or a member of the class though ascertained cannot be found;
- (c) the person is a person under a legal incapacity being—
  - (i) under the age of 18 years;
  - (ii) not capable of managing their participation in the proceeding because of a mental or physical disability or illness; or
  - (iii) a person whose affairs are administered (wholly or in part) under a law for the protection of persons suffering from mental or physical disability or illness; or
- (d) it appears to the Court expedient to exercise the power for the purpose of saving expense.

**351.8—Applications commenced by a personal applicant**

- (1) An online application or originating application commenced by a personal applicant must include a certificate of identity in the prescribed form that—
  - (a) is certified by an authorised witness; and
  - (b) annexes identification documents that have been certified by the authorised witness.

**Note—**

The certificate of identity may only be completed by an authorised witness upon that witness being satisfied of the identity of the personal applicant by completing the 100 Point Proof of Identification. Refer to the Certificates of Identity incorporated in Practice Note 4 of 2024.

- (2) If there is more than one personal applicant, each personal applicant must lodge a separate certificate of identity completed by an authorised witness.
- (3) If there is a testamentary document, there must be compliance with rule 356.5.

**Note—**

The original testamentary document needs to be marked before the authorised witness who is completing the certificate of identity at the same time.

- (4) If there is no testamentary document—
  - (a) there must be compliance with rule 356.16—Letters of administration without will; and
  - (b) the oath of administrator and the certificate of identity must be signed and completed before the same authorised witness at the same time.
- (5) The original testamentary document, the certificate of identity that annexes the certified copies of identification, all sworn or affirmed documentation (including any oath or affidavits), and any letter must be deposited in an A4 envelope with a coversheet in person or by post to the Registry located at 1 Gouger Street Adelaide SA 5000.

**Note—**

The original testamentary document is retained by the Court.

The Electronic System will generate the coversheet for the envelope—refer to the documents tab in the action number on the Electronic System.

- (6) Unless the Court otherwise orders, no personal application will be received through an agent nor may a personal applicant be accompanied by a person acting or appearing to act as the personal applicant's adviser.
- (7) No personal application will be received or proceeded with if an application has already been made through a lawyer on behalf of the personal applicant and has not been withdrawn or rejected by the Court.
- (8) The Court may at any time, if it appears expedient in the circumstances of the case, direct that the institution of a proceeding (including an online application, renunciation, caveat, citation or originating application) must proceed through a lawyer.
- (9) Legal advice will not be given to a personal applicant or to a lawyer by an officer of the Registry on any matter connected with the application but an officer may, when practicable, assist a personal applicant or a lawyer by providing procedural guidance.

**Division 5—Documents****Note—**

Documents are addressed generally in Chapter 4.

**351.9—Filed documents**

- (1) Unless the Court otherwise orders, a document (including an affidavit) filed with the Court (including one uploaded to the Electronic System) must—
  - (a) be in the English language or translated into the English language;
  - (b) have any erasures or handwritten additions authenticated; and
  - (c) be typed or printed.
- (2) If a testamentary document or other document is translated from another language into English, the translation must be verified by an affidavit in the prescribed form.

**Prescribed form—**

Form PROB44 Affidavit Verifying the Translation of a Will or other Document

- (3) A testamentary document that has been deposited in the Registry will not be given out unless—
  - (a) special circumstances exist; and
  - (b) the Court's leave has been obtained.

**351.10—Institution of proceeding**

- (1) Unless a rule otherwise provides, a proceeding governed by this Chapter must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

**Note—**

Some proceedings are instituted by completion of an online application (for example, an application for probate or letters of administration under Part 6 Division 2, 3 or 4; or an application to amend or revoke a grant under Part 7 Division 2).

Some proceedings are instituted by filing a will deposit online: see Part 2 Division 2.

Some proceedings are instituted by filing a renunciation online: see Part 3 Division 2.

Some proceedings are instituted by filing a caveat online: see Part 4 Division 1.

Some proceedings are instituted by filing a citation online: see Part 4 Division 2.

- (2) The Court may require—
  - (a) an application made by online application to be brought by Originating Application under this Chapter; or
  - (b) an application to be brought by originating application under Chapter 19 Part 2 or Chapter 20 Part 4.
- (3) The Court may refuse to accept an application or issue a grant until all enquiries that it sees fit to institute have been answered to the Court's satisfaction.
- (4) The Court may require proof of identity of the deceased, or of the applicant, beyond what is required in the online application or by these rules.

**351.11—Notice and service of an application**

- (1) The Court may order that notice of an application be given to such persons interested as the Court thinks fit.
- (2) The Court may dispense with service of an application on all or any one or more of the persons beneficially interested.
- (3) The Court may order substituted service on any person beneficially interested.

**351.12—Responses**

- (1) A person served with an Originating Application who wishes to oppose or make submissions about it must, within 14 days after service of the Originating Application documents, file a Response in the prescribed form and must serve it as soon as practicable on each other party to the action in accordance with Chapter 5.

**Prescribed form—**

Form PROB3 Response to Originating Application

- (2) A person served with an Originating Application who wishes to consent to the orders sought in the originating application may consent via the Electronic System.
- (3) A person opposing the orders sought in the originating application must file a Response opposing the originating application on the Electronic System and must upload an affidavit stating with sufficient particularity the grounds of opposition.

**Prescribed form—**

Form PROB34 Affidavit

- (4) A person who has filed a Response is entitled to adduce evidence either for or against any application.

**351.13—Affidavits**

- (1) An affidavit must be in the prescribed form.

**Prescribed forms—**

Form PROB34 Affidavit

- (2) An affidavit may, with the leave of the Court, be received for the purpose of any matter, despite any defect or irregularity or non-compliance.

**351.14—Affidavits referring to testamentary documents**

- (1) A testamentary document exhibited to an affidavit must be marked as follows—

An original testamentary document must be identified in the affidavit as follows—

“the document dated [*insert date*] now produced to me marked “XXX1””.

The back of the original document must be marked “XXX1” and it must be dated and signed by the person taking the affidavit, for example—

“XXX1”

This is the document marked “XXX1” referred to in the affidavit of [*name of person who has sworn/affirmed the affidavit*] sworn/affirmed before me on ..... 20...

.....  
A Commissioner for taking affidavits in the State of South Australia

- (2) An affidavit referred to in subrule (1) must be physically filed in the Registry.  
(3) A copy of a testamentary document annexed to an affidavit must be marked as follows—  
“A copy of the document dated [*insert date*] now annexed and marked “A”.  
The annexed copy of the document must be marked “A”.

**351.15—Evidence of foreign law**

If evidence as to the law of any other country is required on an application governed by this Chapter, unless the Court otherwise orders, it may be proved by an affidavit from a person who, by virtue of their knowledge or experience given in the affidavit, is suitably qualified to give expert evidence of the law in question.

**351.16—Sealed orders**

To obtain a sealed Court order from the Registry, a request must be sent by email to the Registry attaching the draft order in the prescribed form as a Word document to be settled by the Registry.

**Prescribed form—**

Form PROB5 Order

**Note—**

This rule only relates to an order made by the Court in the testamentary causes jurisdiction. An order made by the Court in the civil jurisdiction must be sent to the civil registry.

**351.17—Order for provision incorporated into grant**

- (1) When a direction is made under section 119(4) of the Act in relation to a family provision order, a Court certified sealed copy of the order must be provided to the Registry for the order to be incorporated into the grant.

**Note—**

To obtain a Court certified sealed copy of the order for provision out of the estate, a request must be sent by email to the civil registry with payment of the prescribed fee.

- (2) The original Court certified sealed copy of the order that is produced by the Civil Registry must be delivered to the Registry for it to be incorporated into the grant.  
(3) If the grant issued before 26 November 2018, the original paper grant must be provided to the Registry with two original Court certified sealed copies of the orders.

**Note—**

The Court certified sealed copy of the order will be retained by the Registry.

**351.18—Inspection and copying of documents held by Registry**

- (1) Unless the Court otherwise orders, no person is permitted to inspect or copy an electronic or physical court file or document filed with the Registry unless a valid interest is established to the Registrar’s satisfaction.  
(2) No affidavit or record of the Court in its testamentary causes jurisdiction is to be taken out of court without an order of the Court and no subpoena for the production of any affidavit or record of the Court is to be issued.

**Note—**

A residual beneficiary of an estate or a person entitled to file a claim under section 115 of the Act may request a copy of the statement of assets and liabilities from the Registry if an executor or administrator of a deceased estate does not provide a copy to that person upon request. A request should also first be sent to the lawyer who obtained the grant on behalf of the executor or administrator of the estate, if any.

**351.19—Issue of copies of original testamentary documents and other documents**

- (1) Unless the Court otherwise orders, if a copy is required of the whole or any part of an original testamentary document or other document deposited under section 45 of the Act or of any grant, the copy must be a photocopy made in the Registry and is to issue as a search (non-official) copy.

- (2) If the copy required is—
  - (a) an office copy (pursuant to section 129 of the Act), or
  - (b) a copy certified under the hand of the Registrar to be a true copy,
 the copy will be issued only if it is required that the seal of the Court be affixed to the document.

### 351.20—Request for court sealed copy of record

- (1) The Registry will only issue a court sealed copy of the record of the Court in limited circumstances.
- (2) A request for a court sealed copy of the record of the Court from the Registry should be made in accordance with the below Note.

#### Note—

An email is to be sent to the Registry attaching a letter addressed to the Registrar of Probates. The letter must identify why a court sealed copy of the record of the Court is required with supporting evidence. For example, if there is an asset in another jurisdiction that requires a court sealed copy of the record of the Court in order to administer that asset, that asset needs to have been disclosed to this Court and evidence needs to be provided from the other jurisdiction stating that they will not rely upon the Electronic System as proof of the grant that has issued from this Court.

## Part 2—Proceedings inter vivos

### Division 1—Statutory wills

#### 352.1—Introduction

- (1) This Division contains rules relating to applications authorising the making, alteration or revocation of a will by a person lacking testamentary capacity.
- (2) The jurisdiction to hear and determine an application governed by this Division will be exercised by a Justice or Associate Justice but the Registrar may hear and determine interlocutory matters.

#### 352.2—Wills of minors authorised by Court

- (1) An application for an order authorising the making, alteration or revocation of a will by a minor under section 6 of the Act may be instituted by a minor or a person acting on behalf of a minor by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form exhibiting the proposed draft will in the prescribed form.

#### Prescribed forms—

- Form PROB1 Originating Application—Probate Ex Parte
- Form PROB2 Originating Application—Probate Inter Partes
- Form PROB34 Affidavit
- Form PROB9 Will Authorised Under section 6 or 7 of the *Succession Act 2023*

#### Note—

A Will authorised by the Court under section 6 of the Act must be made and executed in accordance with the Act and must be deposited with the Registrar under Part 2 Division 6 of the Act.

- (2) The supporting affidavit must set out all of the facts on which the applicant relies, including—
  - (a) the full name, age and residential address of the minor;
  - (b) the full names and addresses of the persons having the guardianship and custody of the minor and, if a guardian has been appointed by a court or tribunal of competent jurisdiction, a sealed copy of the guardianship order must be exhibited to the affidavit;
  - (c) evidence that the minor understands the nature and effect of the proposed testamentary document, alteration or revocation (as the case may be);
  - (d) evidence that the proposed testamentary document, alteration or revocation (as the case may be) accurately reflects the intentions of the minor;
  - (e) the names and addresses of the persons who would be entitled to share in the minor's estate under an existing testamentary document of the minor or in the event of the minor dying intestate;
  - (f) the minor's assets, liabilities, income and living expenses and whether there may be a variation in them;
  - (g) a history of the circumstances of the minor and the reasons for the manner in which the minor is seeking to dispose of their estate reflected in the proposed draft testamentary document.
- (3) The application must (in addition to the supporting affidavit required by subrule (1)) be accompanied by—
  - (a) the written consent of the person acting on behalf of the minor to act as litigation guardian (which may be exhibited to the supporting affidavit);
  - (b) evidence in the prescribed form that the proposed executor consents to act;

#### Prescribed form—

- Form PROB8 Consent of Proposed [Executor-Administrator] to Act

- (c) unless Public Trustee has consented in writing to act on behalf of the minor, an affidavit by a lawyer on the record stating that—
  - (i) the lawyer is aware that the person for whom the lawyer acts is a minor;
  - (ii) the person named as the person to act on behalf of the minor has no personal interest in the application; and
  - (iii) that to the best of the lawyer's knowledge, information and belief there is no reason why that person is not a fit and proper person to act on behalf of the minor.



**352.3—Will for person lacking testamentary capacity authorised by Court**

- (1) In this rule, *proposed testator* means a person lacking testamentary capacity who is the subject of an application under section 7 of the Act.
- (2) An application for an order authorising the making, alteration or revocation of a testamentary document on behalf of a proposed testator under section 7 of the Act must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form exhibiting the proposed draft testamentary document in the prescribed form.

**Prescribed forms—**

Form PROB2 Originating Application-Probate Inter Partes  
 Form PROB34 Affidavit  
 Form PROB9 Will Authorised Under section 6 or section 7 of the *Succession Act 2023*

**Note—**

A will authorised by the Court under section 7 of the Act must be made and executed in accordance with the Act and will be deposited with the Registrar under Part 2 Division 6 of the Act after compliance with rule 352.4(9).

- (3) The application must include an application for leave to apply for the order.
- (4) The supporting affidavit must set out all of the facts on which the applicant relies, including—
  - (a) the full name, residential address and age of the proposed testator;
  - (b) evidence that the proposed testator lacks testamentary capacity;
  - (c) the full name and address, and details of the appointment, of the proposed testator's—
    - (i) administrator, guardian or enduring guardian if one has been appointed under the *Guardianship and Administration Act 1993*;
    - (ii) manager if one has been appointed under the *Aged and Infirm Persons' Property Act 1940*;
    - (iii) attorney if one has been appointed under an enduring power of attorney,
 and a sealed copy of the order or a certified copy of the enduring power of attorney must be exhibited to the affidavit;
  - (d) full details relating to all of the matters referred to in paragraphs (a) to (g) of section 7(5) of the Act;
  - (e) the terms of any proposed testamentary document, codicil, draft testamentary document or codicil, written instructions for the same or any other document of a testamentary nature made by or under the direction of the proposed testator of which the applicant has knowledge, and—
    - (i) whether the applicant has or has not such documents in their possession;
    - (ii) if any such document is not in the applicant's possession—the name and address of the person in whose possession it is, or is believed to be, or if the applicant does not know that information so stating; and
    - (iii) every such document in the custody or control of the applicant must be exhibited to the affidavit;
  - (f) the reasons why in all of the circumstances the applicant considers that the order should be made.
- (5) The application must (in addition to the supporting affidavit required by subrule (2)) be accompanied by evidence in the prescribed form that the proposed executor consents to act.

**Prescribed form—**

Form PROB8 Consent of Proposed [Executor-Administrator] to Act

- (6) The applicant must join the proposed testator as a respondent.
- (7) If no response or notice of acting is filed on behalf of the proposed testator, the applicant must before proceeding with the application seek and obtain an order from the Court appointing a litigation guardian for the proposed testator.
- (8) If the proposed testator files a response or notice of acting, the Court may, if it is in the interest of the proposed testator to do so, appoint a litigation guardian for the proposed testator, and may remove or substitute any such guardian.
- (9) Notice of the application, including service of the originating documents, must be given by the applicant to—
  - (a) to the extent applicable—each person mentioned in section 7(8) of the Act; and
  - (b) any other person who appears to have a proper interest as the Court may order.

**352.4—Subsequent steps**

- (1) The Court may order that notice of the application be served on any person who appears to the Court to be interested.
- (2) The Court may order the joinder of a person as a respondent or interested party.
- (3) A person who has been served with notice or joined as a respondent or interested party may file a Response in the prescribed form—
  - (a) within 14 days or such other time as is specified in an order for notice or joinder; or
  - (b) afterwards by leave of the Court.

**Prescribed form—**

Form PROB3 Response to Originating Application

- (4) Subject to subrule (5), the evidence of a qualified medical practitioner in an application governed by rule 352.3 may be given by a report signed by the practitioner exhibited to an affidavit sworn by the applicant or the applicant's lawyer, who must depose to the fact that they have received the report in relation to the proceeding.
- (5) The Court, at the request of a party or on the Court's own initiative, may decline to receive the evidence of a medical practitioner adduced under subrule (4) and may require such evidence to be given in a manner that the Court directs.
- (6) Despite subrule 352.2(2) or 352.3(4), the Court may accept and act upon a statement of facts or such other evidence, whether oral or written, as the Court considers sufficient, although not given on oath or affirmation.
- (7) A statement of facts or other written evidence under subrule (6) must—
  - (a) be drawn up in numbered paragraphs and dated;
  - (b) set out the matters specified in subrule 352.2(2) or 352.3(4) as applicable;
  - (c) be signed by the person by whom it is made.
- (8) A testamentary document made on behalf of a minor under section 6 of the Act must be deposited in accordance with Division 6 of the Act and rule 352.5.
- (9) Upon the Court making an order under section 7 of the Act—
  - (a) the original testamentary document in the prescribed form must be provided to the Registrar to be signed and sealed as soon as practicable from the date of the order being made;
  - (b) a copy of the signed and sealed testamentary document will be returned to the applicant;
  - (c) the applicant must then lodge a will deposit application on the Electronic System in accordance with Division 6 of the Act and rule 352.5.

**Prescribed form—**

Form PROB9 Will Authorised Under section 6 or section 7 of the *Succession Act 2023*

**Division 2—Deposited wills**

**352.5—Deposit of will**

- (1) A duly executed will appointing an executor may at any time before the death of the testator be deposited for safe custody with the Court by the testator or on their behalf by the Registrar, a lawyer, a notary public or a commissioner for taking affidavits in the Supreme Court.

**Notes—**

Section 8 of the Act sets out requirements as to writing and execution of a will.

- (2) Unless the will is made under section 6 or 7 of the Act, a will deposited under this rule must have been executed by the testator as required by law and one of the attesting witnesses must have been the Registrar, a lawyer, a notary public or commissioner for taking affidavits in the Supreme Court.

**Note—**

A will authorised by the Court under section 6 or 7 of the Act must be executed in accordance with the Act.

- (3) Unless the will is made under section 6 or 7 of the Act, if an attesting witness is a lawyer, a notary public or commissioner for taking affidavits in the Supreme Court, that witness must verify the testator's execution of the will by a certificate in the prescribed form which is to accompany deposit of the will.

**Prescribed form—**

Form PROB50 Certificate of Execution-section 45 of the *Succession Act 2023* and rule 352.5(3)

- (4) The deposited will is to be held in an envelope with a cover sheet generated by the Electronic System until withdrawn.

**Note—**

The Electronic System will generate a certificate of the will deposit.

**352.6—Withdrawal of will by testator**

The testator who executed a deposited will may at any time apply in writing to the Registrar to be given the will or to have it given to a person authorised by the testator.

**Note—**

Sections 6(6) and 7(12) of the Act prohibit withdrawal of a will made under those sections unless the Court has made an order authorising revocation or the person by whom or on whose behalf the will is made acquires testamentary capacity.

**352.7—Release of will after death of testator**

- (1) After the testator has died, an executor named in a deposited will or a person entitled to letters of administration with will annexed may apply in writing to the Registrar to request that the will be released to them.
- (2) The written request must—
  - (a) be accompanied by a copy of the death certificate for the testator; and
  - (b) establish the entitlement of the person making the request for release of the will.
- (3) The Registrar may examine a will to enable compliance with a request for release and, if in doubt as to whom the will is to be given, may refer the matter to a Justice or Associate Justice for a direction.
- (4) The Registrar must ensure that an accurate copy of the deposited will is taken and retained in the Registry before the original will is given out.

**Part 3—Pre-grant proceedings****Division 1—Preliminary****353.1—Introduction**

- (1) This Part contains rules relating to applications made before the institution of a grant proceeding or the issue of a grant other than those governed by Part 5.
- (2) This Part also contains rules relating to applications that may be made either before or after the institution of a grant proceeding or the issue of a grant.
- (3) Unless a rule in this Part provides otherwise, a proceeding governed by this Part must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application-Probate Ex Parte  
Form PROB2 Originating Application—Probate Inter Partes  
Form PROB34 Affidavit

- (4) Applications under this Part will ordinarily be heard and determined by the Registrar but, if they are or become contentions, the Registrar ordinarily will refer them to a Justice or Associate Justice for hearing and determination and may require the action to be referred to the civil jurisdiction
- (5) The Registrar may refer a matter to a Court appointed mediation.
- (6) An application under Chapter 19 Part 2 or Chapter 20 Part 4 must be commenced in the civil jurisdiction.

**Division 2—Renunciations****353.2—Renunciation of probate and/or administration**

- (1) At any time after the death of the testator, an executor or, if there is no executor, the person who would be entitled under rule 356.3 to a grant of administration with will annexed or, if the deceased died intestate, the person who would be entitled to a grant of administration under rule 356.15, may renounce probate or administration (as the case may be) by filing a renunciation in the prescribed form on the Electronic System.

**Prescribed forms—**

Form PROB16 Renunciation of Probate  
Form PROB17 Renunciation of Letters of Administration With Will Annexed  
Form PROB18 Renunciation of Letters of Administration  
Form PROB19 Renunciation and Consent *Spes Successionis* Grant  
Form PROB20 Renunciation of Letters of Administration to Body Corporate not being a Trust Corporation  
Form PROB21 Renunciation of Probate by a Trust Corporation

**Note—**

- A renunciation can also be filed with an application for a grant (thereby avoiding an additional Court fee and process to withdraw the testamentary document from the Registry).
- (2) If the renunciation is of probate or administration with will annexed, the original testamentary document must be deposited in the Registry with the original renunciation.
  - (3) A person who has not renounced probate or administration in respect of a testamentary document that has been deposited in the Registry under subrule (2) and who intends to make an application to the Court to prove the same may apply by affidavit in the prescribed form in the renunciation proceeding to withdraw the testamentary document from the Registry.

**Prescribed form—**

Form PROB45 Affidavit to Withdraw Will Deposited with Renunciation

- (4) Renunciation of probate by an executor does not operate as a renunciation of any right that the executor may have to a grant of administration in another capacity unless the executor expressly renounces such right.
- (5) Unless the Court otherwise orders, no person who has renounced administration in one capacity may obtain a grant of administration in another capacity.
- (6) Subject to subrule (7), if an executor to whom leave has been reserved to apply for probate renounces probate after the issue of a paper grant to a co-executor, the original paper grant must be provided and an order granting leave to file the renunciation obtained.
- (7) If the original paper grant cannot be provided under subrule (6), a court sealed copy of the record of the Court may be produced in its stead.
- (8) Subject to subrule (9), an application for leave to retract a renunciation of probate or administration must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form showing that the retraction of the renunciation is for the benefit of the estate, or of the persons interested or both.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte  
Form PROB2 Originating Application—Probate Inter Partes  
Form PROB34 Affidavit

- (9) The Court may dispense with the requirement of an originating application for the purpose of subrule (8).
- (10) The Court may order the joinder of a person as a respondent or interested party.

- (11) Only in exceptional circumstances will leave be given to an executor to retract a renunciation of probate after a grant has been made to another person entitled in a lower degree.

### Division 3—Subpoena

#### 353.3—Application for order to bring in a testamentary document or attend for examination

- (1) An application under section 60 of the Act for a subpoena to attend for examination or section 61 of the Act for a subpoena requiring a person to produce a testamentary document in the possession of or under the control of a person must be made by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

##### Prescribed forms—

Form PROB2 Originating Application-Probate Inter Partes

Form PROB34 Affidavit

- (2) The applicant must join as a respondent the person on whom the subpoena is sought to be served.
- (3) The supporting affidavit must establish to the Court's satisfaction the existence of the testamentary document or that the respondent has knowledge of such document that would assist the Court.
- (4) If the subpoena is to be served on an organisation, the subpoena is to be addressed to its Proper Officer.
- (5) A person who is required to respond to a subpoena—
- (a) must comply with the subpoena by attending at the Court for examination or producing the document sought (as required); or
- (b) if the subpoena is confined to the production of a document(s)—may file an affidavit on the Electronic System denying that the document is in their possession, custody or power.

##### Note—

Failure to comply with a subpoena is a contempt of Court and may be the subject of a contempt proceeding under Chapter 17 Part 5.

### Division 4—Leave to swear death

#### 353.4—Application for leave to swear to death

- (1) An application for leave to swear to the death of a person in respect of whose estate a grant is to be sought must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

##### Prescribed forms—

Form PROB1 Originating Application—Probate Ex Parte

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

- (2) Unless a separate affidavit of disclosure in the prescribed form is filed, the supporting affidavit must disclose the assets and liabilities of the estate of the deceased in terms of the content of the statement annexed to the prescribed form.

##### Prescribed form—

Form PROB46 Affidavit of Assets and Liabilities

- (3) The Court may order the joinder of a person as a respondent or interested party.
- (4) If the Court makes an order granting leave to swear to death under this Division, an application for a grant can then proceed under Part 6 or Chapter 20 Part 4 (as applicable), with a copy of the order uploaded to the application.

##### Note—

See *In the Estate of Chambers* [2023] SASC 34 and *In the Estate of Papps (deceased)* [2017] SASC 117

### Division 5—Admission of a testamentary document

#### 353.5—Admission of an informal testamentary document to proof

- (1) An application for an order admitting to proof, or finding against, a document purporting to express the testamentary intentions of a deceased person under section 11(2) of the Act must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

##### Prescribed forms—

Form PROB1 Originating Application—Probate Ex Parte

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

##### Example of order sought admitting document to proof—

The document (being the exhibit marked “XXX1” referred to in the affidavit of ... sworn/affirmed on ... 20...) be admitted to probate as the last will of [*name and last residential address for the deceased*] deceased and that probate of the same be granted to [*full name*] the executor as described in the will (as the case may be).

- (2) The supporting affidavit must contain any evidence that the applicant can provide to assist the Court.

##### Note—

The affidavit evidence filed in support of the application may either support or cast doubt on whether the informal document should be admitted.

- (3) The original testamentary document the subject of the application must be exhibited to an affidavit in accordance with rule 351.14.
- (4) Unless a separate affidavit of disclosure in the prescribed form is filed, the supporting affidavit must disclose the assets and liabilities of the estate of the deceased in terms of the content of the statement annexed to the prescribed form.

**Prescribed form—**

Form PROB46 Affidavit of Assets and Liabilities

- (5) The Court may order the joinder of a person as a respondent or interested party.
- (6) The Registrar may determine an application governed by this rule if the Registrar is satisfied that—
  - (a) all persons who may be adversely affected by the orders sought are not under a disability and have provided their consent by affidavit evidence;

**Prescribed forms—**

Form PROB7 Consent

- (b) a person who is not under a disability who may be adversely affected by the order sought but fails to appear before the Registrar after such service on the person as the Registrar may order of the proceeding and all other persons who may be adversely affected are not under a disability and have consented; or
  - (c) it is expedient having regard to all of the circumstances (including the amount at stake, the degree of difficulty of the point to be determined and the expense otherwise occasioned) for the Registrar to determine the application.
- (7) If it appears to the Registrar expedient having regard to all of the circumstances (including the amount at stake, the degree of difficulty of the point to be determined and the expense otherwise occasioned), the Registrar may dispense with the requirement of an originating application for the purpose of saving expense.
- (8) If subrule (6) or (7) do not apply, the Registrar will refer the application to a Justice or Associate Justice for hearing and determination.
- (9) If the Court makes an order admitting to proof an informal testamentary document under this rule, an application for a grant can then proceed under Part 6, with a copy of the order uploaded to the application.

**Note—**

If the application is for a grant of letters of administration with the will annexed a copy of the order must be annexed to the oath and uploaded to the application. If the application is for a grant of probate, the order must be uploaded to the application.

**353.6—Informal revocation of a testamentary document**

- (1) An application for a declaration that a document that has not been executed with the formalities required by the Act expresses an intention by a deceased person to revoke a document that might otherwise have been admitted to proof effective under section 11(3) of the Act must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

**Note—**

If a probate action has been commenced under Chapter 20 Part 4, an application under section 11(3) of the Act should be made in that action.

- (2) The original testamentary document the subject of the application must be exhibited to an affidavit in accordance with rule 351.14.
- (3) Unless a separate affidavit of disclosure in the prescribed form is filed, the supporting affidavit must disclose the assets and liabilities of the estate of the deceased in terms of the content of the statement annexed to the prescribed form.

**Prescribed form—**

Form PROB46 Affidavit of Assets and Liabilities

- (4) The Court may order the joinder of a person as a respondent or interested party.
- (5) The Registrar may determine an application governed by this rule if the Registrar is satisfied that—
  - (a) all persons who may be adversely affected by the orders sought are not under a disability and have provided their consent by affidavit evidence;

**Prescribed forms—**

Form PROB7 Consent

- (b) a person who is not under a disability who may be adversely affected by the order sought but fails to appear before the Registrar after such service on the person as the Registrar may order of the proceeding and all other persons who may be adversely affected are not under a disability and have consented; or
  - (c) it is expedient having regard to all of the circumstances (including the amount at stake, the degree of difficulty of the point to be determined and the expense otherwise occasioned) for the Registrar to determine the application.

- (6) If subrule (5) does not apply, the Registrar will refer the application to a Justice or Associate Justice for hearing and determination.
- (7) If the Court makes an order under this rule, an application for a grant can then proceed under Part 6 with a copy of the order uploaded to the application.

**Note—**

If the application is for a grant of letters of administration with or without the will a copy of the order must be annexed to the oath and uploaded to the application. If the application is for a grant of probate, the order must be uploaded to the application.

- (8) If an application for a grant is made following an order under section 11(3) of the Act—
- (a) if the application is for of letters of administration—the order must be recited in the administrator’s oath; and
- (b) if the document revokes all former testamentary acts—the document and its revocatory effect must be recited on the grant of letters of administration; viz “(the deceased having made a document dated ..... 20... revoking all former testamentary acts) pursuant to an order made on [date] by the Honourable [Justice/Associate Justice] [surname] in [Action/case] no. [number]”.

**Division 6—Admission of copy of a testamentary document****353.7—Admission of copy of a testamentary document to proof**

- (1) An application for an order admitting to proof a testamentary document contained in a copy, a completed draft, a reconstruction or the subject of other evidence of its contents where the original testamentary document is not available must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte  
 Form PROB2 Originating Application—Probate Inter Partes  
 Form PROB34 Affidavit

- (2) The supporting affidavit must—
- (a) set out the facts upon which the applicant relies;
- (b) contain evidence of the existence of the original document after the death of the deceased or alternatively evidence to rebut the presumption of revocation by the testator; and
- (c) contain evidence of the accuracy of the copy or other evidence of the contents of the testamentary document.

**Example of order sought—**

Probate of the last will and testament dated the ..... day of ..... 20.. as contained in the copy [or completed draft *or a* reconstruction] (being the exhibit marked “XXX1” referred to in the affidavit of [insert name] sworn/affirmed on the ..... day of ..... 20..) of [name of deceased] late of [address and occupation] deceased who died on the ..... day of ..... 20.. be granted to [insert name of person] of [address and occupation] the executor as described in the testamentary document limited until the original testamentary document or a more authentic copy of it be brought into and left in the Registry of this Court.

- (3) Unless a separate affidavit of disclosure in the prescribed form is filed, the supporting affidavit must disclose the assets and liabilities of the estate of the deceased in terms of the content of the statement annexed to the prescribed form.

**Prescribed form—**

Form PROB46 Affidavit of Assets and Liabilities

- (4) A copy of the testamentary document sought to be admitted to proof must be exhibited to the supporting affidavit from the applicant in accordance with rule 351.14 and the original copy of the testamentary document must be deposited in the Registry.

**Note—**

A further photocopy of the testamentary document will not be accepted. Only the original copy of the testamentary document that is sought to be proved is to be deposited.

- (5) An affidavit of due execution and knowledge and approval of content must be filed (see rules 356.6 and 356.7).
- (6) The Court may order the joinder of a person as a respondent or interested party.
- (7) The Registrar may determine an application governed by this rule if the Registrar is satisfied that—
- (a) all persons who may be adversely affected by the orders sought are not under a disability and have provided their consent by affidavit evidence;

**Prescribed forms—**

Form PROB7 Consent

- (b) a person who is not under a disability who may be adversely affected by the order sought but fails to appear before the Registrar after such service on the person as the Registrar may order of the proceeding and all other persons who may be adversely affected are not under a disability and have consented; or
- (c) it is expedient, having regard to all of the circumstances (including the amount at stake, the degree of difficulty of the point to be determined and the expense otherwise occasioned) for the Registrar to determine the application.
- (8) If subrule (7) does not apply, the Registrar will refer the application to a Justice or Associate Justice for hearing and determination.

- (9) If the Court makes an order admitting to proof a copy of a testamentary document under this Division, an application for a grant can then proceed under Part 6 with a copy of the order uploaded to the application.

**Note—**

See *In the Estate of Lisa Karen Hall (deceased)* [2011] SASC 117

The grant that issues is a limited grant until the original testamentary document or a more authentic copy of it be brought into the Registry of the Court.

If the application is for a grant of letters of administration with the will annexed a copy of the order must be annexed to the oath and uploaded to the application. If the application is for a grant of probate, the order must be uploaded to the application.

**Division 7—Grant to assignees**

**353.8—Grant to assignees**

- (1) An application by the person or persons entitled to the whole of the estate (whether under a testamentary document or an intestacy) (the assignor) for an order that their interest in the estate be assigned to another person (the assignee) must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

**Note—**

If the Court makes an order under this rule to assign the interest in the estate to the assignee, the assignee replaces in the order of priority for a grant of administration the assignor or, if there are two or more assignors, the assignor with the highest priority.

If there are two or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding three) of them.

- (2) The supporting affidavit must—
- (a) establish that the assignor is entitled to the whole interest in the estate;
  - (b) annex the renunciation in the prescribed form of the assignor;
  - (c) exhibit the original instrument of assignment (which completely assigns the whole interest in the estate to the assignee);
  - (d) provide consent from any other assignees who do not wish to obtain administration.
- (3) If a testamentary document is referred to in the affidavit, the original testamentary document must be exhibited to the supporting affidavit in accordance with rule 351.14.

**Prescribed form—**

Form PROB16 Renunciation of Probate

Form PROB17 Renunciation of Letters of Administration With Will Annexed

Form PROB18 Renunciation of Letters of Administration

Form PROB19 Renunciation and Consent *Spes Successionis* Grant

Form PROB20 Renunciation of Letters of Administration to Body Corporate not being a Trust Corporation

Form PROB21 Renunciation of Probate by a Trust Corporation

- (4) If the Court makes an order under this Division, an application for a grant can then proceed under Part 6 with a copy of the order uploaded to the application.

**Note—**

The instrument of assignment must bear an endorsement that it has been assessed by an officer of Revenue SA.

If the application is for a grant with or without the will a copy of the order must be annexed to the oath and uploaded to the application.

**Division 8—Omission of words**

**353.9—Omission of offensive or libellous words from grant**

- (1) An application for an order for the omission of words of an offensive or libellous nature from the version of a testamentary document to be admitted to proof must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

- (2) If an application is made for proof of a testamentary document that, in the Registrar's opinion, contains words of an offensive or libellous nature, the grant will not issue until a determination has been made by the Court commenced by an Originating Application filed by the applicant.
- (3) The original testamentary document must be deposited with the Registry.

- (4) The Registrar may determine an application governed by this rule if the Registrar is satisfied that—
- (a) all persons who may be adversely affected by the orders sought are not under a disability and have provided their consent by affidavit evidence;
 

**Prescribed forms—**  
Form PROB7 Consent
  - (b) a person who is not under a disability who may be adversely affected by the order sought but fails to appear before the Registrar after such service on the person as the Registrar may order of the proceeding and all other persons who may be adversely affected are not under a disability and have consented; or
  - (c) it is expedient having regard to all of the circumstances (including the amount at stake, the degree of difficulty of the point to be determined and the expense otherwise occasioned) for the Registrar to determine the application.
- (5) If subrule (4) does not apply the Registrar will refer the application to a Justice or Associate Justice for hearing and determination.
- (6) The Court may order the joinder of a person as a respondent or interested party.
- (7) If the Court makes an order under this Division, an application for a grant can then proceed under Part 6 with a copy of the order uploaded to the application.

**Note—**

If the application is for a grant of letters of administration with the will annexed a copy of the order must be annexed to the oath and uploaded to the application. If the application is for a grant of probate the order must be uploaded to the application.

**Division 9—Rectification****Note—**

Rectification may be sought before an application for a grant or after the issue of a grant.

**353.10—Rectification of a testamentary document**

- (1) Subject to subrule (2), an application for an order for rectification under section 22 of the Act must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte  
Form PROB2 Originating Application—Probate Inter Partes  
Form PROB34 Affidavit

**Example of order sought—**

The will dated the .... date of ... 20.. (being the exhibit marked “XXX1” referred to in the affidavit of [insert name] sworn/affirmed on the .... day of ..... 20..) of [name of deceased] late of [address and occupation] deceased who died on the ..... day of ..... 20 is hereby rectified by the deletion of the words ... before the word ... in Clause 3 of the will and by the inclusion of the words ... immediately after the word ... where that word first appears in Clause 3 thereof (or as the case may be).

Probate of the will as rectified by this order be granted to [name] the executor as described in the will.

- (2) If a probate action has been commenced under Chapter 20 Part 4 in respect of a testamentary document, the application must be made in that proceeding.
- (3) The supporting affidavit must—
- (a) set out the facts upon which the applicant relies;
  - (b) contain such evidence as can be adduced as to the testator’s testamentary intentions with regard to the document sought to be rectified;
  - (c) if the testamentary document has not been admitted, an engrossment of the proposed rectified testamentary document exhibited to the affidavit.

**Note—**

Any original will instructions for the preparation of the will should be made an exhibit to the supporting affidavit.

Regarding an engrossment of the testamentary document, see rule 356.13.

- (4) Unless a separate affidavit of disclosure in the prescribed form is filed, the supporting affidavit must disclose the assets and liabilities of the estate of the deceased in terms of the content of the statement annexed to the prescribed form.

**Prescribed form—**

Form PROB46 Affidavit of Assets and Liabilities

- (5) Unless the Court otherwise orders, notice of the application must be given to every person whose interest might be adversely affected by the rectification applied for and any consent to the application of such a person must be exhibited to the affidavit in support of the application.
- (6) The Court may order the joinder of a person as a respondent or interested party.
- (7) The Registrar may determine an application governed by this rule if the Registrar is satisfied that—
- (a) all persons who may be adversely affected by the orders sought are not under a disability and have provided their consent by affidavit evidence;

**Prescribed forms—**

Form PROB7 Consent



- (b) a person who is not under a disability who may be adversely affected by the order sought but fails to appear before the Registrar after such service on the person as the Registrar may order of the proceeding and all other persons who may be adversely affected are not under a disability and have consented; or
  - (c) it is expedient, having regard to all of the circumstances (including the amount at stake, the degree of difficulty of the point to be determined and the expense otherwise occasioned), for the Registrar to determine the application.
- (8) If subrule (7) does not apply the Registrar will refer the application to a Justice or Associate Justice for hearing and determination.
  - (9) If the Court makes an order under this Division and a grant has not already been made, an application for a grant can then proceed under Part 6 with a copy of the order uploaded to the application.

**Note—**

If the application is for a grant of letters of administration with the will annexed a copy of the order must be annexed to the oath and uploaded to the application. If the application is for a grant of probate, the order must be uploaded to the application.

- (10) If an order for rectification is made—
  - (a) if the will has not been admitted to proof—an engrossment of the will in the form in which it is to be proved must be uploaded with the Originating Application; and

**Note—**

Regarding an engrossment of the testamentary document, see rule 356.13.

- (b) if the will has been admitted to proof—unless the Court otherwise orders, a certified copy of the order for rectification must be incorporated into the grant.

**Division 10—Other applications****353.11—Other applications**

- (1) This rule applies to applications that may be made, or may be required to be made, before an application leading to the full grant may be made under Part 6.
- (2) An application for an order governed by this Part must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

- (3) If a probate action has been commenced under Chapter 20 Part 4 in respect a testamentary document, the application must be made in that proceeding.
- (4) The Registrar may refer to a Justice or Associate Justice a proceeding or a question arising in the course of a proceeding governed by this Division.
- (5) The Court may require an application to be brought by Originating Application under Chapter 20 Part 4.

**Part 4—Pre-grant contentious matters****Division 1—Caveats****354.1—Entering caveat to prevent grant being issued**

- (1) A person (the *caveator*) who wishes to ensure that no grant is issued without notice to them may enter a caveat by completing the online form on the Electronic System.
- (2) Subject to subrule (3), the caveator must provide a copy of the death certificate.
- (3) If the caveator cannot obtain a copy of the death certificate, the caveat may be entered upon the caveator satisfying the Court of the person's death.

**Note—**

If the caveator cannot obtain a copy of the death certificate, the caveator must upload a letter explaining the circumstances and must provide other evidence such as a death notice published in a newspaper or a memorial card from the funeral or a fact of death extract from the Registrar of Births Deaths and Marriages.

- (4) If the caveat is entered by a lawyer on the caveator's behalf, the name and address of the caveator must be included and will be recorded on the sealed caveat.
- (5) A caveat must bear the date on which it is sealed and remains in force for six months only from that date.
- (6) A caveat may be renewed from time to time for additional periods of six months by renewing the caveat on the Electronic System.
- (7) No caveat affects any grant made on the day on which the caveat is sealed.
- (8) The commencement of a probate action, whether or not a caveat has been entered, operates to prevent the issuing of a grant (other than a limited grant for the purpose of preserving or protecting the estate or representing the estate in external litigation) until an application for a grant is made by the person shown to be entitled by a decision of the Court in the probate action and upon such application any caveat entered by a person who had notice of the proceedings ceases to have effect.

**354.2—Registrar to give notice of caveat**

If there is a caveat against the issuing of a grant, the Registrar will cause notice to be given—

- (a) of the caveat to an applicant for a grant; and
- (b) to the caveator of an application for a grant.

**354.3—Withdrawal of caveat**

- (1) A caveator may withdraw a caveat at any time before an appearance to a warning is entered and the caveat thereupon ceases to have effect.
- (2) A caveat may be withdrawn by completing a withdrawal of caveat on the Electronic System.

**354.4—Warning to caveat**

- (1) A person (a *warnor*) claiming to have an interest in the estate of the deceased may apply on the Electronic System for a warning of the caveat to be issued from the Registry.

**Note—**

Refer to Practice Note 5 of 2024

A person who wishes to warn a caveat must first obtain case access as an interested party.

- (2) A warnor must state their interest in the estate and, if they claim under a testamentary document, identify the date of the testamentary document.
- (3) A copy of any testamentary document referred to in the warning must be uploaded before the warning is issued.
- (4) A copy of the warning to caveat must be served on the caveator or their lawyer forthwith.

**Note—**

See Chapter 5 regarding the methods of service

- (5) If the time limit for entering an appearance has expired and the caveator has not entered an appearance, the warnor may file an affidavit in the prescribed form showing that—
  - (a) the warning was duly served;
  - (b) no appearance has been entered; and
  - (c) the warnor has not received an Originating Application for directions under subrule 354.5(4).

**Prescribed form—**

Form PROB11 Affidavit of Service of Warning and of Search and Non-appearance

- (6) Upon the Court being satisfied of compliance with subrule (5), the Court may order that the caveat cease to have effect.

**354.5—Appearance to warning to caveat**

- (1) A caveator having an interest contrary to that of the warnor may enter an appearance on the Electronic System at any time before an affidavit has been filed on the Electronic System under rule 354.4(5).
- (2) A copy of any testamentary document referred to in the appearance must be uploaded to the Electronic System before the appearance is issued.
- (3) A copy of the appearance must be served on the warnor or their lawyer forthwith.

**Note—**

See Chapter 5 regarding the methods of service

- (4) A caveator having no interest contrary to that of the warnor but wishing to show cause against the sealing of a grant to the warnor may at any time before an affidavit is filed under rule 354.4(5) commence an Originating Application for directions before the Registrar.

**354.6—Originating Application for discontinuance of caveat**

- (1) If the caveator enters an appearance, the warnor may apply for an order for discontinuance of the caveat by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

**Example of order sought**

That the contentious proceedings in this action arising from the caveat with an issue date of [date caveat was sealed] and the appearance to warning thereto entered on [date appearance entered] be discontinued and that probate of the testamentary document dated [date of the testamentary document] of [deceased's name] late of [address and occupation] deceased be granted to [insert name of person], if entitled thereto.

- (2) The applicant must join the caveator as a respondent.
- (3) If the application is contested and cannot be resolved, it will ordinarily be referred by the Registrar to a Justice or Associate Justice for hearing and determination.

**Note—**

If the matter is contentious, consideration will be given to whether a probate action should be commenced under Chapter 20 Part 4.

**354.7—Fresh caveat**

Unless the Court otherwise orders, no further caveat may be entered by or on behalf of a caveator whose caveat is either in force or has ceased to have effect.

**Division 2—Citation****354.8—Citation to apply for a grant**

- (1) A citation requiring a person to apply for or renounce their entitlement to a grant may be issued at the instance of a person who would be entitled to a grant if the person cited had renounced their right to apply.
- (2) A citation requiring an executor to whom leave has been reserved to apply for probate may be issued at the instance of—
  - (a) all surviving executors who proved the testamentary document in the first instance; or
  - (b) all surviving executors of the last survivor of the deceased executors who proved the will.
- (3) The person requesting the citation (the *citor*) must enter a caveat before issuing a citation.
- (4) A caveat entered under subrule (3) will remain in force until an application for a grant is lodged by the person shown to be entitled or by order of the Court, upon which the caveat ceases to have effect.
- (5) A citation must be filed by completing the online form on the Electronic System in the action in which the caveat was entered.
- (6) Subject to subrule (7), each averment in a citation must be verified by an affidavit in the prescribed form sworn by the citor or, if there are two or more citors, by one of them.

**Prescribed forms—**

Form PROB12 Affidavit to Lead to Citation to Accept or Refuse Probate

Form PROB13 Affidavit to Lead to Citation to Accept or Refuse Administration

Form PROB14 Affidavit—Citation-to Accept or Refuse Double Probate

- (7) The Court may in special circumstances accept an affidavit sworn by the citor's lawyer that includes additional depositions verifying the special circumstances.
- (8) Subject to subrule (9), the original testamentary document referred to in a citation must be deposited in the Registry.
- (9) The Court may dispense with compliance with subrule (8) if satisfied that it is not reasonably practicable for the citor to produce the original testamentary document.
- (10) Upon a citation being issued by the Court, it must be served on the person or persons to whom it is addressed (the *citee*).

**Note—**

See Chapter 5 regarding the methods of service

- (11) No citation to take a grant may issue while a proceeding as to the validity of a testamentary document is pending.

**354.9—Appearance**

- (1) A citee may enter an appearance by completing the online form on the Electronic System within 14 days of the citation being served on them or any time thereafter if no application has been made by the citor under rule 354.10.
- (2) The citee must specify in the appearance whether they elect to—
  - (a) comply with the citation and apply for a grant forthwith; or
  - (b) show cause why a grant in the estate of the deceased should not be granted to the citor.
- (3) If a citee has entered an appearance but has not applied for a grant or prosecuted their application with reasonable diligence (as the case may be), the citor may apply by Originating Application in the prescribed form supported by an affidavit in the prescribed form for an order for a grant to the citor.

**Prescribed forms—**

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

**354.10—Non-appearance**

- (1) If the time limited for an appearance to be filed has expired and no citee has entered an appearance on the Electronic System, the citor may—
  - (a) in the case of a citation under subrule 354.8(1)—file an affidavit without notice to any other party applying for an order for a grant to issue to the citor;

**Note—**

In a subsequent application leading to the grant, the administrator's oath should contain an additional recital of the citation process and the outcome. An endorsement will appear on the face of the electronic grant referable to the order referred to in (a) above.

- (b) in the case of a citation under subrule 354.8(2)—file an affidavit without notice to any other party applying for an order that a note be made on the electronic grant that the executor in respect of whom leave was reserved has been cited and has not appeared and that all of the executor's rights in respect of the executorship have wholly ceased.

**Note—**

See section 66 of the Act.

- (2) The affidavit must be in the prescribed form and show that the citation was served and that no citee has filed an appearance or had any communication with the citor or their lawyer.

**Prescribed form—**

Form PROB15 Affidavit of Service of Citation and of Search and Non-appearance

**Division 3—Passing over**

**354.11—Application to pass over**

- (1) An application seeking an order for passing over must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Note—**

See section 67 of the Act

**Prescribed forms—**

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

- (2) The applicant must join the person sought to be passed over as a respondent.
- (3) Unless a separate affidavit of disclosure in the prescribed form is filed, the supporting affidavit must disclose to the best of the applicant's ability the assets and liabilities of the estate of the deceased in terms of the content of the statement annexed to the prescribed form.

**Prescribed form—**

Form PROB46 Affidavit of Assets and Liabilities

- (4) If the application is contested and cannot be resolved, it will ordinarily be referred by the Registrar to a Justice or Associate Justice for hearing and determination.
- (5) If the Court makes an order under this Division, an application for a grant can then proceed under Part 6, with a copy of the order uploaded to the application

**Note—**

If the application is for a grant of letters of administration with or without the will annexed a copy of the order must be annexed to the oath and uploaded to the application. If the application is for a grant of probate, the order must be uploaded to the application.

**Division 4—Competition between persons entitled in equal priority**

**354.12—Application when two or more persons entitled in same order of priority**

- (1) An application by a person in dispute with another person entitled to a grant in the same order of priority must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

- (2) The applicant must join the other person entitled to a grant in the same order of priority as a respondent.
- (3) The applicant must enter a caveat before an Originating Application is filed.
- (4) A caveat entered under subrule (3) will remain in force until discontinued by an order of the Court.
- (5) Unless a separate affidavit of disclosure in the prescribed form is filed, the supporting affidavit must disclose the assets and liabilities of the estate of the deceased in terms of the content of the statement annexed to the prescribed form.

**Prescribed form—**

Form PROB46 Affidavit of Assets and Liabilities

- (6) If the application is contested and cannot be resolved, it will ordinarily be referred by the Registrar to a Justice or Associate Justice for hearing and determination.
- (7) Unless the Court otherwise orders, administration will be granted—
- (a) to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same order of priority;
  - (b) to a person not under a disability in preference to a person under a disability in the same order of priority.
- (8) If the Court makes an order under this Division, an application for a grant can then proceed under Part 6, with a copy of the order uploaded to the application.

**Note—**

If the application is for a grant of letters of administration with or without the will annexed a copy of the order must be annexed to the oath and uploaded to the application. If the application is for a grant of probate the order must be uploaded to the application.

**Part 5—Preliminary orders for an interim limited grant**

**Division 1—Preliminary**

**355.1—Introduction**

- (1) This Part contains rules relating to applications for a limited grant before or pending an application leading to a grant in common form under Part 6 or a grant in solemn form under Chapter 20 Part 4.

- (2) The jurisdiction to hear and determine an application governed by this Part may be exercised by the Registrar or may be referred to a Justice or Associate Justice for hearing and determination.
- (3) If an order is made by the Court under a rule in this Part, the applicant will need to apply for the limited grant under Part 6.

#### Division 2—Persons with legal incapacity

##### 355.2—Mental or physical incapacity of person entitled to grant

- (1) An application for an order for administration for the use and benefit of a person entitled to a full grant who is by reason of mental or physical disability or illness incapable of managing their affairs (a *person under a disability*) must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

##### Prescribed forms—

- Form PROB1 Originating Application—Probate Ex Parte
- Form PROB2 Originating Application—Probate Inter Partes
- Form PROB34 Affidavit

- (2) The application may be made by—
  - (a) an administrator of the estate of the person under a disability appointed under section 35 of the *Guardianship and Administration Act 1993* (or if more than one administrator has been appointed jointly, by all of such administrators);
  - (b) a manager of the property of the person under a disability appointed under the *Aged and Infirm Persons' Property Act 1940*;
  - (c) if no such administrator or manager has been appointed—
    - (i) if the person under a disability is entitled to a full grant as executor and has no interest in the residuary estate of the deceased—the person entitled to the residuary estate and, if there is more than one such person, the person acting with consent from the others;
    - (ii) if the person under a disability is entitled to a full grant as executor and has an interest in the residuary estate of the deceased—the person who would be entitled to a grant in respect of the estate of the person under a disability if the person under a disability had died intestate and, if more than one, consent from the others is required; or
  - (d) such other person as the Court may order.
- (3) The supporting affidavit must—
  - (a) establish that the person under a disability would be entitled to a full grant but for the incapacity and clear off any person with a higher entitlement to apply for the grant;
  - (b) establish the applicant's entitlement to apply under subrule (2);
  - (c) provide medical evidence regarding why the person under a disability is incapable of acting;
  - (d) provide evidence of consent from any other person with an equal entitlement to apply; and
  - (e) include any other relevant evidence.

##### Note—

In support of an application under this rule, medical evidence by affidavit from a qualified medical practitioner must be provided. The medical evidence should include the complete name and date of birth of the person under a disability, and state how long the qualified medical practitioner has been treating the person under a disability; and identify why the person under a disability cannot act as an executor or administrator.

- (4) Unless a separate affidavit of disclosure in the prescribed form is filed, the supporting affidavit must disclose the assets and liabilities of the estate of the deceased in terms of the content of the statement annexed to the prescribed form.

##### Prescribed form—

- Form PROB46 Affidavit of Assets and Liabilities

- (5) If a testamentary document is referred to in the affidavit, the original testamentary document must be exhibited to the supporting affidavit in accordance with rule 351.14.
- (6) Unless the Court otherwise orders, an order for a grant of administration will not be made under this rule unless all persons entitled in the same order of priority as the person under a disability have been cleared off.
- (7) If after a grant has been made the sole executor or administrator, or the surviving executor or administrator, becomes a person under a disability, upon the grant being impounded, an application for a grant of administration *de bonis non* for the use and benefit of that person, limited during their incapacity, may be made in accordance with this rule.
- (8) If a grant of probate has been made to the executor with leave reserved to one or more executors and the proving executor becomes a person under a disability, upon the grant being impounded, an application for double probate may be made by one or more of the non-proving executors.

##### Notes—

If a paper grant issued before 26 November 2018, the original paper grant must be deposited and will be retained by the Registry.

If the grant is an electronic grant that issued on the Electronic System, the process of impounding the grant will be done internally by the Registry and the electronic grant on the Electronic System will be noted accordingly.

- (9) If a grant of probate has been made to two or more executors and one becomes a person under a disability, upon the grant being revoked, a grant of probate may be made to the executor or executors not under a disability, leave being reserved to the executor under a disability to apply for probate when they become capable of managing their affairs.
- (10) Unless the Court otherwise orders, in the case of physical disability or illness, the application for a grant under this rule must be supported by evidence of the consent of the person alleged to be a person under a disability.
- (11) The Court may order the joinder of a person as respondent or interested party.
- (12) Except when the person under a disability is a minor, an administrator appointed under section 35 of the *Guardianship and Administration Act 1993* or a manager appointed under the *Aged and Infirm Persons' Property Act 1940*, in respect of the person under a disability may, on the person's behalf, renounce probate or administration.
- (13) If an order is made under this rule, the appointed administrator must file an application leading to the limited grant in accordance with Part 6, with the order being annexed to an oath for a grant of letters of administration with the will annexed or for a grant of letters of administration.

### 355.3—Minor entitled to grant

- (1) An application for and order for administration for the use and benefit of a minor to whom a grant would otherwise be made until the minor attains the age of 18 years must be instituted by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

#### Prescribed forms—

- Form PROB1 Originating Application—Probate Ex Parte
- Form PROB2 Originating Application—Probate Inter Partes
- Form PROB34 Affidavit

- (2) Subject to subrules (3) and (4), an order for administration may be made to—
  - (a) both parents of the minor jointly;
  - (b) one parent with the consent of the other;
  - (c) the statutory guardian of the minor;
  - (d) a guardian appointed by a court of competent jurisdiction; or
  - (e) if there is no such person able and willing to act and the minor has attained the age of 16 years—
    - (i) a relative of the minor within the meaning of section 101 of the Act nominated by the minor; or
    - (ii) if the minor is married—such a relative or the spouse of the minor if nominated by the minor.
- (3) A person nominated under subrule (2)(e) may represent another minor of whom they are the next of kin, being a minor below the age of 16 years and entitled in the same degree as the minor who made the nomination.
- (4) Despite anything in this rule, administration for the use and benefit of a minor until the minor attains the age of 18 years may be granted to a person assigned as guardian by order of the Court in default of, or jointly with, or to the exclusion of, a person mentioned in subrule (2).
- (5) An order may be made under subrule (4) on application by the intended guardian if the intended guardian files an affidavit in support of the application and, if required by the Court, an affidavit of fitness sworn by a responsible person.
- (6) The supporting affidavit must—
  - (a) establish that the minor would be entitled to a full grant but for their minority and clear off any person with a higher entitlement to apply for the grant;
  - (b) explain why any person referred to in subrule (2) cannot or should not be appointed;
  - (c) exhibit a copy of the minor's birth certificate;
  - (d) provide consent from any other person with an equal entitlement to apply; and
  - (e) include any other relevant evidence.
- (7) Unless a separate affidavit of disclosure in the prescribed form is filed, the supporting affidavit must disclose the assets and liabilities of the estate of the deceased in terms of the content of the statement annexed to the prescribed form.

#### Prescribed form—

- Form PROB46 Affidavit of Assets and Liabilities

- (8) If a testamentary document is referred to in the affidavit, the original testamentary document must be exhibited to an affidavit in accordance with rule 351.14.
- (9) If a minor who is the executor has no interest in the residuary estate of the deceased, administration for the use and benefit of the minor until the minor attains the age of 18 years may be granted to the person entitled to the residuary estate of the deceased.
- (10) The Court may order the joinder of a person as respondent or interested party.
- (11) A minor's right to administration may be renounced only by a person assigned as guardian under subrule (4) and authorised to renounce by the Court.
- (12) If an order is made under this rule, the appointed administrator must lodge an application leading to the limited grant in accordance with Part 6, with the order being annexed to an oath for a grant of letters of administration with the will annexed or a grant of letters of administration.

**Division 3—Protective limited grants****355.4—Grant *ad colligenda bona***

- (1) An application for a grant *ad colligenda bona* to preserve or protect a particular asset of the estate pending delay in obtaining a full grant must be made by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte  
 Form PROB2 Originating Application—Probate Inter Partes  
 Form PROB34 Affidavit

- (2) The supporting affidavit must—
- explain the reason for the delay in not being able to obtain a full grant;
  - explain why a limited grant is required and justify its urgency;
  - if any exists—exhibit the original testamentary document or annex a copy and explain why the original testamentary document cannot be provided;
  - identify the proposed administrator of the proposed grant and their relevant qualifications;
  - to the best of the applicant's ability, identify the assets and liabilities of the estate of the deceased; and
  - exhibit a copy of the proposed administrator's consent to the appointment.
- (3) The Court may order the joinder of a person as a respondent or interested party.
- (4) If an order for a grant *ad colligenda bona* is made, the appointed administrator must lodge an application leading to the limited grant in accordance with Part 6, with a copy of the order annexed to the administrator's oath for a grant of letters of administration.

**Prescribed form—**

PROB24 Oath of Administrator Leading to a Grant *Ad Colligenda Bona*

**355.5—Grant *pendente lite***

- (1) An application for a grant *pendente lite* to recover, call in and preserve the assets of the estate pending determination of an application for a full grant in the testamentary causes jurisdiction must be made by filing in the grant proceeding an Interlocutory Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB4 Interlocutory Application  
 Form PROB34 Affidavit

**Note—**

If a probate action under Chapter 20 Part 4 has already commenced in the Civil Jurisdiction, an order for an administrator *pendente lite* must be sought in that proceeding.

See *Tomkinson v Hersey* (1983) 34 SASR 181

- (2) The supporting affidavit must—
- explain the reason for the delay in not being able to obtain a full grant;
  - explain why a limited grant is required and justify its urgency;
  - to the best of the applicant's ability, identify the assets and liabilities of the estate of the deceased; and
  - exhibit a copy of the proposed administrator's consent to the appointment.
- (3) The Court may order the joinder of a person as a respondent or interested party.
- (4) If an order for a grant *pendente lite* is made, the appointed administrator must lodge an application leading to the limited grant in accordance with Part 6, with a copy of the order annexed to the administrator's oath for a grant of letters of administration.

**Prescribed form—**

Form PROB23 Oath of Administrator *Pendente Lite*

**Division 4—Limited grants for external litigation****355.6—Grant *ad litem***

- (1) An application for a grant *ad litem* for the purpose of representing the estate in existing or proposed litigation by or against an external party (*external litigation*) pending delay in obtaining a full grant must be made by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte  
 Form PROB2 Originating Application—Probate Inter Partes  
 Form PROB34 Affidavit

- (2) The supporting affidavit must—
- explain the reason for the delay in not being able to obtain a full grant;
  - explain why a limited grant is required;

- (c) if the external litigation has already been commenced—identify the proceeding by court, case number and parties;
  - (d) if the external litigation has not been commenced—identify the proposed proceeding;
  - (e) exhibit the original testamentary document in accordance with rule 351.14;
  - (f) identify the proposed administrator of the proposed grant and their relevant qualifications;
  - (g) to the best of the applicant's ability, identify the assets and liabilities of the estate of the deceased; and
  - (h) exhibit a copy of the proposed administrator's consent to the appointment.
- (3) The Court may order the joinder of a person as a respondent or interested party.
  - (4) If an order for a grant *ad litem* is made, the appointed administrator must lodge an application leading to the limited grant in accordance with Part 6, with a copy of the order annexed to the administrator's oath for a grant of letters of administration.

**Prescribed form—**

Form PROB25 Oath of Administrator *Ad Litem*

**Part 6—Common Form Grants****Division 1—Preliminary****356.1—Introduction**

- (1) This Part contains rules relating to common form grants when the application for a grant is non-contentious.
- (2) Applications under this Part will ordinarily be heard and determined by the Registrar but, in case of difficulty or doubt, the Registrar may refer them to a Justice or Associate Justice for hearing and determination or may require an Originating Application to be instituted under Chapter 20 Part 4.
- (3) A person must not make or proceed with an application for a grant if they have knowledge or have in their possession an informal testamentary document that may be entitled to proof under section 11 of the Act.
- (4) If subrule (3) applies, before making an application for a grant, an Originating Application must be commenced under Part 3 Division 5 for the Court to make a finding for or against the informal testamentary document.
- (5) If the deceased died domiciled outside the state of South Australia the order of priority contained within rule 356.2, rule 356.3 and rule 356.15 may not apply.

**Note—**

If the deceased died outside Australia see rule 356.21

**Division 2—Grants with a testamentary document****Subdivision A—Applications****356.2—Application for grant of probate to an executor**

- (1) An application for a grant of probate of a testamentary document of a deceased person must be made by an executor named in the testamentary document (the *applicant*) by completing the electronic form on the Electronic System and providing such other documents as the Registrar may require.
- (2) The original testamentary document must be deposited in the Registry in accordance with rule 356.5.
- (3) If there is more than one applicant applying for a grant, the testamentary document must be marked as set out in rule 356.5 by each applicant.

**Note—**

The applicants do not need to sign in the presence of the same authorised witness or on the same date.

- (4) If the testamentary document nominates an executor of the same or a higher order of priority and such executor is not the applicant, they must be accounted for on the electronic form as not applying for a grant.

**Note—**

The Registry must be made aware of any executor named in the testamentary document with the same or a higher priority. A higher priority means a person nominated in the testamentary document to take a grant before the applicant.

Example reasons why an executor may not apply for a grant—they have died, they are incapable of acting, they have renounced or leave is to be reserved to them.

- (5) Multiple executors must be listed in the electronic form in the order in which they appear in the testamentary document.

**356.3—Persons entitled to apply for a grant of letters of administration with will annexed**

- (1) If an executor has not been appointed in the testamentary document or has been cleared off, the following persons, in descending order of priority, may apply for a grant of letters of administration with will annexed—
  - (a) a trustee of the residuary estate;
  - (b) a residuary beneficiary for life;
  - (c) a residuary beneficiary;
  - (d) a person entitled to all or part of the residuary estate on intestacy or partial intestacy;
  - (e) a specific or pecuniary legatee;
  - (f) a creditor of the deceased estate;
  - (g) a person having no interest under the testamentary document of the deceased who would have been entitled to a grant if the deceased had died wholly intestate;
  - (h) anyone else the Court may appoint.



- (2) The Court may, if it thinks fit, grant letters of administration with will annexed to any person in priority to any person mentioned in subrule (1).
- (3) If two or more persons have the same priority, the order of priority will be decided according to which of them has the greater beneficial interest in the estate.

**Note—**

Nothing in this rule operates to prevent a grant being made to a person to whom a grant may, or may be required to, be made under a statute.

- (4) Subject to rule 354.12(7) a personal representative of a person mentioned in paragraph (c) or (d) of subrule (1) has the same priority as the person who would be entitled to the grant.

**356.4—Application for grant of letters of administration with will annexed**

- (1) An application for a grant of letters of administration with will annexed must be made by the applicant by completing the electronic form on the Electronic System together with—
  - (a) an administrator's oath in the prescribed form amended with the relevant modification when necessary; and
  - (b) such other documents as the Registrar may require.

**Prescribed form—**

Form PPROB27 Oath of Administrator With Will Annexed

- (2) The original testamentary document must be deposited in the Registry in accordance with rule 356.5.
- (3) If there is more than one applicant applying for a grant, each applicant must provide an administrator's oath and mark the testamentary document as required by rule 356.5.

**Notes—**

The applicants do not need to sign in the presence of the same authorised witness or on the same date.

Two or more applicants may provide a joint oath.

- (4) If the testamentary document nominates an executor, they must be accounted for on the electronic form as not applying for the grant.

**Note—**

The Registry must be made aware of any executor named in the testamentary document with a higher priority. A higher priority means a person nominated in the testamentary document to take a grant before the applicant.

Example reasons why an executor may not apply for a grant—they have died or they have renounced.

**356.5—Marking and depositing of a testamentary document**

- (1) This rule applies to applications for probate, double probate and applications for a grant of letters of administration with will annexed.
- (2) The marking of the testamentary document must include—
  - (a) the name and signature of the applicant;
  - (b) the name and signature of the authorised witness in the physical presence of whom the applicant signed the testamentary document;
  - (c) the position or authority of the authorised witness to administer oaths in the place where the marking is made;
  - (d) the suburb and postcode where the marking is made;
  - (e) the date when the marking is made.
- (3) The marking referred to in subrule (2), must appear on the original testamentary document—
  - (a) on the back sheet of the testamentary document, if applicable;
  - (b) if there is no back sheet—on the reverse of the front page of the testamentary document, if blank; or
  - (c) if there is no back sheet and the reverse of the front page of the testamentary document is not blank—in the margin of the original testamentary document where no text appears.
- (4) If a testamentary document consists of two or more unattached pages, each page must be marked as set out in subrules (2) and (3).
- (5) If a testamentary document has been executed in duplicate, both copies must be provided to the Registry and marked in accordance with subrules (2) and (3).
- (6) If the Registrar is satisfied that compliance with this rule might result in the loss or damage of the original testamentary document, the Registrar may allow a certified copy of the testamentary document to be marked or exhibited instead of the original testamentary document in which case the oath or affidavit (as the case may be) must describe the document so marked or exhibited as a copy.

**Note—**

If an applicant seeks to mark a certified copy of the testamentary document, permission must be sought prior to the grant application being lodged on the Electronic System. Permission must be sought by an email being sent to the Registry attaching a letter addressed to the Registrar of Probates. The letter must explain why the original testamentary document cannot be marked by the applicant.

- (7) The original testamentary document must be deposited with the Registry in a sealed A4 envelope with the Grant Coversheet as generated by the Electronic System affixed to the front of the envelope.

**Subdivision B—Further evidence****356.6—Due execution**

- (1) This rule applies if—
  - (a) a will contains no attestation clause;
  - (b) the attestation clause is insufficient; or
  - (c) it appears to the Registrar that there is some doubt about due execution of the testamentary document.
- (2) If this rule applies, an affidavit of due execution and knowledge of contents in the prescribed form from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present when the testamentary document was executed must be filed with the application.

**Prescribed form—**

Form PROB35 Affidavit of Due Execution

- (3) The affidavit must establish the testator's knowledge and approval of the contents of the testamentary document or explain to the satisfaction of the Court why that fact cannot be established.
- (4) If no affidavit can be obtained in accordance with subrule (2), the Court may, if it thinks fit, accept evidence on affidavit to show that the signatures on the testamentary document are in the handwriting of the deceased and of the attesting witnesses or of any other matter that may raise a presumption in favour of the due execution of the testamentary document.
- (5) If no affidavit can be obtained in accordance with subrules (2) and (4), the Court may require evidence that the distribution of the estate would be the same if the testamentary document were not admitted.
- (6) If any order has been made restricting the ability of the testator to make a testamentary disposition, a copy of such order must be filed with the application and the applicant must by prescribed form establish to the satisfaction of the Registrar that they are entitled to the grant notwithstanding the restriction.

**Prescribed form—**

Form PROB38 Court or Other Order In Place When Will was Executed—Affidavit from Public Trustee Officer

- (7) The Court may admit a testamentary document without evidence as required by this rule if satisfied that it is proper to do so.

**356.7—Evidence as to knowledge and approval of contents**

If for any reason the Court has a doubt as to whether the testator knew and approved the contents of the testamentary document at the time of its execution, the Court may require affidavit evidence that the testator had such knowledge.

**356.8—Alterations in a testamentary document**

- (1) This rule applies if there appears in a testamentary document an obliteration, interlineation or other alteration (collectively an *alteration*) that is not authenticated—
  - (a) in the manner prescribed in section 16(2) of the Act;
  - (b) by the re-execution of the will; or
  - (c) by the execution of a codicil.
- (2) If this rule applies, evidence must be provided to show whether the alteration was present at the time the testamentary document was executed.

**Note—**

The supporting affidavit must include a deposition as to due execution and knowledge of contents.

- (3) If an alteration was made after the testamentary document was executed and is of practical importance, the Court may direct that an Originating Application be lodged under Part 3 Division 5 or 10.
- (4) If the Court determines that the alteration is of no practical importance, it may dispense with compliance with subrule (3).

**356.9—Condition of a testamentary document**

- (1) If from any mark on or hole in the testamentary document it appears that a paper, memorandum or other document may have been annexed or attached to a testamentary document, it must be accounted for and the paper, memorandum or other document must be produced or, if not produced, its non-production must be accounted for to the Court's satisfaction.
- (2) If this rule applies, an affidavit of plight and condition and finding in the prescribed form must be filed with the application explaining the condition of the testamentary document with the original testamentary document being made an exhibit to the affidavit.

**Prescribed form—**

Form PROB39 Affidavit of Plight and Condition and Finding

**Note—**

The original testamentary document must be made an exhibit to the affidavit in the prescribed form to enable the mark or hole to be identified.

The affidavit must be physically filed in the Registry—refer to rule 351.14(2)

- (3) If the condition of the testamentary document cannot be accounted for, evidence of unsuccessful searches for any other testamentary document must be provided. Affidavit evidence must be filed with the application stating that further unsuccessful searches have been undertaken and no other testamentary document has been located.

**356.10—Trust deed referred to in a testamentary document**

- (1) If a testamentary document contains a reference to a trust deed, a copy certified by a lawyer of the trust deed and any amending deed made to the date of the testamentary document must be provided to the Registry.
- (2) If such a trust deed cannot be produced, its non-production must be accounted for by affidavit evidence of searches conducted for and all the unsuccessful attempts made to locate them.
- (3) If the trust deed is incorporated into a testamentary document by reference—
  - (a) the original of the trust deed must be provided to the Registry; and
  - (b) a copy certified by a lawyer of the trust deed must be marked in accordance with rule 356.5.

**Notes—**

A trust deed may be incorporated into a testamentary document by reference if it:

- (a) is expressly identifiable by name and date;
- (b) was in existence at the date of execution of the testamentary document and is not expressed to be a future document in the testamentary document; and
- (c) is referred to in the testamentary document as being in existence at the date of execution of the testamentary document.

The trust deed may not be published with the grant. However, the grant may be issued with an endorsement stating that a duly certified copy of the trust deed and any relevant amendments to the trust deed has been filed in the Court.

If the trust deed is not considered to be incorporated into the testamentary document by reference, the grant may be issued with an endorsement referable to it.

The original trust deed provided to the Registry will be available for collection once the grant has issued.

- (4) If the trust deed is considered by the Registrar to be testamentary in nature, then the Court may direct that an Originating Application under Part 3 Division 10 be commenced.

**356.11—Other documents referred to in a testamentary document**

- (1) This rule applies if a testamentary document contains a reference to a paper, memorandum, list or other document (other than a trust deed) (a *referenced document*).
- (2) If the original referenced document can be provided, it must be exhibited to an affidavit from the applicant and deposited in the Registry as part of the application. Evidence of the searches conducted for it and the circumstances of its finding should be provided to ascertain whether it is incorporated into the testamentary document by reference or whether it is testamentary in nature.
- (3) If the referenced document cannot be provided, its non-production must be accounted for by affidavit evidence of searches conducted for it and all unsuccessful attempts made to locate it.
- (4) If the referenced document is incorporated into the testamentary document by reference, the original of the referenced document must be marked in accordance with rule 356.5.

**Notes—**

The referenced document may be incorporated into the testamentary document by reference if it:

- (a) is expressly identifiable by name and date;
- (b) was in existence at the date of execution of the testamentary document and is not expressed to be a future document in the testamentary document; and
- (c) is referred to in the testamentary document as being in existence at the date of execution of the testamentary document.

If the referenced document is incorporated into the testamentary document by reference, a copy of the referable document shall ordinarily be published as part of the grant.

If the referenced document is not considered to be incorporated into the testamentary document by reference, the grant may be issued with an endorsement referable to it.

- (5) If the referenced document may be testamentary in nature, the Court may order that an originating application under Part 3 Division 10 be commenced.

**Note—**

See *Estate of Kathleen Torr* [2005] SASC 49

**356.12—Date of execution of testamentary document**

- (1) If the Court has doubt as to the date of when a testamentary document was executed, an affidavit from one of the attesting witnesses in proof of the actual date must be filed.

**Note—**

The affidavit should be supported with evidence to substantiate the date (for example, reference to a calendar entry, event, circumstance or occurrence).

The supporting affidavit must include a deposition as to due execution and knowledge of contents.

- (2) If neither attesting witnesses nor any other person can make such an affidavit, evidence must be given showing that the testamentary document is the latest or only testamentary document of the testator.
- (3) If there is evidence to support that the testamentary document was executed on a day other than the date recorded on the testamentary document or if the testamentary document is undated or imperfectly dated, the grant will reflect a date or period of time established by evidence.

**356.13—Engrossment of testamentary document required for Court record**

- (1) If the Court considers that a testamentary document or other document required to be published is not suitable for the purpose of being annexed as a copy to the grant, the Court may require an engrossment of the testamentary document to be lodged.
- (2) If subrule (1) applies, the engrossment of the testamentary document will be annexed to the electronic grant.
- (3) If a testamentary document contains alterations of no practical importance that are not admissible to proof, an engrossment of the testamentary document must be lodged in a form approved by the Registrar.
- (4) An engrossment must reproduce the form and content of the testamentary document or other document (including signatures and dates) to be admitted to proof in typed form, word by word, line by line, and page by page.

**Note—**

The engrossment must be an exact replicate of the original document—subject to any modification in the circumstances of the case. For example, if an order for rectification has been made, the engrossment would include the rectification.

**Division 3—Grants in solemn form****356.14—Application for grant to issue in solemn form**

If a Court order has been made under Chapter 20 Part 4 declaring for the force and validity of a testamentary document in solemn form, an application leading to the grant must be lodged on the Electronic System under this Part with an oath in the prescribed form.

**Prescribed form—**

Form PROB22 Executor's Oath after Pronouncing for a Will in Solemn Form

**Note—**

Form PROB22 must be uploaded in support of the grant application and the testamentary document must be marked in accordance with the requirements of the Form.

Unless directed otherwise by the Registrar, the testamentary document is not to be uplifted from the Registry.

The intended applicant will need to contact the Probate Registry to arrange a time to attend at the Registry to mark the original testamentary document as required by the oath.

**Division 4—Grants without a testamentary document****356.15—Persons entitled to apply for a grant of letters of administration**

- (1) Subject to the following subrules, the persons entitled in distribution under Part 5 of the Act, may, in the following descending order of priority, apply for a grant of letters of administration providing they survived the deceased by at least 30 days—
  - (a) a surviving spouse or domestic partner of the deceased;
  - (b) a child of the deceased or the issue of a child who died before the deceased;
  - (c) a parent of the deceased;
  - (d) a sibling of the deceased or the issue of a deceased sibling who died before the deceased;
  - (e) a grandparent of the deceased;
  - (f) a sibling of a parent of the deceased or the issue of a deceased sibling of a parent of the deceased who died before the deceased; or
  - (g) any other person the Court may appoint.
- (2) Subject to subrule (3), a personal representative of a person mentioned in a subrule (1) has the same priority as the person represented.
- (3) A child of the deceased will generally be preferred to the personal representative of a spouse or domestic partner who has died without taking a beneficial interest in the whole estate of the deceased as ascertained at the time of the application for the grant.
- (4) If all persons entitled to apply for a grant under subrule (1)(a) to (g) have been cleared off, a grant may be made to—
  - (a) a creditor of the deceased; or
  - (b) a person who, notwithstanding that they have no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.
- (5) The Court may, if it thinks fit, grant letters of administration to any person (whether or not mentioned in subrule (1)) in priority to any person mentioned in subrule (1).
- (6) If two or more persons have the same priority, the Court may make a grant to one or more of them.
- (7) In default of any person having a beneficial interest in the estate, administration will be granted to the Attorney-General if the Attorney General claims *bona vacantia* on behalf of the Crown in right of the State of South Australia.

**Note—**

Nothing in this rule operates to prevent a grant being made to any person to whom a grant may, or may be required to, be made under a statute.

**356.16—Application for grant of letters of administration**

- (1) An application for a grant of letters of administration must be lodged by completing the electronic form on the Electronic System, together with an administrator's oath in the prescribed form amended with the relevant modification(s).

**Prescribed form—**

Form PROB28 Oath of Administrator Without Will

- (2) If there is more than one administrator applying for a grant, each administrator must provide an administrator's oath.

**Note—**

Two or more applicants may provide a joint oath.

- (3) Unless the Court otherwise orders, no grant of administration will be made to more than three persons jointly.

**Division 5—Evidence in support of application for a grant****356.17—Statement of assets and liabilities**

- (1) An application on the Electronic System for a grant must disclose an asset of the deceased held in South Australia.

**Note—**

If an application does not disclose an asset held in South Australia, the application will be rejected.

- (2) Subject to subrule (3) and (4), an applicant for a grant must, for the purposes of section 71 of the Act, complete the online form disclosing all of the deceased's assets and liabilities known to the applicant at the time of making the application wherever situated.
- (3) If the deceased was not at the time of death domiciled in Australia, disclosure under subrule (2) is only required in respect of assets situated in Australia and liabilities that are charged on those assets or arose in Australia.
- (4) If an applicant seeks to register an interstate grant under Division 10, only the deceased's assets located within South Australia and liabilities that are charged on those assets or arose in South Australia need to be disclosed.

**Note—**

See section 71(4) of the Act.

- (5) The value of an asset to be disclosed is the value as at the date of death of the deceased which is known to the applicant at the time of making the application or further disclosure in accordance with subrule (6).
- (6) After a grant has issued an executor, administrator or trustee of the estate of a deceased person must disclose any further or previously undisclosed assets or liabilities and correct any inaccurate disclosure previously made on the Electronic System.

**Note—**

For a grant that issued electronically on the Electronic System, if a further asset or liability is required to be disclosed or corrected, it is done on the Electronic System in the same grant application.

If a paper grant issued before the commencement of the Electronic System (26 November 2018) and a further asset or liability is required to be disclosed or corrected, an affidavit in accordance with the prescribed form is to be filed on the Electronic System and the draft Registrar's Certificate is to be provided by email to the email address nominated by the Registry on the CAA website or as otherwise directed by the Registrar.

**Prescribed forms—**

Form PROB47 Affidavit of Assets and Liabilities Supplementary Affidavit

Form PROB48 Registrar's Certificate of Disclosure

- (7) A Registrar's Certificate for disclosure of an asset will issue in the same terms as the disclosure that has been made under this rule and on the Electronic System.

**Note—**

The Court makes no representations express or implied as to the descriptions and values ascribed to any asset or as to the mathematical accuracy of the disclosure.

**356.18—Evidence required to prove death**

- (1) If the death occurred in Australia, a copy of the death certificate issued by the Registrar of Births Deaths and Marriages or an equivalent certificate issued by another State or Territory satisfactory to the Registrar must accompany the application for a grant.

**Note—**

An interim death certificate may be relied upon for the purposes of applying for a grant.

- (2) If there is an error in the death certificate, the applicant must notify the Court of that error by letter uploaded to the Electronic System.
- (3) Where the death occurred outside Australia—
- (a) if the death has been registered under the *Registration of Deaths Abroad Act 1984* (Cth) or section 33(4) of the *Births, Deaths and Marriages Registration Act 1996*, a death certificate issued under such Act may be lodged in lieu of a death certificate issued from the country of the place of death;
- (b) if the death occurred in a country that is a member of the Commonwealth of Nations, the original death certificate as issued by the competent authority satisfactory to the Registrar must accompany the application for a grant;
- (c) if the death occurred in a country that is not a member of the Commonwealth of Nations and the country is a signatory to and has ratified the *Hague Convention Abolishing the Requirements of Legalisation for Foreign Public Documents*, the original death certificate issued from the country or an equivalent certificate given or issued by a competent authority must be authenticated in the manner prescribed by the *Foreign Evidence Act 1994* (Cth) and must accompany the application for a grant;

(d) if the death occurred in a country that is not a member of the Commonwealth of Nations and the country is not a signatory to, or has not ratified, the *Hague Convention Abolishing the Requirements of Legalisation for Foreign Public Documents*, the original death certificate issued from the country or an equivalent certificate given or issued by a competent authority must accompany the application for a grant together with affidavit evidence—

- (i) identifying the deceased person and how that identification was established; and
- (ii) establishing that the dead body was that of the deceased person.

**Prescribed form—**

Form PROB44 Affidavit Verifying the Translation of a Testamentary Document or Other Document

- (4) If the fact of death is certain but the exact date of death is unknown, the Court may publish the date of death as recorded on the death certificate of the deceased.

**Note—**

If the death certificate states that the death was on or about a date or between certain dates, the exact wording recorded on the death certificate will be published on the grant.

If the date as published on the grant causes uncertainty with the administration of the estate, the executor or administrator should apply to the Court for advice or directions (see rule 357.7). If further evidence is obtained and a more specific date of death can be established, an application should be made seeking an order for the grant to be amended to reflect that date.

- (5) The Court may request any further evidence that it deems necessary to establish the date of death to be published on the grant.
- (6) If the fact of death is uncertain but there is evidence from which death may be presumed to have occurred, an application must be made under Part 3 Division 4 for an order giving leave to swear to the death.

**356.19—Inoperative testamentary document**

- (1) If the last testamentary document of the testator is wholly inoperative, an applicant may proceed to apply for a grant of letters of administration.
- (2) The original testamentary document must be exhibited to the oath of the administrator and the oath must include the following evidence:
  - (a) that all persons with a prior entitlement to take a grant and participate in the distribution of the estate under the testamentary document died during the lifetime of the testator, or otherwise establish why the testamentary document is inoperative;
  - (b) that searches have been conducted and no later testamentary documents have been located; and
  - (c) that the deceased died intestate.

**Prescribed form—**

Form PROB28 Oath of administrator

**Note—**

If the testamentary document is inoperative then the practice of this Court in such matters is not to prove the testamentary document but the oath for administration must recite the failed testamentary document. The failed testamentary document is then recorded on the grant and the testamentary document remains in the Court.

The affidavit must be physically filed in the Registry—refer to rule 351.14(2)

**Division 6—Issue of a grant**

**356.20—Issue of grant**

- (1) Except with leave of the Court, a grant is not to issue within 28 days from—
  - (a) the date of death of the deceased; or
  - (b) if the exact date of death is unknown—the last date of the period recorded on the death certificate as being the date of death.
- (2) If leave is sought under subrule (1), the request must be made by letter and supporting affidavit accompanying the grant application and notification of the request and the filed application must be sent to the Registry by email.
- (3) The supporting affidavit must set out the facts on which the applicant relies, including—
  - (a) that, to the best of the applicant's knowledge and belief, no-one is likely to be adversely affected by the issue of the grant;
  - (b) that the applicant has made due inquiries and is satisfied that the testamentary document tendered for proof is the last testamentary document of the deceased;
  - (c) if the deceased died intestate—that the applicant has made due inquiries and identifying the searches undertaken to be satisfied that the deceased died intestate;
  - (d) that the applicant has no notice of any opposition to the grant;
  - (e) an undertaking not to distribute the estate within 28 days from the exact date of death or from the last date of the period recorded in the death certificate as being the date of death.
- (4) A grant will not issue until all inquiries that the Court sees fit to institute have been answered to the Court's satisfaction.
- (5) A grant may be made to a person entitled to a grant without notice to other persons entitled in the same order of priority.

**356.21—Grants when deceased died domiciled outside Australia**

- (1) If the deceased died domiciled outside Australia, the Court may order (except when the deceased has appointed executors in South Australia to administer the estate in this State) that a grant issue—
  - (a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;
  - (b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled; or
  - (c) if there is no such person as is mentioned in paragraph (a) or (b) or if the circumstances so require—to such person as the Court may order.
- (2) An application for an order under subrule (1) may be made by affidavit in an application under this Part.
- (3) An order under subrule (1) is not required—
  - (a) if the testamentary document is in the English language, in which case probate may be granted to the executor as described in the testamentary document;
  - (b) if the testamentary document describes the duties of a named person in terms sufficient to constitute the person as executor according to the tenor of the testamentary document, in which case probate may be granted to that person; or
  - (c) if the whole of the estate in South Australia consists of immovable property, a grant limited to such property may be made in accordance with the law that would have been applicable if the deceased had died domiciled in South Australia.

**Division 7—Grants to a particular persons****356.22—Grants to attorneys**

- (1) If a person entitled to a grant resides outside South Australia, administration may be granted to the person's constituted attorney in the prescribed form for the use and benefit of the person, and until the person applies for and obtains a grant.

**Prescribed Form—**

Form PROB49 General and Enduring Power of Attorney

**Note—**

See *Re Estate of Dudley (deceased)* (2013) 115 SASR 328

- (2) Unless the Court otherwise orders, when the person so entitled is an executor, administration will not be granted to the person's attorney without notice to the other executors, if any.
- (3) If the Court is satisfied that it is desirable for a grant to be made to the constituted attorney of a person entitled to a grant of administration in the prescribed form and is a resident in South Australia, the Court may order that administration be granted to the attorney for the use and benefit of the person, limited until the person obtains a grant or in such other way as the Court may order.

**Prescribed Forms—**

Form PROB27 Oath of Administrator With Will Annexed

Form PROB28 Oath of Administrator Without Will

Form PROB49 General and Enduring Power of Attorney

**Note—**

The oath will need to include the necessary depositions to establish the desirability for the grant to be made to the attorney.

- (4) Subject to subrule (5), an enduring power of attorney for the purpose of obtaining a grant must be executed as a deed and the original must be deposited in the Registry with the application for the grant.
- (5) If an enduring power of attorney contains, in addition to the specific powers required for obtaining administration, general powers required for other purposes, it may be given out after the grant has issued on a copy certified by a lawyer being deposited with the Registry.

**356.23—Grants to trust corporations**

If a trust corporation applies for a grant through one of its officers, the officer must upload with the application on the Electronic System supporting evidence of—

- (a) his or her authority to make the application on behalf of the trust corporation; and

**Note—**

For example, such authority may include a certified copy of a resolution of the board of directors, a power of attorney, or a list of authorised officers of the corporation authorising the officer to make the application which may also include specimen signatures.

- (b) any change of name of the trust corporation compared to the name described in the testamentary document, which must be reconciled by a formal change of name or transfer of business creating a successor in law.

**356.24—Grants to corporate bodies**

- (1) If a body corporate would, if an individual, be entitled to a grant, a grant for its use and benefit may be granted to its syndic or lawfully constituted attorney.

**Note—**

A grant of probate will not be made jointly to a syndic or attorney of a body corporate and to one or more individuals because an individual's right to probate has priority.

- (2) If a body corporate applies for a grant (by syndic or attorney), the application for the grant on the Electronic System must be supported by a copy of—
- (a) the rules or constitution of the body corporate to establish that it has power to take a grant through its nominee; and
  - (b) a resolution of its directors (or equivalent) appointing the syndic or attorney as its nominee to take the grant on its behalf.

**Notes—**

The copies of the rules or constitution of the body corporate and the resolution of appointment must be duly authenticated to the Court's satisfaction.

The grant of administration to the nominee of the body corporate is limited for the use and benefit of the body corporate and until further representation is granted.

As the grant is of administration, an oath is required from the nominee of the body corporate in the prescribed form suitably amended to the circumstances and including additional depositions—

- (a) confirming that the deponent is duly authorised by the body corporate to make the oath;
- (b) confirming that the body corporate is not a trust corporation and has the power to appoint the applicant as its nominee;
- (c) confirming that the resolution of appointment was properly made and passed in accordance with the rules or constitution; and
- (d) annexing a duly authenticated copy of the rules or constitution and the resolution of the applicant's appointment.

If the appointment of the syndic or attorney has been executed as a deed, a copy of the deed must be annexed to the oath.

Each application under this rule will be examined on its own merit.

**Prescribed Form**

Form PROB28 Oath of Administrator Without Will—see note above for additional depositions

- (3) If a body corporate is highest in priority to take a grant but elects to renounce that right, rule 353.2 applies and a renunciation in the prescribed form must accompany the application

**Prescribed Form**

Form PROB20 Renunciation of Letters of Administration to Body Corporate not being a Trust Corporation

**356.25—Grants to persons having *spes successionis***

- (1) If the beneficial interest in the whole estate of the deceased is vested absolutely in a sole person who has renounced in the prescribed form their right to a grant and has consented to administration being granted to the person or persons who would be entitled to the estate of the renunciant if they had died intestate, administration may be granted to such other person or one or more of such other persons.

**Prescribed Form**

Form PROB19 Renunciation and Consent *Spes Successionis* Grant

- (2) For the purposes of subrule (1), a surviving spouse is not regarded as a person in whom the estate has vested absolutely unless they would be entitled to the whole of the estate regardless of its value.

**356.26—Grants when a minor is a co-executor**

- (1) If one of two or more executors is a minor—
- (a) probate may be granted to the other executor or executors not under disability, with leave reserved to the minor to apply for probate on the minor attaining the age of 18 years; and
  - (b) administration for the use and benefit of the minor until the minor attains the age of 18 years may be granted under rule 355.3 if, and only if, the executors who are not under a disability—
    - (i) renounce; or,
    - (ii) on being cited to accept or refuse a grant, fail to make an effective application.
- (2) A minor executor's right to probate on attaining the age of 18 years may not be renounced by any person on the minor's behalf other than in accordance with rule 355.3.

**Division 8—Description of deceased and executor or administrator****356.27—Description of deceased with a testamentary document**

- (1) If the deceased died with a testamentary document, the grant will issue in the name of the testator as described in the heading of the testamentary document lodged with the application.

**Note—**

If the deceased is incorrectly named in the application filed on the Electronic System, the application will be rejected. The application will not be amended by the Registry.

If the testator is described in the heading of the testamentary document with more than one name, the grant will only issue in one name. Any otherwise name (alias) must be justified by affidavit evidence.

Any name of the testator appearing in the attestation clause to the testamentary document is irrelevant for an application for a grant.



- (2) If the name of the testator as described in the heading of a testamentary document is misspelt, imperfect or incomplete, the grant may issue with the name of the testator as described in the heading of the testamentary document followed by the true and correct name of the testator.

**Note—**

The true and correct name must be supported by affidavit evidence.

The death certificate uploaded for the purposes of the application is not sufficient standalone evidence to justify an otherwise name.

**Prescribed form—**

Form PROB40 Affidavit as To Alias-Will

- (3) If an otherwise name is required to administer the estate of the deceased, the grant may issue with the name of the testator as described in the heading of the testamentary document followed by the name required to administer the estate as justified.

**Note—**

An affidavit must be filed in support identifying the asset held in the otherwise name.

**Prescribed form—**

Form PROB40 Affidavit as To Alias-Will

- (4) The deceased's last residential address and the suburb of their place of death will be published on the grant.

**Note—**

In the first instance the Registry relies upon the last residential address recorded on the death certificate. If that is incorrect, then refer to rule 356.27(5).

- (5) If there are any inconsistencies between the evidence recorded on the death certificate of the deceased and the evidence submitted on the Electronic System, the applicant must notify the Court by letter uploaded to the Electronic System explaining the discrepancy.
- (6) The Court retains discretion regarding any name or address that is published on the grant and may request any evidence that it deems necessary.

**356.28—Description of deceased without a testamentary document**

- (1) If the deceased died without a testamentary document, the grant will issue in the name of the deceased as described in the oath filed in support of the application.

**Note—**

If the deceased is incorrectly named in the application filed on the Electronic System, the application will be rejected. The application will not be amended by the Registry.

- (2) If an otherwise name is required to administer the estate of the deceased, the grant may issue with the primary name of the testator as described in the oath followed by the name required to administer the estate as justified.

**Note—**

An affidavit must be filed in support identifying the asset held in the otherwise name.

**Prescribed form—**

Form PROB41 Affidavit as To Alias-Intestacy

- (3) The deceased's last residential address and the suburb of their place of death will be published on the grant.

**Note—**

The addresses as stated in the oath will be relied upon for the purposes of the grant.

- (4) If there are any inconsistencies between the evidence recorded on the death certificate of the deceased and the evidence submitted on the Electronic System, the applicant must notify the Court by letter uploaded to the Electronic System explaining the discrepancy.
- (5) The Court retains discretion regarding any name or address that is published on the grant of representation and may request any evidence that it deems necessary.

**356.29—Description of executor or administrator**

- (1) The online form on the Electronic System form must disclose the full and correct name of the executor or administrator.
- (2) If name of the executor or administrator has legally changed since the date of the testamentary document, the words "formerly called ... (*as described in the testamentary document*)" must be added to the applicant's name in the grant and, for that purpose, the applicant must provide evidence of the change by affidavit in the prescribed form.

**Prescribed form—**

Form PROB42 Affidavit of Identity—Name Changed Since Will

- (3) If the name of the executor or administrator is misspelled or is imperfectly or incompletely given in the testamentary document, the words "in the will called ... (*as described in the testamentary document*)" must be added to the applicant's name in the grant and, for that purpose, the applicant must provide evidence of their correct full name by affidavit in the prescribed form.

**Prescribed form—**

Form PROB43 Affidavit of Identity—Name in Will Incorrect

- (4) If the name of the executor or administrator is recorded incorrectly or is incomplete in the deceased's death certificate, the applicant must notify the Registrar by letter accompanying the application file identifying the error and stating the correct name.

- (5) The executor or administrator's residential address will be published on the grant.
- (6) An executor or administrator may seek leave of the Court for an alternative address to be published on the grant by letter and supporting affidavit uploaded with the grant application.

**Note—**

The affidavit in support must be by the proposed executor or administrator justifying why the grant should issue with an alternative address.

The application for the grant completed on the Electronic System, should include the alternate address. If the Court concludes that the request is not justified, the applicant's residential address will be required for the publication on the grant.

**Division 9—Deemed grants****Notes—**

Section 73(2) of the Act empowers Public Trustee in defined circumstances to give notice in the Gazette of intention to administer an estate under section 73 in accordance with these rules.

Section 73(4) of the Act provides that 14 days after publication of the notice Public Trustee will be taken to have been granted probate of the testamentary document, if there is one, or otherwise administration.

Section 73(3) of the Act requires Public Trustee to file any testamentary document with the Registrar.

**356.30—Deemed grant to Public Trustee**

- (1) Upon publication of a notice under section 73(2) of the Act, Public Trustee must—
  - (a) commence an online application on the Electronic System;
  - (b) upload a copy of the testamentary document and of the published notice to the online application; and
  - (c) deposit the original testamentary document with the Registry.
- (2) Upon the expiry of 14 days after publication of the notice, the Registrar will cause to be recorded in the proceeding the fact of the deemed grant.
- (3) Upon the expiry of 14 days after publication of the notice, the testamentary document is deemed to be a public document.

**Division 10—Interstate and overseas grants****356.31—Registration of an interstate grant**

- (1) An application for the registration of an interstate grant under section 57 of the Act must be made on the Electronic System.
- (2) Registration of an interstate grant will only be made if the grant sought to be registered accords with this Part and is a form of grant that would issue from this Court.
- (3) Unless the Court otherwise orders, a special or limited or temporary grant will not be registered.
- (4) If the deceased was not at the date of death domiciled within the jurisdiction of the Court from which the original grant issued, the Court may require further evidence as to domicile and the grant will not be registered except by order of the Court.
- (5) The grant application must include—
  - (a) either—
    - (i) the original paper grant that issued from the original jurisdiction; or

**Note—**

If an original grant is provided to be registered, the original grant will be returned to the applicant following the registration of the grant.

An original paper grant does not need to be marked in accordance with rule 356.5.

- (ii) the original certified copy of the electronic grant that issued from the original jurisdiction; or

**Note—**

If an electronic grant is sought to be registered—

- (a) the electronic grant needs to be printed and marked as a certified copy by an authorised witness;
  - (b) the applicant is required to mark the certified copy of the electronic grant in accordance with rule 356.5;
  - (c) the original certified electronic grant that has been marked by the authorised witness and the applicant must be deposited with and shall be retained by the Court following registration of the grant;
  - (d) each separate page of the original certified copy of the electronic grant containing the original wet-ink markings and certification must be marked in accordance with the above requirements.
- (iii) a duly authenticated copy of the grant to the satisfaction of the Court;

**Note—**

A duly authenticated copy includes an exemplification, and the exemplification must include all pages of the testamentary document that was admitted in the original jurisdiction.

The duly authenticated copy of the grant sought to be registered is not required to be marked in accordance with rule 356.5.

The duly authenticated copy of the grant (including all testamentary documents) will be retained by the Court following the registration of the grant.

- (b) an oath in the prescribed form;

**Prescribed form—**

Form PROB29 Oath to Lead Registration of Interstate Grant

- (c) the death certificate in accordance with rule 356.18; and  
 (d) disclosure of all the assets located within South Australia and any liabilities that are charged on those assets or arose within South Australia known to the applicant at the time that the grant is filed on the Electronic System for registration.

**Note—**

The assets and liabilities disclosed on the Electronic System at the time of the application and subsequently must comply with section 71 of the Act and rule 356.17(4).

- (6) If it appears that a page of a grant lodged (in whatever form) for registration (including any annexure) may have been detached from the grant after it was made, the Court may refuse to register the grant.

**Note—**

Refer above rule 356.5(4) as to forms of grant entitled to be registered.

- (7) Notice of the registration of a grant in South Australia will be sent by the Registrar to the Court which issued the original grant.  
 (8) If the Registry receives notification that a grant that has issued from the Supreme Court of South Australia has been registered or re-sealed in another Court or jurisdiction, notification will be sent by the Registrar to the Court or jurisdiction that has registered or re-sealed the original South Australian grant if that original grant is amended or revoked.

**356.32—Re-seal of an overseas grant**

- (1) An application for the re-sealing of an overseas grant under section 57 of the Act must be made on the Electronic System.  
 (2) Re-sealing of an overseas grant will only be made if the grant sought to be re-sealed accords with this Part and is a form of grant that would issue from this Court.  
 (3) Unless the Court otherwise orders, a special or limited or temporary grant will not be re-sealed.  
 (4) If the deceased was not at the date of death domiciled within the jurisdiction of the Court from which the original grant issued, the Court may require further evidence as to domicile and the grant will not be re-sealed except by order of the Court.  
 (5) The grant application must include—

- (a) either

- (i) the original paper grant that issued from the original jurisdiction; or

**Note—**

If an original grant is provided to be re-sealed, the original grant will be returned to the applicant following the re-sealing of the grant.

An original paper grant does not need to be marked in accordance with rule 356.5.

- (ii) the original certified copy of the electronic grant that issued from the original jurisdiction; or

**Note—**

If an electronic grant is sought to be re-sealed—

- (a) the electronic grant needs to be printed and marked as a certified copy by an authorised witness;  
 (b) the applicant is required to mark the certified copy of the electronic grant in accordance with rule 356.5;  
 (c) the original certified electronic grant that has been marked by the authorised witness and the applicant must be deposited with and shall be retained by the Court following re-sealing of the grant;  
 (d) each separate page of the original certified copy of the electronic grant containing the original wet-ink markings and certification must be marked in accordance with the above requirements.  
 (iii) a duly authenticated copy of the grant to the satisfaction of the Court; and

**Note—**

A duly authenticated copy includes an exemplification, and the exemplification must include all pages of the testamentary document that was admitted in the original jurisdiction.

The duly authenticated copy of the grant sought to be registered is not required to be marked in accordance with rule 356.5.

The duly authenticated copy of the grant (including all testamentary documents) will be retained by the Court following the re-sealing of the grant.

- (b) an oath in the prescribed form;

**Prescribed form—**

Form PROB30 Oath to Lead Re-seal of Overseas Grant

- (c) the death certificate in accordance with rule 356.18(3); and  
 (d) disclosure of all the assets and liabilities of the deceased person known to the applicant at the time that the grant is filed on the Electronic System for re-sealing.

**Note—**

The assets and liabilities disclosed on the Electronic System at the time of the application and subsequently must comply with section 71 of the Act and rule 356.17(4).

If the deceased person was not at the date of death domiciled within Australia then disclosure is only required of all the assets of the deceased held within Australia and any liabilities that are charged on those assets or arose in Australia—see section 71(5) and (6) of the Act.

- (6) If it appears that a page of a grant lodged (in whatever form) for re-sealing (including any annexure) may have been detached from the grant after it was made, the Court may refuse to re-seal the grant.

**Note—**

Refer to subrule (5)(a) as to forms of grant entitled to be re-sealed.

- (7) Notice of the re-seal of a grant in South Australia will be sent by the Registrar to the Court which issued the original grant.
- (8) If the Registry receives notification that a grant that has issued from the Supreme Court of South Australia has been registered or re-sealed in another Court or jurisdiction, notification will be sent by the Registrar to the Court or jurisdiction that has registered or re-sealed the original South Australian grant if that original grant is amended or revoked.

**Part 7—Post Grant Applications****Division 1—Introduction****357.1—Introduction**

- (1) This Part contains rules relating to applications after a grant has issued other than those governed by Chapter 20 Part 4.
- (2) Applications under this Part will usually be heard and determined by the Registrar but, if they are or become contentious, the Registrar ordinarily will refer them to a Justice or Associate Justice for hearing and determination.

**Division 2—Amendment or revocation of grant****357.2—Amendment of grant**

- (1) An application for an order to amend a grant must be made on the Electronic System.
- (2) The application must be supported by an affidavit in the prescribed form setting out and evidencing the grounds of the application.

**Prescribed form—**

Form PROB34 Affidavit

- (3) Unless the Court grants leave in special circumstances, an application to amend a grant must be made by or with the consent of the person to whom the grant was made.
- (4) If the Court is satisfied that a grant should be amended, the Court may make an order accordingly.
- (5) The Court may at any time amend a grant to correct a clerical error or for any other reason that the Court deems appropriate.

**357.3—Non-contentious application to revoke grant****Note—**

An application may be made under this rule in respect of a grant under Part 6 Division 2, 3 or 4 or a deemed grant under Division 9 (see section 73(5) of the Act).

- (1) An uncontentious application for an order to revoke a grant must be made on the Electronic System.
- (2) The application must be supported by affidavit evidence in the prescribed form setting out the grounds of the application.

**Prescribed form—**

Form PROB34 Affidavit

- (3) Unless the Court grants leave in special circumstances, an application to revoke a grant must be made by or with the consent of the person to whom the grant was made.
- (4) If the Court is satisfied that a grant should be revoked, the Court may make an order accordingly.

**Notes—**

This rule is intended to be used when the grant has been issued under rule 355.2(9) or a subsequent later dated testamentary document is found or by mistake or clerical error.

An application to revoke a grant that is contentious or opposed must be made by a probate action under Chapter 20 Part 4.

- (5) The Court may revoke a grant on its own initiative at any time it deems necessary.

**Division 3—Grants of double probate****357.4—Grants of double probate**

- (1) This rule applies where executors have been appointed in a testamentary document and probate has been granted by the Court to one or some, but not all of them with leave reserved to others who have not renounced probate.
- (2) On application for probate by an executor to whom leave has been reserved a grant of double probate may issue and it runs concurrently with the initial grant of any of the original grantees still living.

**Note—**

If the only proving executor in the initial grant subsequently lacks capacity to manage their affairs then refer rule 355.2(8).

The oath for the grant of double probate must clear off other persons having a prior entitlement to a grant.

The testamentary document to be marked when the oath is sworn is that:

- contained in the original paper grant that issued by the Court (if held by the applicant); or
- contained in a court sealed copy of the record of the Court obtained from the Probate Registry of the Court following a request for same on payment of the prescribed fee; or
- the original testamentary paper held in the Probate Registry of the Court and for that purpose, an appointment must be made for production of the will in the Registry of the Court.

Refer rule 356.5 for the requirements for the marking of the will.

For the purpose of an application for a Double Probate grant only the unadministered assets and liabilities need to be disclosed.

- (3) The executor's oath must be in the prescribed form.

**Prescribed form—**

Form PROB31 Executor's Oath for Double Probate

**Division 4—Grants de bonis non****357.5—Grant when grantee dies**

- (1) This rule applies if—
- (a) the person to whom a grant has been made dies leaving part of the estate unadministered;
  - (b) there is no personal representative of the deceased by chain of executorship; and
  - (c) there is no power reserved to one or more executors able to obtain a grant of double probate.
- (2) If this rule applies, an application may be made on the Electronic System for a grant of administration *de bonis non* in respect of the unadministered estate in favour of a new personal representative to enable the administration of the estate to be completed.
- (3) The applicable rules of priority in relation to original grants apply equally in the case of a second or subsequent *de bonis non* grant in the same estate, subject to a living person being preferred to the personal representative of a deceased person on the same level of priority unless the Court otherwise orders.

**Notes—**

If the deceased died leaving a testamentary document, the rules of priority are contained in rule 356.3.

If the deceased died without leaving a testamentary document, the rules of priority are contained in rule 356.15.

- (4) The administrator's oath must be in the prescribed form.

**Prescribed form—**

Form PROB32 Oath of Administrator With Will Annexed *De Bonis Non*

Form PROB33 Oath of Administrator (Without Will) *De Bonis Non*

**Notes—**

For the purpose of an application for a *de bonis non* grant, only the unadministered assets and liabilities need to be disclosed.

If a person entitled to a grant is by reason of mental or physical disability or illness incapable of managing their affairs before a grant is taken, rule 355.2 applies.

**357.6—Grant when grantee becomes under a disability**

- (1) This rule applies if—
- (a) the person to whom a grant has been made becomes a person under a disability leaving part of the estate unadministered;
  - (b) there is no personal representative of the deceased by chain of executorship; and
  - (c) there is no power reserved to one or more executors able to obtain a grant of double probate.
- (2) If this rule applies, upon the grant being impounded an application for a grant *de bonis non* for the use and benefit of the person, limited during their period of disability may be made in accordance with rule 355.2(1).

**Notes—**

For the purpose of an application for a *de bonis non* grant, only the unadministered assets and liabilities need to be disclosed.

If the paper grant issued before 26 November 2018, for the purpose of being impounded, that paper grant must be deposited in the Registry.

If the grant is an electronic grant that issued on the Electronic System, the process of impounding the grant will be done in the Registry and the electronic grant on the Electronic System noted accordingly.

**Division 5—Applications by executors, administrators and trustees****357.7—Application for advice or direction**

- (1) An application for advice or direction under section 95 of the Act or section 91 of the *Trustee Act 1936* must be instituted by an Originating Application in the prescribed form supported by an affidavit in the prescribed form setting out the facts upon which the applicant relies.

**Prescribed forms—**

Form PROB1 Originating Application-Probate Ex Parte  
 Form PROB2 Originating Application \_Probate Inter Partes  
 Form PROB34 Affidavit

- (2) The Registrar may refer an application governed by this rule to a Justice or Associate Justice.
- (3) The Court may if it thinks fit require the applicant to institute an *inter partes* substantive proceeding in the civil jurisdiction of the Court seeking declaratory or other relief.

**357.8—Indicator on the allowance of remuneration**

- (1) The Chief Judicial Officer, on the recommendation of the Associate Justices, may produce and amend from time to time an indicator to the exercise of the discretion in respect of commission or other remuneration under section 96 of the Act (a *Remuneration Indicator*).
- (2) A Remuneration Indicator is a guide only and does not fetter the exercise of the discretion of the Court in a particular case.
- (3) The Registrar must cause to be published the current version of any Remuneration Indicator on the CAA website.

**357.9—Application for remuneration**

- (1) An application for commission or other remuneration under section 96 of the Act (a *Remuneration Application*) must be made by lodging an Originating Application in the prescribed form supported by the affidavit in the prescribed form and the accounts of the applicant, verified on oath, with respect to the estate or the trust property and its administration.

**Prescribed forms—**

Form PROB2 Originating Application-Probate Inter Partes  
 Form PROB34 Affidavit

- (2) The applicant must join as a respondent the beneficiary out of whose interest in the estate or trust commission or other remuneration would be payable.
- (3) If an order for payment of commission or other remuneration has been made previously in respect of the same applicant and the same estate or trust property, unless the Court otherwise orders—
  - (a) the action remains on foot and is available to be used for future applications for commission or other remuneration by the applicant by way of interlocutory application;
  - (b) the applicant may elect to file an interlocutory application in the prescribed form instead of an Originating Application;

**Prescribed form—**

Form PROB4 Interlocutory Application

- (c) if the applicant files an interlocutory application under paragraph (b)—this rule and rule 357.10 apply in respect of any subsequent application for remuneration as if a further originating application had made by the applicant.
- (4) An application governed by this rule (whether originating or interlocutory) must state whether any previous application having the same or a similar object has been made to the Court with respect to the same estate or trust property.
- (5) The accounts supporting the application must—
  - (a) contain separate items of capital and income giving particulars and the date of each receipt and payment;
  - (b) show with respect to each item of receipt whether the getting in or realisation was effected by the applicant personally or with the paid assistance of agents or lawyers, and in the latter case the amount of the expense incurred;
  - (c) if estate or trust funds have been retained in the hands of the applicant—contain a statement showing the present state of investment, distinguishing from re-investments those assets that are still in the same state of investment as they were when they vested in the applicant;
  - (d) contain a summary of the assets and income got in, realised, specifically appropriated in specie or distributed, showing—
    - (i) what portion of the assets or income were got in or realised with the paid assistance of agents or lawyers;
    - (ii) if any estate or trust funds have been retained in the hands of the applicant—a plan for the distribution of the funds.
- (6) The Court may make such orders as to joinder of or service upon any party interested, or as to advertisement of the application, as it thinks appropriate.
- (7) If an applicant is one of several executors, administrators or trustees, notice of the application must be served on the other or others of them.
- (8) Unless the Court orders otherwise, if the applicant is administrator of an intestate estate, notice of the application must be served on Public Trustee.
- (9) No order will be made on the application unless an affidavit is filed proving service of notice required to be given under subrules (7) and (8).

**357.10—Application for commission subsequent steps**

- (1) A person wishing to object, consent or make submissions as to the allowance of commission or other remuneration must file a Response in the prescribed form.

**Prescribed form—**

Form PROB3 Response to Originating Application or Form PROB6 Written Submissions

- (2) A person served with an Originating Application who wishes to consent to the orders sought in the application may consent via the Electronic System.
- (3) A person opposing the orders sought in the originating application must file a Response opposing the originating application on the Electronic System and must upload an affidavit stating with sufficient particularity the grounds of opposition.

**Prescribed form—**

Form PROB34-Affidavit

- (4) A copy of the Response must be served on the applicant or the applicant's lawyer.
- (5) A person filing a Response must be served with notice of all applications and is entitled to attend all hearings on the Remuneration Application.
- (6) If the Court is of the opinion that any costs occasioned to the applicant by a person who filed a Response should not be borne by the estate or the trust fund or the applicant, the Court may order that such costs be taxed, or a gross sum in lieu thereof be fixed, and paid by that person.
- (7) The Court may of its own motion refer a Remuneration Application to an Associate Justice or the Registrar for an inquiry and report.
- (8) The Remuneration Indicator may be taken into consideration.
- (9) Unless a Response has been filed under subrule (1), the Court may of its own motion without requiring the attendance of the parties make an order on an application governed by this rule based on a report of an Associate Justice or the Registrar.
- (10) No person is permitted to attend before an Associate Justice or the Registrar on an inquiry or upon an application to consider and report by an Associate Justice or the Registrar until the person has filed a Response.

**357.11—Application for approval to act in multiple capacities**

An application by Public Trustee under section 5(3) of the *Public Trustee Act 1995* for approval to act in the same matter or transaction in different capacities or in the same capacity but as representative of different persons or interests must be made by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application—Probate Ex Parte

Form PROB34 Affidavit

**357.12—Application to dispense with requirement to pay funds to Public Trustee**

- (1) An application by an administrator for approval not to be bound to pay or transfer funds to the Public Trustee in compliance with section 91 of the Act must be made by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB2 Originating Application—Probate Inter Partes

Form PROB34 Affidavit

- (2) The supporting affidavit must—
  - (a) identify why compliance with the Act should be dispensed with;
  - (b) provide a summary of the assets held for the benefit of the person with a legal incapacity; and
  - (c) identify the proposed person or entity who will manage the funds on behalf of the person with the legal incapacity and their qualifications to do so and their consent.
- (3) The applicant must join Public Trustee as a respondent.
- (4) The Court may order the joinder of any respondent or interested party.

**Division 6—Other applications**

**357.13—Other applications**

- (1) An application not governed by Part 7 Division 1 to 5 must be made by lodging an Originating Application in the prescribed form supported by an affidavit in the prescribed form.

**Prescribed forms—**

Form PROB1 Originating Application-Probate Ex Parte

Form PROB2 Originating Application-Probate Inter Partes

Form PROB34 Affidavit

- (2) The Court may if it thinks fit require the applicant to institute an *inter partes* substantive proceeding in the civil jurisdiction of the Court seeking declaratory or other relief.

**357.14—Statutory matters in common form dealt with by the Registrar**

- (1) Every application to the Court under:
  - (a) section 9 of the *Public Trustee Act 1995*; and
  - (b) sections 4(3) and 4(4) of the *Trustee Companies Act 1988*
 is to be brought by Originating Application.
- (2) The Registrar may determine an application governed by this rule if the Registrar is satisfied that it is expedient, having regard to all of the circumstances (including the amount at stake, the degree of difficulty of the point to be determined and the expense otherwise occasioned)

**Part 8—Reviews and appeals****358.1—Review of decision of Deputy Registrar**

- (1) A person aggrieved by a judgment, order, direction or other decision of a Deputy Registrar may apply to the Registrar or acting Registrar for a review of the decision.
- (2) The application for review must be made within 14 days after communication of the decision of the Deputy Registrar.
- (3) The Registrar or acting Registrar may determine the review in such manner as the Registrar or acting Registrar thinks fit.
- (4) The Registrar or acting Registrar may affirm, revoke or vary the original decision and may substitute the Registrar's or acting Registrar's own decision.

**358.2—Appeal to a Justice**

- (1) An appeal lies to a Justice from any judgment, order, direction or decision made by the Registrar or acting Registrar whether at first instance or on review under rule 358.1.
- (2) An appeal is governed by Chapter 18 in like manner to appeals to a Justice against a decision of an Associate Justice."

119. A new Chapter 26 is inserted as follows:

**“Chapter 26—Specific kinds of proceedings—ERD Court****Part 1—General****Division 1—General****361.1—Introduction**

- (1) This Chapter contains rules relating to specific kinds of proceedings in the ERD Court.
- (2) Except to the extent that a rule in this Chapter excludes, modifies or is inconsistent with the other provisions of these rules, the other provisions of these rules applicable to an originating application apply to a proceeding the subject of this Chapter.

**Notes—**

Proceedings in the ERD Court's mining jurisdiction (other than involving native title) are addressed in Chapter 20.

Proceedings in the ERD Court's native title jurisdiction are addressed in Chapter 27.

**361.2—Interpretation**

- (1) In this Chapter, unless the contrary intention appears—
  - the *Act* means the *Environment, Resources and Development Court Act 1993*;
  - appeal against an administrative decision* means an appeal to the Court against, or application to the Court for review of, an administrative decision instituted pursuant to—
    - (a) any of the following provisions of the *Planning, Development and Infrastructure Act 2016*, namely—
      - (i) section 142(5);
      - (ii) section 155(11);
      - (iii) section 157(10);
      - (iv) section 202(1)(a), (b), (c), (d), (e), (f) or (g);
      - (v) section 213(8);
      - (vi) section 231(5);
    - (b) section 106(1) of the *Environment Protection Act 1993*;
    - (c) section 20(1), 20(1a) or 39A(7) of the *Heritage Places Act 1993*;
    - (d) sections 79(9), 112(15), 113(10), 115(6), 124(4), 131(4), 136(5), 137(1)(h), 138(2), 143(4), 144(h), 145(2), 151(4), 155(6), 157(4), 174(4), 216(1) or 216(2) of the *Landscape South Australia Act 2019*;
    - (e) subsections 55(1) or 57(1) of the *Irrigation Act 2009*;
    - (f) section 48(1) of the *South Eastern Water Conservation and Drainage Act 1992*;
    - (g) sections 38(1), 38(2) or 65(1) of the *Ground Water (Qualco-Sunlands) Control Act 2000*;
    - (h) section 32(1) of the *Local Nuisance and Litter Control Act 2016*;
    - (i) any other statutory provision that confers a right of appeal or review to the Court in respect of an administrative decision,

but excluding an appeal or review governed by the Warden's Court Reinstated rules 2024 or Chapter 27;

*application* means an application to the Court instituted pursuant to—

- (a) any of the following provisions of the *Planning, Development and Infrastructure Act 2016*:
  - (i) section 125(6);
  - (ii) section 125(8);
  - (iii) section 139(2)(e);
  - (iv) section 140(4);
  - (v) section 141(1);



- (vi) section 223(5);
- (vii) section 225(1);
- (viii) section 230(4);
- (b) sections 42(1), 49(8) or 89(4) of the *Environment Protection Act 1993*;
- (c) section 30(3) or 35 of the *Heritage Places Act 1993*;
- (d) the power of the Court to make a declaration of right pursuant to section 28 of the Act;
- (e) section 31F(4) or 31F(5) of the *Native Vegetation Act 1991*;
- (f) the *Landscape South Australia Act 2019*;
- (g) any other statutory provision that confers a right of application to the Court, but excluding an appeal against an administrative decision, an enforcement application, an interlocutory application or an application governed by the Warden's Court Reinstated rules 2024 or Chapter 27;

**Authority** includes—

- (a) a relevant authority under Part 6 of the *Planning, Development and Infrastructure Act 2016*;
- (b) a designated authority under section 212(1) of the *Planning, Development and Infrastructure Act 2016*;
- (c) a designated entity under sections 225(17) or 230(14) of the *Planning, Development and Infrastructure Act 2016*;
- (d) a Council;
- (e) the Environment Protection Authority;
- (f) the South Australian Heritage Council;
- (g) the Native Vegetation Council;
- (h) an irrigation trust constituted under the *Irrigation Act 2009*;
- (i) a relevant authority under the *Landscape South Australia Act 2019*;
- (j) a Minister of the Crown or a public authority against whose decision an appeal or review to the Court may be instituted;

**building referee** and **building referees** mean a Commissioner or Commissioners to whom a building reference is referred for determination as a building referee or building referees;

**building reference** means an appeal—

- (a) under sections 152(10), 152(11) and 202(1)(e) against a refusal under section 152 of the *Planning, Development and Infrastructure Act 2016*;
- (b) under sections 153(3), 153(4) and 202(1)(e) against a refusal under section 153 of the *Planning, Development and Infrastructure Act 2016*;
- (c) under section 202(1)(f) of the *Planning, Development and Infrastructure Act 2016* in respect of a building dispute of a type specified therein;

**certificate of title** means a certificate of title issued pursuant to the *Real Property Act 1886* or a memorandum of lease issued pursuant to the *Crown Land Management Act 1929*, the *Pastoral Land Management and Conservation Act 1989* or the *Irrigation Act 2009*;

**conference** means a conference conducted pursuant to section 16 of the Act;

**Council** means a municipal or district council constituted under the *Local Government Act 1999*;

the **Court** means the ERD Court and includes a Judge, Commissioner, Associate Judge or Magistrate of the Court;

**decision** means a decision, assessment, request, declaration, direction, restriction, order or other act against which an appeal or review may be instituted or which may be the subject of a building reference;

**development appeal** means an appeal to the Court against, or application to the Court for review of, an administrative decision instituted pursuant to section 202(1)(b), (c) or (d) of the *Planning, Development and Infrastructure Act 2016*;

**District Registry** means a Registry of the Court other than the Principal Registry of the Court;

**enforcement application** means an application to the Court for an order pursuant to—

- (a) section 214 of the *Planning, Development and Infrastructure Act 2016*;
- (b) section 104 of the *Environment Protection Act 1993*;
- (c) section 215 of the *Landscape South Australia Act 2019*;
- (d) section 31A of the *Native Vegetation Act 1991*;
- (e) section 33 of the *Local Nuisance and Litter Control Act 2016*;
- (f) any other statutory provision that confers a right of application to the Court to enforce a direction or decision by an administrative body or person or to remedy or restrain a breach of the statute;

**final hearing** means the ultimate substantive hearing of an originating application as opposed to a directions hearing, conference or other interlocutory hearing;

**interim injunction** means an injunction or other order of the Court issued pursuant to section 34 of the Act;

**interlocutory application** means an application for an interlocutory order of the Court;

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

- (a) sections 17(1), 28, 34 or 35 of the Act;

- (b) sections 155(12), 157(11), 213(9) or 214(10) of the *Planning, Development and Infrastructure Act 2016*;
- (c) sections 106(4) or 107(2) of the *Environment Protection Act 1993*;
- (d) Part 4 of this Chapter; or
- (e) sections 31C, 31E(7) or 31F(1), (4) or (5) of the *Native Vegetation Act 1991*;
- (f) any other statutory provision that confers a right of application to the Court for an order does not finally dispose of the rights of parties;

**Registrar** means the Registrar of the Court and includes a Deputy Registrar;

**registry** means the Principal Registry and any District Registry of the Court;

**related decision** means a decision made or issued by the same Authority and relating to the same development, land, watercourse or other subject.

- (2) The rules applicable to a proceeding in the Court must be construed, interpreted and applied in a manner that will best ensure the attainment of the following objects—
  - (a) the simplification of practice and procedure;
  - (b) the identification and clarification of material issues between the parties;
  - (c) the saving of expense;
  - (d) the fair and expeditious disposal of the business of the Court.
- (3) It is acknowledged that the business of the Court will include proceedings involving parties who will not be represented by counsel, solicitor or other qualified representative familiar with these rules. These rules are not intended to frustrate the presentation of a case in good faith by a party not so represented, and the rules are to be construed and applied accordingly, having regard to the duty of the Court, expressed in section 21(1)(c) of the Act.

### 361.3—Non-compliance with rules or court order

If a party fails to comply with—

- (a) these rules in relation to the production of a statement or other material which the party intends to produce or rely on at the final hearing; or
- (b) an order pursuant to rule 368.2 of these rules,

the Court may order that any statement (including oral testimony of an expert witness whose statement should have been produced) or document not be admitted into evidence at the final hearing.

## Division 2—Administration

### 361.4—Registries of the Court

- (1) The Principal Registry of the Court shall be at the same place as the Principal Registry of the District Court.
- (2) The District Registries of the Court shall be at the same places as the District Registries of the District Court, namely at Berri, Mount Gambier, Port Lincoln, Port Pirie and Whyalla.

## Division 3—Service

### 361.5—Service on particular parties

- (1) This rule applies subject to the provisions of the *Electronic Transactions Act 2000* and the other provisions of these rules permitting service in other manners.
- (2) A document required to be served or notice given by the Act or these rules may be served upon or given to the State Planning Commission, the Environment Protection Authority, the South Australian Heritage Council, the Native Vegetation Council, a Minister of the Crown, an instrumentality of the Crown, or a State public authority against whose decision an appeal to the Court may be instituted by—
  - (a) delivering it to the office of the Crown Solicitor;
  - (b) posting it in an envelope addressed to the Crown Solicitor at its office; or
  - (c) sending it to the email address identified by the Crown Solicitor for that purpose.
- (3) A document required to be served or notice given by the Act or these rules may be served upon or given to an assessment panel or assessment manager constituting a relevant authority under section 82 of the *Planning, Development & Infrastructure Act 2016* by—
  - (a) delivering it to the office of the chief executive officer of the designated authority who appointed the relevant authority;
  - (b) posting it in an envelope addressed to the office of the chief executive officer of the relevant designated authority who appointed the relevant authority; or
  - (c) sending it to the email address identified by the relevant designated authority who appointed the relevant authority for that purpose.
- (4) A document required to be served or notice given by the Act or these rules may be served upon or given to a Council by—
  - (a) delivering it to the office of the chief executive officer of the Council;
  - (b) posting it in an envelope addressed to the chief executive officer at their office; or
  - (c) sending it to the email address identified by the Council for that purpose.

#### Note—

Service on parties not mentioned in this rule (such as accredited professionals constituting a relevant authority) is governed by Chapter 5.

**Division 4—Practice Directions****361.6—Practice directions**

- (1) The Registrar may issue practice directions, not inconsistent with these rules, with respect to the business of the Court, for the information and guidance of parties and their representatives.
- (2) If the Registrar issues practice directions, the Registrar must cause them to be published on the CAA website.

**Part 2—Appeals against administrative decisions****Note—**

Building references fall within the definition of an appeal against an administrative decision and are governed by this Part except to the extent that a provision in this Part is inconsistent with Part 3, which specifically governs building references.

**Division 1—Institution****362.1—Institution**

- (1) A development appeal must be instituted by filing an Originating Application in the prescribed form.

**Prescribed forms—**

Form 5G Originating Application—Appeal Against Administrative Decision-Development

- (2) An application under section 202(1)(g) of the *Planning, Development and Infrastructure Act 2016* for review of a matter with respect to a decision as to the nature of a development under Part 7 Division 2 Subdivision 1, Subdivision 2 or Subdivision 3 of the *Planning, Development and Infrastructure Act 2016* must be instituted by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 5G Originating Application—Appeal Against Administrative Decision-Development

- (3) In any other case, if the statute calls the proceeding an “appeal”, an appeal against an administrative decision must be instituted by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 5 Originating Application—Appeal Against Administrative Decision

- (4) In any other case, if the statute calls the proceeding a “review”, an appeal against an administrative decision must be instituted by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 4 Originating Application for Review

- (5) If the proceeding is not in the nature of a “review” or an “appeal” and is not otherwise governed by this rule, the proceeding must be instituted by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 2AD Originating Application

- (6) A proceeding governed by this rule must—
  - (a) identify the land, watercourse, building or other subject matter to which the appeal or review relates;
  - (b) if the appeal or review relates to the issue or refusal of a development authorisation, specify whether the applicant—
    - (i) was the applicant for the development authorisation; or
    - (ii) is a person who made a representation and to whom notice was given pursuant to section 110(6) of the *Planning, Development and Infrastructure Act 2016*.
- (7) A proceeding governed by this rule must have affixed to the originating application or exhibited to a supporting affidavit (if filed)—
  - (a) a copy of any notice or document constituting or evidencing the decision, order or notice of the Authority which is the subject of the appeal or review; and
  - (b) in the case of a development appeal—a copy of written notice or other evidence of the decision provided to the applicant or otherwise a copy of the minutes of the meeting or similar document prepared by the Authority which identifies the date upon which the Authority made its decision.

**362.2—Amendment to proposed development**

- (1) This rule applies in respect of a development appeal.
- (2) If, following the closure of the conference in accordance with rule 366.6, the applicant for development authorisation intends to amend the proposed development in any respect, they must file and serve on the other parties details of the proposed amendment)—
  - (a) in accordance with a timetable ordered by the Court; or
  - (b) if a timetable has not been set, at least 21 days before the final hearing.

**Division 2—Parties****362.3—Joint parties**

An Originating Application may be brought by or on behalf of one or more applicants if—

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

**362.4—Appeals by representors—joinder of applicant for development authorisation**

- (1) When an appeal is instituted pursuant to section 202(1)(d) of the *Planning, Development and Infrastructure Act 2016* or section 113, 137 or 144 of the *Landscape South Australia Act 2019* by a person who is or was entitled to be given notice of a decision under the relevant Act, the person must join the applicant for development authorisation as a respondent.

**Note—**

Section 110(8) of the *Planning, Development and Infrastructure Act 2016* provides that the applicant for the relevant development authorisation is a party to the appeal. It also requires the Registrar to notify the applicant for the relevant development authorisation of the appeal.

- (2) When a review is instituted pursuant to section 202(1)(g) of the *Planning, Development and Infrastructure Act 2016* by a person other than the applicant for the development authorisation, the applicant for the development authorisation may apply to be joined as a respondent.

**362.5—Appeals by applicants for development authorisation—joinder of persons who made a representation**

- (1) When an appeal is instituted pursuant to section 202(1)(b) or (c) of the *Planning, Development and Infrastructure Act 2016* by an applicant for development authorisation, the Registrar must give notice to each person who made a representation to the relevant Authority and whose name and address has been given to the Court pursuant to section 110(6)(b)(iii) of the *Planning, Development and Infrastructure Act 2016*, of the fact that an appeal has been instituted and that a person who made a representation in respect of the application for development authorisation may apply, in accordance with the provisions of this rule, to be joined as a party to the appeal.
- (2) When an appeal is instituted pursuant to section 216 of the *Landscape South Australia Act 2019* by an applicant for a permit or approval, the Registrar must give notice to each person who made a representation to the relevant Authority and whose name and address has been given to the Court pursuant to section 113, 137 or 144 of the *Landscape South Australia Act 2019*, of the fact that an appeal has been instituted and that a person who made a representation in respect of the application for a permit or approval may apply, in accordance with the provisions of this rule, to be joined as a party to the appeal.
- (3) When a representation was made by two or more persons, notice need only be given to the person nominated as the person making the representation, or (when no such nomination has been made), to the first person named in the representation, who shall be deemed to be the person who made the representation.
- (4) Any person to whom the Registrar has given notice pursuant to subrules (1) or (2) may, within seven days of the giving of such notice, apply to the Court in the prescribed form under rule 22.1 to be joined as a party to the appeal to which such notice relates.

**Prescribed form—**

Form 77I Interlocutory Application to be Joined

- (5) The Court may, after hearing such application, join the person to whom such notice has been given.
- (6) If all parties consent to an application by a representor under subrule (4), the Court or the Registrar may order the joinder of the applicant administratively without a hearing.
- (7) In any other case, a person who wishes to make an application to the Court to be joined as a party to any proceeding may apply to the Court in the prescribed form under rule 22.1.

**Prescribed form—**

Form 77I Interlocutory Application to be Joined

**Division 3—Statement of facts issues and contentions****362.6—Statement of facts issues and contentions**

- (1) The Court may of its own motion or on application by a party order that the applicant file and serve a statement of facts issues and contentions in the prescribed form.

**Prescribed form—**

Form 11 Statement of Facts Issues and Contentions Standalone

- (2) If the Court makes an order under subrule (1), the respondent and any interested party who wishes to be heard on the appeal or review must file a response to the statement of facts issues and contentions in the prescribed form—
  - (a) in accordance with a timetable ordered by the Court; or
  - (b) if a timetable has not been set, within 28 days after service of the statement of facts issues and contentions.

**Prescribed form—**

Form 57 Response to Statement of Facts Issues and Contentions

**Part 3—Building References****363.1—Building referees**

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

**Note—**

Section 202(2) of the *Planning, Development and Infrastructure Act 2016* requires building references to be referred to a commissioner or commissioners of the Court acting as a building referee or building referees under section 206.

**363.2—Institution**

- (1) A building reference must be instituted by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 4 Originating Application for Review

- (2) The Originating Application must—
  - (a) identify the building work (current or proposed) to which the reference relates;
  - (b) specify the decision, direction or dispute the subject of the reference;
  - (c) briefly set out the order, direction or modification which the party seeking the reference is requesting the Court to make or give.
- (3) The supporting affidavit must exhibit any plans, specifications or other documents (including any order or notice of refusal) either the subject of or relating to the reference.
- (4) The applicant must join the Authority or other person who made the order or direction or is the other party to the dispute as a respondent.

### **363.3—Additional powers of building referees**

For the purpose of expediting the hearing and determination of any building reference and without limiting any other power of the Court, a building referee may—

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

## **Part 4—Enforcement Applications**

### **364.1—Institution of application**

- (1) An enforcement application must be instituted by filing the following documents—
  - (a) an Originating Application in the prescribed form seeking leave to serve a summons (and where the applicant requires leave to bring the application, seeking leave to bring the application);
  - (b) a summons in the prescribed form in respect of which leave is sought;
  - (c) a supporting affidavit made in accordance with subrule (2);
  - (d) when the applicant brings the application in a representative capacity, a memorandum exhibited to the supporting affidavit and in accordance with subrule (3).

#### **Prescribed forms—**

Form 2AD Originating Application  
Form 84D Draft Summons  
Form 12 Affidavit  
Form 14 Exhibit to Affidavit

- (2) The supporting affidavit must set out—
  - (a) the facts and circumstances upon which the applicant relies; and
  - (b) the name (and, as far as is known, the address, email address and telephone number) of any person who, in the opinion of the deponent, either has or might reasonably be expected to have a legal or equitable interest in the land or other subject of the application.
- (3) A memorandum must specify all the people or organisations on whose behalf the proceeding is brought and be signed by all the people or organisations in such manner as shows that all the people or organisations consent to the proceeding being brought on their behalf.

### **364.2—Leave to serve summons**

- (1) The Court, on the hearing of an application for leave to serve a summons, may refuse to grant the application or may amend or strike out part of the proposed summons when, on the evidence before the Court, there is no reasonable prospect that the Court would make any order of the nature sought.
- (2) A summons in respect of which leave has been granted by the Court:
  - (a) shall not be issued by the Court after one month of such leave being granted;
  - (b) remains in force for three months only after the date of such issue, unless the Court extends such period.
- (3) As soon as is reasonably practicable after a summons and accompanying affidavits have been served upon a person (including an Authority, where such service is required), the applicant must file an affidavit of proof of service.

#### **Prescribed form—**

Form 42 Affidavit of Proof of Service

### **364.3—Notice of Acting**

- (1) A person served with a summons who wishes to be heard by the Court in response must file a Notice of Acting in the prescribed form within 14 days of the date of service.
- (2) The Notice of Acting must specifically acknowledge service of the summons, set out the name of the person who desires to be heard in response to the summons and specify an address for service.

#### **Prescribed form—**

Form 23 Notice of Acting

**364.4—Affidavit of merits**

A person (other than an Authority) who has filed a Notice of Acting must, at least 14 days prior to the final hearing, file and serve on all other parties to the summons an affidavit setting out such facts and circumstances as they may ask the Court to take into account upon the final hearing of the summons.

**364.5—Persons with legal or equitable interest**

- (1) When an affidavit filed pursuant to subrule 364.1(c) sets out the name of a person who, in the opinion of the deponent, either has or might reasonably be expected to have a legal or equitable interest in the land or other subject of the application, the Court may order that notice of the summons in the prescribed form be given by the applicant to that person.
- (2) When, in the opinion of the Court, a person has a legal or equitable interest in the land or other subject of the application, the Court may order that notice of the summons in the prescribed form be given by the applicant to that person.

**Prescribed form—**

Form 47 Notice of Summons

- (3) A notice given to a person in consequence of an order made pursuant to subrule (1) or (2) must have attached to it a copy of the summons.
- (4) When an order is made that notice be given to a person in consequence of an order pursuant to subrule (1) or (2), an affidavit in the prescribed form verifying that notice has been given must be filed by the applicant as soon as is reasonably practicable after the notice has been given.

**Prescribed form—**

Form 42 Affidavit of Proof of Service

- (5) A person to whom notice is given pursuant to this rule who desires to be heard by the Court upon the hearing of the summons must file a Notice of Interest in the prescribed form, within 14 days of being served with such notice.

**Prescribed form—**

Form 59 Notice of Interest

- (6) A Notice of Interest filed pursuant to subrule (5) must give an address for service and must contain a brief statement of the person's interest in the land or other subject of the proceeding.

**364.6—Setting down for hearing**

- (1) The summons will be set down for a conference as soon as is practicable after the time for filing of a Notice of Acting has expired.
- (2) The Registrar must give notice of the time appointed for the conference to—
  - (a) the applicant;
  - (b) any respondent who has filed a Notice of Acting;
  - (c) any person who has filed a Notice of Interest pursuant to and meeting the requirements of subrule 364.5(5) and (6); and
  - (d) any Authority which has been served.

**Part 5—Other applications****365.1—Institution**

- (1) Subject to subrule (5), an application to the Court other than an appeal against an administrative decision, building reference, enforcement application or interlocutory application must be instituted by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 2AD Originating Application

- (2) An application governed by this rule must—
  - (a) briefly state the facts, circumstances and other relevant matters upon which the application is based; and
  - (b) identify the land, building, watercourse or other subject to which the application relates.
- (3) The applicant must join the Authority or person against whom the declaration or orders are sought as a respondent.
- (4) When an application seeks an order pursuant to section 141 of the *Planning, Development and Infrastructure Act 2016*—
  - (a) the applicant must join the owner and (if different) occupier of the land to which the application relates as a respondent;
  - (b) the Originating Application must also set out the name, address and interest of any other person who (as far as is known by the applicant) has a material interest in the application;
  - (c) the Originating Application must have affixed to it a copy of the certificate of title of the land to which the application relates.
- (5) When an order is sought pursuant to section 30(3) of the *Heritage Places Act 1993*, the Originating Application must be accompanied by an affidavit in the prescribed form setting out the facts in support thereof.

**Prescribed forms—**

Form 12 Affidavit

Form 14 Exhibit to Affidavit

- (6) In the case of urgency, or in any other circumstances in which the Court considers it appropriate, the Court may—
- (a) hear an oral application; or
  - (b) hear an application and make an order by audio visual link, telephone or email.

#### **Part 6—Conferences and post-conference steps**

##### **366.1—Matters to be referred to a conference**

###### **Note—**

Sections 204(2) and 214(5) of the *Planning, Development and Infrastructure Act 2016*; sections 104(12) and 106(5) of the *Environment Protection Act 1993*; section 38 (4) of the *Ground Water (Qualco-Sunlands) Control Act 2000* and section 31A(5) of the *Native Vegetation Act 1991* require proceedings referred to therein to be referred to a conference governed by section 16 of the Act.

In addition to the matters that must be referred to a conference pursuant to legislation, the following proceedings must at first instance be referred to a conference—

- (a) an appeal against an administrative decision pursuant to section 231(5) of the *Planning, Development and Infrastructure Act 2016*;
- (b) an appeal against an administrative decision pursuant to section 48 of the *South Eastern Water Conservation and Drainage Act 1992*;
- (c) an appeal against an administrative decision pursuant to section 20 of the *Heritage Places Act 1993*;
- (d) an appeal against an administrative decision pursuant to section 55(1) or section 57(1) of the *Irrigation Act 2009*;
- (e) an appeal against an administrative decision pursuant to section 32(3) of the *Local Nuisance and Litter Control Act 2016*;
- (f) an application pursuant to section 141(1) or section 139(2)(e) of the *Planning, Development and Infrastructure Act 2016*;
- (g) an application pursuant to section 35 of the *Heritage Places Act 1993*;
- (h) an application pursuant to sections 29(1) or section 31A of the *Native Vegetation Act 1991*;
- (i) an application pursuant to section 33 of *Local Nuisance and Litter Control Act 2016*;
- (j) an application pursuant to section 215(10) of the *Landscape South Australia Act 2019*.

##### **366.2—Presiding member**

A Judge, Commissioner, Associate Judge or Magistrate of the Court may preside at any conference.

##### **366.3—Preparation for conference**

- (1) When the decision of an Authority is the subject of a proceeding to be referred to a conference, the Authority must, at least 7 days before the scheduled conference date, provide to the Court and to each party to the proceeding a book of documents comprising a copy of—
  - (a) each of the application documents, together with any additional information provided subsequently to the Authority by the applicant, whether in response to a request by the Authority, in response to representations, or otherwise;
  - (b) any representation, submission or report with respect to the application (including a report by staff of, and any consultant engaged by, the Authority), submitted to the Authority or any person or committee acting under delegation from the Authority prior to its decision;
  - (c) where the proceeding is a development appeal, any response of a prescribed body pursuant to s 122(1)(b) of the *Planning, Development and Infrastructure Act 2016* and any additional documents or information provided to a prescribed body by the applicant pursuant to s 122(3)(a);
  - (d) any report by an Authority or an officer, delegate or employee of the Authority;
  - (e) where the proceeding is a development appeal, a copy of the Planning rules relevant to the application;
  - (f) any advice or report provided prior to the decision of the Authority by a consultant engaged to advise upon the application or aspects of the application;
  - (g) the minutes of any meeting of the Authority at which the application was considered;
  - (h) the notification of the decision of the Authority;
  - (i) the reasons for the Authority's decision.
- (2) It is not necessary to include more than one copy of a document in a book of documents produced pursuant to this rule.

###### **Example—**

Where a document which is included in the book of documents was also an attachment, for example, to an agenda for a meeting of the authority or a committee, or to the report of an officer, it will be sufficient to insert a note following the reproduced agenda, report or other document, identifying the document and indicating the numbers of the pages of the book of documents where the document has been reproduced.

- (3) A book of documents produced pursuant to this rule must—
  - (a) be in chronological order for each category of documents;
  - (b) have pages that are sequentially numbered;
  - (c) have an index at the front.
- (4) Nothing in this rule derogates from the duty of an Authority to provide notice to the Court of persons who made representations pursuant to subsection 110(6)(b)(iii) of the *Planning, Development and Infrastructure Act 2016*.

- (5) The parties must be prepared in advance of the conference to be able to—
  - (a) identify and discuss the issues or matters in dispute at the conference;
  - (b) attend with such persons who are able to negotiate with authority;
  - (c) participate and comply with rules 366.4 and 366.6.

**366.4—The conference**

- (1) The purpose of a conference is to enable the presiding member at the conference to assist the parties to explore any possible resolution of the matters in dispute without resorting to a formal hearing.
- (2) To that end, it is expected that—
  - (a) the issues or matters in dispute, from the perspective of each party, will be aired and discussed openly at the conference, with a view to a fair and reasonable exchange of views in good faith;
  - (b) each party or their representative(s) attending the conference will attend in good faith, and that the representative(s) will have obtained the authority to discuss, negotiate and authorise a settlement of the proceeding, or agree on such issues or part of the proceeding as may be agreed;
  - (c) each party or their representative(s) will be prepared at the conference to discuss its case, identify the issues it proposes to argue, and the grounds therefor and respond as best it then can to the case of each other party.
- (3) Summaries of expert reports may be produced at a conference provided that—
  - (a) the reports are not summarised in such a way that they may be inaccurate or misleading;
  - (b) a copy of the summary is provided to the Court and to each other party at least 24 hours before the commencement of the conference.

**366.5—Adjournment of conference**

- (1) If, during the course of a conference, the presiding member concludes that the parties have reached or may reach a settlement which may materially prejudice any person not represented at the conference but who has a direct or material interest in the proceeding to which the conference relates, the presiding member may adjourn the conference and direct the Registrar to give notice of the conference and of the proposed or probable settlement to such person and the Registrar must give notice accordingly.
- (2) Any person to whom a notice has been given pursuant to subrule (1) may—
  - (a) attend at the adjourned conference and participate in it;
  - (b) apply to be joined as a party to the proceeding the subject of the conference.

**366.6—Closure of conference**

- (1) At the request of a party the presiding member may close the conference and list the matter for directions.
- (2) Upon the closure of the conference, the parties may be asked to—
  - (a) express their views concerning the composition of the bench to hear and determine the matter;
  - (b) identify the issues and inform the presiding member whether there is a legal issue to be determined, and if so, the nature of the legal issue.
- (3) When the presiding member considers it appropriate, the presiding member may list the matter for a directions hearing.

**366.7—Order for costs**

When the presiding member at a conference makes an order for costs pursuant to section 16(7)(h) of the Act, the amount of costs so ordered will be determined by reference to Part 9.

**366.8—Directions hearing**

- (1) This rule applies to the directions hearing convened after the close of the conference and any adjourned directions hearing.
- (2) At the directions hearing, the parties will be expected to inform the Court with respect to—
  - (a) the issues for determination including whether there is a legal issue to be determined, and if so, the nature of the legal issue;
  - (b) if not already determined, the composition of the bench to hear and determine the matter;
  - (c) any proposed amendments to the development proposal;
  - (d) the exchange of expert reports and meetings of experts;
  - (e) the availability of witnesses and counsel;
  - (f) the estimated duration of the final hearing; and
  - (g) any other matters relevant to the listing of the appeal.
- (3) At the directions hearing, to the extent that a timetable has not already been set, the Court may set a timetable for—
  - (a) the provision of particulars of a party's case;
  - (b) the filing and service of any amended development proposal when applicable;
  - (c) the exchange of expert reports;
  - (d) any meeting of proposed expert witnesses having similar expertise, for the purpose of identifying differences in opinion between them.
- (4) Following consultation with the Listings Co-ordinator, the Court will inform the parties of the date or dates for the final hearing of the appeal.



**366.9—Re-opening of conference or referral to Mediation**

The parties, by agreement, may request the Court—

- (a) at any time before the scheduled hearing date, to reconvene the conference of the parties;
- (b) at any time, to appoint a mediator to endeavour to achieve a negotiated settlement of the matter.

**Part 7—Mediation****367.1—Mediation**

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

**367.2—Mediation pursuant to section 28B of the Act**

- (1) Mediation may be conducted at any stage of proceedings.
- (2) The Court may appoint a mediator with the consent of the parties.

**367.3—Settlement resulting from mediation**

- (1) In the event that a mediation results in the settlement of any of the matters in dispute between the parties, the outcome shall be reduced to writing, signed by the mediator and the parties (the *mediation report*) and filed in a registry of the Court.
- (2) Following receipt of a mediation report, the Court may record a settlement and make any decision or order it considers appropriate.

**Part 8—Subsequent steps before final hearing****Division 1—Restraining orders****368.1—Restraining orders**

Where an interlocutory application is for a restraining order pursuant to section 28A of the Act, and the Court considers it appropriate to exercise its powers under section 28A(5) of the Act, the Court may—

- (a) direct the Registrar to issue and cause to be served a summons directing the respondent to appear before the Court at a specified time and place to be examined concerning the identification of property the subject of the proposed restraining order; or
- (b) issue a warrant for the arrest of the respondent, under the hand of a Judge, directed to the Sheriff, ordering the Sheriff to take the person into custody and to hold them in custody until they can be brought before the Court to be examined concerning the identification of property the subject of the proposed restraining order.

**Division 2—Particulars and discovery****368.2—Particulars and discovery**

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

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

**Division 3—Section 21(2) Documents****368.3—Documents requested under section 21(2)**

- (1) The Court may make a request for documents pursuant to section 21(2) of the Act on application by a party or of its own motion.
- (2) When any documents have been delivered or sent to the Court as a consequence of a request made pursuant to section 21(2) of the Act, the Registrar must make them available for inspection by the parties or their representatives at a registry of the Court.
- (3) Subject to any statutory provision, the Registrar may provide a copy of such documents as may reasonably be copied in the Registry to any party or their representative upon their paying the relevant fee or, where there is no fee, an amount sufficient to cover the cost of producing the copy.

**Division 4—Amendment to proposed development****368.4—Amendment to proposed development**

- (1) This rule applies in respect of a development appeal.
- (2) If, for the purpose of the final hearing, the applicant intends to amend the proposed development in any respect, they must file and serve on the other parties details of the proposed amendment—
  - (a) in accordance with a timetable ordered by the Court; or
  - (b) if a timetable has not been set, at least 21 days before the final hearing.

**Division 5—Expert evidence****368.5—Expert evidence**

- (1) Subject to subrule (2), the provisions of Chapter 7 Part 14 apply to a proceeding governed by this Chapter.
- (2) Rules 74.2, 74.3 and 74.8 do not apply to a proceeding governed by this Chapter.
- (3) A party who requests an expert to provide an expert report must, within 7 days of arranging for the expert to provide an expert report, send to the expert a copy of Divisions 3 and 4 of Chapter 7 Part 14.

- (4) If a party intends to adduce expert evidence at the final hearing, the party must, at least 7 days before the final hearing, obtain an expert report complying with rule 74.10 from each intended expert.
- (5) Unless the Court otherwise orders, an expert's evidence in chief at the final hearing must be given only by tendering the report from the expert and the expert giving evidence that the report is correct.
- (6) If a party wishes to adduce expert evidence of which notice should have been, but was not, given by an expert report from the witness (including evidence outside the scope of an expert report served under this rule)—
  - (a) the party must first obtain leave of the Court; and
  - (b) if a party fails to comply with this rule 368.5, the Court may order that the party pay the incremental costs of each other party caused by the failure to comply with this rule.

#### **Division 6—Book of documents for final hearing**

##### **368.6—Enforcement applications**

- (1) This rule applies to enforcement applications.
- (2) The applicant must provide to the Court and each other party any proposed interim or other order of the Court relevant to the final hearing in sufficient numbers, having regard to whether the matter is to be heard by a full bench or Judge or Commissioner sitting alone, subject to any order of the Court, to each party, at least 7 days before the commencement of the final hearing.

##### **368.7—Appeals against administrative decisions**

- (1) This rule applies to appeals against administrative decisions.
- (2) Subject to subrule (3), the Authority whose decision is the subject of an appeal to the Court must produce a book of documents in accordance rule 366.3 (whether or not rule 366.3 applies to the proceeding).
- (3) If a book of documents has already been prepared pursuant to rule 366.3—
  - (a) if no further documents would be included in a book of documents prepared in accordance with the timing required by subrule (6), the Authority need not prepare a further book of documents;
  - (b) if further documents would be included in a book of documents prepared in accordance with the timing required by subrule (6), the Authority must prepare (at its option) either a supplementary book of documents containing the further documents or a fresh book of documents.
- (4) The applicant for development authorisation under the *Planning, Development and Infrastructure Act 2016*, whether the applicant or respondent, must produce a full set of the plans or drawings, with dimensions, and drawn to an identified scale, which relate to the development as proposed at the time of the final hearing.
- (5) A party who plans to use, in the course of the final hearing, a diagram, specification, photograph, or other documentary material, which is reasonably capable of being copied without undue expense, must produce a book containing a copy of the material in preparation for the final hearing.
- (6) A party required by this rule to produce copy documents must provide to each other party and the Court the copy documents in sufficient numbers having regard to whether the matter is to be heard by a full bench or Judge or Commissioner sitting alone and allowing for one copy to be available to any person giving evidence at the final hearing, at least 7 days before the commencement of the final hearing subject to any order of the Court.
- (7) If the decision the subject of an appeal is in the nature of an appeal against a statutory notice that has been issued by an Authority, a book of documents shall be prepared which book is only required to contain those documents listed in rule 366.3 which are relevant to the issue of the statutory notice (noting that it may be the case that no such documents exist, in which case, a book of documents shall not be required).

#### **Part 9—Costs**

##### **369.1—Scale of costs**

- (1) The Scale of Costs prescribed by the Court for the purposes of sections 29 and 44 of the Act is the Higher Courts costs scale.
- (2) Subrule (1) is subject to the rules contained in Chapter 16.

##### **369.2—Witness fees**

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

##### **369.3—Costs of subpoenaed witness**

- (1) When the Court, on the application of a party to the proceeding, issues a subpoena requiring a person to appear before the Court, the Court may, either at the time of the issue of the subpoena or at any time before the conclusion of the action, order the party who applied for the issue of the subpoena to pay to the person required to appear the cost of that person attending before the Court.

- (2) When determining the amount to be paid pursuant to subrule (1), the Court will have regard to—
  - (a) the principles applicable to witness fees in rule 369.2;
  - (b) any travelling, accommodation or other costs actually incurred or likely to be incurred by the person in attending the Court.
- (3) The Court may make an order pursuant to this rule either upon an application by the person required to appear or a party to the proceeding, or of its own motion.
- (4) When an order is made pursuant to this rule, the amount ordered to be paid shall be a debt payable to the person required to attend by the party against whom the order is made.”

120. A new Chapter 27 is inserted as follows:

**“Chapter 27—Specific kinds of proceedings—Native Title—Supreme and ERD Courts**

**Part 1—Preliminary**

**371.1—Introduction**

- (1) This Chapter contains rules relating to actions involving native title.
- (2) Except to the extent that a rule in this Chapter excludes, modifies or is inconsistent with the other provisions of these rules, the other provisions of these rules applicable to an originating application apply to an action the subject of this Chapter.

**371.2—Interpretation**

- (1) In this Chapter, unless the contrary intention appears—
 

*Acquisition Act* means the *Land Acquisition Act 1969*;  
 the *Act* means the *Native Title (South Australia) Act 1994*;  
*Mining Act* means the *Mining Act 1971*;  
*Opal Mining Act* means the *Opal Mining Act 1995*;  
*register* means the State Native Title Register;  
*Registrar* means the Registrar of the ERD Court;  
*Regulations* means the *Native Title (South Australia) Regulations 1996*.
- (2) In this Chapter, unless the contrary intention appears, words defined in the Acquisition Act, Mining Act, Opal Mining Act or the Act, when used in the context of an application under that Act, have the same meaning as in that Act.

**371.3—Cultural or customary concerns**

- (1) At any time in a proceeding, the Court may make an order that it considers appropriate to take account of the cultural or customary concerns of a party to the proceeding or another person.

**Example—**

The Court might make a ruling on the naming of recently deceased people.

- (2) In considering orders to be made, the Court may seek any information it considers appropriate from a party to the proceeding.

**371.4—Transfer of proceedings between courts**

- (1) An application to the Supreme Court under section 6(4) of the Act or section 20(2) of the *Environment, Resources and Development Court Act 1993* to remove a proceeding into the Supreme Court must be made or be instituted by filing an Originating Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.

**Prescribed form—**

Form 2 Originating Application

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (2) An application to the ERD Court under section 6(3) of the Act or section 20(1) of the *Environment, Resources and Development Court Act 1993* to refer a proceeding to the Supreme Court must be made or be instituted by filing an Interlocutory Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 102.1 or, with leave of the Court, by oral application at a hearing.

**Prescribed form—**

Form 77 Interlocutory Application

Form 12 Affidavit

- (3) An application to the Supreme Court under section 6(1) of the Act to refer a proceeding to the ERD Court must be made or be instituted by filing an Interlocutory Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 102.1 or, with leave of the Court, by oral application at a hearing.

**Prescribed form—**

Form 77 Interlocutory Application

Form 12 Affidavit

- (4) If a proceeding is transferred to the Court under section 6 of the Act or section 20 of the *Environment, Resources and Development Court Act 1993* before the pleadings are completed, the parties must, unless the Court otherwise orders, complete the pleadings in accordance with the rules applicable to the court in which the proceeding originated.
- (5) The Court may exercise interlocutory powers that could have been exercised by the court in which the proceeding originated.

#### **371.5—Serving documents and giving notice**

- (1) If a document is required by these rules to be served on the holders of or claimants to native title, it must be served—
  - (a) in accordance with Chapter 5; or
  - (b) to the extent applicable, section 28 or 29 of the Act.

##### **Note—**

Sections 28 and 29 of the Act provide that, if native title, or a claim to native title, is registered under the law of the Commonwealth or the State, a notice or other document is validly served on the holders or claimants if it is given personally or by post to their registered representative and the relevant representative Aboriginal body for the land.

- (2) If notice is required by these rules or an order of the Court to be served on the holders of, or claimants to, native title, the notice must be—
  - (a) in writing; or
  - (b) in any other form that the Court considers appropriate; andit must be given—
  - (c) by ordinary pre-paid post; or
  - (d) in any other way that the Court considers appropriate.
- (3) The Court may direct an applicant or the Registrar to give public notice of any hearing before the Court, or any order of the Court, in the manner and at the time the Court considers appropriate.

### **Part 2—Native Title Act**

#### **Note—**

The Supreme Court and ERD Court are vested by section 5 of the Act with concurrent jurisdiction to hear and determine native title questions under the Act.

#### **Division 1—State Native Title Register**

##### **372.1—Title of register**

The register kept by the Registrar under section 17 of the Act will be called the “State Native Title Register”.

##### **372.2—Matters to be recorded**

###### **Note—**

Section 17 of the Act and regulation 6 of the Regulations specify the information that must be recorded in the register. That includes all decisions by competent authorities under the law of the Commonwealth about the existence of native title in land in the State or the nature of rights conferred over land in the State by native title.

The Registrar may accept a certified extract of the National Native Title Register kept under the *Native Title Act 1993* (Cth) as a basis for entering decisions of competent authorities under the law of the Commonwealth about the existence of native title in land in the State or the nature of rights conferred over land in the State by native title.

##### **372.3—Inspection of register**

###### **Note—**

Section 17(3) of the Act requires the register to be kept available for inspection during normal business hours on payment of the fee fixed by the Regulations.

- (1) The register will be available for inspection at the principal registry of the Court at the Sir Samuel Way Building, Victoria Square, Adelaide.
- (2) The Registrar may make the register, or part of the register, available for inspection at district registries of the Court on terms and conditions determined by the Registrar.

##### **372.4—Confidential part of register**

###### **Note—**

Section 17(4) of the Act requires a part of the register to be set aside for the inclusion of information and materials of a nature that cannot be publicly disclosed without contravening Aboriginal tradition. The confidential part is to include information and materials determined by the Court or the Registrar. The confidential part is only to be inspected as authorised by the Court or the Registrar.

- (1) The part of the register set aside for the inclusion of information and materials of a nature that cannot be publicly disclosed without contravening Aboriginal tradition (the *confidential part of the register*) must be kept as directed by a Judge.
- (2) The Court or the Registrar may specify conditions on which a person is authorised to have access to the confidential part of the register, including conditions restricting the information or materials to which the person is to have access.
- (3) The Registrar must keep a written record of each decision of the Court or the Registrar authorising a person to have access to the confidential part of the register, including details of the name and address of the person and the information or materials to which the person was authorised to have access (but that record is not to be made available for inspection by members of the public).

**Division 2—Applications for native title declarations and/or compensation****372.5—Scope of Division**

This Division applies to applications for a native title declaration under Part 4 and for compensation for acts adversely affecting native title under Part 4A of the Act.

**372.6—Application for native title declaration or revocation or variation**

- (1) A claimant application under section 18 of the Act for a declaration that native title exists in land made on behalf of an Aboriginal group must be instituted by filing an Originating Application in accordance with rule 82.1 in the prescribed form.

**Prescribed form—**

Form 2P Originating Application—Native Title Declaration Claimant Application

- (2) An application under subrule (1) must be supported by a statutory declaration in the prescribed form in accordance with section 18A(2)(k) of the Act.

**Prescribed form—**

Form 13 Statutory Declaration

- (3) A non-claimant application under section 18 of the Act for a native title declaration must be instituted by filing an Originating Application in accordance with rule 82.1 in the prescribed form.

**Prescribed form—**

Form 2Q Originating application—Native Title Declaration Non-Claimant Application

- (4) An application under subrule (3) must be supported by a statutory declaration in the prescribed form in accordance with section 18A(4)(e) of the Act.

**Prescribed form—**

Form 13 Statutory Declaration

- (5) An application under section 25 of the Act for variation or revocation of a native title declaration must be made by filing an interlocutory application in accordance with rule 102.1 in the prescribed form supported by an affidavit in accordance with rule 102.1(2).

**Prescribed forms—**

Form 77B Interlocutory Application—Native Title and Form 77C Schedule to Interlocutory Application—Native Title

**Note—**

The above prescribed forms reflect the forms prescribed by the Regulations for applications under Part 4 of the Act.

**372.7—Claim for compensation**

A claim under section 27A of the Act for compensation for an act extinguishing or otherwise affecting native title must be instituted by filing a Claim in the prescribed form in accordance with rule 63.1.

**Prescribed form—**

Form 1D Claim—Native Title Compensation

**372.8—Supporting affidavit or statutory declaration**

- (1) If the applicant is an individual, the application or claim must be signed, and the accompanying statutory declaration or affidavit sworn or affirmed, by the applicant.
- (2) If the applicant is a body corporate, the application or claim must be signed, and the accompanying statutory declaration or affidavit sworn or affirmed, by a director, secretary or other principal officer of the body corporate, or by a person employed by the body corporate who is authorised to sign the application or claim and make the statutory declaration or affidavit.

**372.9—Amendment of application**

- (1) A person applying under regulation 8 of the Regulations to amend an application made under Part 4 or Part 4A of the Act must file the application and each map and other accompanying document with the Court.

**Note—**

An application may be amended under Parts 4 and 4A of the State Native Title Act and the Regulations or in any other way as ordered by the Court.

- (2) If the application is a claimant application and the Registrar has not yet decided whether it is to be registered, the Registrar may if the Registrar thinks fit join an additional party.
- (3) Subject to subrule (2), the application will be determined by the Court.
- (4) The Court may give the directions and make the orders it considers appropriate, including (but without limiting the generality of this power) an order that claimant applications be combined.

**372.10—Review of decision not to accept claim**

- (1) An application under section 19B of the Act for review of a decision by the Registrar in relation to registration or de-registration of a claim must be made by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 4 Originating Application for Review

- (2) The application must be filed within 42 days from the date of notification of the decision under section 19A(7) of the Act.
- (3) On a review, the Judge may give directions to the Registrar or the applicant.

**372.11—Joinder of additional parties**

- (1) A person who seeks to be joined as a party to an application governed by this Division must file an application in the prescribed form setting out the nature of the person's interests in the proceeding.

**Prescribed form—**

Form 77I Interlocutory Application to be Joined

- (2) The applicant for joinder must serve the joinder application on the applicant and any other party to the proceeding.
- (3) If the application is a claimant application and the Registrar has not yet decided whether it is to be registered, the Registrar may if the Registrar thinks fit join an additional party.
- (4) Subject to subrule (3), the application will be determined by the Court.
- (5) If the Court make an order for joinder, notice of the decision must be given to the applicant and to any other party to the proceedings.

**Division 3—Other applications****372.12—Scope of Division**

This Division applies to applications under the Act other than those governed by Division 3.

**372.13—Institution**

- (1) An application governed by this Division must be instituted by filing an Originating Application in the prescribed form.

**Prescribed form—**

Form 2 Originating Application

- (2) The application must be accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.
- (3) If the applicant is an individual, the supporting affidavit must be sworn or affirmed, by the applicant.
- (4) If the applicant is a body corporate, the supporting affidavit must be sworn or affirmed by a director, secretary or other principal officer of the body corporate, or by a person employed by the body corporate who is authorised to make the application and the affidavit.
- (5) Unless the Court otherwise orders, the applicant must join as a respondent—
- (a) the Minister responsible for administration of the Act; and
  - (b) if the application relates to native title the subject of a claim under the Act—the registered holder of the native title or otherwise the claimant or person registered as representative of the claimants.

**372.14—Joinder of additional parties**

- (1) If a respondent believes that another person has an interest in the application, the applicant, or the State Minister may, within 14 days of being served with the application, notify the Court of the name and address of the person believed to have an interest.
- (2) The Court may order that any person that the Court is satisfied has an interest in the application be joined as an additional respondent or interested party.
- (3) Nothing in this rule affects any right a person may otherwise have to be joined as a party to a proceeding, or the power of the Court, on its own initiative or at the request of a party, to order that a person be joined as a party to a proceeding.
- (4) In this rule, *person* includes a group of persons or an organisation.

**Part 3—Acquisition Act, Mining Act and Opal Mining Act****Note—**

Jurisdiction in relation to native title under the Acquisition Act, Mining Act and Opal Mining Act is prima facie vested in the ERD Court.

However, section 5(1) of the Act vests jurisdiction in the Supreme Court and ERD Court to determine native title questions and section 20A of the *Environment Resources and Development Court Act 1993* vests jurisdiction in the Supreme Court if the Supreme Court removes a proceeding into the Supreme Court or the ERD Court transfers a proceeding to the Supreme Court.

**Division 1—Mediation****Note—**

Sections 19(3) and 23(3) of the Acquisition Act, section 63P(3) of the Mining Act and section 58(3) of the Opal Mining Act provide for the ERD Court to mediate between the parties to assist in obtaining their agreement.

**373.1—Request for mediation**

- (1) An application requesting the Court to mediate between parties to assist in obtaining their agreement about a native title question must be instituted by filing an Originating Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.

**Prescribed forms—**

Form 2 Originating Application

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (2) The application or affidavit must—
- (a) include an outline of the circumstances of the case and the matters in dispute; and
  - (b) be accompanied by a copy of the notice initiating negotiations between the parties.

- (3) The applicant must join as a respondent each other party to the proposed agreement.
- (4) If mediation has been requested, it may continue even after an application for a native title declaration has been made to the Court seeking a resolution of the matters in dispute.

#### **Division 2—Determination in absence of agreement**

##### **Note—**

Section 20 of the Acquisition Act, section 63S of the Mining Act and section 61 of the Opal Mining Act provide for the ERD Court to make determinations if agreement cannot be reached.

##### **373.2—Application for determination**

- (1) An application for a native title determination following the failure of negotiating parties to reach agreement must, subject to subrule (4), be instituted by filing an Originating Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.

##### **Prescribed forms—**

Form 2AK Originating Application—Native Title Determination

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (2) The application or affidavit must—
  - (a) identify the land subject to the negotiations;
  - (b) identify the other parties with whom negotiations have taken place;
  - (c) identify the representative Aboriginal body for the area in which the land is situated;
  - (d) identify any person who holds an interest in the land (including an authority or tenement authorising mining or other operations on the land) but has not been a party to the negotiations and give details of the nature of the interest;
  - (e) include a statement of the effect of the proposed acquisition or operations on—
    - (i) the enjoyment of native title rights and interests by the native title parties;
    - (ii) the way of life, culture and traditions of the native title parties;
    - (iii) the development of the social, cultural and economic interests of the native title parties;
    - (iv) the freedom of access by any of the native title parties to the land and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land in accordance with their traditions;
    - (v) any area or site on the land of particular significance to the native title parties in accordance with their traditions;
    - (vi) the natural environment of the land;
  - (f) set out the terms of the determination sought;
  - (g) if it is made by a person other than a native title party—
    - (i) describe the interest (including any authority or tenement authorising proposed operations on the land) that the applicant holds or has applied to hold in the land;
    - (ii) describe the general nature of the operations proposed to be carried out on the land or the purpose for which the land is to be acquired;
    - (iii) exhibit a copy of the notice initiating the negotiations;
    - (iv) set out to whom, when and how that notice was given;
  - (h) if it is made by a native title party—
    - (i) give details of the nature of the rights conferred by the native title in the land held or claimed by the applicant and the basis on which native title is held or claimed;
    - (ii) give details of any request for non-monetary compensation.
- (3) The applicant must join as a respondent—
  - (a) each other party to the negotiations;
  - (b) the representative Aboriginal body for the area in which the land is situated;
  - (c) the Minister responsible for administration of the Act under which the determination is sought.
- (4) However, if the Court has mediated between the parties to assist in obtaining their agreement, a party to the mediation may apply for a native title determination in the proceeding in which the mediation occurred by filing an interlocutory application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.

##### **Prescribed forms—**

Form 77 Interlocutory Application

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (5) If a party proceeds under subrule (4), the application or affidavit must address the matters and exhibit the documents referred to in subrule (2).

**Division 3—Summary determination****373.3—Application where no registered native title parties****Note—**

Section 63N of the Mining Act provides for the ERD Court to make determinations if, four months after notice is given, there are no native title parties in relation to the land to which the notice relates.

Section 56 of the Opal Mining Act provides for the ERD Court to make determinations if, two months after notice is given, there are no native title parties in relation to the land to which the notice relates.

- (1) An application for a determination authorising entry to and mining operations on land where there are no native title parties must be instituted by filing an Originating Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.

**Prescribed forms—**

Form 7D Originating Application Ex Parte—Summary Determination Authorising Operations on Native Title Land

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (2) The application or affidavit must—
  - (a) identify and describe the land on which the proposed operations are to be carried out;
  - (b) describe the interest (including any authority or tenement authorising the proposed operations) that the applicant holds or has applied to hold in the land;
  - (c) describe the general nature of the proposed operations that are to be carried out on the land;
  - (d) set out the terms of the determination sought;
  - (e) exhibit a copy of the notice initiating negotiations with native title parties in relation to the proposed operations given by the applicant;
  - (f) identify to whom, when and how that notice was given.

**373.4—Application for expedited procedure****Note—**

Section 63O of the Mining Act and section 57 of the Opal Mining Act provide for the ERD Court to make summary determinations if operations are of a kind attracting the expedited procedure.

- (1) An application for a determination authorising entry to and mining operations on land where the applicant is relying on the expedited procedure must be instituted by filing an Originating Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.

**Prescribed forms—**

Form 7D Originating Application Ex Parte—Summary Determination Authorising Operations on Native Title Land

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (2) The application or affidavit must—
  - (a) identify and describe the land on which the proposed operations are to be carried out;
  - (b) describe the interest (including any authority or tenement authorising the proposed operations) that the applicant holds or has applied to hold in the land;
  - (c) describe the general nature of the proposed operations that are to be carried out on the land;
  - (d) set out the terms of the determination sought;
  - (e) set out the grounds on which the applicant alleges that the expedited procedure applies to the proposed operations;
  - (f) exhibit a copy of the notice initiating negotiations with native title parties in relation to the proposed operations given by the applicant;
  - (g) identify to whom, when and how that notice was given;
  - (h) exhibit a copy of any objections to reliance on the expedited procedure received by the applicant.
- (3) The applicant must give a copy of the application and supporting affidavit, together with notice of the effect of section 63O(4) of the Mining Act or section 57(4) of the Opal Mining Act as applicable, to any person who has objected to reliance on the summary procedure.

**Division 4—Review of determination for compensation****Note—**

Section 63ZB of the Mining Act and section 70 of the Opal Mining Act provide for the ERD Court to review a determination insofar as it fixed compensation payable in the event that a native title declaration is later made establishing who are the holders of native title in the land.

**373.5—Application for review**

- (1) An application for review of the provisions of a native title determination providing for the payment of compensation following a native title declaration must, subject to subrule (4), be instituted by filing an Originating Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.



**Prescribed forms—**

Form 2 Originating Application

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (2) The application or affidavit must identify—
- (a) the date and case number of the original declaration by the Court;
  - (b) the land to which the declaration relates;
  - (c) if native title is declared to exist in the land—
    - (i) the persons declared to be the common law holders of native title;
    - (ii) the body declared to be the registered representative of the common law holders of native title;
    - (iii) the nature and extent of the rights and interests conferred by the native title;
    - (iv) the nature and extent of other interests in the land that may affect the native title rights and interests deriving from the native title;
  - (d) the operations authorised by the determination and the authorities or tenements under which the operations authorised by the determination may be carried out;
  - (e) if the applicant is a person who is liable to pay compensation under the determination, the operations that have been carried out under the determination;
  - (f) any person who holds an interest in the land but who was not a party to the negotiations leading to the determination and give details of the nature of the interest;
  - (g) the proposed changes to the provisions of the determination for payment of compensation;
  - (h) the reasons for changing the provisions of the determination for payment of compensation.
- (3) The applicant must join as a respondent—
- (a) each other party bound by the determination;
  - (b) the representative Aboriginal body for the area in which the land is situated;
  - (c) the Minister responsible for administration of the Act under which the determination is sought.
- (4) However, a party to the determination may apply for a native title determination in the proceeding in which the mediation occurred by filing an interlocutory application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.

**Prescribed forms—**

Form 77 Interlocutory Application

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (5) If a party proceeds under subrule (4), the application or affidavit must address the matters referred to in subrule (2).

**Division 5—Fixing basis for compensation****Note—**

Section 63Q(2) of the Mining Act and section 59(2) of the Opal Mining Act provide for the ERD Court to fix compensation payable when an agreement provides for payment based on profits or income derived from mining operations on the land or the quantity of minerals produced on a basis to be fixed by the Court.

**373.6—Application for determination**

- (1) An application requesting the Court to determine the basis of payment to native title parties under a native title agreement (as required by the agreement) must be instituted by filing an Originating Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.

**Prescribed forms—**

Form 2 Originating Application

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (2) The supporting affidavit must exhibit a copy of the native title agreement.
- (3) The applicant must join as a respondent—
- (a) each other party to the agreement;
  - (b) the Minister responsible for administration of the Act under which the determination is sought.

**Division 6—Appeal against prohibition of registration—ERD Court****Note—**

Section 63Q(5) of the Mining Act and section 59(5) of the Opal Mining Act empower the Minister, if there is reason to believe that a native title agreement may not have been negotiated in good faith, to prohibit registration of the agreement.

Section 63Q(6) of the Mining Act and section 59(6) of the Opal Mining Act provide that a prohibition decision is subject to appeal to the ERD Court.

**373.7—Application by way of appeal**

- (1) An application by way of appeal against a decision of a Minister prohibiting registration of a native title agreement must be instituted by filing an Originating Application in the prescribed form accompanied by a supporting affidavit in the prescribed form in accordance with rule 82.1.

**Prescribed forms—**

Form 5 Originating Application—Appeal against Administrative Decision

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

- (2) The application or affidavit must—
  - (a) give an outline of the circumstances of the case;
  - (b) give details of the decision appealed against;
  - (c) set out the grounds of appeal;
  - (d) set out the terms of the order sought;
  - (e) exhibit a copy of the native title agreement;
  - (f) exhibit a copy of the order of the Minister prohibiting registration of the agreement and any separate reasons given for the decision.
- (3) The applicant must join—
  - (a) each other party to the agreement as a respondent; and
  - (b) the Minister as an interested party.

**Part 4—Directions hearings****Note—**

Directions hearings generally are governed by Chapter 9.

**374.1—Conduct of directions hearing**

- (1) A directions hearing will ordinarily be convened before a Judge of the Court.
- (2) A particular matter raised at a directions hearing may be referred to an Associate Judge for direction or decision.
- (3) A directions hearing may be convened, if a Judge so directs, before an Associate Judge or Commissioner.

**374.2—Additional directions**

Without affecting the directions that may be given under Chapter 9, directions may be given to the parties or the Registrar—

- (a) to define and clarify the issues between the parties;
- (b) to facilitate the efficient and expeditious hearing and determination of the issues raised by the proceeding;
- (c) about the giving of notice of the proceedings (see section 16(1) of the Act);
- (d) inviting or requiring a person (or representative of a group) to be joined as a party to the proceedings or to introduce evidence, or make submissions, relevant to the proceeding;
- (e) about service of a notice or other document;
- (f) about whether the proceeding should be heard in the ERD Court or the Supreme Court;
- (g) about whether the proceeding should be heard together with another proceeding before the Court relating to the same land (see section 26 of the Act);
- (h) if the proceeding has been referred or removed to the Court from another court—
  - (i) giving interested persons a specified time within which to apply for registration of a claim to native title in land or for a native title declaration;
  - (ii) about the procedure for the completion of pleadings, if not completed;
- (i) requiring a party to undertake investigations, make inquiries or ascertain facts that may be relevant to the proceeding;
- (j) requiring a party to provide (to the Court or another party) reports, maps, records or any other documents that may be relevant to the proceeding;
- (k) requiring a party to provide particulars of their case, including a written summary of the evidence intended to be introduced;
- (l) about the convening of a conference of the parties, including—
  - (i) the selection of a mediator;
  - (ii) the procedure, places, timing and other arrangements for the conference.

**374.3—Overlapping applications**

- (1) If a party has knowledge of the existence of another proceeding before the Court that relates to a native title question that covers (in whole or in part) the same area as that application, the party must immediately give notice to the Court identifying the other proceeding.
- (2) If the Court receives notice under subrule (1), the Court will convene a directions hearing in both proceedings together to consider the future conduct of the proceedings.
- (3) The Court may make the orders pursuant to section 26(2) of the Act that it considers proper for the future conduct of the proceedings.

**374.4—Adjournment for negotiation**

- (1) The Court may, at any time in a proceedings (including after commencement of the final hearing), on its own initiative or at the request of a party, order an adjournment to allow the parties time for negotiation.
- (2) Negotiations for which an adjournment may be allowed may relate to an agreement about matters other than native title.
- (3) This rule does not limit the general power of the Court in relation to mediation or adjournments.

**Part 5—Native title conferences****Note 1—**

Section 8 of the Act requires the Court to call a conference of the parties to contested proceedings involving a native title question, unless the Court is of the opinion that no useful purpose would be served by a conference between the parties before the hearing of the matter or there is some other adequate reason for dispensing with a conference.

**Note 2—**

Mediations generally are governed by Chapter 11 Part 1.

**375.1—Appointment of mediator and assistant****Note—**

Section 9 of the Act requires the Court to select a mediator from among the Judges and the native title commissioners to preside at the conference in accordance with the rules.

- (1) The mediator to preside at a conference under section 8 of the Act is to be selected by the Judge having responsibility for the management of the proceeding or another Judge of the Court and will ordinarily be a native title commissioner but may, if the Court thinks fit, be a Judge of the Court
- (2) The Court may appoint a native title commissioner to assist the mediator if considered appropriate for reasons of Aboriginal tradition or for other reasons.
- (3) A person appointed to assist a mediator—
  - (a) must do so in the manner requested by the mediator;
  - (b) is, unless all parties agree to the contrary, disqualified from taking further part in the proceeding (as is the mediator under section 12 of the Act).

**375.2—Purpose of conference and conduct of parties**

- (1) The purpose of a conference is to enable the mediator to assist the parties to explore the possibility of resolving the matters in dispute by agreement and without resorting to a formal hearing (see section 8(1) of the Act).
- (2) It is expected that as far as possible the issues or matters in dispute, from the perspective of each party, will be aired and discussed openly at the conference, with a view to a fair and reasonable exchange of views in good faith.
- (3) A party or the representative of a party attending the conference should attend in good faith.
- (4) A party or the representative of a party should have the authority to discuss, negotiate and authorise a settlement of the proceedings, or if a settlement cannot be achieved to agree on issues or parts of the proceeding.
- (5) A party or the representative of a party should be prepared at the conference to discuss the party's case and its grounds, identify the issues proposed to be argued and respond to the case of each other party to the best of their ability.

**375.3—Powers of mediator****Note—**

Section 9(4) of the Act allows the mediator to exercise powers of the Court delegated by the rules.

The mediator may, at any time in the course of the conference—

- (a) exercise the delegated powers of the Court to make orders—
  - (i) requiring a party to undertake investigations, make inquiries or ascertain facts or matters;
  - (ii) requiring a party to provide (to the Court or another party) reports, maps, records or other documents that may be relevant to the proceeding;
  - (iii) requiring a party to provide particulars of their case, including a written summary of the evidence intended to be introduced;
  - (iv) about the procedure, places, timing and other arrangements for the conference;
- (b) with the consent of all parties to the proceeding, take and record evidence which may be admissible in proceedings before the Court (see section 11 of the Act).

**375.4—Conclusion of conference****Note—**

Section 10 of the Act provides that if a settlement is reached at a conference, the Court may make orders to give effect to the terms of agreement.

Section 10 also provides that if it appears that there is no reasonable prospect of reaching a negotiated settlement within a reasonable time, the mediator must close the conference and report the failure to reach agreement to the Court.

- (1) If a settlement is reached at a conference, the mediator must, as soon as reasonably practicable, close the conference and give a written report of the terms of agreement (including the terms of any proposed orders of the Court) to the presiding member of the Court.

- (2) If it is proposed that the Court make an order to give effect to the terms of agreement, the Court—
  - (a) will have regard to the views of the mediator who presided at the conference;
  - (b) will, if the order is a final order in the proceeding, give the parties an opportunity to make submissions about the terms of the order.

#### **Part 6—Final Hearing and evidence**

##### **Note—**

Trials generally are governed by Chapter 14.

##### **Division 1—Evidence**

###### **376.1—Directions concerning evidence**

- (1) Without affecting the general powers of the Court, the Court may, at any time in a proceeding, make any order it considers appropriate relating to evidentiary matters.
- (2) Without affecting the generality of subrule (1), the Court may make orders—
  - (a) relating to the manner in which evidence may be presented to the Court;
  - (b) relating to the time when and the place where certain evidence is to be taken;
  - (c) relating to the presentation of evidence about a cultural or customary subject.

###### **376.2—Evidence not in the ordinary course**

- (1) If evidence of a cultural or customary subject is to be given by way of singing, dancing, storytelling or in any other way other than in the normal course of giving evidence, the party intending to adduce the evidence must inform the Court, within a reasonable time before the evidence is proposed to be given—
  - (a) of the evidence intended to be so adduced;
  - (b) where, when and in what form it is proposed to adduce the evidence;
  - (c) of any issues of secrecy or confidentiality relating to the evidence or part of the evidence.
- (2) If the Court considers that a person's evidence should be given at a time other than when such evidence would normally be given, the Court may give directions as to how, when and in what form the evidence is to be given.
- (3) Subrule (2) applies even if the proceeding has been referred to mediation.

###### **376.3—Evidence given in consultation with others**

- (1) The Court may, if it considers that it is in the interests of justice to do so, receive into evidence a statement from a group of witnesses, or a statement from a witness after that witness has consulted with other persons.
- (2) If a statement is made by a witness after consultation with other persons, the identity of the persons may, at the direction of the Court, be recorded in the transcript.

###### **376.4—Secrecy and confidentiality**

- (1) Without affecting the generality of rule 376.1, the Court may make orders—
  - (a) restricting access to the content of any pleading or any other document on the Court file;
  - (b) relating to the manner of identifying and referring to evidence about specified subject matters;
  - (c) restricting access to the transcript of a hearing.
- (2) If a party claims that a document to be used in a proceeding refers to a cultural or customary subject that is of a confidential or secret nature—
  - (a) the party must give written notice of the claim on the front page of the document including a short description of the material and the reason for its confidential or secret nature;
  - (b) place the material in a sealed envelope attached to the document marked “not be opened except by leave of the Court”;
  - (c) the sealed envelope must not be opened except by leave of the Court;
  - (d) leave to inspect the document may be conditional on an undertaking of non-disclosure of the material or part of the material.

###### **376.5—Notice of intention to adduce evidence or inspect document**

- (1) This rule applies if the adducing of evidence or inspection of a document in a proceeding might disclose evidence or information relating to the culture, genealogy, customs or traditions of Aboriginal peoples or Torres Strait Islanders contrary to a direction or order of a court or tribunal.
- (2) A person who wishes to adduce evidence or inspect a document referred to in subrule (1) must give reasonable notice to—
  - (a) the court or tribunal that gave the direction or made the order;
  - (b) the person, or the representative of the person, who gave the evidence or produced the information; and
  - (c) any other person as the Court may direct.
- (3) Notice may be given under subrule 2(a) by giving notice to the Registrar of the court or tribunal, or a person performing the duties of a Registrar or holding a similar office.
- (4) In this rule, a *court or tribunal* includes the Aboriginal Land Commissioner and any other body or entity with jurisdiction under a law of the Commonwealth or a State or Territory to hear and determine, or make findings and recommendations, or mediate or otherwise act in relation to, indigenous land proceedings.

**Division 2—Hearing****376.6—Inspection of a place**

- (1) To enable the proper determination of any matter in question in a proceeding, the Court may make orders for the inspection of any place, including about the method, manner and means of inspection.
- (2) Without affecting the generality of subrule (1), the Court may make orders, including orders relating to—
  - (a) the provision of maps;
  - (b) the obtaining of permission of owners and occupiers of land;
  - (c) the giving of notice;
  - (d) travel and accommodation details;
  - (e) arrival and departure times;
  - (f) the type, number and description of motor vehicles;
  - (g) route description (for example the physical features of the route including condition of road surfaces);
  - (h) distances to be travelled and estimated times of travel and inspection;
  - (i) details of any third party controlling the inspection and any related costs.

**376.7—Practical outcomes of native title determination**

Before the Court makes a final declaration as to native title, the Court may, at the request of a party or on its own initiative, direct the parties to confer, with the aim of reaching agreement about the practical management of any aspect of the rights and interests to be the subject of the final declaration.”

121. The note to Schedule 2 subrule 2(b) is amended by inserting immediately after the existing note, the following:  
Form 79 Draft Order is to be lodged as an editable Word document.
122. The note to Schedule 3 subrule 2(b) is amended by inserting immediately after the existing note, the following:  
Form 79 Draft Order is to be lodged as an editable Word document.
123. Schedule 6 Part 2 subrule 3(1) is amended by replacing “(6)” with “7”.
124. Schedule 6 Part 2 subrule 3(2) is amended by:
  - (a) replacing “(6)” with “(7)”; and
  - (b) replacing the words “on or after 1 January 2021” with the words, “between 1 January 2021 and 31 December 2021.
125. Schedule 6 Part 2 subrule 3(3) is amended by:
  - (a) replacing “(6)” with “(7)”; and
  - (b) replacing the words “from on or after 1 January 2022” with the words, “between 1 January 2022 and 31 December 2022.
126. Schedule 6 Part 2 subrule 3(4) is amended by:
  - (a) replacing “(6)” with “(7)”; and
  - (b) replacing the words “from on or after 1 January 2023” with the words, “between 1 January 2023 and 31 December 2023.
127. Schedule 6 Part 2 subrule 3(5) is amended by:
  - (a) replacing “(6)” with “(7)”; and
  - (b) replacing the words “from on or after 1 January 2024” with the words, “between 1 January 2024 and 31 December 2024.
128. Schedule 6 Part 2 rule 3 is amended by inserting a new subrule (6) as follows:
  - (6) Subject to subrule (7), the Higher Courts costs scale in respect of work done from on or after 1 January 2025 is set out in the following table.

Higher Courts Costs Scale		
Item	Description	Amount
<i>Documents</i>		
1	Drawing any document of importance, other than documents mentioned under item 2, 10 or 11 (including original and the lawyer’s file copy).	\$67.27—for each ¼ page.
2	Drawing proofs, indices, formal lists, extracts from other documents, lists of authorities, or other formal documents (including original and the lawyer’s file copy).	\$22.10—for each ¼ page.
3	Engrossing documents, when copying or scanning is not appropriate (including original and the lawyer’s file copy).	\$6.39—for each ¼ page.
4	Perusing documents (including electronic documents).	a range between \$3.21 and \$12.51—for each ¼ page.
5	Examining documents (including electronic documents), when a perusal is not justified.	\$0.80—for each ¼ page.
6	Documents produced by copying or scanning, or receiving emails, faxes or any other electronic transmissions.	\$0.47—for each sheet.

Higher Courts Costs Scale		
Item	Description	Amount
<i>Attendances and Communications</i>		
7	Attendances and oral communications, whether personal or by electronic communication, including attendances to swear or take affidavits.	Either: (a) for each 6 minute unit by a lawyer involving skill—\$46.51; (b) for each 6 minute unit by a lawyer not involving skill—\$27.90; (c) for each 6 minute unit by a non-lawyer employed or engaged by a lawyer—\$22.10; or (d) for arranging appointments, including all work involved—\$31.40 per person.
8	Attending hearings, including preparation, and when not attending as instructing lawyer for counsel.	Either: (a) for an ordinary hearing—\$232.59; or (b) if protracted (beyond 5 units), for each 6 minute unit of hearing time—\$46.51.
9	Filing or delivery of documents other than <u>personal service</u> , when no other attendance is properly allowable.	\$31.40.
<i>Correspondence</i>		
10	Correspondence, including original to send and the lawyer's file copy, and the ordinary postal or transmission expenses—whether sent by letter, email, SMS or fax.	\$31.40—for each ¼ page.
11	Circular correspondence, including original to send and the lawyer's file copy, and the ordinary postal or transmission, expenses—after the first.	\$15.71—for each letter, including copying for subsequent pages (regardless of the number of pages).
<i>Miscellaneous</i>		
12	Paying disbursements by whatever means and including all work and associated expenses.	\$31.40.
13	Preparation of Pleadings Books, Tender Books, Application Books, Appeal Books and Briefs, including indices, pagination and binding.	\$2.33—for each page.
14	Lump sum on a default judgment.	\$3176.09.

129. Schedule 6 Part 7 rule 3 is amended by renumbering subrule (6) as subrule (7), replacing the word “and” after (4) with a comma and inserting the words “and (6)” after “(5)”.
130. Schedule 6 Part 3 subrule 5(1) is amended by inserting immediately after the words, “28 August 2022” the following words, “is set out in the following table.”
131. Schedule 6 Part 4 subrule 7(1) is amended by replacing “(4)” with “(5)”.
132. Schedule 6 Part 4 subrule 7(2) is amended by:
- (a) replacing “(4)” with “(5)”; and
  - (b) replacing the words “on or after 29 August 2022” with the words, “between 29 August 2022 and 31 December 2022”.
133. Schedule 6 Part 4 subrule 7(3) is amended by:
- (a) replacing “(4)” with “(5)”; and
  - (b) replacing the words “on or after 1 January 2023” with the words, “between 1 January 2023 and 31 December 2024”.

134. Schedule 6 Part 4 subrule 7(3) is amended by inserting a new subrule (4) as follows:

- (4) Subject to subrule (5), the Minor Civil costs scale in respect of work done from on or after 1 January 2025 is set out in the following table.

Minor Civil Costs Scale		
Item	Description	Amount
1	Filing a claim, originating application, defence or response (solicitor and counsel), including: (a) supporting affidavit or opposing affidavit; and (b) attending the first <u>directions hearing</u> or hearing (as applicable).	\$20 plus 5% of <u>quantum</u> (up to a maximum of \$500).
2	Having a lawyer prepare and file personal injury particulars.	2% of quantum.
3	Where a matter is defended and a Magistrate orders that the complexity of the action justifies legal advice in the pre- <u>trial</u> processes.	5% of <u>quantum</u> .
4	When permitted by the Court in accordance with section 38(5) of the <i>Magistrates Court Act 1991</i> , any and all activity after the first <u>directions hearing</u> or hearing by solicitor and counsel until: (a) if the action is to proceed to <u>trial</u> —the last hearing before trial, whether a <u>directions hearing</u> , hearing or pre-trial conference; or (b) the final determination of an originating application: (i) when determined at a hearing; and (ii) when the action is not listed for <u>trial</u> .	14% of quantum
5	Any attendance at Court by party or lawyer (when lawyer is entitled to attend).	0.5% of quantum
6	Filing and serving a subpoena.	\$55.
7	When permitted by the Court in accordance with section 38(5) of the <i>Magistrates Court Act 1991</i> , preparation of a trial plan.	3% of quantum.
8	To advise on compromise or settlement when court approval required.	Either: (a) when only the amount is in dispute—\$1,110; or (b) when liability and amount are in dispute—\$1,670.
9	When permitted by the Court in accordance with section 38(5) of the <i>Magistrates Court Act 1991</i> , attendance of counsel at trial, including fee on brief.	The following applies: (a) the first day—the greater of the following: (i) \$1,480; or (ii) 4% of <u>quantum</u> ; or (b) subsequent days—the greater of the following: (i) \$1,110; or (ii) 3% of <u>quantum</u> .
10	Notice of Demand and registration of Lien under the <i>Worker's Liens Act 1893</i> .	Either: (a) for claims of \$1 up to and including \$10,000—\$280; or (b) for claims above \$10,000—\$500.
11	Notice of withdrawal or satisfaction of Lien and registration.	Either: (a) for claims of \$1 up to and including \$10,000—\$110; or (b) for claims above \$10,000—\$160.
<i>Enforcement</i>		
12	Request for Investigation or Examination summons including attendance at the hearing.	\$55.
13	Any other request for enforcement of judgment.	\$55.
14	Preparing and registering a warrant of sale against real property.	Either:

Minor Civil Costs Scale		
Item	Description	Amount
		(a) for claims of \$1 up to and including \$10,000—\$160; or (b) for claims above \$10,000—\$190.
15	Discharging a warrant of sale.	Either: (a) for claims of \$1 up to and including \$10,000—\$110; or (b) for claims above \$10,000—\$160.
16	Applying for and obtaining a charging order over real property and registering it.	Either: (a) for claims of \$1 up to and including \$10,000—\$240; or (b) for claims above \$10,000—\$500.
17	Discharging a charging order at the Lands Titles Office.	Either: (a) for claims of \$1 up to and including \$10,000—\$110; or (b) for claims above \$10,000—\$160.
<i>Disbursements</i>		
18	Service of originating process.	Either: (a) personal service on an individual—\$110; or (b) other—\$55.
19	Witness fees generally.	\$90—per day.
20	Professional witness.	\$560—per day.
21	All other Court fees.	As allowed by the Court.
22	Other disbursements.	As allowed by the Court.

135. Schedule 6 Part 4 rule 7 is amended by renumbering subrule 7(4) as subrule 7(5), replacing the word “and” after “(2)” with a comma and inserting the words “and (4)” after “(3)”.

136. Schedule 6 Part 6 is amended by:

- (a) Renumbering subrule 6.1 as subrule 12.1;
- (b) Renumbering subrule 6.2 as subrule 12.2;
- (c) Renumbering subrule 6.3 as subrule 12.3;
- (d) Renumbering subrule 6.4 as subrule 12.4;
- (e) Renumbering subrule 6.5 as subrule 12.5; and
- (f) Renumbering subrule 6.6 as subrule 12.6.

137. Schedule 6 is amended by inserting a new Part 7 as follows:

**Part 7—Court of Disputed Returns**

**13—Court of Disputed Returns costs scale**

- (1) The Court of Disputed Returns costs scale in respect of work done from the commencement date is set out in the following table.

Item	Description	Amount
1	On lodging a petition.	\$170

138. The index to Schedule 7 is amended by:

- (a) Inserting the words, “Form 2AD—Originating Application” immediately after the words, “Form 2A—Originating Application—Fences Act”;
- (b) Inserting the words, “Form 2W—Originating Application Petition—Court of Disputed Returns—State Parliamentary Election” immediately after the words, “Form 2V—Origination Application—Petition—Court of Disputed Returns”;
- (c) The words, “Form 3—Originating Application—Notice of Objection” are deleted and replaced with “Form 3C—Plaint Note—Originating Application—Notice of Objection”;
- (d) Inserting the words, “Form 5G—Originating Application—Appeal Against Administrative Decisions—Development” immediately after the words, “Form 5A—Originating Application—Appeal Against Administrative Decision—Probationary or Provisional Licence Disqualification”;
- (e) Inserting the words, “Form 47—Notice of Summons” immediately after the words, “Form 46—Notice of Probate Action”;
- (f) Inserting the words, “Form 56B—Response—Reply—Court of Disputed Returns—State Parliamentary Election” immediately after the words, “Form 56A—Response—Reply—Court of Disputed Returns”;



- (g) Inserting the words, “Form 59—Notice of Interest” immediately after the words, “Form 58A—Notice of Objection—Admission”;
- (h) Inserting the words, “Form 77I—Interlocutory Application to be Joined” immediately after the words, “Form 77C—Schedule to Interlocutory Application—Native Title”;
- (i) Inserting the words, “Form 84D—Draft Summons” immediately after the words, “Form 84—Summons”;
- (j) Immediately after the words, “Form 105A—Subpoena to Attend to Give Evidence”, replacing the words, “(Sup and Dist Courts)” with the words, “(Sup, Dist and ERD Courts)”;
- (k) Immediately after the words, “Form 105B—Subpoena to Attend to Give Evidence”, replacing the words, “(Mag Court)” with the words, “(Mag and Youth Courts)”;
- (l) Immediately after the words, “Form 106A—Subpoena to Produce Documents”, replacing the words, “(Sup and Dist Courts)” with the words, “(Sup, Dist and ERD Courts)”;
- (m) Immediately after the words, “Form 106B—Subpoena to Produce Documents”, replacing the words, “(Mag Court)” with the words, “(Mag and Youth Courts)”;
- (n) Immediately after the words, “Form 107A—Subpoena to Attend and Produce”, replacing the words, “(Sup and Dist Courts)” with the words, “(Sup, Dist and ERD Courts)”;
- (o) Immediately after the words, “Form 107B—Subpoena to Attend and Produce”, replacing the words, “(Mag Court)” with the words, “(Mag and Youth Courts)”;
- (p) Inserting after the words, “Form 200-Generic” a new section 13 as follows:

**“13—Probate**

- Form PROB1—Originating Application—Probate Ex Parte
- Form PROB2—Originating Application—Probate Inter Partes
- Form PROB3—Response to Originating Application
- Form PROB4—Interlocutory Application
- Form PROB5—Order
- Form PROB6—Written Submissions
- Form PROB7—Consent Form
- Form PROB8—Consent of Proposed [Executor-Administrator] To Act
- Form PROB9—Will Authorised Under section 6 or section 7 of the Succession Act 2023
- Form PROB10—Affidavit in Support of Order to Issue Subpoena
- Form PROB11—Affidavit of Service of Warning and of Search and Non-appearance
- Form PROB12—Affidavit to Lead to Citation to Accept or Refuse Probate
- Form PROB13—Affidavit to Lead to Citation to Accept or Refuse Administration
- Form PROB14—Affidavit-Citation-to Accept or Refuse Double Probate
- Form PROB15—Affidavit of Service of Citation and of Search and Non-appearance
- Form PROB16—Renunciation of Probate
- Form PROB17—Renunciation of Letters of Administration With Will Annexed
- Form PROB18—Renunciation of Letters of Administration
- Form PROB19—Renunciation and Consent Spes Successionis Grant
- Form PROB20—Renunciation of Letters of Administration to Body Corporate not being a Trust Corporation
- Form PROB21—Renunciation of Probate by a Trust Corporation
- Form PROB22—Executor’s Oath After Pronouncing for a Will in Solemn Form
- Form PROB23—Oath of Administrator Pendente Lite
- Form PROB24—Oath of Administrator Leading to a Grant Ad Colligenda Bona
- Form PROB25—Oath of Administrator Ad Litem
- Form PROB26—Executor’s Oath
- Form PROB27—Oath of Administrator With Will Annexed
- Form PROB28—Oath of Administrator Without Will
- Form PROB29—Oath to Lead Registration of Interstate Grant
- Form PROB30—Oath to Lead Re-seal of Overseas Grant
- Form PROB31—Executor’s Oath for Double Probate
- Form PROB32—Oath of Administrator With Will Annexed De Bonis Non
- Form PROB33—Oath of Administrator (Without Will) De Bonis Non
- Form PROB34—Affidavit
- Form PROB35—Affidavit of Due Execution
- Form PROB36—Affidavit of Due Execution-Deponent Present when Will Executed
- Form PROB37—Affidavit Where No Affidavit of Due Execution Can Be Obtained
- Form PROB38—Court or Other Order In Place When the Will was Executed—Affidavit From Public Trustee Officer

- Form PROB39—Affidavit of Plight and Condition and Finding
- Form PROB40—Affidavit as To Alias—Will
- Form PROB41—Affidavit as To Alias—Intestacy
- Form PROB42—Affidavit of Identity—Name Changed Since Will
- Form PROB43—Affidavit of Identity—Name in Will Incorrect
- Form PROB44—Affidavit Verifying the Translation of a Testamentary Document or Other Document
- Form PROB45—Affidavit to Withdraw Will Deposited with Renunciation
- Form PROB46—Affidavit of Assets and Liabilities
- Form PROB47—Affidavit of Assets and Liabilities Supplementary Affidavit
- Form PROB48—Registrar’s Certificate of Disclosure
- Form PROB49—General and Enduring Power of Attorney
- Form PROB50—Certificate of Execution-section 45 of the Succession Act 2023 and rule 352.5(3)”

139. In Schedule 7, a new Form 2AD—Originating Application is inserted immediately after Form 2A—Originating Application—Fences Act as follows:

Form 2AD

<p><b>To be inserted by Court</b></p> <p>Case Number:</p> <p>Date Filed:</p> <p>FDN:</p>
<p><b>Hearing Date and Time:</b></p> <p><b>Hearing Location:</b></p>

## ORIGINATING APPLICATION

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA  
CIVIL JURISDICTION

Please specify the Full Name for each party. Each party should include a party number if more than one party of the same type.

Applicant/s

Respondent/s

<b>Applicant</b>	<b>Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))</b>		
<b>Name of law firm / solicitor</b> If any	<b>Law Firm</b>	<b>Solicitor</b>	
<b>Address for service</b>	<b>Street Address (including unit or level number and name of property if required)</b>		
	<b>City/town/suburb</b>	<b>State</b>	<b>Postcode</b>
	<b>Country</b>		
	<b>Email address</b>		
<b>Phone Details</b>	<b>Type - Number</b>		

Duplicate panel if multiple Applicants

<b>Respondent</b>	<b>Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))</b>		
<b>Address</b>	<b>Street Address (including unit or level number and name of property if required)</b>		
	<b>City/town/suburb</b>	<b>State</b>	<b>Postcode</b>
	<b>Country</b>		
	<b>Email address</b>		
<b>Phone Details</b>	<b>Type - Number</b>		

Duplicate panel if multiple Respondents

**Application details**

The Applicant is:

- the applicant for the development authorisation
- an interested person (owner/occupier of subject land or adjacent land)
- the relevant authority
- other, please specify

This Application is for:

*Summary of decision under review in one sentence*

This Application is brought under

*Act and section or other particular provision***Proposed Development subject of application**

Description of Proposed Development:

Location of Proposed Development:

Name and contact details of Proposed Developer: *if not the applicant*

Reference Number, Notice Number or Development Application Number:

Classification of Proposed Development where applicable:

*Planning, Development and Infrastructure Act 2016*

- Accepted
- Deemed-to-Satisfy
- Performance Assessed
- Restricted

*Development Act 1993*

- Category 1
- Category 2
- Category 3

**Date of decision**

Date of decision:

Date notice of decision received:

**Grounds of application**

Grounds of application in separate numbered paragraphs

1.

**Facts, circumstances and other relevant matters**

Briefly set out any matters relevant to the application (if any)

1.

**Orders sought**

Orders sought in addition to or in place of the orders made in separate numbered paragraphs

1.

**Receipt of judgment**

The Applicant prefers to receive judgment/decision via:

- email
- post

If applicable

**Consent to joinder**

- The Applicant consents to the applicant for development authorisation being joined as a party to the proceeding.

If applicable

**Extension of time**

The Applicant seeks an extension of time to bring this Appeal pursuant to

Act and section or other particular provision

on the grounds that:

Grounds in separate numbered paragraphs

1.

If applicable

**Hearing**

This Application is urgent on the grounds that:

1.

The Applicant requests that the hearing be by written submissions only because:

Reasons in separate numbered paragraphs

**Note:** The hearing will only proceed by written submissions if the Court so orders. The Court will consider any request for such a hearing and determine whether the matter is suitable for proceeding without an oral hearing.

1.

**To the other parties: WARNING**

This Application will be considered at the hearing at the date and time set out at the top of this document.

If you wish to oppose the Application or make submissions about it:

- you **must attend the hearing** and
- you **must file and serve on all parties a Response within 14 days after service** of the Application and
- if you wish to rely on any facts in addition to or contrary to those relied on by the party seeking the orders you **must file and serve on all parties an Affidavit within 14 days after service** of the Application.

If you do not do so, the Court may proceed in your absence and orders may be made **finally determining** this proceeding (including as to costs) without further warning.

For instructions on how to file a response to an application and how to obtain access to the file, visit <https://courtsa.courts.sa.gov.au/?g=node/482>.

**Service**

The party filing this document is required to serve it on all other parties in accordance with the Rules of Court.

**Accompanying Documents**

Mark appropriate sections below with an 'x'

Accompanying service of this Application is a:

- A copy of the original decision/notice/judgment the subject of this application (**mandatory**)
- Supporting Affidavit
- Draft Order
- Draft Summons
- If other additional document(s) please list them below:

**Note to Parties**

Once stamped, you must provide a copy of the Court sealed 'Originating Application to the relevant authority/Respondent as soon as practicable.

140. In Schedule 7, a new Form 2W—Originating Application Petition—Court of Disputed Returns—State Parliamentary Elections is inserted immediately after Form 2V—Originating Application—Petition—Court of Disputed Returns as follows:

Form 2W

<p><b>To be inserted by Court</b></p> <p>Case Number:</p> <p>Date Filed:</p> <p>FDN:</p>
<p><b>Hearing Date and Time:</b></p> <p><b>Hearing Location:</b></p>

## **ORIGINATING APPLICATION PETITION—COURT OF DISPUTED RETURNS –STATE PARLIAMENTARY ELECTION**

SUPREME COURT OF SOUTH AUSTRALIA  
SPECIAL STATUTORY JURISDICTION

Applicant

First Respondent

Second Respondent



Applicant Petitioner	Full Name (including Also Known as)		
Name of law firm / solicitor <small>If any</small>	Law Firm	Solicitor	
Address for service	Street Address (including unit or level number and name of property if required)		
	City/town/suburb	State	Postcode
	Country		
	Email address		
Phone Details	Type—Number		

Duplicate panel if multiple Applicants

First Respondent	Full Name (including Also Known as)		
Address	Street Address (including unit or level number and name of property if required)		
	City/town/suburb	State	Postcode
	Country		
	Email address		
Phone Details	Type—Number		
Service	[.....] Sheriff service requested for this Respondent <small>If requested mark with an 'x'</small>		

Second Respondent	Full Name (including Also Known as)		
Address	Street Address (including unit or level number and name of property if required)		
	City/town/suburb	State	Postcode
	Country		
	Email address		
Phone Details	Type—Number		
Service	[.....] Sheriff service requested for this Respondent <small>If requested mark with an 'x'</small>		

Duplicate panel if multiple Respondents

**Petition**

This petition is made to the Court of Disputed Returns under Part 12, Division 2 of the *Electoral Act 1985*.

The Applicant Petitioner alleges:

Set out in separate numbered paragraphs each of the facts relied on to invalidate the election:

1.

The Applicant Petitioner seeks the following relief:

Orders sought in separately numbered paragraphs.

1.

**To the other parties: WARNING**

This Application will be considered at the hearing at the date and time set out at the top of this document.

If you wish to oppose the Application or make submissions about it:

1. you **must attend the hearing** and
2. you **must file and serve on all parties a Response—Reply within 14 days after service** of the Application and
3. if you wish to rely on any facts in addition to or contrary to those relied on by the party seeking the orders you **must file and serve on all parties an Affidavit within 14 days after service** of the Application.

If you do not do so, the Court may proceed in your absence and orders may be made **finally determining** this proceeding (including as to costs) without further warning.

For instructions on how to file a response to an application and how to obtain access to the file, visit <https://courtsa.courts.sa.gov.au/?g=node/482>.

**Service**

The party filing this document is required to serve it on all other parties in accordance with the rules of Court.

**Accompanying Documents**

Mark appropriate sections below with an 'x'

Accompanying service of this Application is a:

- [.....] Multilingual Notice (mandatory)
- [.....] Supporting Affidavit (mandatory)
- [.....] Notice to Respondent Served Interstate (mandatory if address of the respondent or interested party to be served is interstate)
- [.....] Notice to Respondent Served in New Zealand (mandatory if address of the party to be served is in New Zealand)
- [.....] Notice to Respondent Served outside Australia (mandatory if address of the party to be served is outside Australia but not in New Zealand)
- [.....] If other additional document(s) please list below.

**Certification**

Mark appropriate section below with an 'x'

As a [*candidate/elector*] at the election in dispute, I am responsible for filing this pleading. Each allegation of fact in the pleading is true to the best of my knowledge, information and belief.

.....  
Signature

.....  
Name of Applicant/Petitioner Printed

Before  
me.....  
Full Name, Occupation and Address of attesting witness 1

.....  
Signature of attesting witness 1

Before  
me.....  
Full Name, Occupation and Address of attesting witness 2

.....  
Signature of attesting witness 2

.....  
Date

141. In Schedule 7, a new Form 5G—Originating Application—Appeal Against Administrative Decision—Development is inserted immediately after Form 5A—Originating Application—Appeal Against Administrative Decision—Probationary or Provisional Licence Disqualification as follows:

**Form 5G**

<b>To be inserted by Court</b>
Case Number:
Date Filed:
FDN:
<b>Hearing Date and Time:</b>
<b>Hearing Location:</b>

**ORIGINATING APPLICATION—APPEAL AGAINST  
ADMINISTRATIVE DECISION—DEVELOPMENT**

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA  
CIVIL JURISDICTION

Please specify the Full Name including capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable) for each party. Each party should include a party number if more than one party of the same type.

Applicant/s

Respondent/s

<b>Applicant</b>	<b>Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))</b>		
<b>Name of law firm / solicitor</b> If any	<b>Law Firm</b>	<b>Solicitor</b>	
<b>Address for service</b>	<b>Street Address (including unit or level number and name of property if required)</b>		
	<b>City/town/suburb</b>	<b>State</b>	<b>Postcode</b>
	<b>Country</b>		
	<b>Email address</b>		
<b>Phone Details</b>	<b>Type—Number</b>		

Duplicate panel if multiple Applicants

<b>Respondent</b>	<b>Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))</b>		
<b>Address</b>	<b>Street Address (including unit or level number and name of property if required)</b>		
	<b>City/town/suburb</b>	<b>State</b>	<b>Postcode</b>
	<b>Country</b>		
	<b>Email address</b>		
<b>Phone Details</b>	<b>Type—Number</b>		

Duplicate panel if multiple Respondents

<b>Interested Party</b>	<b>Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))</b>		
<b>Address</b>	<b>Street Address (including unit or level number and name of property if required)</b>		
	<b>City/town/suburb</b>	<b>State</b>	<b>Postcode</b>
	<b>Country</b>		
	<b>Email address</b>		
<b>Phone Details</b>	<b>Type—Number</b>		

Duplicate panel if multiple Interested Parties

**Appeal details**

The Applicant is:

4. the applicant for the development authorisation
5. a representor/person entitled to be given notice
6. the relevant authority
7. other, please specify

The Applicant appeals to the Court against the decision/notice/judgment:

*Summary of decision/notice/judgment in one sentence*

This Appeal is brought under

*Act and section or other particular provision*

**Proposed Development subject of appeal**

Description of Proposed Development:

Location of Proposed Development:

Name and contact details of Proposed Developer: *if not the applicant*

Reference Number, Notice Number or Development Application Number:

Classification of Proposed Development where applicable:

*Planning, Development and Infrastructure Act 2016*

8. Accepted
9. Deemed-to-Satisfy
10. Performance Assessed
11. Restricted

*Development Act 1993*

12. Category 1
13. Category 2
14. Category 3

**Date of decision**

Date of decision:

Date notice of decision received:

**Grounds of appeal**

*Grounds of appeal in separate numbered paragraphs*

1.

**Facts, circumstances and other relevant matters**

*Briefly set out any matters relevant to the appeal (if any)*

1.

**Orders sought**

Orders sought in addition to or in place of the orders made in separate numbered paragraphs

1.

**Receipt of judgment**

The Applicant prefers to receive judgment/decision via:

1. email
2. post

If applicable

**Consent to joinder**

1. The Applicant consents to the applicant for development authorisation being joined as a party to the proceeding.

If applicable

**Extension of time**

The Applicant seeks an extension of time to bring this Appeal pursuant to

Act and section or other particular provision

on the grounds that:

Grounds in separate numbered paragraphs

1.

If applicable

**Hearing**

This Appeal is urgent on the grounds that:

1.

The Applicant requests that the hearing be by written submissions only because:

Reasons in separate numbered paragraphs

Note: The hearing will only proceed by written submissions if the Court so orders. The Court will consider any request for such a hearing and determine whether the matter is suitable for proceeding without an oral hearing.

1.

**To the other parties: WARNING**

This Application will be considered at the hearing at the date and time set out at the top of this document.

If you wish to oppose the Application or make submissions about it:

1. you **must attend the hearing** and
2. you **must file and serve on all parties a Response within 14 days after service** of the Application and
3. if you wish to rely on any facts in addition to or contrary to those relied on by the party seeking the orders you **must file and serve on all parties an Affidavit within 14 days after service** of the Application.

If you do not do so, the Court may proceed in your absence and orders may be made **finally determining** this proceeding (including as to costs) without further warning.

For instructions on how to file a response to an application and how to obtain access to the file, visit <https://courtsa.courts.sa.gov.au/?g=node/482>.

**Service**

The party filing this document is required to serve it on all other parties in accordance with the rules of Court.

**Accompanying Documents**

Mark appropriate sections below with an 'x'

Accompanying service of this Application is a:

- A copy of the original decision/notice/judgment the subject of this Appeal (mandatory)
- Supporting Affidavit
- Draft Order
- Draft Summons
  
- If other additional document(s) please list them below:

**Note to Parties**

Once stamped, you must provide a copy of the Court sealed 'Originating Appeal' to the relevant authority/Respondent as soon as practicable.



142. In Schedule 7, a new Form 47—Notice of Summons is inserted immediately after Form 46—Notice of Probate Action as follows:

Form 47

<p><b>To be inserted by Court</b></p> <p>Case Number:</p> <p>Date Filed:</p> <p>FDN:</p>
--

## NOTICE OF SUMMONS

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA  
CIVIL JURISDICTION

Please specify the Full Name including capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable) for each party. Each party should include a party number if more than one party of the same type.

Applicant/s

Respondent/s

Lodging Party	Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))			
Name of law firm / solicitor If any	Law Firm		Solicitor	
Address for service	Street Address (including unit or level number and name of property if required)			
	City/town/suburb	State	Postcode	Country
	Email address			
Phone Details	Type—Number			

Duplicate panel if multiple Applicants

**Potential Respondent or Interested Party**

Potential Party

Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))

Duplicate panel if multiple Respondents/Interested Parties

**Notice**

The Applicant has filed an enforcement application seeking orders to be made by the Court against the Respondent in these proceedings.

The Court, on the application of the Applicant, has issued the attached summons to the Respondent. The summons sets out the alleged breaches by, and orders sought against, the Respondent. In the opinion of the Court, you are a person who has a legal or equitable interest in the land or other subject of the enforcement application and accordingly notice of the summons is required to be given to you.

The summons is returnable on the date and at the time and place set out in the summons.

**WARNING**

This application will be considered at the hearing at the date and time set out in the summons.

If you wish to oppose the application or make submissions about it:

4. you **must attend the hearing** and
5. you **must file and serve on all parties within 14 days after service** of this notice a **Notice of Interest (Form 59)** containing an address for service at which documents and communications can be directed to you and containing a brief statement of your interest in this proceeding and/or in the land to which it relates.

If you do not do so, the Court may make orders **finally determining** this proceeding without further warning.

143. In Schedule 7, a new Form 56B—Response—Reply—Court of Disputed Returns—State Parliamentary Election is inserted immediately after Form 56A—Response—Reply—Court of Disputed Returns as follows:

**Form 56B**

<p><b>To be inserted by Court</b></p> <p>Case Number:</p> <p>Date Filed:</p> <p>FDN:</p>
--

**RESPONSE—REPLY—COURT OF DISPUTED RETURNS—STATE  
PARLIAMENTARY ELECTION**

SUPREME COURT OF SOUTH AUSTRALIA  
SPECIAL STATUTORY JURISDICTION

Applicant

First Respondent

Second Respondent

Lodging Party	Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))	
Name of law firm / solicitor If any	Law Firm	Solicitor

<p><b>Reply</b></p> <p>In answer to the Originating Application Petition the respondent relies on the following facts: Set out in separate numbered paragraphs each of the facts relied upon by the respondent:</p> <p>1.</p> <p>The Respondent seeks the following relief: Orders sought in separately numbered paragraphs.</p> <p>1.</p>
--

**Service**

The party filing this document is required to serve it on all other parties in accordance with the rules of Court.

**Certification**

Mark appropriate section below with an 'x'

As the filing lawyer, I certify that this pleading is filed in accordance with the instructions of the party/parties for whom I act. There is a proper basis for each allegation of fact in the pleading and it complies with the rules of Court.

As a Litigant in Person (self-represented), I am responsible for filing this pleading. Each allegation of fact in the pleading is true to the best of my knowledge, information and belief.

.....  
Signature

.....  
Date

144. In Schedule 7, a new Form 59—Notice of Interest is inserted immediately after Form 58A—Notice of Objection—Admission as follows:

Form 59

**To be inserted by Court**

Case Number:

Date Filed:

FDN:

## NOTICE OF INTEREST

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA  
CIVIL JURISDICTION

Please specify the Full Name including capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable) for each party. Each party should include a party number if more than one party of the same type.

Applicant/s

Respondent/s

Lodging Party	Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))		
Name of law firm / solicitor If any	Law Firm	Solicitor	
Address for service	Street Address (including unit or level number and name of property if required)		
	City/town/suburb	State	Postcode
	Country		
Phone Details	Email address		
	Type—Number		

**Service**

The party filing this document is required to serve it on all other parties in accordance with the rules of Court.

**Notice of Interest**

**1. Attitude to the enforcement application**  
Identify whether you support or oppose the application

**2. A brief statement of the persons interest in the land or other subject of the enforcement application**  
Identify your interest

145. In Schedule 7, a new Form 77I—Interlocutory Application to be Joined is inserted immediately after Form 77C—Schedule to Interlocutory Application—Native Title as follows:

Form 77I

<p><b>To be inserted by Court</b></p> <p>Case Number:</p> <p>Date Filed:</p> <p>FDN:</p>
<p><b>Hearing Date and Time:</b></p> <p><b>Hearing Location:</b></p>

## INTERLOCUTORY APPLICATION TO BE JOINED

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA  
CIVIL JURISDICTION

Please specify the Full Name including capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable) for each party. Each party should include a party number if more than one party of the same type.

Applicant/s

Respondent/s

<b>Applicant</b>	<b>Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))</b>		
<b>Name of law firm / solicitor</b> <small>If any</small>	<b>Law Firm</b>	<b>Solicitor</b>	
<b>Address for service</b>	<b>Street Address (including unit or level number and name of property if required)</b>		
	<b>City/town/suburb</b>	<b>State</b>	<b>Postcode</b>
	<b>Country</b>		
	<b>Email address</b>		
<b>Phone Details</b>	<b>Type—Number</b>		

Duplicate panel if multiple Applicants

**Joinder application details**  
 This is an application to be joined as a party to the proceedings. It is made under [section] of the [act]:

The proposed party has an interest in these proceedings because:  
If the proposed party is not the applicant for consent in relation to a development, the physical location of your residence/place of interest (together with confirmation of whether you are an owner or occupier (or both) of that residence and/or place of interest) in relation to the subject land must be identified

If joined, the proposed party intends to:

1. give evidence
2. call expert evidence, please specify nature of expert evidence
  
3. make submissions to the Court
4. other, please specify

If Applicable  
 This application is urgent on the grounds that:

If Applicable  
 This application is by consent of all parties to the proceedings. The consent is evidenced by the attached document(s):  
Identify the documents below which provide proof of consent and attach the documents to the application

If Applicable  
 This application is made ex parte because:



**Accompanying documents**

If applicable:

Accompanying this application is a:

- Supporting affidavit (**mandatory**)
- If other document(s) please list them below:

**To the Other Parties: WARNING**

This application will be considered at the hearing at the date and time set out at the top of this document.

If you wish to oppose the application or make submissions about it:

1. **you must attend the hearing** and
2. if you wish to rely on any facts in addition to or contrary to those relied on by the party seeking the orders you **must** file and serve on all parties an affidavit at least 2 business days before the hearing date unless ordered otherwise.

If you do not do so, **orders may be made against you** without further warning including orders as to costs.

**Service**

The party filing this document is required to serve it on all other parties in accordance with the rules of Court.

146. In Schedule 7, a new Form 84D—Draft Summons is inserted immediately after Form 84—Summons as follows:

Form 84D

<p><b>To be inserted by Court</b></p> <p>Case Number:</p> <p>Date Filed:</p> <p>FDN:</p>
--

## **DRAFT SUMMONS**

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA  
CIVIL JURISDICTION

Please specify the Full Name including capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable) for each party. Each party should include a party number if more than one party of the same type.

Applicant/s

Respondent/s

Lodging Party	Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))		
Name of law firm / solicitor If any	Law Firm	Solicitor	
Address for service	Street Address (including unit or level number and name of property if required)		
	City/town/suburb	State	Postcode
	Country		
	Email address		
Phone Details	Type—Number		

Duplicate panel if multiple Applicants

Respondent	Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))		
Address	Street Address (including unit or level number and name of property if required)		
	City/town/suburb	State	Postcode
	Country		
	Email address		
Phone Details	Type—Number		

Duplicate panel if multiple Respondents

**To the Respondent: WARNING**

An application has been made by the Applicant seeking the following orders to be made by the Court:

Orders sought in separately numbered paragraphs

1.

The application is made on the following grounds:

Details of alleged obligation(s) and breach(es) in respect of which enforcement or compliance application is made in separately numbered paragraphs

1.

The facts on which the Applicant relies are set out in the affidavit of [full name] served with this Summons.

The Court will hear the application, or make orders for the hearing of the application, at a hearing.

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

This Notice of Acting must be filed at a Registry of the Court. A list of the Registry addresses is available at <https://www.courts.sa.gov.au/going-to-court/court-locations/environment-resources-and-development-court>.

If you do not have a solicitor, you may attend personally at a Registry to do this or alternatively, you may send written correspondence (preferably by email) to the Registry enclosing a Notice of Acting (email address: [erdcourt@courts.sa.gov.au](mailto:erdcourt@courts.sa.gov.au)).

If you do not file a Notice of Acting or do not appear at the hearing or on any day to which this matter is adjourned, the Court may proceed in your absence.

**Notes to Applicant**

1. Set out in numbered paragraphs the orders that you are seeking from the Court and the grounds for your application.
2. You should use plain English language.
3. If a summons is issued, give the Respondent a copy of any originating application and any affidavit in support that you filed in the Court together with a copy of the order of the Court in which permission was granted to serve the summons.
4. After giving the Respondent the summons and any accompanying documents, you must file an Affidavit of Proof of Service (Form 42) in the Court confirming that you have done so.

147. In Schedule 7, immediately after Form 200-Generic, new forms are inserted as follows:

(a) Form PROB1—Originating Application—Probate Ex Parte as follows:

**Form PROB1**

**ORIGINATING APPLICATION  
– PROBATE EX PARTE**

**Supreme Court of South Australia  
Testamentary Causes Jurisdiction**

---

**Action No:**

**Applicant/s**

Full Name:

Address:

**Solicitor for Applicant/s (if applicable)**

Name:

Address:

**Deceased Person (or Proposed Testator)**

Full Name:

Last residential address:

---

**ORDERS SOUGHT**

State in full the orders sought (including the section of any Act or rules relied upon, if applicable):

**AFFIDAVIT/S**

The material facts that support this application are set out in the accompanying affidavit/s.

**OTHER DOCUMENTS**

The following documents are provided/required for this application:

---

**NOTE**

**There are usually cost penalties for making an unsuccessful application.**

(b) Form PROB2—Originating Application—Probate Inter Partes as follows:

**Form PROB2**

**ORIGINATING APPLICATION  
– PROBATE INTER PARTES**

**Supreme Court of South Australia  
Testamentary Causes Jurisdiction**

---

**Action No:**

**Applicant/s**

Full Name:

Address:

**Solicitor for Applicant/s (if applicable)**

Name:

Address:

**Respondent/s**

Full Name:

Address:

**Deceased Person (or Proposed Testator)**

Full Name:

Last residential address/Address:

**Interested Party/Parties**

Full Name:

Address:

---

**TO THE RESPONDENT/INTERESTED PARTY**

**The applicant has applied for the orders set out in this application.**

**The facts that support this application are set out in the accompanying affidavit/s.**

**If you wish to oppose the application you must file and serve on all parties a notice of address for service and any affidavits within 14 days of this application being served on you.**

---

**ORDERS SOUGHT**

State in full the orders sought (including the section of any Act or rules relied upon, if applicable):

**AFFIDAVIT/S**

The material facts that support this application are set out in the accompanying affidavit/s.

**OTHER DOCUMENTS**

The following documents are provided/required for this application:

---

**NOTE**

**There are usually cost penalties for making an unsuccessful application.**

(c) Form PROB3—Response to Originating Application as follows:

**Form PROB3**

**RESPONSE TO ORIGINATING APPLICATION**

**Supreme Court of South Australia**

**Testamentary Causes Jurisdiction**

---

**Action No:**

**The estate of:**

**Last residential address:**

---

*[Party name], [Party role], [consents to/opposes]* the originating application.

---



(d) Form PROB4—Interlocutory Application as follows:

**Form PROB4**

**INTERLOCUTORY APPLICATION**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION  
[PROB-XX-XXXXXX]

In the Estate of **[FULL NAME OF DECEASED]** (Deceased)

---

**[FULL NAME]**  
First Applicant

**[FULL NAME]**  
First Respondent

**[FULL NAME]**  
First Interested Party

---

**Application Details**

This application is for *[nature of application in one sentence]*.

This application is made under *[Act and section, rules or other particular provision]*.

The *[party role]* seeks the following orders:

[1 *Enter orders sought in separately numbered paragraphs*]

The application is made on the grounds set out in the accompanying affidavit *[sworn/affirmed]* by *[deponent name]* on *[date]*.

*[The application is urgent on the grounds set out in the accompanying affidavit [sworn/affirmed] by [deponent name] on [date].] [Delete if inapplicable]*

*[The application is by consent. The consent is evidenced as attached.] [Delete if inapplicable]*

*[The application is made ex parte because [grounds].] [Delete if inapplicable]*

---

**To the other parties: WARNING**

This application will be considered at a hearing at a date and time to be set by the Court.

If you wish to oppose the application or make submissions about it:

1. **you must attend the hearing** and
2. if you wish to rely on any facts in addition to or contrary to those relied on by the party seeking the orders, you **must file in the action and serve on all parties an affidavit at least 2 days before the hearing date** unless the Court orders otherwise.

If you do not do so, **orders may be made against you** without further warning, including orders as to costs.

**Service**

The party filing this document is required to serve it on all other parties in accordance with the rules of Court.

**Accompanying Documents**

Accompanying this application is:

Supporting affidavit (mandatory)

If other additional document(s) please list them below:

**Note to parties**

There are usually cost penalties for making an unsuccessful application or resisting a successful application.

(e) Form PROB5—Order as follows:

**Form PROB5**

**ORDER**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION  
[PROB-XX-XXXXXX]

In the Estate of [*FULL NAME OF DECEASED*] (Deceased)

---

[*FULL NAME*]  
First Applicant

[*FULL NAME*]  
First Respondent

[*FULL NAME*]  
First Interested Party

---

**Hearing**

Hearing location: Adelaide  
Hearing date: [*Date*]  
Presiding officer: [*Presiding officer*]

**Appearances**

[*Applicant/Appellant Appearance Information*]

[*Respondent Appearance Information*]

[*Interested Party Appearance Information*]

**Recitals**

[*Remarks from Record of Outcome*]

**Date of order:** [*Date*]

**Terms of order:**  
It is ordered that:

[1 *Enter orders in separately numbered paragraphs.*]

**To the parties against whom orders are made: WARNING**

If you disobey this order, you will be in **contempt of court** and liable to **imprisonment and/or a fine** or other punishment and any other person who knows of this order and does anything that helps or permits you to disobey this order may similarly be punished.

.....  
Registrar of Probates

(f) Form PROB6—Written Submissions as follows:

**Form PROB6**

**WRITTEN SUBMISSIONS**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION  
[PROB-XX-XXXXXX]

**In the Estate of [NAME OF DECEASED] (Deceased)**

---

- 1 Details of deceased [*name*] late of [*address and postcode*] who died at [*suburb and postcode*] aged [*years*].
- 2 [*Written submissions in numbered paragraphs with reference to relevant Acts, rules, cases and textbooks*].

(g) Form PROB7—Consent Form as follows:

**Form PROB7**

**CONSENT FORM**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [*Name of Deceased*] (Deceased)**

I, [*full name*], [*address and postcode*] and [*occupation of deponent*], [*swear on oath / do truly and solemnly affirm*] that:

- 1 I am a [*relationship to deceased*] of [*name of deceased*] late of [*address and postcode*] who died at [*suburb and postcode*] on [*date*] leaving a testamentary document dated/undated [*date*] a copy of which is annexed and marked "A".
- 2 I am over the age of 18 years and not under any disability affecting my legal capacity.
- 3 I am informed that [*name of applicant recited in the Originating Application*] seeks an order [*for admission to proof of an informal testamentary document / to admit to proof a testamentary document as contained in a copy / for rectification of a testamentary document / or as the case may be*]. A copy of the [*draft orders / Originating Application*] is annexed and marked "B".
- 4 I have had the opportunity to seek and obtain independent legal advice.
- 5 I understand that my interest may be adversely affected if the Court makes the orders sought on the [*draft orders / Originating Application*] as [*include details as to how the deponent is adversely affected*].
- 6 Notwithstanding, I consent to the application / do not object to the application and will abide by the decision of the Court.

[*Sworn/Affirmed*] by the abovenamed deponent at [*place and postcode*] on [*date*].

.....  
[*signature of deponent*]

before me

.....  
[*signature of authorised witness*]  
[*print name of witness*]  
[*print title of authorised witness*]  
[*ID number of witness*]

(h) Form PROB8—Consent of Proposed [Executor-Administrator] To Act as follows:

**Form PROB8**

**CONSENT OF PROPOSED [EXECUTOR-ADMINISTRATOR] TO ACT**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION  
[PROB-XX-XXXXXX]

**In the Matter of [FULL NAME OF PROPOSED TESTATOR]  
or  
In the Estate of [FULL NAME OF DECEASED] (Deceased)**

---

**[Full Name]**  
First Applicant

**[Full Name]**  
First Respondent

---

I, *[Full name of proposed executor/administrator]*, consent to act as *[executor/administrator]* of the abovenamed *[Name of proposed testator/name of deceased estate (deceased)]*.

.....  
Signed *[Proposed executor/administrator]*

.....  
Date

I, *[Name of witness]* of *[address and postcode]* certify that the signature written above is the signature of the person giving consent.

.....  
Signed *[Witness signature]*

.....  
Date

(i) Form PROB9—Will Authorised Under section 6 or section 7 of the *Succession Act 2023* as follows:

**Form PROB9**

**WILL AUTHORISED UNDER SECTION 6 OR SECTION 7  
OF THE SUCCESSION ACT 2023 (SA)**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF PROPOSED TESTATOR] (Deceased)**

---

*[This precedent merely illustrates the manner in which a will authorised by the Court under section 6 / 7] of the Succession Act 2023 (SA) is to be made and executed.]*

This is the last will and testament of [name of proposed testator] of [address and postcode] authorised by an order dated [date] made under section [6 / 7] of the *Succession Act 2023* (SA) by the Honourable Justice [surname].

I revoke all former testamentary acts:

- 1 I appoint [Full name] of [address] and [Full name] of [address] to be my [executor(s)] and [trustee(s)] (“my trustee(s)”) which includes my trustees for the time being.
- 2 I give devise and bequeath etc

.....  
Date

*[The Court seal will be affixed by the Registrar of Probates for a will made under section 7 of the Succession Act 2023 (SA)]*

**Registrar of Probates**



(j) Form PROB10—Affidavit in Support of Order to Issue Subpoena as follows:

**Form PROB10**

**AFFIDAVIT IN SUPPORT OF ORDER TO ISSUE SUBPOENA**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] of [address and postcode] deceased died at [suburb] [postcode] on [date] having duly made their last will and testament bearing date [date] (“the document”) of which they appointed [full name of executor as described in the document] executor and myself the residuary beneficiary [or as the case may be] (a photocopy of the document being now produced to me and marked “A”).
- 2 The document is now in the possession custody or power of the said [full name of person who holds the document] who has neglected or declined to prove the document or renounce probate of it and I request that the document be brought into the Probate Registry of this Court in order that I may prove the same or otherwise act as I may be advised.
- 3 I believe [full name of person who holds the document] resides at [address and postcode].

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Note**

- 1 See rule 353.3 of Chapter 25 of the *Uniform Civil rules 2020* and section 60 and 61 of the *Succession Act 2023* (SA).

(k) Form PROB11—Affidavit of Service of Warning and of Search and Non-appearance as follows:

**Form PROB11**

**AFFIDAVIT OF SERVICE OF WARNING AND OF SEARCH AND NON-APPEARANCE**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 On [date] I duly served [full name] of [address and postcode] with a sealed copy of the warning, annexed and marked "A" is a true copy [explain method of service in compliance with Chapter 5 of the Uniform Civil Rules 2020].
- 2 On [date] I searched the records in the Probate Registry of this Court [explain method of search conducted with the Probate Registry] for entering of appearances from [date of service] to the present day inclusive, to ascertain whether or not any appearance to the warning had been entered, and I say that no appearance to the warning has been entered either by or on behalf of any person or persons whomsoever.
- 3 No Originating Application for directions under rule 354.5(4) of Chapter 25 of the *Uniform Civil Rules 2020* has been received by me or my lawyer.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

(l) Form PROB12—Affidavit to Lead to Citation to Accept or Refuse Probate as follows:

**Form PROB12**

**AFFIDAVIT TO LEAD TO CITATION TO ACCEPT OR REFUSE PROBATE**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased (“the deceased”) died at [suburb] [postcode] on [date] having made and duly executed their last will bearing date [date] (“the will”) now remaining in the Probate Registry of this Court.
- 2 [Full name of executor as described in the will of the deceased] of [address and postcode] is the [sole executor / the surviving executor / or as the case may be] named in the will [[Full name of other executor with a prior right to apply for a grant as described in the will of the deceased] the other executor having died during the lifetime of the deceased / or as the case may be].
- 3 [Full name of executor as described in the will of the deceased] has not yet taken probate of the will or renounced their right to apply.
- 4 I am [the residuary beneficiary / one of the residuary beneficiaries] named in the will [or as the case may be].
- 5 I wish to obtain letters of administration with the will annexed of the estate of the deceased.
- 6 The deceased left [real and personal estate / real estate only / personal estate only] in the State of South Australia.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

(m) Form PROB13—Affidavit to Lead to Citation to Accept or Refuse Administration as follows:

**Form PROB13**

**AFFIDAVIT TO LEAD TO CITATION TO ACCEPT OR REFUSE ADMINISTRATION**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased (“the deceased”) died at [suburb] [postcode] on [date] intestate leaving [full name of spouse] of [address and postcode] their [surviving spouse] and one of the persons entitled to share in their estate.
- 2 There is no person adjudged under the *Family Relationships Act 1975* (SA) to have been a domestic partner of the deceased as at the date of their death.
- 3 [Full name of surviving spouse] has not yet taken upon themselves letters of administration of the estate of the deceased or renounced their right to apply.
- 4 I am the [relationship to the deceased] and one of the persons entitled to share in the estate of the deceased.
- 5 I wish to obtain letters of administration of the estate of the deceased.
- 6 The deceased left [real and personal estate / real estate only / personal estate only] in the State of South Australia.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Note**

- 1 If the intestate died leaving a domestic partner (adjudged under Part 3 of the *Family Relationships Act 1975* (SA)) then amend this form to substitute the word “spouse” with the words “domestic partner”, delete paragraph numbered 2 of the Form and renumber the subsequent paragraphs.

(n) Form PROB14—Affidavit—Citation Against—to Accept or Refuse Double Probate as follows:

**Form PROB14**

**AFFIDAVIT—CITATION—TO ACCEPT OR REFUSE DOUBLE PROBATE**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased (“the deceased”) died at [suburb] [postcode] on [date] having made and duly executed their last will bearing date [date] (“the will”) and therein named [full name of executor] of [address and postcode] and [full name of executor] of [address and postcode] their executors.
- 2 On [date] probate of the will was granted by the Court to the said [full name of proving executor] one of the executors named in the will, leave being reserved for [full name of leave reserved executor] the other executor to apply for probate [ensure all executors named in the will have been cleared off].
- 3 [Full name of proving executor] died on [date] leaving part of the estate unadministered.
- 4 [Full name of leave reserved executor] has not yet taken probate of the will.
- 5 I am the sole executor of the will of the said [full name of proving executor] probate whereof was granted to me by the Court on [date] and I wish to act as executor by transmission of executorship of the will of the said [full name of deceased] deceased.
- 6 To the best of my knowledge information and belief the deceased died possessed of assets in the State of South Australia remaining unadministered.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

(o) Form PROB15—Affidavit of Service of Citation and of Search and Non-appearance as follows:

**Form PROB15**

**AFFIDAVIT OF SERVICE OF CITATION AND OF SEARCH AND NON-APPEARANCE**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 On [date] I duly served [full name] of [address and postcode] with a sealed copy of the citation, annexed and marked "A" is a true copy, by [giving it to them personally at [address and postcode] / explain the method of service in compliance with Chapter 5 of the Uniform Civil Rules 2020].
- 2 On [date] I searched the records in the Probate Registry of this Court [explain method of search conducted with the Probate Registry] for entering of appearances from [date of service] to the present day inclusive, to ascertain whether or not any appearance to the citation had been entered, and I say that no appearance to the citation has been entered either by or on behalf of any person or persons whomsoever.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

(p) Form PROB16—Renunciation of Probate as follows:

**Form PROB16**

**RENUNCIATION OF PROBATE**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [NAME OF DECEASED] (Deceased)**

Whereas [full name of deceased] late of [address and postcode] deceased died on [date] at [suburb] [postcode] having made and duly executed their last will and testament dated [date] in which they appointed the undersigned [full name of executor as described in the will] the executor as described in the will [or as the case may be].

Now I, the said [full name of executor as described in the will] of [address, postcode, occupation and relationship], do hereby declare that I have not intermeddled in the estate of the deceased and will not hereafter intermeddle in the estate with intent to defraud creditors and I do hereby renounce all my right and title to probate and execution of the will and to letters of administration with the will annexed of the estate of the deceased.\*

.....  
[Signature of [executor as described in the will]]

.....  
Dated [date]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

\* If the renunciant does not wish to renounce an entitlement to letters of administration with the will annexed, the words “and to letters of administration with the will annexed of the estate of the deceased” should be omitted.

1 The renunciation must be executed before an authorised witness.

(q) Form PROB17—Renunciation of Letters of Administration With Will Annexed as follows:

**Form PROB17**

**RENUNCIATION OF LETTERS OF ADMINISTRATION WITH  
WILL ANNEXED**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

Whereas [full name of deceased] late of [address and postcode] died on [date] at [suburb] [postcode] having made and duly executed their last will and testament dated [date] in which [they did not appoint an executor / the appointment of executor has failed / or as the case may be] but named me the undersigned [full name of person renouncing] residuary beneficiary [or as the case may be]:

Now I the said [full name of person renouncing] of [address, postcode, occupation and relationship as appearing in Practice Note 2 of 2024] do hereby renounce all my right and title to letters of administration with the will annexed of the estate of the deceased.

.....  
[Signature of [person renouncing]]

.....  
Dated [date]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 The renunciation must be in place before any oath is sworn or affirmed clearing off the person renouncing, i.e., the renunciation must pre-date the oath.
- 2 The renunciation must be executed before an authorised witness.



(r) Form PROB18—Renunciation of Letters of Administration as follows:

**Form PROB18**

**RENUNCIATION OF LETTERS OF ADMINISTRATION**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

Whereas [full name of deceased] late of [address and postcode] deceased died on [date],  
intestate [clear off all persons having a prior entitlement to the grant under rule 356.15(1) in the  
manner described in the table appearing in Practice Note 2 of 2024] leaving [full name of person  
renouncing] their [surviving spouse/domestic partner/or as the case may be] and one of the  
persons entitled to the deceased estate [or as the case may be]:

Now I the said [full name of person renouncing] of [address, postcode and relationship as  
appearing in Practice Note 2 of 2024] do hereby renounce all my right and title to letters of  
administration of the estate of the deceased.

.....  
[Signature of [full name of person renouncing]]

.....  
Dated [date]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 The renunciation must be in place before any oath is sworn or affirmed clearing off the person renouncing, i.e., the renunciation must pre-date the oath.
- 2 The renunciation must be executed before an authorised witness.

(s) Form PROB19—Renunciation and Consent Spes Successionis Grant as follows:

**Form PROB19**

**RENUNCIATION AND CONSENT  
SPES SUCCESSIONIS GRANT**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

Whereas [name of deceased] late of [address and postcode] deceased (“the deceased”) died on [date] at [suburb and postcode] intestate [clear off all persons entitled to a grant of administration with a prior right as in Practice Note 1 of 2024] leaving me the undersigned [name of person renouncing and relationship to the deceased] the only person entitled to the whole of the estate of the deceased.\*

Now I, the said [name of person renouncing] of [address, and relationship as in Practice Note 2 of 2024] the only person entitled to the estate of the deceased do hereby renounce all my right and title to letters of administration of the estate of the deceased,

And I do hereby consent to letters of administration of the estate of the deceased being granted to [name, address, postcode and relationship (to person renouncing)] [the person / one of the persons] who would be entitled to my estate if I were to die intestate.

Signed by the [name of person renouncing] at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- \* If renunciant is the surviving parent of the deceased then the Renunciation should include a recital that the other parent died during the lifetime of the deceased.
- 1 Refer to rule 356.25 of Chapter 25 of the *Uniform Civil Rules 2020*.
- 2 The renunciation must be executed before an authorised witness.

**Modification of Form PROB19****(a) *Renouncing probate and letters of administration with will annexed***

Whereas [*name of deceased*] late of [*address and postcode*] deceased died on [*date*] at [*suburb and postcode*] having made and duly executed their last will and testament dated [*date*] in which they appointed the undersigned [*name of person renouncing*] the executor as described in the will and the only beneficiary of the whole estate of the deceased.

Now I, the said [*name of person renouncing*] of [*address, and relationship as in Practice Note 2 of 2024*] do hereby declare that I have not intermeddled in the estate of the deceased and will not hereafter intermeddle in the estate with intent to defraud creditors and I hereby renounce all my right and title to probate of the will and to letters of administration with the will annexed of the estate of the deceased.

And I do hereby consent to letters of administration with the will annexed of the estate of the deceased being granted to the person [or persons] who would be entitled to my estate if I were to die intestate.

(t) Form PROB20—Renunciation of Letters of Administration to Body Corporate not being a Trust Corporation as follows:

**Form PROB20**

**RENUNCIATION OF LETTERS OF ADMINISTRATION TO BODY CORPORATE NOT BEING A TRUST CORPORATION**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

Whereas [full name of deceased] of [address and postcode] died on [date] having made and duly executed their last will and testament dated [date] in which they appointed [name of company] of [address and postcode] (“the Company”) the executor as described in the will [or as the case may be]:

Now the Company hereby renounces all its right and title to a grant to its syndic of letters of administration with the will annexed of the estate of the deceased.

The Common Seal of [full name of company] was hereunto affixed by authority of the Directors on [date]

[Common Seal]

I [full name and title] of [full name of company] declare that the Company has not intermeddled in the estate of the deceased and will not hereafter intermeddle in the estate with intent to defraud creditors.

.....  
Declared at [suburb and postcode] by [full name and title]

.....  
Dated [date]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

(u) Form PROB21—Renunciation of Probate by a Trust Corporation as follows:

**Form PROB21**

**RENUNCIATION OF PROBATE  
BY A TRUST CORPORATION**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

Whereas [full name of deceased] late of [address and postcode] died on [date] at [suburb] [postcode] having made and duly executed their last will and testament dated [date] in which they appointed [name of company] of [address and postcode] (“the Company”) the executor as described in the will [and a trustee of the residuary estate (or as the case may be)]: Now the Company hereby renounces all its right and title to probate and execution of the will and to letters of administration with the will annexed of the estate of the deceased.\*

The Common Seal of [name of company] was hereunto affixed by authority of the Directors on [date]

[Common Seal]

In the presence of [full name and title]

I [full name and title] of [name of company] declare that the Company has not intermeddled in the estate of [full name of deceased] deceased and will not hereafter intermeddle in the estate with intent to defraud creditors.

.....  
Declared at [suburb and postcode] by [full name and title]

.....  
Dated [date]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- \* If the trustee company named in the will has changed its name or has a successor in law, then that must be recited in the body of the renunciation to reconcile the trustee company named in the will and the name of the company in the seal affixed to the renunciation.
- \* If the renunciant does not wish to renounce an entitlement to letters of administration with the will annexed, the words "*and to letters of administration with the will annexed of the estate of the deceased*" should be omitted.

(v) Form PROB22—Executor’s Oath After Pronouncing for a Will in Solemn Form as follows:

**Form PROB22**

**EXECUTOR’S OATH AFTER PRONOUNCING FOR A WILL IN SOLEMN FORM**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Name of deceased] late of [address and postcode] deceased (“the deceased”) died at [suburb] [postcode] on [date] aged [number] years.
- 2 The deceased made and duly executed their last will and testament dated [date] [or as the case may be] (“the will”) and thereof appointed me executor.
- 3 On [date] the Honourable [Justice/Associate Justice [Surname]] in action [file number] pronounced for the force and validity of the will a true copy of the sealed order being annexed and marked “A”.
- 4 I believe the testamentary document now produced to and marked by me to contain the will of the deceased.
- 5 I am [relationship to deceased] of the deceased and the executor as described in the will.
- 6 I will:
  - (a) collect, get in, and administer according to law the estate of the deceased; and
  - (b) if required to do so by the Court, produce to the Court a full statement and account of my administration of the estate.
- 7 The deceased died possessed of assets in the State of South Australia.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent(s)]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 The oath must clear off other persons having a prior entitlement to the grant—see rule 356.2(4) and rule 356.3 of Chapter 25 of the *Uniform Civil Rules 2020*.
- 2 The oath must include a deposition reciting any grant of letters of administration pendente lite that issued during the course of the substantive proceedings.
- 3 Where an application for a grant of letters of administration is made following a judgment in a probate action pronouncing against the force and validity of a document purporting to be the last will of the deceased, the details of the order must be recited in the oath and a true copy of the order must be annexed to the oath.



(w) Form PROB23—Oath of Administrator Pendente Lite as follows:

**Form PROB23**

**OATH OF ADMINISTRATOR  
PENDENTE LITE**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF THE DECEASED] (Deceased)**

---

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of the deceased] late of [address and postcode] died at [suburb] [postcode] on [date] aged [number] years (“the deceased”).
- 2 There is now pending in the Court an Action (“the Action”) [file number] concerning the validity of the will of the deceased dated [date].
- 3 By order of the Honourable [Justice [Surname] / Associate Justice [Surname] / Registrar of Probates] dated [date] it was ordered that letters of administration of the estate of the deceased be granted to me pending the Action. A true copy of the sealed order is annexed and marked “A”.
- 4 Pending the Action I will:
  - (a) under the control and direction of this Court collect, get in and administer according to law the estate of the deceased and will not distribute the estate;
  - (b) if required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
  - (c) if required to do so by the Court, deliver up to the Court any prior grant that may have issued in this action;
  - (d) deliver at the office of Public Trustee of the State of South Australia within six calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of the deceased and of my administration of such estate pending the Action.

5 The deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 The application seeking an order for the appointment of an administrator pendente lite is to be made in the substantive Action involving the determination of the validity of the will.
- 2 If the order obtained contains any limitations, then the form of oath must be varied accordingly.
- 3 Refer section 92(2) of the *Succession Act 2023* (SA) regarding the inclusion of standard deposition 4(c) in the oath. The oath may need to be varied accordingly.
- 4 The grant of administration ceases on the determination of the substantive Action and not upon the issue of a grant in substitution.

(x) Form PROB24—Oath of Administrator Leading to a Grant Ad Colligenda Bona as follows:

**Form PROB24**

**OATH OF ADMINISTRATOR LEADING TO A GRANT AD  
COLLIGENDA BONA**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF THE DECEASED] (Deceased)**

---

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of the deceased] late of [address and postcode] died at [suburb] [postcode] on [date] aged [number] years (“the deceased”).
- 2 A limited grant is required to [preserve/protect] [include detail of the asset] of the estate of the deceased.
- 3 By order of the [Honourable Justice [Surname] / Honourable Associate Justice [Surname] / Registrar of Probates] dated [date] it was ordered that letters of administration of the estate of the deceased be granted to me limited as mentioned below. A true copy of the sealed order is annexed and marked “A”.
- 4 I will:
  - (a) collect, get in and administer according to law the real and personal estate of the deceased limited to [include the specific limited orders made] and until further representation be granted but no further or otherwise;
  - (b) if required to do so by the Court, produce to the Court a full statement and account of my administration of the estate limited as aforesaid; and
  - (c) deliver at the office of Public Trustee of the State of South Australia within six calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of the deceased and of my administration of such estate under the letters of administration ad colligenda bona to be grant to me.

5 The deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 If the order obtained contains any limitations, then the form of oath must be varied accordingly.
- 2 Refer section 92(2) of the *Succession Act 2023* (SA) regarding the inclusion of standard deposition 4(c) in the oath. The oath may need to be varied accordingly.
- 3 All grants ad colligenda bona are limited until further representation be granted. The grant ad colligenda bona ceases on the issue of the general grant after completion of the limited acts required by the orders made.

(y) Form PROB25—Oath of Administrator Ad Litem as follows:

**Form PROB25**

**OATH OF ADMINISTRATOR  
AD LITEM**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

---

I, *[full name, address, postcode and occupation of deponent]*, *[swear on oath / do truly and solemnly affirm]* that:

- 1 *[Full name of deceased]* late of *[address and postcode]* died at *[suburb]* *[postcode]* on *[date]* aged *[number]* years ("the deceased").
- 2 A limited grant is required to *[commence / continue]* *[include details of the current proceedings [name of Court and file number] or proposed proceedings]* on behalf of the estate of the deceased.
- 3 By order of the *[Honourable Justice [Surname] / Honourable Associate Justice [Surname] / Registrar of Probates]* dated *[date]* it was ordered that letters of administration of the estate of the deceased be granted to me limited as mentioned below. A true copy of the sealed order is annexed and marked "A".
- 4 I will:
  - (a) *[include specific limited orders made]* and until further representation be granted but no further or otherwise;
  - (b) if required to do so by the Court, produce to the Court a full statement and account of my administration of the estate limited as aforesaid; and
  - (c) deliver at the office of Public Trustee of the State of South Australia within six calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of the deceased and of my administration of such estate.

5 The deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 If the order obtained contains any limitations, then the form of oath must be varied accordingly.
- 2 The limited grant ceases on the issue of the general grant after completion of the limited acts required by the orders made.
- 3 Refer section 92(2) of the *Succession Act 2023* (SA) regarding the inclusion of standard deposition 4(c) in the oath. The oath may need to be varied accordingly.

(z) Form PROB26—Executor’s Oath as follows:

**Form PROB26**

**EXECUTOR’S OATH**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

---

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 [I / We] believe the paper writing [or if more than one testamentary document, paper writings] now produced to and marked by [me / us] to contain the last will and testament of [and codicil or two codicils] of [full name of deceased] late of [address and postcode] deceased (“the deceased”).
- 2 [I am / We are] the [relationship to the deceased] of the deceased and [the executor / the executors / one of the executors] as described in the will.
- 3 [Full name], [spouse/domestic partner] of the deceased an executor as described in the will, died during the lifetime of the deceased] [OR [Full name] of [address, postcode and relationship, if any] the other executor as described in the will has renounced probate and letters of administration with eh will annexed of the estate of the deceased [or as the case may be]].
- 4 [I / We] will:
  - (a) collect, get in and administer according to law the estate of the deceased;
  - (b) if required to do so by the Court, produce to the Court a full statement and account of [my / our] administration of the estate;
  - (c) if required to do so by the Court, deliver up to the Court any prior grant that may have issued in this estate.
- 5 The deceased died at [suburb] [postcode] on [date] aged [number] years.

- 6 The deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent(s)]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

### Notes

- 1 Refer rule 356.27 of Chapter 25 of the *Uniform Civil Rules 2020* regarding the description of the deceased in the oath or in any of the modification to this Form.
- 2 The oath must clear off all other persons having a prior entitlement to the grant—see rule 356.2(4) of Chapter 25 of the *Uniform Civil Rules 2020*.
- 3 Where leave is to be reserved for non-proving executor[s] the following endorsement must be added at the foot of the oath:
 

Leave to be reserved for [full name] of [address and postcode] the other executor as described in the will [or as the case may be] to apply for probate.
- 4 If section 19 of the *Succession Act 2023* (SA) applies and revokes the appointment of the testator's former spouse or partner as one of the executors of the testamentary document or if the applicant's title to the grant is dependent upon the revocation of the executorship of the former spouse or partner or upon the operation of that section then refer to the modifications of the form of oath below.

### Modifications to Form PROB26

- (a) **Oath of executor where appointment of one executor has been revoked by section 19(1)(b) of the Succession Act 2023 (SA)**

[Heading]

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath/do truly and solemnly affirm] that:

- 1 [I / We] believe [complete as in Form PROB26].
- 2 [I am / We are] [relationship to the deceased] and [the executor / the executors / one of the executors] as described in the will.
- 3 The appointment of [full name] the former [spouse / partner] of the deceased an executor as described in the will has been revoked pursuant to section 19(1)(b) of the *Succession Act 2023* (SA).
- 4 [I / We] will: [complete as in Form PROB26].



**(b) Oath of executor where applicant's title to the grant is dependent on the application of section 19(1)(b) of the Succession Act 2023 (SA) (e.g. the testator's former spouse or partner has been appointed as an executor highest in priority)**

[Heading]

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 [I / We] believe [complete as in Form PROB26].
- 2 [I am / We are] [relationship to the deceased] and [the executor / the executors / one of the executors] as described in the will.
- 3 The appointment of [full name] the former spouse of the deceased an executor as described in the will has been revoked pursuant to section 19(1)(b) of the *Succession Act 2023 (SA)* the marriage between the testator and [full name of former spouse] having been dissolved by order of the Federal Circuit and Family Court of Australia made on [date]. A true copy of the order is annexed and marked "A".

OR

- 3 The appointment of [full name] the former partner of the deceased an executor as described in the will has ended under section 13(1) of the *Relationships Register Act 2016 (SA)* ("the Act"). A copy of the Certificate issued by the Registrar of Births, Deaths and Marriages under section 21 of the Act recording the event or entry on the Certificate that ended the registered relationship is annexed and marked "A".
- 4 [I / We] will: [complete as in Form PROB26].

**(c) Oath of executor where the marriage or registered relationship of the testator has ended and the former spouse or partner has been appointed one of the executors of the will, or an executor highest in priority, or is an executor, or is an executor according to the tenor, or is authorised by the terms of the will to nominate an executor and applies section 19(2) of the Succession Act 2023 (SA)**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I believe [complete as in Form PROB26].
- 2 I am the former [spouse / partner] of the deceased and [the executor / the executors / one of the executors] as described in the will.
- 3 The marriage between the deceased and myself was dissolved by order of the Federal Circuit and Family Court of Australia made on [date]. A true copy of the order is annexed and marked "A", but the deceased by codicil dated [date] affirmed the will showing no intention of revoking the appointment of myself as [the executor / or as the case may be]\*.

OR

3 The appointment of [full name] the former partner of the deceased an executor as described in the will has ended under section 13(1) of the *Relationships Register Act 2016* (SA) (“the Act”). A copy of the Certificate issued by the Registrar of Births, Deaths and Marriages under section 21 of the Act recording the event or entry on the Certificate that ended the registered relationship is annexed and marked “A” but the deceased by codicil dated [date] affirmed the will showing no intention of revoking the appointment of myself as [the executor / or as the case may be]

4 I will: [complete as in Form PROB26]

**\*NB:** The oath must disclose such facts as are necessary to exclude the operation of section 19(1) of the *Succession Act 2023* (SA).

**(d) If directed by the Court to include an oath with the application leading to the grant on proving a lost will as contained in a copy or draft, etc.**

[Heading]

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

1 On [date] the [Registrar of Probates / or as the case may be] ordered that probate of the last will and testament as contained in the copy [or a completed copy or reconstruction (or as the case may be)] (being the exhibit marked “A” referred to in the affidavit of [full name] [sworn / affirmed] on [date]) of [name of deceased] late of [address and postcode] deceased (“the deceased”) be granted to [me / us] [the executor / the executors / one of the executors] as described in the will limited until the original will or a more authentic copy of it be brought into and left in the Probate Registry of this Court.

2 [I / We] believe the paper writing now produced to and marked by [me / us] to contain the last will and testament [as contained in the copy (or as the case may be)] of the deceased.

3 [I am / We are] the [relationship to deceased] of the deceased [as the case may be] and [the executor / the executors / or as the case may be] as described in the will.

4 [I / We] will:

(a) collect, get in and administer according to law the estate of the deceased limited as aforesaid.

(b) if required to do so [complete as in Form PROB26].

**(e) If directed by the Court to include an oath with the application leading to the grant after order has been made under section 11 of the Succession Act 2023 (SA) admitting an informal will to probate**

[Heading]

[I/We], [full name, address and postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 On [date] the [Registrar of Probates /or as the case may be] ordered that a document (being the exhibit marked "A" referred to in the affidavit of [full name] [sworn / affirmed] on [date]) be admitted to probate as the last will of [name of deceased] late of [address and postcode] deceased ("the deceased") and that probate of the same be granted to [me / us] [the executor / the executors / one of the executors] as described in the will.
- 2 [I / We] believe the document now produced to and marked by [me / us] to contain the last will and testament of the deceased.
- 3 [I am / We are] the [complete as in Form PROB26].

**(f) Oath after order has been made under section 22 of the Succession Act 2023 (SA) rectifying a will before a common form grant has been made**

[Heading]

[I / We], [full name, address and postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 [Name of deceased] late of [address and postcode] deceased ("the deceased") made and duly executed their last will and testament bearing date [date] ("the will") and appointed [me the executor / us the executors / or as the case may be] as described in the will.
- 2 On [date] the [Registrar of Probates / or as the case may be] ordered that the will be rectified and a copy of the said order is annexed to and marked "A".
- 3 [I / We] believe the paper writing now produced to and marked by [me / us] to contain a true copy of the will of the deceased (the same being contained in an engrossment of the will as rectified by the aforesaid order).
- 4 [I am / We are] the [complete as in Form PROB26].

**Note**

- 1 If a probate action has been commenced under Chapter 20, Part 4 of the *Uniform Civil Rules 2020* in respect of a testamentary document then the rectification application must be made in that proceeding (rule 353.10(2) of Chapter 25 of the *Uniform Civil Rules 2020*) and any such oath must include reference to the relevant orders referable to the testamentary documents admitted to proof or otherwise.

(aa) Form PROB27—Oath of Administrator With Will Annexed as follows:

**Form PROB27**

**OATH OF ADMINISTRATOR  
WITH WILL ANNEXED**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

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[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 [I / We] believe the paper writing [or if more than one testamentary document, paper writings] now produced to and marked by [me / us] to contain the last will and testament [and codicil or two codicils or as the case may be] (“the will”) of [full name of deceased] late of [address and postcode] deceased (“the deceased”).
- 2 [Full name of executor as described in the will] [relationship to the deceased (if applicable)] the executor as described in the will [died during the lifetime of the testator or survived the deceased and is since died without having proved the will] [or the deceased did not in the will appoint an executor or the executor has renounced] [or as the case may be].
- 3 [I am / We are] the [insert the relationship (if any) to the deceased] and [the residuary beneficiary / one of the residuary beneficiaries / as the case may be] named in the will.
- 4 [I / We] will:
  - (a) collect, get in and administer according to law the estate of the deceased;
  - (b) if required to do so by the Court, produce to the Court a full statement and account of [my / our] administration of the estate;
  - (c) if required to do so by the Court, deliver up to the Court any prior grant that may have issued in this action;
  - (d) deliver at the office of Public Trustee of the State of South Australia within six calendar months from the date of administration being granted to [me / us] a statement and account verified by [my / our] declaration of all the estate of the deceased and of the administration of the estate.
- 5 The deceased died at [suburb] [postcode] on [date] aged [number] years.
- 6 The deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

### Notes

- 1 Where the applicant's title to the grant is dependent upon the revocation pursuant to section 19(1) of the *Succession Act 2023 (SA)* of the executorship and/or beneficial interest of the testator's former spouse or partner or upon the operation of the section being excluded, then refer to the modifications of the form of oath below.
- 2 The oath must clear off other persons having a prior entitlement to the grant—see rules 356.2 and 356.3 of Chapter 25 of the *Uniform Civil Rules 2020*.

### Modifications to Form PROB27

- (a) ***Oath of administrator where the applicant's title to the grant as one of the residuary beneficiaries substituted in the will is dependent upon the application of section 19(1) of the Succession Act 2023 (SA) (e.g. the testator's former spouse or partner having been named the executor and instituted residuary beneficiary named in the will)***

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I believe the paper writing [complete as in Form PROB27].
- 2 The appointment of [full name of the former spouse] the former spouse of the deceased as the executor as described in the will and the instituted residuary beneficiary named in the will has been revoked pursuant to section 19(1) of the *Succession Act 2023 (SA)* the marriage between the testator and [full name of the former spouse] having been dissolved by order of the Federal Circuit and Family Court of Australia [or as the case may be] made on [date]. A true copy of the order is annexed and marked "A".

OR

- 2 The appointment of [full name] the former partner of the deceased an executor as described in the will has ended under section 13(1) of the *Relationships Register Act 2016 (SA)* ("the Act"). A copy of the Certificate issued by the Registrar of Births, Deaths and Marriages under section 21 of the Act recording the event or entry on the Certificate that ended the registered relationship is annexed and marked "A".
- 3 I am one of the residuary beneficiaries substituted in the will.
- 4 I will: [complete as in Form PROB27].

**(b) Oath of administrator where the marriage or registered relationship of the testator has ended and the former spouse or partner has been named residuary beneficiary and section 19(2) of the Succession Act 2023 (SA) applies**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I believe the paper writing [complete as in Form PROB27].
- 2 [Full name of executor as described in the will] [relationship to the deceased (if applicable)] the executor as described in the will died in the lifetime of the deceased [or as the case may be].
- 3 I am the former [spouse / partner] of the deceased and the residuary beneficiary named in the will.
- 4 The marriage between the deceased and myself was dissolved by order of the Federal Circuit and Family Court of Australia [or as the case may be] made on [date]. A true copy of the order is annexed and marked "A" but the deceased by codicil dated [date] affirmed the will showing no intention of revoking my beneficial entitlement to property under the will.\*

OR

- 4 The appointment of [full name] the former partner of the deceased an executor as described in the will has ended under section 13(1) of the *Relationships Register Act 2016* (SA) ("the Act"). A copy of the Certificate issued by the Registrar of Births, Deaths and Marriages under section 21 of the Act recording the event or entry on the Certificate that ended the registered relationship is annexed and marked "A" but the deceased by codicil dated [date] affirmed the will showing no intention of revoking my beneficial entitlement to property under the will.
- 5 I will: [complete as in Form PROB27].

\*NB The oath must disclose such facts as are necessary to exclude the operation of the section.

**(c) Oath of administrator where the grant is taken by the legal personal representative of a deceased person who is entitled to the whole of the estate**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I believe the paper writing [complete as in Form PROB27].

- 2 *[Full name of executor as described in the will] [relationship to the deceased (if applicable)]* the executor as described in the will and the residuary beneficiary therein named survived the deceased by 28 days *[or as the case may be]* but died on *[date]* without having proved the will.
- 3 *[Probate of the will or Letters of Administration with the will annexed]* of *[full name of executor as described in the will]* deceased was granted by the Court to me the executor as described in *the will [or as the case may be]* on *[date]*.
- 4 I will: *[complete as in Form PROB27]*.

(bb) Form PROB28—Oath of Administrator Without Will as follows:

**Form PROB28**

**OATH OF ADMINISTRATOR WITHOUT WILL**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [NAME OF DECEASED] (Deceased)**

---

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died intestate [clear off all persons having a prior entitlement to the grant in the manner provided in the table appearing in Practice Note 1 of 2024].
- 2 I am [describe your relationship in the manner provided in the table appearing in Practice Note 2 of 2024]\*.
- 3 [(If it is the case) The other persons entitled in distribution of the estate of the deceased [is / are] (use name and relationship to show entitlement)]:

[Name]	[Relationship]
--------	----------------
- 4 I will:
  - (a) collect, get in and administer according to law the estate of the deceased;
  - (b) if required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
  - (c) deliver at the office of Public Trustee of the State of South Australia within six calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of the deceased and of my administration of such estate.
- 5 The deceased died at [suburb] [postcode] on [date] aged [number] years.
- 6 The deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.



[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

#### Note

- \* If a parent of the deceased is described as the “only” person entitled, evidence (death certificate or deposition of date of death) must be given as to the death of the other parent during the lifetime of the intestate.
- 1 For the description of a relationship refer to the *Succession Act 2023* (SA), Part 5—section 101(1) Intestacy Interpretation.

#### Modifications of Form PROB28

- (a) ***Oath for administration to surviving spouse or domestic partner where there are other persons entitled to share in the estate by virtue of section 105(1)(c)(i) and/or section 106(2) of the Act***

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died intestate.
- 2 I am the [surviving spouse / domestic partner] of the deceased and one of the persons entitled to share in the estate.
- 3 The other persons entitled in distribution of the estate of the deceased are:
 

[Name]	[Relationship]
--------	----------------
- 4 I will: [complete as in Form PROB28].

**(b) Oath for administration to surviving spouse where the value of the intestate estate does not exceed the preferential legacy and there is no domestic partner entitled to share in the estate by virtue of section 106(2) of the Act but there are issue who may become entitled to share in the estate under section 105(1)(b) of the Act in the event of an accretion to the estate resulting in the value of the intestate estate exceeding the preferential legacy**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died intestate.
- 2 I am the [surviving spouse] of the deceased and the only person now entitled to the estate of the deceased.
- 3 The other persons entitled in distribution of the estate of the deceased are:  

[Name]	[Relationship]
--------	----------------
- 4 I will: [complete as in Form PROB28].

**Note**

1 “preferential legacy” is defined in section 105(2) of the *Succession Act 2023* (SA).

**(c) Oath for administration to surviving spouse who under section 105(1)(a) of the Act is entitled to the whole of the estate—there being no domestic partner entitled to share in the estate under section 106(2) of the Act**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died intestate.
- 2 I am the surviving spouse of the deceased and the only person entitled to the estate of the deceased.
- 3 I will: [complete as in Form PROB28].

**(d) Oath for administration to domestic partner where the deceased is survived by a spouse and/or issue**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased (“the deceased”) died intestate.

- 2 By an order dated *[date of order]* made by the *[Name of Court]* under the *Family Relationships Act 1975 (SA)*, I was declared the domestic partner of the deceased as at the date of their death (a true copy of the sealed order being annexed and marked "A").

OR

- 2 The Register of Births, Deaths and Marriages has registered the relationship under section 8(2) of the *Relationships Register Act 2016 (SA)* (a true copy of the certificate issued by the Registrar of Births, Deaths and Marriages certifying the particulars of the entry of the registered relationship under section 21 of the *Relationships Register Act 2016* being annexed and marked "A").

- 3 I am one of the persons entitled to share in the estate of the deceased.

- 4 The other persons entitled in distribution of the estate of the deceased are:

<i>[Name]</i>	<i>[Relationship]</i>
---------------	-----------------------

- 5 I will: [complete as in Form PROB28].

**(e) *Oath for administration where the value of the intestate estate does not exceed the preferential legacy—child applies on renunciation of surviving spouse***

*[Heading]*

I, *[full name, address, postcode and occupation of deponent]*, *[swear on oath / do truly and solemnly affirm]* that:

- 1 *[Full name of deceased]* late of *[address and postcode]* deceased died intestate leaving *[name of surviving spouse / domestic partner]* their surviving spouse and the only person now entitled to the estate who has renounced letters of administration of the estate of the deceased.

- 2 I am a child of the deceased and a person who may become entitled to share in the estate of the deceased in the event of an accretion thereto.

- 3 The other persons who may become entitled in distribution of the estate of the deceased are:

<i>[Name]</i>	<i>[Relationship]</i>
---------------	-----------------------

- 4 I will: [complete as in Form PROB28].

**Note**

1 "preferential legacy" is defined in section 105(2) of the *Succession Act 2023 (SA)*.

**(f) Oath for administration where the value of the intestate estate exceeds the preferential legacy—child applies on renunciation of surviving spouse**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died intestate leaving [name of surviving spouse] their surviving spouse and one of the persons entitled to share in the estate of the deceased who has renounced letters of administration of the estate of the deceased.
- 2 There is no person adjudged under the *Family Relationships Act 1975 (SA)*, to have been a domestic partner of the deceased as at the date of their death.\*
- 3 I am a child of the deceased and one of the persons entitled to share in the estate of the deceased.
- 4 The other persons entitled in distribution of the estate of the deceased are:  

[Name]	[Relationship]
--------	----------------
- 5 I will: [complete as in Form PROB28].

**Notes**

- \* This disposition is required in order to clear off the prior entitlement of a domestic partner to the administration of the estate. Delete this deposition if there is a domestic partner who has renounced and substitute “domestic partner” for “surviving spouse” in paragraph numbered 1 of this modification.
- 1 “preferential legacy” is defined in section 105(2) of the *Succession Act 2023 (SA)*.

**(g) Oath for administration to child or other issue having beneficial interest**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died intestate a without a surviving spouse or domestic partner and without any other person entitled in priority to share in their estate by virtue of any enactment.
  - 2 I am a child of the deceased and [only person entitled to the estate / one of the persons entitled to share in the estate] of the deceased.
- OR
- 2 I am a [grandchild] of the intestate being [the child] of [name of parent], [the child] of the intestate who died in the lifetime of the intestate) and [the only person entitled to the estate / one of the persons entitled to share in the estate] of [name of deceased] deceased.

- 3 [(IF this is the case) The other persons entitled in distribution of the estate of the deceased are:

[Name] [Relationship]

- 4 I will: [complete as in Form PROB28].

**Note**

- 1 Where the applicant's title to the administration depends upon establishing paternity the application must be supported by evidence of the claim to the relationship. Refer to section 7 of the *Family Relationships Act 1975* (SA).

**(h) Oath for administration to adopted child**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died intestate without a surviving spouse or domestic partner and without any other person entitled in priority to share in their estate by virtue of any enactment.
- 2 By an order dated [date] made by [insert full name of the Court that made the order and its locality] under the *Adoption of Children Act 1967* (SA), [or as the case may be] I was duly adopted by the deceased and [name of other adopting individual] and that the said order is still subsisting, a certified extract under the hand and seal of the Registrar of Births, Deaths and Marriages relating to the adoption [or as the case may be] is annexed and marked "A".
- 3 I am a child of the deceased and [only person entitled to the estate / one of the persons entitled to share in the estate] of the deceased.
- 4 [(IF this is the case) The other persons entitled in distribution of the estate of the deceased are:

[Name] [Relationship]

- 5 I will: [complete as in Form PROB28].

**(i) Oath for administration to child where the deceased has died divorced**

[Heading]

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died intestate without a domestic partner a divorced person and without any other person entitled in priority to share in their estate by virtue of any enactment.
- 2 The marriage between the said [full name of deceased] deceased and [full name of surviving spouse] was dissolved by order of the Federal Court and Family Court of Australia [or as the case may be] made on [date]. A true copy of the order is annexed and marked "A".

- 3 The deceased did not subsequently remarry or register a relationship under section 8(2) of the *Relationships Register Act 2016* (SA).
- 4 I am a child of the deceased and *[the only person entitled to the estate / one of the persons entitled to share in the estate]* of the deceased.
- 5 *[If this is the case]* The other persons entitled in distribution of the estate of the deceased are:
- | <i>[Name]</i> | <i>[Relationship]</i> |
|---------------|-----------------------|
|---------------|-----------------------|
- 6 I will: [complete as in Form PROB28].

**(j) Oath for administration to parent**

*[Heading]*

I, *[full name, address, postcode and occupation of deponent]*, *[swear on oath / do truly and solemnly affirm]* that:

- 1 *[Full name of deceased]* late of *[address and postcode]* deceased died intestate without a spouse or domestic partner and without issue, or any other person entitled in priority to share in their estate by virtue of any enactment.
- 2 I am the parent of the deceased and *[the only person entitled to the estate\* / [or where both parents of the deceased are living] one of the persons entitled to share in the estate]* of the deceased.
- 2 *[If this is the case]* The other person entitled in distribution of the estate of the deceased is *[full name of other parent of the deceased]* the other parent of the deceased.
- 3 I will: [complete as in Form PROB28].

**Notes**

- \* If a parent of the deceased is described as the “only” person entitled, evidence (death certificate or deposition of date of death) must be given as to the death of the other parent during the lifetime of the intestate
- 1 If the deceased died intestate a divorced person then see paragraphs 2 and 3 in modification (i) above for the additional wording required in the oath.
- 2 Where the applicant’s title to the administration depends upon establishing paternity, the application must be supported by evidence of the claim to the relationship. Refer to section 7 of the *Family Relationships Act 1975* (SA).

**(k) Oath for administration to sibling (brother or sister)**

*[Heading]*

I, *[full name, address, postcode and occupation of deponent]*, *[swear on oath / do truly and solemnly affirm]* that:

- 1 *[Full name of deceased]* late of *[address and postcode]* deceased died intestate without a spouse or domestic partner\* and without issue or a parent, or any other person entitled in priority to share in their estate by virtue of any enactment.

2 I am a sibling of the deceased and [*the only person entitled to the estate / one of the persons entitled to the estate / or as the case may be*] of the deceased.

3 [*If this is the case*] *The other persons entitled in distribution of the estate of the deceased are:*

*[Name] [Relationship]*

4 I will: [complete as in Form PROB28].

**Note**

- \* If the deceased died intestate divorced see paragraphs 2 and 3 in modification (i) above for the additional wording required in the oath.

(cc) Form PROB29—Oath to Lead Registration of Interstate Grant as follows:

**Form PROB29**

**OATH TO LEAD REGISTRATION OF INTERSTATE GRANT**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [NAME OF DECEASED (as described in the grant to be registered)]  
(Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 A grant of [probate of the will (and codicil or [number of codicils if more than one] codicils) / letters of administration with the will annexed of the estate / letters of administration of the estate / or as the case may be] of [name of deceased] late of [as in grant sought to be registered] deceased who died at [location and postcode] on [date] aged [number] years was granted to me by [full name of Court that issued the grant sought to be registered] on [date].
- 2 The deceased was at the date of death domiciled in [name of State or Territory] within the jurisdiction of the Court that issued the grant now sought to be registered [the last 15 words to be struck out if inapplicable].
- 3 The deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

[See notes to this Form for additional depositions required for various circumstances]

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]



**Notes**

- 1 If the deceased was not at the date of death domiciled within the State in which the original interstate grant was made, the oath must address rule 356.31(4) of Chapter 25 of the *Uniform Civil Rules 2020*.
- 2 If an executor predeceased the testator or died since the death of the testator without having taken a grant of probate or has renounced probate it must be recited in the oath.
- 3 If the grant was made to two or more executors one of whom has since died the death of the deceased executor must be recited in the oath.
- 4 If leave has been reserved in the interstate grant to another executor, to apply for probate the following words must be inserted at the end of paragraph 1 of the above oath:  
“Leave being reserved for [*name of other executor*] the other executor to apply for probate”,  
and the following additional deposition must be made in the oath:  
“2 That no grant of double probate has been made by the Supreme Court of [*State/Territory*] to the aforesaid executor to whom leave was reserved to apply for probate.”
- 5 An application to register a grant of probate made after the death of the executor to whom it has been granted by his executor will be accepted provided that probate of the will of the deceased executor has been granted or registered in South Australia. The oath in this instance must fully disclose all the events that have happened so that the title of the executor of the deceased executor to register his testator’s grant is thereby established.
- 6 The assets and liabilities to be disclosed on the Electronic System at the time of the application and subsequently must comply with section 71 of the *Succession Act 2023* (SA) and rule 356.17(4) of Chapter 25 of the *Uniform Civil Rules 2020*.  
If the deceased person was not domiciled in Australia at the date of death, then disclosure is only required for all of the assets of the deceased located within Australia and any liabilities that are charged on those assets or arose in Australia—refer section 71(5) and section 71(6) of the *Succession Act 2023* (SA).

**Modification of Form PROB29****(a) Oath by attorney of executor or administrator authorised to apply for the registration of the interstate grant**

[*Heading*]

I, [*full name, address, postcode and occupation of deponent*], [*swear on oath / do truly and solemnly affirm*] that:

- 1 A grant of probate of the will [*or as the case may be*] of [*name of deceased (name as in the interstate grant to be registered)*] late of [*as in grant sought to be registered*] deceased who died at [*location*] on [*date*] aged [*number*] years was granted to [*insert name of the person to whom grant was made*] by the Supreme Court of the [*State/Territory*] on [*date*].
- 2 The deceased was at the date of death domiciled in [*name of State / Territory*] within the jurisdiction of the Court that issued the grant now sought to be registered [*the last 15 words to be struck out if inapplicable*].

- 3 I am the attorney appointed by [*name of the person to whom the grant was made*] (which appointment has not to the best of my knowledge information and belief been revoked) and am duly authorised to apply to this Court for the registration of the interstate grant.
- 4 To the best of my knowledge the deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

**Notes**

- 1 If there is more than one executor named in the grant to be registered, administration will not be granted to the person's attorney without notice to the other executors (if any)—see rule 356.22(2) of Chapter 25 of the *Uniform Civil Rules 2020*.
- 2 A copy certified by a lawyer of the General and Enduring Power of Attorney must be deposited with the application.
- 3 For a form of power of attorney, see Form PROB49 General and Enduring Power of Attorney.

(dd) Form PROB30—Oath to Lead Re-seal of Overseas Grant as follows:

**Form PROB30**

**OATH TO LEAD RE-SEAL OF  
OVERSEAS GRANT**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [NAME OF DECEASED (as described in the grant to be re-sealed)  
(Deceased)]**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 A grant of [probate of the will (and codicil or [number of codicils if more than one] codicils) / letters of administration with the will annexed of the estate / letters of administration of the estate / or as the case may be] of [name of deceased] late of [as in grant sought to be re-sealed] deceased who died at [location and postcode] on [date] aged [number] years was granted to me by [full name of Court that issued the grant sought to be re-sealed] on [date].
- 2 The deceased was at the date of death domiciled in [name of State or country overseas] within the jurisdiction of the Court that issued the overseas grant now sought to be re-sealed [the last 16 words to be struck out if inapplicable].
- 3 The deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

[See notes to this Form for additional descriptions required for various circumstances]

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 If the deceased was not at the date of death domiciled within the State/Country in which the original overseas grant was made, the oath must address rule 356.32(4) of Chapter 25 of the *Uniform Civil Rules 2020*.
- 2 If an executor predeceased the testator or died since the death of the testator without having taken a grant of probate or has renounced probate it must be recited in the oath.
- 3 If the grant was made to two or more executors one of whom has since died the death of the deceased executor must be recited in the oath.
- 4 If leave has been reserved in the overseas grant to another executor, to apply for probate the following words must be inserted at the end of paragraph 1 of the above oath:  
“Leave being reserved for [*name of other executor*] the other executor to apply for probate”,  
and the following additional deposition must be made in the oath:  
“2 That no grant of double probate has been made by the Supreme Court of [*State / Country*] to the aforesaid executor to whom leave was reserved to apply for probate.”
- 5 An application to re-seal a grant of probate made after the death of the executor to whom it has been granted by his executor will be accepted provided that probate of the will of the deceased executor has been granted or re-sealed in South Australia. The oath in this instance must fully disclose all the events that have happened so that the title of the executor of the deceased executor to re-seal his testator’s grant is thereby established.
- 6 The assets and liabilities to be disclosed on the Electronic System at the time of the application and subsequently must comply with section 71 of the *Succession Act 2023* (SA) and rule 356.17(4) of Chapter 25 of the *Uniform Civil Rules 2020*.  
If the deceased person was not domiciled in Australia at the date of death, then disclosure is only required for all of the assets of the deceased located within Australia and any liabilities that are charged on those assets or arose in Australia—refer section 71(5) and section 71(6) of the *Succession Act 2023* (SA).

**Modification of Form PROB30****(a) Oath by attorney of executor or administrator authorised to apply for the sealing of the overseas grant**

[*Heading*]

I, [*full name, address, postcode and occupation of deponent*], [*swear on oath / do truly and solemnly affirm*] that:

- 1 A grant of probate of the will [*or as the case may be*] of [*name of deceased (name as in the overseas grant to be re-sealed)*] late of [*as in grant sought to be re-sealed*] deceased who died at [*location*] on [*date*] aged [*number*] years was granted to [*insert name of the person to whom grant was made*] at [*location of Court*] on [*date*] (“the overseas grant”).
- 2 The deceased was at the date of death domiciled in [*name country overseas*] within the jurisdiction of the Court that issued the overseas grant now sought to be re-sealed [*the last 16 words to be struck out if inapplicable*].

- 3 I am the attorney appointed by [*name of the person to whom the grant was made*] (which appointment has not to the best of my knowledge information and belief been revoked) and am duly authorised to apply to this Court for the re-sealing of the overseas grant.
- 4 To the best of my knowledge the deceased died possessed of assets in the State of South Australia as disclosed on the Electronic System.

**Notes**

- 1 If there is more than one executor named in the grant to be re-sealed, administration will not be granted to the person's attorney without notice to the other executors (if any)—see rule 356.22(2) of Chapter 25 of the *Civil Uniform Rules 2020*.
- 2 A copy certified by a lawyer of the General and Enduring Power of Attorney must be deposited with the application.
- 3 For a form of power of attorney, see Form PROB49 General and Enduring Power of Attorney.

(ee) Form PROB31—Executor’s Oath for Double Probate as follows:

**Form PROB31**

**EXECUTOR’S OATH  
FOR DOUBLE PROBATE**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

---

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I believe the testamentary document now produced to and marked by me [to contain the last will and testament / to be a true copy of the last will and testament as contained in [a court sealed copy of the Record of the Court / an exemplification] [and codicil / or as the case may be] (“the will”) of [name of deceased] late of [address and postcode] deceased (“the deceased”) the same being published on the Electronic System in action [PROB number], the deceased having died at [suburb] [postcode] on [date] aged [number] years.
- 2 Probate of the will was granted by the Court on [date] to [name and address of executor or executors] [relationship to the deceased] of the deceased [an executor / executors] as described in the will leave then having been reserved for me to apply for probate.
- 3 I am a [relationship to the deceased] of the deceased and an executor as described in the will.
- 4 I will:
  - (a) collect, get in and administer according to law the estate of the deceased;
  - (b) if required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
  - (c) if required to do so by the Court, deliver up to the Court any prior grant that may have been issued in this estate.
- 5 The deceased died possessed of assets in the State of South Australia remaining unadministered as disclosed on the Electronic System.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 The oath must clear off other persons having a prior entitlement to the grant—see rule 356.2(4) of Chapter 25 of the *Uniform Civil Rules 2020*.
- 2 The applicant for the grant must disclose on the Electronic System all the unadministered assets and liabilities of the estate existing at the date of death of the deceased known to the applicant at the time of making the application.
- 3 A Court sealed copy of the Record of the Court or an exemplification is required to make the deposition “to be a true copy of...”.

(ff) Form PROB32—Oath of Administrator With Will Annexed De Bonis Non as follows:

**Form PROB32**

**OATH OF ADMINISTRATOR  
WITH WILL ANNEXED *DE BONIS NON***

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

---

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died on [date] at [suburb] [postcode] aged [number] years (“the deceased”) having made and duly executed their last will and testament [and codicil or two codicils or as the case may be] (“the will”).
- 2 On [date] probate of the will was granted to [full name of proving executor] [relationship to the deceased] of the deceased the executor as described in the will [or as the case may be] who died on [date] intestate [or as the case may be, showing how the chain of executorship is broken] leaving part of the estate of the deceased unadministered.
- 3 I believe the paper writing now produced to and marked by me to be a true and correct copy of the last will [and codicil or two codicils or as the case may be] of the deceased the same being published on the Electronic System being [PROB number] [or a court sealed copy of the record of the Court (see rule 351.16 of Chapter 25 of the Uniform Civil Rules 2020)].
- 4 I am [relationship to the deceased (if applicable) / or as the case may be] and one of the residuary beneficiaries [or as the case may be] named in the will.
- 5 I will:
  - (a) collect, get in and administer according to law the unadministered estate of the deceased;
  - (b) if required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
  - (c) if required to do so by the Court, deliver up to the Court any prior grant that may have issued in this estate;
  - (d) deliver at the office of Public Trustee of the State of South Australia within six calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of the deceased left unadministered and of my administration of such estate.
- 6 The deceased died possessed of assets in the State of South Australia remaining unadministered as disclosed on the Electronic System.



[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 The applicant for the grant must disclose on the Electronic System all the unadministered assets and liabilities of the estate existing at the date of the death of the deceased known to the applicant at the time of making the application.
- 2 For grants *de bonis non*, refer to Division 4 of Chapter 25 of the *Uniform Civil Rules 2020*.

(gg) Form PROB33—Oath of Administrator (Without Will) De Bonis Non as follows:

**Form PROB33**

**OATH OF ADMINISTRATOR (WITHOUT WILL) *DE BONIS NON***

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

---

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased died at [suburb] [postcode] on [date] intestate (“the deceased”).
- 2 On [date] letters of administration of the estate of the deceased were granted by the Court to [full name of person to whom the grant was made] [relationship to the deceased] of the deceased and one of the persons entitled to share in the estate of the deceased.
- 3 [full name of person to whom the grant was made] died on [date] leaving part of the estate of the deceased unadministered.
- 4 I am a [relationship to the deceased] and one of the persons [or as the case may be] entitled to share in the estate of the deceased.
- 5 There is no person declared under the *Family Relationships Act 1975 (SA)*, to have been a domestic partner of the deceased as at the date of their death.
- 6 I will:
  - (a) collect, get in and administer according to law the unadministered estate of the deceased;
  - (b) if required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
  - (c) if required to do so by the Court deliver up to the Court any prior grant that may have issued in this estate;
  - (d) deliver at the office of the Public Trustee of the State of South Australia within six calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of the deceased left unadministered and of my administration of such estate.
- 7 The deceased died possessed of assets in the State of South Australia remaining unadministered as disclosed on the Electronic System.

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 The applicant for the grant must disclose on the Electronic System all the unadministered assets and liabilities of the estate existing at the date of the death of the deceased known to the applicant at the time of making the application.
- 2 For grant *de bonis non*, refer to Division 4 of Chapter 25 of the *Uniform Civil Rules 2020*.

(hh) Form PROB34—Affidavit as follows:

**Form PROB34**

**AFFIDAVIT**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

[I / We], [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

[1 Enter text in separate numbered paragraphs]

[Sworn / Affirmed] by the abovenamed deponent[s] at [place and postcode] on [date].

.....  
[signature of deponent(s)]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 There must be consistency between the wording in the commencement of the affidavit and the jurat. If the wording in the commencement of the affidavit is not consistent with the jurat (sworn / affirmed), then the affidavit may not be accepted.
- 2 The jurat should be placed at the end of the affidavit adjacent to the left-hand margin of the page but not on a page on which no part of the text appears. If there is more than one jurat a subsequent jurat or jurats may appear on a page on which no part of the text appears.
- 3 The name of the person before whom the affidavit is sworn / affirmed must be legibly printed or typed below their signature in the jurat.
- 4 The person taking the affidavit must disclose their authority for taking affidavits beneath their signature in the jurat, e.g. "A Commissioner for taking affidavits in the Supreme Court of South Australia" or "A Justice of the Peace in and for the State of South Australia" or as the case may be.
- 5 If the affidavit is taken out of South Australia by a person not being authorised to take affidavits in the Supreme Court of South Australia, then the person before whom the affidavit is sworn / affirmed must disclose their authority to administer oaths in the place where it is sworn / affirmed, e.g. "A Justice of the Peace in and for the State of Victoria and a person duly authorised to administer oaths in that State".
- 6 Where an affidavit is on more than one page, it must be signed by the deponent on each page and the person taking the oath/affirmation must also sign on each page and add the date.

- 7 Where a testamentary document is referred to in an affidavit, e.g. “*the document dated [date] being now produced to me and marked ‘A’ (as the case may be)*” the document must be marked “A” on the backsheet beneath which a suitable exhibit endorsement must be made and which must be dated and signed by the person taking the affidavit, e.g.

“A”

This is the document marked “A” referred to in the affidavit of [*name of deponent*] [*sworn / affirmed*] before me on [*date*]

.....  
A Commissioner, etc

If the testamentary document does not have a backsheet the marking, exhibit endorsement and signature shall be made in some convenient place on the document and the Registrar’s direction may be sought, if necessary. The marking, endorsement and signature must not interfere with the writing on either side of the document.

**Modifications of Form PROB34**

**(a) Where the deponent is blind, illiterate or physically incapable of reading**

[*Sworn / Affirmed*] at [*suburb and postcode*] on [*date*] )  
 by [*deponent name*], this affidavit having )  
 been previously read over to )  
 them (*where there are exhibits the* )  
*following words must be added*) and )  
 the nature and effect of the exhibits )  
 having been explained to them) and ) [*Deponent’s mark or signature*]  
 [*deponent name*] appearing perfectly to )  
 understand the same and having made their )  
 mark (*or signed their name*) to it in )  
 my presence )

Before me:  
.....

**Note**

The Commissioner (or as the case may be) must first read over the affidavit to the deponent, or cause it to be read over to the deponent in the Commissioner’s presence, and be satisfied that the deponent understands it and the exhibits (if any) to which the affidavit refers, and the deponent must make their mark or (if able) sign their name to the affidavit in the Commissioner’s presence.

**(b) Where the deponent is physically capable of reading but incapable of signing:**

[*Sworn / Affirmed*] at [*suburb and postcode*] )  
 by [*deponent name*] on [*date*], [*deponent name*] )  
 having made their mark to this affidavit in my presence, )  
 and being physically incapable of writing ) [*Deponent’s mark*]  
 their name )

Before me:  
.....

**(c) Where the deponent is physically capable of reading but incapable of making a mark or signing:**

[Sworn / Affirmed] at [suburb and postcode] by )  
[deponent name] on [date] without [deponent name] )  
making their mark or signing this affidavit, )  
[deponent name] being physically incapable )  
of so doing )

Before me:  
.....

**(d) Where the deponent does not understand English:**

[Sworn / Affirmed] at [suburb and postcode] by )  
[deponent name] on [date] through the interpretation of )  
[interpreter name] of [address and )  
occupation], [interpreter name] having first been sworn )  
that they had truly, distinctly and audibly )  
interpreted the contents of this affidavit [and )  
explained the nature and effect of the exhibits] ) [Deponent's signature]  
to [deponent name] in the [language] language and )  
that they would truly and faithfully interpret )  
the oath to be administered to them )

Before me:  
.....

**Note**

The interpreter must first take the following oath (or affirm to the same effect):

*“You do swear that you well understand the English and [language of the deponent])  
languages, and that you have truly, distinctly, and audibly interpreted the contents of this  
affidavit [and explained the nature and effect of the exhibits] to the deponent, and that you  
will truly and faithfully interpret the oath about to be administered to them  
So help you God.”*

The Commissioner (or as the case may be) must then repeat the ordinary form of oath or affirmation, and the interpreter must interpret it to the deponent.

(ii) Form PROB35—Affidavit of Due Execution as follows:

**Form PROB35**

**AFFIDAVIT OF DUE EXECUTION**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [NAME OF DECEASED] (Deceased)**

---

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I am one of the subscribing witnesses to the last will and testament [and/or codicil] (“the document”) of [full name of will maker] late of [address and postcode] deceased (“the will maker”) [a copy of the document] dated [date] [being annexed and marked “A” / the document dated [date] being now produced to me and marked “A”].
- 2 The will maker executed the document on the above date [or on [date]] by [signing their name/making their mark] at the foot or end of the document [or as the case may be] as the same now appears on it in the presence of me and of [full name of other subscribing witness] the other subscribed witness to the document both of us being present at the same time and we then at the request of the will maker attested and subscribed the document in the will maker’s presence.

*If the deceased acknowledged their signature to the attesting witnesses, then for paragraph 2 above substitute:*

- 2 The will maker executed the document on [the above date / [date]] by acknowledging their signature, as the same now appears at the foot or end of the document [or as the case may be] to be their signature in the presence of me and of [full name of other subscribing witness], the other subscribed witness to it, both of us being present at the same time, by producing the document to us and pointing to their signature which was clearly visible and saying to us “Will you witness my signature to my will [or as the case may be]” and we then in compliance with their request attested and subscribed the document in the deceased’s presence.
- 3 Prior to the execution of the document by the will maker, [I read the document over to the will maker / the document was read over to the will maker by [full name of other subscribing witness] in my presence / the will maker read over the document in my presence / as the case may be] and the will maker at such time appeared thoroughly to understand the same and to have full knowledge of its contents.

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 If the deponent was present when the will was executed but was not a subscribing witness, then use the following Form PROB36.
- 2 If evidence is required to show whether an unauthenticated alteration was present at the time the will was executed, then the following paragraph may be added or substituted (as the case may require):
 

Having observed the alteration made to the document by the interlineation of the words [*describe exact location of where the words appear on the will*] on the document [*or as the case may be*] I am able to say that those words were written and made in the document prior [*or subsequent*] to its execution [*or that I am unable to say whether those words were written and made prior or subsequently to the execution of the document.*]
- 3 If the deponent is unable to depose to the testator’s knowledge of the contents of the will or codicil, the affidavit should be modified to explain the circumstance in which the will or codicil was executed.



(jj) Form PROB36—Affidavit of Due Execution—Deponent Present when Will Executed as follows:

**Form PROB36**

**AFFIDAVIT OF DUE EXECUTION  
-DEPONENT PRESENT WHEN WILL EXECUTED**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I was present at the time of the execution of the last will and testament [and/or codicil] (“the document”) of [name of will maker] late of [address and postcode] deceased (“the will maker”) [a copy of the document] dated [date] [being annexed and marked “A” / the document dated [date] being now produced to me and marked “A”].
- 2 The will maker executed the document on the above date [or on [date]] by [signing their name/making their mark] at the foot or end of the document [or on the first and second pages at the foot and on the last page at the end of the document or as the case may be] as the same now appears on the document in the presence of me and of [full names of both subscribing witnesses as described on the will] the subscribed witnesses to the document (“the subscribed witnesses”) all of us being present at the same time and the subscribed witnesses then [if such be the case—at the request of the deceased] attested and subscribed the document in the will maker’s presence and in my presence.
- 3 Prior to the execution of the document by the will maker, [I read the document over to the will maker / the document was read over the will maker by [full name of subscribing witness] in our presence / the will maker read over the document in our presence / as the case may be] and the will maker at such time appeared to thoroughly understand the same and to have full knowledge of its contents.

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 If evidence is required to show whether an unauthenticated alteration was present at the time the will was executed, then the following paragraph may be added or substituted as the case may require:

Having observed the alteration made to the document by the interlineation of the words [*describe exact location of where the words appear on the will*] of the document [*or as the case may be*] I am able to say that those words were written and made in the document prior [*or subsequent*] to its execution [*or that I am unable to say whether those words were written and made prior or subsequently to the execution of the document.*]

- 2 If the deponent is unable to depose to the testator's knowledge of the contents of the will or codicil, the affidavit should be modified to explain the circumstance in which the will or codicil was executed.

(kk) Form PROB37—Affidavit Where No Affidavit of Due Execution Can Be Obtained as follows:

**Form PROB37**

**AFFIDAVIT WHERE NO AFFIDAVIT OF DUE EXECUTION CAN BE OBTAINED**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

1. [I / We], the applicant[s] for a grant of [probate / administration] in the estate of [name of deceased person] late of [address and postcode] deceased (“the deceased”) [a copy of the document] dated [date] [being annexed and marked “A” / the document dated [date] being now produced to me and marked “A”]
2. [If applicable] A grant application in the estate of [name of deceased person] deceased was lodged by [me / us] in the capacity stated in that application.
3. [Indication that evidence of due execution of the document is not available and why (e.g. both subscribing witnesses have since passed away / cannot be identified / found)].
4. [Identify the will and signature and handwriting (if applicable) of the testator].
5. [Confirm marital status or relationship status of deceased as at date of death—married / widowed / divorced / registered relationship under Relationships Register Act 2016 (SA) / domestic partner under Family Relationships Act 1975 (SA)]
6. [Recite who would be entitled in distribution under Part 5 of the Succession Act 2023 (SA) had the deceased died intestate].
7. [Confirm if the distribution of the estate would be the same if the document were not admitted].

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Note**

- 1 See rule 356.6(4) and rule 356.6(5) of Chapter 25 of the *Uniform Civil Rules 2020*.

- (II) Form PROB38—Court or Other Order In Place When the Will was Executed—Affidavit From Public Trustee Officer as follows:

**Form PROB38****COURT OR OTHER ORDER IN PLACE WHEN THE WILL WAS EXECUTED—AFFIDAVIT FROM PUBLIC TRUSTEE OFFICER**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

In the Estate of **[NAME OF DECEASED]** (Deceased)

---

I, *[full name]*, *[address and postcode]* and *[occupation of deponent]*, *[swear on oath / do truly and solemnly affirm]* that:

1. I am a *[position at Public Trustee]* of *[address of Public Trustee]*.
2. I am one of the subscribing witnesses to the last will and testament *[and / or codicil]* (“the document”) of *[name of deceased person]* late of *[address and postcode]* deceased (“the deceased”) a copy of the document dated *[date]* now annexed and marked “A”.
3. Public Trustee has been appointed *[the full]* Administrator of the affairs of the deceased pursuant to an Order of the *[Guardianship Board / South Australian Civil and Administrative Tribunal / Supreme Court]* number *[file number]* and that Order remains in force. A copy of the initial Order dated *[date]* *[and the subsequent orders of reviews dated [date] and [date] etc]* is annexed and marked “B”.
4. At the date of the delegation of authority dated *[date]* made by *[name of person holding the office of the Public Trustee]* (“the delegation”) and at the date of the will I was employed in the office of the Public Trustee and a person occupying the position of *[title of position]*. At the time of execution of the document I was duly authorised by the delegation to be present at and consent to the making and execution of a will by a protected person on behalf of the Public Trustee.
5. The delegation was made pursuant to section 8 of the *Public Trustee Act 1995* (SA) and remains in force. A photocopy of the delegation is annexed and marked “C”.
6. I caused the document to be prepared in accordance with instructions given to me by the deceased.
7. Prior to the execution of the document the deceased handed me a letter from Doctor *[name of doctor]* stating that they considered the deceased *[was medically competent and]* had the testamentary capacity to make a will on *[date]*. A copy of that letter is annexed and marked “D”.

- 8. The deceased executed the document on *[date]* by *[signing their name/making their mark]* at the foot or end of the document *[or as the case may be]* as the same now appears on it in the presence of me and of *[name of other subscribing witness]*, the other subscribed witness to the document both of us being present at the same time, and we then at the request of the deceased attested and subscribed the document in the presence of the deceased.
- 9. Prior to the execution of the document by the deceased *[I read the document over to them / the document was read over to them by [name of other subscribing witness], in my presence / the deceased read over the document in my presence / or as the case may be]* and the deceased at such time appeared thoroughly to understand the same and to have full knowledge of its contents.
- 10. On behalf of the Public Trustee, I consented to the making of the document.
- 11. Having perused Public Trustee’s Will Instruction Form and other records I provide evidence that I complied with the terms of the *[Guardianship Board Order / SACAT order / Court order]* and a copy of the documentation evidencing that compliance is annexed and marked “E”.

*[Sworn / Affirmed]* by the abovenamed deponent at *[place and postcode]* on *[date]*.

.....  
*[signature of deponent]*

before me

.....  
*[signature of authorised witness]*  
*[print name of witness]*  
*[print title of authorised witness]*  
*[ID number of witness]*

**Note**

- 1 Remember to attach copies of the document referred as being annexed marked with the correct identifier and that the identifiers are sequential.

**Modifications of Form PROB38****(a) Where delegated Public Trustee officer no longer an employee of Public Trustee**

[Heading]

I, [full name], [address and postcode] and [occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I was employed in the office of the Public Trustee as a [position at Public Trustee] from [date] until [date] and am familiar with the requirement to formally execute a will.
- 2 I am one of the subscribing witnesses to the last will and testament [and/or codicil] (“the document”) of [name of deceased person] late of [address and postcode] deceased (“the deceased”) a copy of the document dated [date] now annexed and marked “A”.
- 3 As I am no longer employed in the office of Public Trustee I do not have access to its will preparation files however my practice in relation to making a will for a person subject to an Order of the [Guardianship Board / South Australian Civil and Administrative Tribunal / Supreme Court] that restricts the making of testamentary dispositions except in the presence of and with the consent of the Public Trustee (‘the Order’) was as follows:—
  - 3.1 I would have prepared the document in accordance with instructions given to me by the deceased.
  - 3.2 I would have satisfied myself that I was duly authorised by delegation to be present at and consent to the making and execution of a will by a protected person on behalf of the Public Trustee.
  - 3.3 Prior to the execution of the document I would have requested the deceased to hand to me a letter from a medical practitioner stating that the deceased had the testamentary capacity to make a will. I understand that letter should be held on the Public Trustee’s will preparation file.
  - 3.4 Prior to the execution of the document by the deceased the document would have been read over and explained to the deceased by me and I would have been satisfied that the deceased appeared thoroughly to understand the same and to have full knowledge of its contents. If I was not satisfied that the deceased understood and approved the document I would not have signed the will as a witness.
  - 3.5 The deceased would have then executed the document on the date of the document by [signing their name / making their mark] at the end of the document as the same now appears in the presence of me and of [name of other subscribing witness] the other subscribed witness to the document, both of us being present at the same time and we then at the request of the deceased would attest and subscribe the document in the deceased’s presence.

- 3.6 Following the execution of the document I would have completed the necessary documentation required by Public Trustee to ensure I complied with the terms of the Order. That documentation should be held on the Public Trustee's will preparation file.
- 4 On behalf of the Public Trustee, I consented to the making of the document.
- 5 I have no reason to doubt that I varied from my usual practice as described above before witnessing the document.

**(b) Where Public Trustee officer not available or unwilling to provide an affidavit and Public Trustee Estates Manager provides evidence**

[Heading]

I, [full name], [address and postcode] and [occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I am the [position at Public Trustee] in the office of the Public Trustee of 211 Victoria Square Adelaide 5000 and I am duly authorised to make this affidavit on behalf of the Public Trustee.
- 2 [Name of deceased] late of [address and postcode] deceased ("the deceased") and having duly made their last will and testament [and / or codicil] ("the document") a copy of the document dated [date] is annexed and marked "A".
- 3 [Name of the subscribing witnesses and their occupation at Public Trustee (if employed by Public Trustee)] were the subscribing witnesses to the document. [Indicate which subscribing witness prepared the document (if applicable) and how long they had been employed at Public Trustee (if known)].
- 4 [Set out facts why the officer who consented on behalf of the Public Trustee is unable or unwilling, to provide this affidavit].
- 5 Public Trustee has been appointed [the full] Administrator of the affairs of the deceased pursuant to an Order of the [Guardianship Board / South Australian Civil and Administrative Tribunal / Supreme Court] number [insert file number] and that Order remains in force. A copy of the initial Order dated [date] [and the subsequent orders of review dated [date] and [date] etc] are annexed and marked ["next identification letter e.g. "B", "C" etc"].
- 6 At the date of the delegation of authority dated [date] made by [name of person holding the office of Public Trustee] ("the delegation") and at the date of the will [name of Public Trustee officer] was employed in the office of Public Trustee and a person occupying the position of [position classification]. At the time of execution of the document [name of Public Trustee officer] was duly authorised by the delegation to be present at and consent to the making and execution of a will by a protected person on behalf of Public Trustee.

- 7 The delegation was made pursuant to section 8 of the *Public Trustee Act 1995* (SA) and remains in force. A photocopy of the delegation is annexed and marked [*“next identification letter e.g. “B”, “C” etc”*].
- 8 It appears the document was prepared in accordance with the instructions provided by the deceased and duly executed.
- 9 A letter from Doctor [*name of doctor*] stating that [*they*] considered the deceased was medically competent and had the testamentary capacity to make a will on [*date of Doctor’s letter*] is held on the will preparation file. A copy of that letter is annexed and marked [*“next identification letter e.g. “B”, “C” etc”*].
- 10 Having perused Public Trustee’s Will Instruction Form and other records it appears that [*Name of Public Trustee officer*] complied with the terms of the Order and a copy of the documentation evidencing that compliance is annexed and marked [*“next identification letter e.g. “D”, “E” etc”*].



(mm) Form PROB39—Affidavit of Plight and Condition and Finding as follows:

**Form PROB39**

**AFFIDAVIT OF PLIGHT AND  
CONDITION AND FINDING**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 I am [the executor / one of the executors as described in the will / or as the case may be] named in the last will and testament (“the document”) of [name of deceased] late of [address and postcode] deceased, the document bearing date [date], being now produced to me and marked “A”,
- 2 Having viewed and perused the document and particularly observed [here recite:
  - 1. the various obliterations, interlineations, erasures, and alterations (if any) or describe the plight and condition of the document or
  - 2. any other matters required to be accounted for [e.g. pin holes, glider clip or bulldog clip mark, perforations, etc], and describe the finding of the document in its present state, and, if possible, trace the document from the possession of the deceased up to the time of making the affidavit].
- 3 The document is now in all respects in the same state, plight and condition as when [found by me / provided to me] [or as the case may be] save and except as aforesaid.

[Sworn/Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 The original testamentary document should be made an exhibit to this affidavit as the plight and condition may not be evident on a photocopy of the testamentary document.
- 2 If the present state of the document cannot be accounted for, evidence of thorough (unsuccessful) searches for other testamentary papers must be provided.

(nn) Form PROB40—Affidavit as To Alias—Will as follows:

**Form PROB40**

**AFFIDAVIT AS TO ALIAS—WILL**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED AS DESCRIBED IN THE HEADING OF THE WILL] otherwise [OTHER NAME OF DECEASED AS JUSTIFIED] (Deceased)**

---

I, [full name, address and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Name of deceased as described in the heading of the will] otherwise [other name of the deceased as justified] late of [address] deceased (“the deceased”) died at [suburb] [postcode] on [date] having made and duly executed their last will and testament dated [date] (“the will”) of which I was appointed [the executor / one of the executors / or as the case may be].
- 2 The deceased is described in the heading to the will as [name of deceased as described in the heading of the will].

**OPTION 1**

*[If the deceased’s name is misspelt, imperfect, or incomplete in the heading of the will]*

- 3 *Establish the true and correct name of the deceased. For example:*

The name of the deceased that is recorded on their birth certificate was [full name published on the birth certificate of the deceased] a true copy of the Birth Certificate of the deceased is annexed and marked “A” (or as the case may be).]

The name of the deceased recorded on their current passport was [full name of the deceased published on the passport] a true copy of the passport of the deceased is annexed and marked “B” (or as the case may be).]

- 4 In the aforesaid circumstances it is requested that the grant of probate of the will of the deceased issue in the names of [full name of deceased as described in the heading of the will] otherwise [full name of deceased as justified above] deceased.

**OPTION 2**

*[If an otherwise name is required to administer the estate of the deceased]*

3 *Establish an asset being held by the deceased in another name. For example:*

The deceased is registered in the name of *[full name as published on the Certificate of Title]* as the proprietor of an estate in fee simple in the whole of the land *(or as the case may be)* comprised in Certificate of Title Register Book Volume *[number]* Folio *[number]*. A true copy of the Certificate of Title is annexed and marked "A" *(or as the case may be)*.

At the date of death of the deceased the amount of *[\$insert amount]* was standing in credit in account number *[number]* at *[name of bank]* in the name of *[full name as described on the bank statement or provided by the bank]*, a true copy of a letter from the bank is annexed and marked "B" *(or as the case may be)*.

4 In the aforesaid circumstances it is requested the grant of probate of the will of the deceased issue in the names of *[full name of deceased as described in the heading of the will]* otherwise *[full name of deceased as justified above]* deceased.

*[Sworn / Affirmed]* by the abovenamed deponent at *[place and postcode]* on *[date]*.

.....  
*[signature of deponent]*

before me

.....  
*[signature of authorised witness]*  
*[print name of witness]*  
*[print title of authorised witness]*  
*[ID number of witness]*

**Note**

1 If the circumstances require correction of the name of the deceased and disclosure of an asset in a different name to the full true name of the deceased, then the affidavit will require the depositions contained in both Option 1 and Option 2 to be included in the affidavit.

(oo) Form PROB41—Affidavit as To Alias—Intestacy as follows:

**Form PROB41**

**AFFIDAVIT AS TO ALIAS—INTESTACY**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] otherwise [OTHER NAME OF DECEASED AS JUSTIFIED] (Deceased)**

I, [full name, address and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

1 I am the intended administrator of the estate of [full name of deceased] otherwise [other name as justified] late of [address] deceased (“the deceased”) who died at [suburb] [postcode] on [date] intestate.

[Here set out the details of the asset held by the deceased in another name that justifies the alias. For example]

2 The deceased is registered in the name of [full name as published on the Certificate of Title] as the proprietor of an estate in fee simple in the whole of the land (or as the case may be) comprised in Certificate of Title Register Book Volume [number] Folio [number]. A true copy of the Certificate of Title is annexed and marked “A” (or as the case may be).

At the date of death of the deceased the amount of [\$insert amount] was standing in credit in account number [number] at [name of bank] in the name of [full name as described on the bank statement or provided by the bank], a true copy of a letter from the bank is annexed and marked “B” (or as the case may be).

3 In order to deal with the above asset it is requested the grant of administration issue in the names of [full name of deceased as disclosed on the Electronic System] otherwise [other name as justified above] deceased.

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

(pp) Form PROB42—Affidavit of Identity—Name Changed Since Will as follows:

**Form PROB42**

**AFFIDAVIT OF IDENTITY  
– NAME CHANGED SINCE WILL**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [Full current name of deponent], (formerly called [former full name]), of [address and postcode], [swear on oath / do truly and solemnly affirm] that:

- 1 [Name of deceased] late of [address and postcode] deceased (“the deceased”) died at [suburb] [postcode] on [date] having made and duly executed their last will dated [date] (“the will”) wherein I was named as an executor.
- 2 At the date of the will my name was [name of deponent at the date of the will].
- 3 On [date] I [married [name of spouse] / divorced [name of former spouse]] and thereafter have [assumed / reverted to] the name [full current name of deponent]. Annexed and marked “A” is a true copy of my [marriage / divorce] certificate.

OR

- 3 I have since formally changed my name to [full current name of deponent]. Annexed and marked “A” is a true copy of my change of name certificate.

OR

- 3 I have since changed my name and am known by custom and repute as [full current name of deponent].
- 4 I am the same person referred to in the will as [name of deponent appearing in the will of the deceased].

[Sworn / Affirmed] by [full name of deponent] at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

(qq) Form PROB43—Affidavit of Identity—Name in Will Incorrect as follows:

**Form PROB43**

**AFFIDAVIT OF IDENTITY  
—NAME IN WILL INCORRECT**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Name of deceased] late of [address and postcode] deceased (“the deceased”) died at [suburb] [postcode] on [date] having made and duly executed their last will dated [date] (“the will”) wherein I was named as an executor.
- 2 At the date of the will my name was [name of deponent at date of the will].
- 3 The will incorrectly refers to me as [name of deponent as appearing in the will of the deceased].
- 4 [If applicable] I am [describe relationship to the deceased]. The deceased had no [relationship to the deceased] called [name referred to in the will].
- 5 I am the same person referred to in the will as [name referred to in the will].

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

(rr) Form PROB44—Affidavit Verifying the Translation of a Testamentary Document or Other Document as follows:

**Form PROB44**

**AFFIDAVIT VERIFYING THE TRANSLATION OF A  
TESTAMENTARY DOCUMENT OR OTHER DOCUMENT**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF THE DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of translator], [swear on oath / do truly and solemnly affirm] that:

- 1 I am well acquainted with the [Italian / or as the case may be] and English languages and have had experience in the translation of documents from [Italian] into English.
- 2 [Provide details of any formal qualifications as translator].
- 3 A certified copy of the last will and testament of [full name of deceased] in the [Italian / or as the case may be] language is annexed and marked "A".
- 4 Annexed and marked "B" is my true and faithful translation of the will marked "A" annexed to this affidavit.

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

(ss) Form PROB45—Affidavit to Withdraw Will Deposited with Renunciation as follows:

**Form PROB45**

**AFFIDAVIT TO WITHDRAW WILL DEPOSITED WITH  
RENUNCIATION**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF DECEASED] (Deceased)**

I, [full name, address, postcode and occupation of deponent], [swear on oath / do truly and solemnly affirm] that:

- 1 [Full name of deceased] late of [address and postcode] deceased (“the deceased”) died at [suburb] [postcode] on [date] having made and duly executed their last will dated [date] (“the will”) wherein [full name of executor as described in the will of the deceased] was named as executor [and the residuary beneficiary in trust (or as the case may be)].
- 2 [Full name of executor as described in the deceased’s will] by renunciation filed in this Court on [date] renounced probate [and letters of administration (with the will annexed) of the estate of the deceased].
- 3 I am the [relationship to deceased] of the deceased [or as the case may be] and the [substituted executor / residuary beneficiary] [or as the case may be] named in the will.
- 4 The deceased died possessed of property in the State of South Australia.
- 5 I intend to make an application to this Court for a grant of [probate / letters of administration with the will annexed] of the estate of the deceased and I therefore request that the will which has been deposited in this Court be delivered out to [me / to my solicitor [name of solicitor] of [name of firm]].

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]



(tt) Form PROB46—Affidavit of Assets and Liabilities as follows:

**Form PROB46**

**AFFIDAVIT OF ASSETS AND LIABILITIES**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [NAME OF DECEASED] (Deceased)**

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 [I am / We are] the applicant[s] for a grant of representation in the estate of [name of deceased] late of [address and postcode] deceased.
- 2 To the best of [my / our] knowledge information and belief the statement annexed and marked "A" is a true and accurate statement of the assets and liabilities of the deceased wherever situated known to me [us] at the time of making this application.

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

**1 General**

- (a) If an application does not disclose an estate asset held by the deceased within South Australia, then the application will be rejected.
- (b) Jointly held assets are not to be included on the Statement of Assets and Liabilities ("the Statement").
- (c) The asset description must provide sufficient detail to allow the asset holder to release the asset. The asset description and value disclosed on the Statement is duplicated in the Registrar's Certificate.
- (d) Property held on trust by the deceased as trustee may be included in the Statement under the heading "Property held in trust by the deceased" but the value of such property must not be included in the value of the estate assets.

- (e) Accretions to the estate arising out of an asset existing at the date of death should not be disclosed—refer to section 71(9)(b) of the *Succession Act 2023* (SA).
- (f) Funeral expenses should not be included on the Statement as a liability—such expenses are not a liability of the deceased.

## 2 Assets

- (a) Assets of the deceased must be shown under the appropriate heading—“Assets within South Australia” or “Assets outside South Australia”.
- (b) If the deceased was not domiciled in Australia at date of death then disclosure is only required for assets and liabilities in Australia—refer to ss 71(5) and 71(6) of the *Succession Act 2023* (SA).
- (c) Disclosed assets should be listed and identified in the Statement under the headings below.

**Delete any asset heading that is not applicable to your application.**

## 3 Asset Headings

- (a) Real Estate
  - (i) Owned solely by deceased  
(Address, volume and folio number and Valuer General’s valuation or a licensed property valuer (including their name and qualification) as at date of death)
  - (ii) Owned as a tenant in common  
(Tenants-in-Common, address, volume and folio number, Valuer General’s valuation or a licensed property valuer (including their name and qualification) for the whole of the estate as at date of death, percentage of deceased’s share and value of deceased’s share)
- (b) Personal Estate
  - (i) Retirement village/care accommodation  
(Name of provider, location of accommodation and amount due at date of death)
  - (ii) Furniture household and personal effects  
(Address where items located and known or estimated total value of the above)
  - (iii) Motor vehicles and boats  
(Make, registration no., value as at date of death)
  - (iv) Cash in hand  
(Amount as at date of death)
  - (v) Bank or similar accounts  
(Name and location of bank, BSB, account no., and balance as at date of death)
  - (vi) Shares or similar investments  
(Name of company, number and class of shares, value as at date of death. Value of publicly listed share holdings to be provided by ASX (or similar publisher of share values). Value of unlisted and private company share holdings to be provided by an accountant (name, company name and date of valuation to be provided)  
  
If the private company share holdings is a corporate trustee only and not a company which trades in its own right, please include wording to the effect of “as a corporate trustee for [name of trust] trust”.)

## (vii) Interest in deceased estate

(Name and date of death of deceased person, name of trustee(s), nature of interest—the nature of the interest should be described as ‘a/one of specific or pecuniary or residuary legatee and/or devisee and/or in remainder’ (as the case may be) and the value as provided by the trustee)

## (viii) Superannuation (if payable to the estate)

(Name of fund, type of fund, unique identifier and balance as at date of death as provided by the trustee of the fund)

## (ix) If there is another asset type refer to Practice Note 3 of 2024

(Description of asset, unique identifier if applicable and value as at date of death)

e.g. Monies due under contract for sale

(Type of contract, date of contract, date of settlement, name of purchaser, description of property, volume and folio numbers and purchase price)

**Note:** A copy of the contract for the sale should be provided together with the notification on whether any special conditions to the contract have all been satisfied or otherwise.

**4 Liabilities**

The amount of each liability must be stated (with a brief description) or, if the amount is not known, an estimate of the amount must be stated.

**5 Balance of the estate**

State the balance at the end of the Statement as follows:

## Summary of Assets and Liabilities

Assets.....	\$
Liabilities.....	\$
Net Estate disclosed.....	\$

**5 Example**

The following is an example of the form in which the statement is to be prepared.

“A”  
STATEMENT OF ASSETS AND LIABILITIES  
of the estate of [full name of deceased] late of [address and postcode] deceased

	Estimated or known value (see Notes above and Practice Note 3 of 2024)
<i>Assets within South Australia</i>	\$
1. Real estate  Address—1 Gouger Street Adelaide SA 5000 Volume no. 1234 and folio no. 456 Valuer General's value	\$520,000.00
2. Furniture and household effects  Situated at 1 Gouger Street Adelaide SA 5000 Applicant's estimated value as at date of death	\$100.00
3. Motor Vehicle  Vehicle Make—2017 White Holden sedan Registration number—CEU 258 Applicant's estimated value as at date of death	\$12,000.00
4. Bank or similar account  Name of Bank and Branch—BankSA Ltd at West Lakes BSB—101 258 Account Number—478 529 634 Balance as at date of death	\$17,458.20
<i>Assets outside South Australia</i>	
1. Shares  Details of investment—Telstra Group Limited Shares Number of shares—100 Per share price (\$)—\$14.50 Value as at date of death per ASX	\$1,450.00
Total value of assets	<u>\$551,008.20</u>
<i>Liabilities</i>	
1. Mortgage  Memorandum of Mortgage No. 5879654 Registered over—1 Gouger Street Adelaide SA 5000 Volume no. 1234 and folio no. 456 Mortgagee name—BankSA Balance due	<u>\$245,000.00</u>
Total value of liabilities	\$245,000.00

	Estimated or known value (see <i>Notes above and Practice Note 3 of 2024</i> )
<i>Summary of Assets and Liabilities</i>	
Assets	
\$551,008.20	
Liabilities	
\$245,000.00	
Net Estate disclosed	
<u>\$306,008.20</u>	

(uu) Form PROB47—Affidavit of Assets and Liabilities—Supplementary Affidavit as follows:

**Form PROB47**

**AFFIDAVIT OF ASSETS AND LIABILITIES SUPPLEMENTARY  
AFFIDAVIT**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [NAME OF DECEASED] (Deceased)**

[I / We], [full name, address, postcode and occupation of deponent(s)], [swear on oath / do truly and solemnly affirm] that:

- 1 A grant of representation in the estate of [name of deceased] deceased was made by the Court to [me/us] on [recite the date the grant issued]
- 2 To the best of [my / our] knowledge information and belief the Statement annexed and marked "B" is a true and accurate disclosure of the assets and liabilities of the deceased not previously disclosed [and / or incorrectly described in the previous disclosure] to the Court.

[Sworn / Affirmed] by the abovenamed deponent at [place and postcode] on [date].

.....  
[signature of deponent]

before me

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

**Notes**

- 1 Unless otherwise directed, if a grant issued on the Electronic System and a further asset or inaccurately described asset or liability needs to be disclosed or corrected then that is done on the Electronic System in the same action in which the grant application was made.
- 2 If a paper grant issued before the commencement of the Electronic System (26 November 2018) and a further asset or liability needs to be disclosed or corrected then both an affidavit and Registrar’s Certificate (see Forms PROB47 and PROB48 ) are to be provided by email to an address nominated by the Registry on the CAA website or as otherwise directed by the Registrar.
- 3 List the additional or previously inaccurately disclosed assets and liabilities under the appropriate headings and subheadings with the detail and source of value as described in Form PROB47 and Practice Note 3 of 2024.
- 4 This disclosure must be made by the person(s) to whom the grant was made.

- 5 In the case of previous inaccurate asset disclosure, the inaccurately disclosed asset should be described first, followed by the correct description and value of that asset.
- 6 If the gross value of the estate changes as a result of an additional or inaccurately described asset, this may result in a further fee needing to be paid in accordance with the Prescribed filing fee rates.
- 7 Example of the form in which the state is to be prepared:

“B”

STATEMENT OF ADDITIONAL AND/OR INACCURATELY DESCRIBED ASSETS AND LIABILITIES  
of the estate of [*full name of deceased*] late of [*address and postcode*] deceased

	Estimated or known value (see Notes 3 & 5 above and Practice Note 3 of 2024)
<i>Assets within South Australia</i>	\$
1. Real estate	
<p><b>Inaccurate disclosure</b> Address—1 Gouger Street Adelaide SA 5000 Volume no. 1234 and folio no. 456 Valuer General’s value</p> <p style="text-align: right;">\$520,000.00</p>	
<p><b>Accurately described asset</b> Address—1 Gouger Street Adelaide SA 5000 Volume no. 1234 and folio no. <u>111</u> Valuer General’s value</p> <p style="text-align: right;">\$520,000.00</p>	
<i>Assets outside South Australia</i>	
2. Shares	
<p><b>Additional disclosure</b></p> <p>Details of investment—<i>BHP Limited shares</i></p> <p>Number of shares—200</p> <p>Per share price (\$)—\$3.45</p> <p>Value as at date of death per ASX</p> <p style="text-align: right;">\$690.00</p>	
<p><i>Summary of Assets and Liabilities</i></p> <p>Net estate previously disclosed \$306,008.20</p> <p>New Total Net Estate disclosed <u>\$306,698.20</u></p>	

(vv) Form PROB48—Registrar’s Certificate of Disclosure as follows:

**Form PROB48**

**REGISTRAR’S CERTIFICATE OF DISCLOSURE**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**Action No:**

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**The Estate of [name of deceased]:**

**Last residential address:**

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I certify that the asset described hereunder in the name of the above deceased has been disclosed to the Court in compliance with section 71 of the *Succession Act 2023 (SA)*.

Particulars of Asset:

Value of Asset:

[Describe the asset exactly as it has been accurately disclosed in the amended Statement of Assets and Liabilities on CourtSA]

**Registrar of Probates**

**Notes**

- 1 The Court will not issue a Registrar’s Certificate for an asset of a deceased person who died before 1 July 1987 (refer to the commencement date of section 121A of the *Administration and Probate Act 1919 (SA)*).
- 2 section 72 of the *Succession Act 2023 (SA)* obliges a person who deals with an asset of the estate of a deceased person that is required to be disclosed under section 71 to satisfy themselves by examination of the grant or of the Registrar’s certificate, or on the basis of some other reliable evidence, that the asset has in fact been so disclosed to the Court.
- 3 A Registrar’s Certificate for disclosure of an asset will issue in exactly the same terms as the disclosure that has been made on the Electronic System under rule 356.17 of Chapter 25 of the *Uniform Civil Rules 2020*.
- 4 Certificates do not have backsheets.

**The Court makes no representations express or implied as to the descriptions and values ascribed to any asset or as to the mathematical accuracy of the disclosure.**



(ww) Form PROB49—General and Enduring Power of Attorney as follows:

**Form PROB49**

**GENERAL AND ENDURING  
POWER OF ATTORNEY**

**THIS GENERAL AND ENDURING POWER OF ATTORNEY** is made pursuant to sections 5 and 6 of the *Powers of Attorney and Agency Act 1984* (SA), this [full date] by [**FULL NAME OF DONOR**] of [address, postcode and occupation]

- 1. **I APPOINT** [relationship if any] [full name of donee] of [address, postcode and occupation] to be my Attorney (“my Attorney”).
- 2. **I AUTHORISE** my Attorney, subject to clause 4, to do on my behalf anything that I can lawfully do by an Attorney and for the specific purpose of applying for and obtaining from the Supreme Court of South Australia a grant of administration [with the will dated [insert date of will] or without will] of the estate of [full name of deceased] late of [address and postcode] deceased (“the deceased”) for my use and benefit and until further representation be granted.
- 3. I further authorise my Attorney to undertake the administration of the estate of the deceased, once the said grant is obtained from the Court and until further representation be granted. [*Delete this clause 3 if not required and renumber subsequent paragraphs*]
- 4. The authority of my Attorney is subject to the following conditions, limitations or exclusions:  
  
[Insert such conditions, limitations or exclusions as required. If none, insert “NIL”]
- 5. The authority of my Attorney is exercisable from the date on the attached Form of Acceptance and shall remain effective notwithstanding my subsequent legal incapacity.

**EXECUTED AS A DEED**

**SIGNED AS A DEED** by the said [full name of donor] at [suburb and postcode] )  
 ) .....

in the presence of

.....  
[signature of authorised witness]  
[print name of witness]  
[print title of authorised witness]  
[ID number of witness]

## FORM OF ACCEPTANCE

I, **[FULL NAME OF DONEE]** of [address and postcode], the person appointed to be the donee of the power of attorney created by the instrument on which this acceptance is annexed **ACCEPT** the appointment and acknowledge:

- (a) that the power of attorney is an enduring power of attorney and as such may be exercised by me from the date of my acceptance and shall remain effective notwithstanding any subsequent legal incapacity of the donor; and
- (b) that I will, by accepting this power of attorney, be subject to the requirements of the *Powers of Attorney and Agency Act 1984* (SA).

Signed:

.....  
**[FULL NAME OF DONEE]**

Dated: [Date]

### Notes

- 1 This Form is not mandatory, but it must be at least an enduring power of attorney and must contain words to the effect of the specific purpose referred to in clause 2 of this Form. The Attorney can only perform functions of the donor as a personal representative when those functions are specifically provided for in an enduring power of attorney—see *Re Estate of Dudley (deceased) [2003] 115 SASR 328*; and section 5(4) of the *Powers of Attorney and Agency Act 1984* (SA).
- 2 The donee of the power of attorney must be within South Australia (see section 64 the *Succession Act 2023* (SA)).
- 3 When the person so entitled is an executor, administration will not be granted to the person's attorney without notice to the other executors, if any, unless the Court otherwise orders—rule 356.22(2) of Chapter 25 of the *Uniform Civil Rules 2020*.
- 4 **If more than one donee is to be appointed then:**
  - 4.1 Paragraph 1 of the power of attorney should specify the nature of the appointment between the donees (e.g. jointly / jointly and severally / severally) and
  - 4.2 An additional Form of Acceptance needs to be included for each additional donee and
  - 4.3 Consideration is to be given to the content in the body of the power of attorney to change singular into plural and in clause 5 of the power of attorney, to identify the correct date on which the power of attorney becomes operative.
- 5 The original power of attorney must be lodged in the Probate Registry with the application for the grant (see rule 356.22(4) of Chapter 25 of the *Uniform Civil Rules 2020*).

(xx) Form PROB50—Certificate of Execution—section 45 of the *Succession Act 2023* and rule 352.5(3) as follows:

**Form PROB50**

**CERTIFICATE OF EXECUTION—SECTION 45 OF THE  
SUCCESSION ACT 2023 (SA) AND RULE 352.5(3)**

SUPREME COURT OF SOUTH AUSTRALIA  
TESTAMENTARY CAUSES JURISDICTION

**In the Estate of [FULL NAME OF TESTATOR]**

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I, [full name of attesting witness], [address, postcode and occupation], certify that will dated [date] [and/or codicil dated [date]] was on [date] duly executed by [full name of testator] of [address and postcode] as [their last will / a codicil to their last will] in the presence of [full name of other attesting witness] of [address and postcode] and of myself and that the said [full name of other attesting witness] and myself were both present at the same time when [full name of testator] executed the same and that we at the request of and in the presence of [full name of testator] and in the presence of each other thereupon subscribed our names as witnesses.

Dated [date].

.....  
[signature of attesting witness]  
[print name of witness]  
[print authority of attesting witness]

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**All instruments appearing in this gazette are to be considered official, and obeyed as such**