

South Australian Civil and Administrative Tribunal Rules 2014

The South Australian Civil and Administrative Tribunal Rules 2014 which came into operation on 1 September 2014 (*Government Gazette* 14 August 2014, p.4025) have been varied by South Australian Civil and Administrative Tribunal rules dated:

Amendment Number	Date made:	<i>Gazette</i>	Date of operation
1	19 February 2015	12 March 2015 p 1087	29 March 2015 — (r 1-48(d), 48(e)(ii), 48(e)(vi)-(viii), r 50-57, r 63-102) 9 May 2015 — (r 48(e)(i), (iii)-(v), (ix)-(xii))
2	1 December 2016	8 December 2016 p 4899	11 December 2016
3	19 December 2017	19 December 2017 p 5269	19 December 2017
4	8 November 2018	8 November 2018 p 3945	8 November 2018

The President of the South Australian Civil and Administrative Tribunal makes the following Rules under the *South Australian Civil and Administrative Tribunal Act 2013*.

Disclaimer: This consolidation of the Rules of the Tribunal has been prepared by Tribunal staff but DOES NOT constitute an official publication of the Rules. For an official version, reference should be made to the Rules and subsequent amendments as gazetted.

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Part 1 Preliminary

1. Name of Rules

These rules are the South Australian Civil and Administrative Tribunal Rules 2014.

2. Commencement

These rules commence on 1 September 2014.

3. Philosophy

[rule 3 substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

a. The purpose of these Rules is to facilitate the achievement by the Tribunal of its main statutory objectives and:

- i. to ensure matters before the Tribunal are dealt with in a way that is independent, transparent, accessible, fair, just, economical and quick; and with as little formality and technicality as possible, and that does not involve unnecessary and burdensome requirements; and
- ii. to guide the Tribunal and parties to proceedings to resolve disputes fairly, consistently, economically and quickly, while allowing flexibility to cater for different needs of particular parties.

b. Accordingly, these Rules:

- i. provide for procedures that are the same for all proceedings, except if special procedures are required for a particular class of matters to ensure the proper conduct of the proceedings; and
- ii. are to be applied by the Tribunal with the objectives of achieving the Tribunal's main statutory objectives including by:
 1. encouraging the early and economical resolution of disputes before the Tribunal, including, if appropriate, through conferences, conciliation, mediation or other alternative dispute resolution processes; and
 2. conducting proceedings with as little formality and technicality as possible in a way that minimises costs to parties, and is as quick as is consistent with achieving justice; and
 3. recognising, and being responsive to, the diverse needs of persons who use the Tribunal; and
 4. recognising that strict compliance with a procedural requirement in these Rules may not always be necessary.

4. Proportionality and cost effectiveness

[rule 4 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

a. Tribunal proceedings must be conducted efficiently and in a manner proportionate to the matter in dispute. Proportionality means ensuring that legal costs and other costs

incurred in connection with a proceeding are reasonable and proportionate to the importance and complexity of the issues in dispute.

[sub-rule 4b amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- b. Any person, including a legal practitioner, representing a **person** in proceedings must use their best endeavours to facilitate the just, quick and cheap resolution of the real issues in proceedings before the Tribunal and, for that purpose, must participate in the processes of the Tribunal and comply with directions and orders of the Tribunal.

5. Interpretation

[rule 5 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[sub-rule 5aiv amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. In these Rules, unless the contrary intention appears:
- i. words used have the same meaning as words used in the SACAT Act or Regulations or, if applicable, a relevant Act;
 - ii. **ACN** means Australian Company Number under the *Corporations Act 2001* (Cth);
 - iii. **the SACAT Act** means the *South Australian Civil and Administrative Tribunal Act 2013*;
 - iv. **contact details** of a person means the person's address, telephone number, mobile number, facsimile number and email address (as far as each are known or relevant) that can be used by the Tribunal and other parties or persons to contact the person in relation to the proceedings (and in relation to an Australian company, includes the address of the registered office of the company);
 - v. **domestic partner** has the same meaning as in the *Family Relationships Act 1975*;
 - vi. **include**, in relation to an application or other document, includes "be accompanied by";
 - vii. **initiating application** means any document by which proceedings in the Tribunal's original or review jurisdictions are started by a person, or the Tribunal's jurisdiction is otherwise invoked, and includes a referral made to or claim brought before the Tribunal under a relevant Act;
 - viii. **the Regulations** means South Australian Civil and Administrative Tribunal Regulations 2015;
 - ix. **respondent**, for a proceeding started by an initiating application or an application for internal review or in any other manner, means a person or entity in relation to whom a decision of the Tribunal is sought by the applicant;
 - x. **response** means a respondent's answer to an initiating application or an application for internal review or any other application made to the Tribunal;

- b. A reference to a “sworn statement” in the Rules, Practice Directions or in any direction or order of the Tribunal means a statement in writing:
 - i. bearing the full name and address of the person making the statement and a confirmation that the statement has been sworn or affirmed before a justice of the peace or other person authorised at law to take an affidavit; and
 - ii. which is signed and dated on each page by the person making the statement and by the witness.
- c. To avoid doubt, the Rules applying to specific kinds of proceedings before the Tribunal or making provision for specific classes of applications or other documents or specific procedures are to be complied with in addition to Rules of general application.
- d. A reference in these Rules to any Act or statutory instrument means that Act or statutory instrument as amended or substituted from time to time and includes any instrument made under it or the substituted Act or statutory instrument.
- e. The Rules are to be read as subject to the SACAT Act and Regulations and to any applicable provision of a relevant Act or regulations made under a relevant Act.

5A. Tribunal opening hours

[rule 5A inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

The opening hours of the Tribunal are from 9:00am to 5:00pm each day except on Saturdays, Sundays and Public Holidays.

6. When application is commenced

[rule 6 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[rule 6 amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. Subject to this Rule, an application is commenced on whichever is the later of:
 - i. the date and time that the application is **received by** the Tribunal; and
 - ii. if a fee is required to be paid under the Regulations in respect of the application, the date and time that the fee is **received**, or the fee is waived or postponed under the Regulations.
- b. If payment of the fee is postponed under the Regulations but the fee is not **received** by the postponed date, the application is taken not to have been made or lodged.

[sub-rule 6c inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- c. **For the purposes of this Rule, an application is taken to be received:**
 - i. **if received electronically within the Tribunal’s opening hours, on the day the form, email, facsimile or other thing arrives electronically at the Tribunal;**
 - ii. **if received electronically outside of the Tribunal’s opening hours, on the next business day after the form, email, facsimile or other thing arrives electronically at the Tribunal;**
 - iii. **if received by post or document exchange, on the day on which it arrives at the Tribunal’s premises;**

- iv. if received by a staff member at a Tribunal Registry, on the day it is given to that staff member.

7. Relief from time limits and dispensation from Rules

[rule 7 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. The Tribunal may, on application or on its own initiative:
 - i. under section 66 of the SACAT Act, extend or abridge a time limit for doing anything in connection with any proceedings, or for the commencement of any proceedings, even though the limit is imposed under the SACAT Act or any relevant Act; or
 - ii. vary any requirement of these Rules, including extend or abridge any time limit provided in these Rules for doing anything in relation to any proceedings; or
 - iii. dispense with compliance by any person, or by the Tribunal, with any requirement of these Rules,

either before or after the occasion for compliance arises, and in doing so may impose any conditions or give any consequential or other directions as are appropriate.
- b. A registrar of the Tribunal is expressly authorised to constitute the Tribunal for the purposes of this Rule.

8. Seal of the Tribunal

[rule 8 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. The Tribunal will have and use as many seals and stamps as are required for the business of the Tribunal, including physical or electronic seals and stamps.
- b. The seal of the Tribunal will be applied to such documents as the President may direct.
- c. The Tribunal's seals and stamps will be in the form that the President approves and kept in the custody of the Registrar.

9. Practice Directions

[rule 9 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. The President may make any practice direction contemplated by these Rules or necessary for the regulation of proceedings in the Tribunal.
- b. Without limiting the generality of sub-rule (a) or of Rule 7(a), the President may make practice directions varying or dispensing with compliance by any person, or by the Tribunal, of any requirement of these Rules for a specified period and subject to any conditions the President considers appropriate.

Part 2 Organisation of Tribunal business into Streams

10. Streams

[rule 4 renumbered to rule 10 by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. The Tribunal is to exercise its functions in the following Streams:
 - i. the Administrative and Disciplinary Stream; and
 - ii. the Community Stream; and
 - iii. the Housing and Civil Stream
- b. Particular classes of matters may be allocated to a particular Stream (and may be allocated to a particular List within a Stream) as the President directs.

11. Executive Senior Member to head Stream

[rule 5 renumbered to rule 11 by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. A Senior Member of the Tribunal will be nominated in writing from time to time by the President to head a particular Stream or Streams and perform the executive and other functions in relation to the Stream or Streams directed by the President (and be known as an 'Executive Senior Member').
- b. The President may, in consultation with the Executive Senior Member heading a Stream, nominate a Member of the Tribunal to head a List within that Stream and to assist the Executive Senior Member in the performance of his or her functions.

Part 3 Lodging applications or other documents with the Tribunal

[Part 3 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

12. Giving documents to the Tribunal

[rule 12 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[sub-rule 12a amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. Subject to these Rules **and any direction or order of the Tribunal**, an application or other document may be given to the Tribunal:
 - i. **by submitting it via a Tribunal electronic form; or**
 - ii. **by sending it by email to the Tribunal Registry; or**
 - iii. **by sending it by facsimile to the Tribunal Registry; or**
 - iv. **by giving it to a Tribunal staff member at the Tribunal Registry; or**
 - v. **by sending it by post to the Tribunal Registry; or**
 - vi. **by sending it by document exchange to the Tribunal Registry; or**
 - vii. **by sending it via a form approved by a registrar.**

- b. A registrar may refuse to receive a document that is presented to the Tribunal for lodgement in paper or other physical form and may direct that the document be lodged with the Tribunal in a specified electronic form.

13. Urgent oral applications

[rule 13 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If permitted by a Member or registrar of the Tribunal, in urgent circumstances, a person may make an initiating application or an application for internal review orally or partly in writing and partly orally.
- b. In the case of a wholly or partly oral application, a Member or registrar of the Tribunal may require the applicant to give a notice to the Tribunal confirming the application in writing within a period specified by a Member or registrar of the Tribunal or confirm the application at the applicant's first appearance before the Tribunal in the proceedings.
- c. This Rule does not affect the ability of a person to make any other application orally during the course of proceedings.

14. Documents lodged electronically

[rule 14 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. Documents lodged electronically must (to the extent relevant) be:
 - i. if text or pictorial material:
 - 1. in a common software format which enables searching and copying and pasting of parts of text within the document (preferably MS Word, PDF or JPG); and
 - 2. when printed, is clear, legible and with text at least in 11 point font size; and
 - ii. if audio or video material, in a common software format (preferably WAV, MP3 or MP4) that, when played, is clear and audible.
- b. If an application is made electronically to the Tribunal, the Tribunal must send an electronic copy of the application back to the applicant in acknowledgement of the receipt of the application in a form that is printable by the applicant.

[sub-rule 14c deleted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

15. Registrar may receive documents

[rule 15 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

If a registrar considers it appropriate to do so, he or she may receive (including receive on conditions imposed by the registrar) any application or document for lodgement with the Tribunal even though it does not comply with these Rules.

16. Registrar may refuse to receive documents

[rule 16 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. Subject to these Rules, a registrar may refuse to receive any application or document if it does not comply with these Rules.
- b. A registrar must refuse to receive an application or other document for lodgement with the Tribunal if:
 - i. it is not reasonably legible; or
 - ii. the relevant prescribed fee has not been paid and payment of the fee has not been waived or postponed under the Regulations; or
 - iii. it does not comply with the SACAT Act, the Regulations or a relevant Act; or
 - iv. the registrar is the principal registrar of the Tribunal and he or she considers that the application or document is self-evidently an abuse of the Tribunal's process or scandalous, frivolous or vexatious or that, if an application, the application is self-evidently not within the jurisdiction of the Tribunal; or
 - v. it is an application that is beyond the jurisdiction of the Tribunal and a Senior Member or Presidential Member of the Tribunal has directed the registrar to refuse or reject the application; or
 - vi. the application or document is an abuse of the Tribunal's process or scandalous, frivolous or vexatious and a Senior Member or Presidential Member of the Tribunal has directed the registrar to refuse or reject the application or document.
- c. A registrar or Member of the Tribunal may hold any hearings or give any directions that may be necessary under this Rule.
- d. The Tribunal may dismiss any application that has been commenced by means of a document that is rejected under this Rule but the dismissal of an application under this Rule does not prevent the applicant from re-commencing proceedings by lodging another application that complies with the requirements of these Rules and any other applicable legislation.

17. Permission required to rely on documents in certain circumstances

[rule 17 deleted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

[rule 17 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. Subject to these Rules and any direction or order of the Tribunal, if a document is not given to the Tribunal at least 2 clear business days before a hearing in the matter, permission needs to be granted by the Tribunal before the person giving the document can rely on it at that hearing.
- b. Permission may be given orally or in writing.
- c. A reference in this Rule to a "hearing" includes a reference to a directions hearing or conference.

Part 4 General Rules for applications and responses

[Part 4 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

18. Documents

[rule 18 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

All documents given to the Tribunal must:

- a. be in English or, if not in English, be accompanied by a translation of the document into English either prepared by an accredited professional translator or as directed by a registrar; and

[sub-rule 18b amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- b. clearly identify the name of the **person** lodging the document or on whose behalf the document is lodged; and
- c. include the Tribunal's reference number for the proceedings if known; and
- d. be accompanied by any prescribed fee.

19. Applications and responses generally

[rule 19 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

All applications and responses relating to proceedings in the Tribunal must include:

- a. the name and contact details of each party lodging the document (including, if known, the ACN of any party that is an Australian company); and
- b. the name and contact details of:
 - i. any person who is to appear for or represent each party lodging the document and details of the nature of that person's relationship to the lodging party;
 - ii. the name of a recognised advocacy service from which representation will be sought by the lodging party; and
- c. whether the party will seek to put any or any further evidence to the Tribunal and, if so, the nature of that evidence and what is sought to be established by the evidence; and
- d. details of any known needs for an interpreter or assistance with a disability or special cultural, security or other needs required by a party or witness or other person proposing to attend the hearing; and
- e. any other specific additional information or requirements set out in the SACAT Act, the Regulations, a relevant Act, these Rules or required by a Member or registrar of the Tribunal for the particular type of application, response or other document (which may include that the reasons for any application must be contained in a sworn statement).

20. Initiating applications and applications for internal review

[rule 20 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. An initiating application in the Tribunal's original or review jurisdictions or an application for internal review of a decision of the Tribunal in the exercise of its original jurisdiction must also include:

- i. the date of birth of each applicant; and
 - ii. the name and contact details of each respondent to the proceedings (including, if known, the ACN of any party that is an Australian company); and
 - iii. the type of application being made and, if known, the legislation under which it is made; and
 - iv. the grounds or reasons for the application; and
 - v. the remedy sought, including the amount if it is a monetary claim.
- b. An initiating application in the Tribunal's review jurisdiction must also include:
- i. if the reviewable decision to which the application relates was given to the applicant in writing, a copy of the decision; or
 - ii. if the reviewable decision was not communicated to the applicant in writing after it was made, sufficient other information so that the Tribunal can identify the decision, the decision-maker and the legislation under which the decision was made.
- c. An application for internal review must also include details of the Tribunal's decision, or the relevant part of the Tribunal's decision, that is sought to be reviewed.

21. Responses to applications

[rule 21 deleted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]
 [rule 21 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. A respondent must, as soon as practicable after being given a copy of the relevant application, advise the Tribunal of:
- i. their full name and contact details, if different from the name and contact details given for the respondent on the application; and
 - ii. the full name and contact details of any person representing the respondent or the name of a recognised advocacy service from which representation will be sought by the lodging party; and
 - iii. details of any known needs for an interpreter or assistance with a disability or special cultural, security or other needs required by a party or witness or other person proposing to attend the hearing.
- b. Subject to these Rules and any direction or order of the Tribunal, a response to an initiating application or an application for internal review must include the respondent's answer to the application and must be given to the Tribunal as soon as practicable after being given a copy of the relevant application and, in any event, at least 2 clear business days before the next hearing in the matter.
- c. A reference in this Rule to a "hearing" includes a reference to a directions hearing or conference.

[rule 22 deleted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

22. *****

23. Changes to contact details and representation arrangements

[rule 23 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[rule 23 amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. A person whose contact details or representation arrangements change while the Tribunal is considering a matter must give the Tribunal a written notice setting out the new details as soon as practicable after the change and, in any event, at least 2 clear business days before the next hearing in the matter.
- b. A reference in this Rule to a “hearing” includes a reference to a directions hearing or conference.

24. Counter-applications and third-party applications

[rule 24 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If the Tribunal’s jurisdiction permits, a respondent to an initiating application may, in the response to the application or separately, make a counter-application to the Tribunal for a remedy against the applicant or against a person who is not a party to the proceedings (a “**third-party application**”).
- b. A respondent to an application for internal review who seeks to have the Tribunal’s original orders set aside or varied for reasons that differ from those of the applicant may, in the response to the application or separately, make a counter-application for internal review of the Tribunal’s decision.
- c. Any counter-application or third-party application must comply with the relevant Rules for applications and any response to a counter-application or third-party application must comply with the Rules for responses.
- d. Unless a prescribed fee is waived, remitted or postponed under the Regulations, a party is not relieved from any requirement to pay any prescribed fee applicable to the counter-application or third-party application.

25. Applications for summonses

[rule 25 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. An application for a summons in respect of proceedings before the Tribunal must also include:
 - i. the name and contact details of the person to be the subject of the summons; and
 - ii. whether the person is to be required to appear before the Tribunal at a specified time and place to give evidence or to produce evidentiary material (or both) and, in either case, when and where; and
 - iii. if the person is to be required to produce evidentiary material to the Tribunal, a description of that material; and

- iv. an explanation of the relevance to the proceedings of the evidence sought to be given or evidentiary material sought to be produced pursuant to the summons, or both as the case may be.
- b. A summons must not be addressed to more than one person.
- c. The person required to comply with the summons must be named as follows in the application for the summons:
 - i. If an individual, the individual's full name must be used where this is known to or reasonably ascertainable by the party who applied for the summons; or
 - ii. If a corporation, the corporation's full name (including for example "Ltd" or "Pty Ltd" as the case may be) must be stated followed by the words "by its proper officer"; and
 - iii. If the holder of a governmental office or position, the official description of the office or post held must be used; and
 - iv. If a government department or agency, the department's or agency's name must be stated followed by the words "by its proper officer".

26. Applications for joinder under section 54

[rule 26 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

An application for joinder under section 54 of the SACAT Act must also specify whether the relevant person is sought to be joined as an applicant or as a respondent to the proceedings.

27. Applications for the determination of costs payable

[rule 27 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

An application under these Rules to determine the costs payable to a party must also include:

- a. a schedule giving details of the date and nature of the work performed and costs claimed for that work; and
- b. a copy of receipts for, or other evidence of, claimable expenses incurred by that party in the proceedings.

28. Applications for confidentiality, suppression, etc.

[rule 28 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. An application for directions under section 60 of the SACAT Act must include, in a sworn statement, the reasons for the application and why the directions should be made.
- b. This Rule does not apply if Rule 45 applies.

29. Applications for correction of mistakes under section 84

[rule 29 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. An application under section 84 of the SACAT Act for the Tribunal to correct a decision or a statement of reasons must be given to the Tribunal within 21 days of the applicant receiving notice of the decision or the statement and must also include:
 - i. details of the relevant proceedings, decision or statement of reasons; and
 - ii. details of the claimed mistake, error or defect.
- b. The Tribunal may determine its own procedures for dealing with those applications, including whether it should hear from any of the parties.

30. Applications for reviews of decisions under section 85

[rule 30 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[sub-rule 30a amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 3)]

- a. An application under section 85 of the SACAT Act made by a person in respect of whom the Tribunal has made a decision when the person was absent and not represented at the hearing must be given to the Tribunal within 7 days of the Tribunal's decision and must include:
 - i. details of the relevant proceedings and decision; and
 - ii. when and how the applicant became aware of the Tribunal's decision; and
 - iii. the applicant's reasons for not appearing or being represented at the relevant hearing.
- b. A person may only make one application under section 85 in respect of the same matter without the permission of the Tribunal.

31. Applications for inspection of or copy of recording of Tribunal proceedings or transcript

[rule 31 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. An application:
 - i. under section 90(1)(b) of the SACAT Act for inspection, or for a copy, of a transcript of evidence taken by the Tribunal in any proceedings; and
 - ii. under section 90(1)(c) of the SACAT Act for inspection, or for a copy, of any documentary material admitted into evidence in any proceedings; and
 - iii. under section 90(2) of the SACAT Act for inspection, or for a copy, of a video tape, audio tape or other form of recording of Tribunal proceedings,

must include:

- b. the reason for the application; and

- c. a written undertaking that the person receiving the recording, documentary material or transcript will not copy or distribute it, or use it for any purpose, that is inconsistent with any condition imposed by the Tribunal, without first seeking the Tribunal's permission.

32. Application for representation by a legal practitioner

[rule 32 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

If a relevant Act requires that the approval or permission of the Tribunal be obtained for representation of a person by a legal practitioner, the person seeking representation must include in the application full details of the reasons why he or she cannot appear before the Tribunal on his or her own behalf personally or by other permissible representative and why it is necessary that he or she be represented by a legal practitioner.

33. Extensions of time and other applications

[rule 33 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If an extension of time is sought to make any application or to do any other thing, the application for the extension of time must include the reasons for the application and why the extension of time should be given.
- b. All other applications made in respect of proceedings, including for general directions for the conduct of the proceedings, must also include:
 - i. the type of application being made and, if known, the legislation under which it is made; and
 - ii. the reasons for the application; and
 - iii. the directions or remedy sought, including the amount if it is a monetary claim.

34. Amendments

[rule 34 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. A party who has lodged an application or response with the Tribunal may only amend the application or response once without the permission of the Tribunal.
- b. An amendment can only be made under sub-rule (a) without the permission of the Tribunal if the application or response is amended within 14 days of the application or response being given to the Tribunal and not less than one month prior to the hearing.

[sub-rule 34c amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 3)]

- c. This Rule does not apply to proceedings under the *Advance Care Directives Act 2013*, *Community Housing Providers (National Law) (SA) Act 2013*, *Consent to Medical Treatment and Palliative Care Act 1995*, *Guardianship and Administration Act 1993*, *Mental Health Act 2009*, *Residential Parks Act 2007*, *Residential Tenancies Act 1995*, *Retirement Villages Act 1987*, *Retirement Villages Act 2016*, *South Australian Cooperative and Community Housing Act 1991* or the *South Australian Housing Trust Act 1995*.
- d. A registrar is expressly authorised to constitute the Tribunal for the purposes of this Rule.

35. Withdrawing applications

[rule 35 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If a relevant Act requires the Tribunal's permission to be obtained for the withdrawal of an application, an application under section 47 of the SACAT Act for the Tribunal's permission to withdraw or to agree to the withdrawal of the application, or a specified part of the application, must include the reasons for the application for permission.
- b. A copy of the application for permission must be given by a registrar to each other party and other person who was given a copy of the application to be withdrawn and to any other person directed by the Tribunal.
- c. The permission of the Tribunal is not required to withdraw or agree to withdraw any other kind of application or specified part of an application.
- d. An application or part of an application is withdrawn by the applicant giving a written notice of withdrawal to the Tribunal, after obtaining the Tribunal's permission or agreement to withdraw if this is required.
- e. If:
 - i. permission to withdraw an application or specified part of an application is granted and the application or the relevant part of it is withdrawn; or
 - ii. an application or a part of an application is withdrawn if permission is not required;

a registrar must give a copy of the notice of withdrawal to each party and other person who was given a copy of the application to be withdrawn and to any other person directed by the Tribunal.

Part 5 Special Rules in the Community Stream

[Part 5 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

36. Initiating applications and responses

[rule 36 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. This Rule applies to each initiating application under the *Advance Care Directives Act 2013*, *Consent to Medical Treatment and Palliative Care Act 1995*, *Guardianship and Administration Act 1993* or *Mental Health Act 2009*.
- b. The initiating application must also include (to the extent known by or reasonably available to the applicant):
 - i. for all applications, other than initiating applications under the *Mental Health Act 2009*:
 1. the full name, date of birth and contact details of the person who is the subject of the proceedings (and if that person is not currently residing at their usual address, the address of the premises in which they are currently residing must also be provided); and
 2. the name and contact details of any domestic partner, parent or adult child of the person; and

3. the name and contact details of any primary care-giver, accommodation provider or health-care provider of the person; and
 4. the name and contact details of any other individual who is charged with overseeing the ongoing day-to-day supervision, care and well-being of the person; and
 5. the name and contact details of any attorney, trustee, administrator or guardian of the person or any manager of the person's estate appointed under the *Aged and Infirm Persons' Property Act 1940* or any person who is a substitute decision-maker under an advance care directive in respect of the person; and
 6. the name and contact details of any other interested person who should be heard by the Tribunal in the proceedings; and
- ii. if an initiating application under the *Mental Health Act 2009*:
1. the full name, date of birth and contact details of the person who is the subject of the proceedings (and if that person is not currently residing at their usual address, the address of the premises in which they are currently residing must also be provided); and
 2. the name and contact details of any guardian of the person or of any person who is a substitute decision-maker under an advance care directive in respect of the person; and
 3. the name and contact details of any other interested person who should be heard by the Tribunal in the proceedings; and
- iii. details of the personal or professional relationship of the applicant to the person who is the subject of the proceedings; and
- iv. a copy of any advance care directive, power of attorney, administration or guardianship order under the *Guardianship and Administration Act 1993*, protection order under the *Aged and Infirm Persons' Property Act 1940* or a community treatment order or inpatient treatment order under the *Mental Health Act 2009* in relation to the person who is the subject of the proceedings (or, if a copy is not reasonably available to the applicant, sufficient details to enable the Tribunal to identify the relevant document and the person who holds the relevant document); and
- v. details of the person's physical and mental condition relevant to the application and why the application is necessary (and if urgent action is required, an explanation of the urgency); and
- vi. the person's attitude to the application; and
- vii. details of how the person communicates, including the language in which the person primarily communicates, and information about the type of assistance, if any, the person might require at the hearing to communicate with the Tribunal; and

- viii. details of any physical reason why the person cannot attend the hearing of the application (if that be the case); and
 - ix. subject to these Rules, a report from a medical practitioner or psychologist about the person's physical and mental condition relevant to the application; and
 - x. details of any behaviour of any person attending the hearing that is likely to pose a risk to the Tribunal or to any other person.
- c. Any response to an initiating application must be given to the Tribunal no later than three business days prior to the hearing of the proceedings.

37. Application for Tribunal's consent under *Consent to Medical Treatment and Palliative Care Act 1995*

[rule 37 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

If the initiating application is for the Tribunal's consent under Part 2A of the *Consent to Medical Treatment and Palliative Care Act 1995* for the administration of medical treatment to a person, the application must also include (to the extent known by or reasonably available to the applicant):

- a. the reasons for the consent of the Tribunal being sought, rather than consent being given by the person to whom the treatment is proposed to be administered or any other person capable of giving consent for that treatment to be administered to the person; and
- b. details of the condition requiring treatment; and
- c. details of the nature of the treatment that is proposed and when it is proposed to be administered; and
- d. the name and contact details of the health practitioner by whom the treatment is proposed to be administered to the person; and
- e. details of the reasons for the treatment and what is intended to be achieved by the treatment; and
- f. whether the treatment involves the withdrawal or limitation of life-sustaining treatment and, if so, why that is necessary; and
- g. details of the risks and consequences associated with the treatment that is proposed for the person; and
- h. whether the proposed treatment, the risks associated with the treatment and the available alternatives have been communicated to the person and,
 - i. if the proposed treatment, risks and alternatives have been communicated to the person, the person's response; or
 - ii. if the proposed treatment, risks and alternatives have not been communicated to the person, the reason they have not been communicated to the person.

38. Appointment of administrator or guardian under *Guardianship and Administration Act 1993*

[rule 38 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

If the initiating application is for the appointment of an administrator or guardian to a person under the *Guardianship and Administration Act 1993*, the application must also include (to the extent known by or reasonably available to the applicant):

- a. the name and contact details of the person's proposed administrator or guardian; and
- b. except if the proposed administrator is the Public Trustee or the proposed guardian is the Public Advocate:
 - i. details of the nature of the relationship between the proposed administrator or guardian and the person; and
 - ii. the proposed administrator or guardian's written agreement to the appointment; and
 - iii. details of the experience or skills held by the proposed administrator or guardian that are relevant to the application; and
 - iv. whether the proposed administrator or guardian has been declared bankrupt, been convicted of fraud or has any other conflict of interest relevant to the application.
- c. if the proposed administrator is the Public Trustee or the proposed guardian is the Public Advocate, the reasons why the appointment of the Public Trustee or the Public Advocate is sought; and
- d. any details required by Rule 39 of the person's income, outgoings and living expenses, assets and liabilities; and
- e. if the person has a Will:
 - i. details of when the Will was made and the person named as executor of the Will; and
 - ii. a copy of the Will; and
- f. details of the current arrangements for management of the person's financial and personal affairs; and
- g. whether the proposed guardian intends to make an application under section 32(1) of the *Guardianship and Administration Act 1993* for an order in relation to the residence, detention or treatment of the person.

39. Financial information — *Guardianship and Administration Act 1993*

[rule 39 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. This Rule applies where an application is made for the appointment of an administrator under the *Guardianship and Administration Act 1993* for a person.

- b. The application must include (to the extent known by or reasonably available to the applicant) the following information in respect of the person:
- i. details of the amount of a person's income from each relevant source, including from salary or wages, fees, trust distributions, pensions, superannuation, rents, interest, dividends and other investment income, and any other income to which the person is entitled. Information is to be provided as to the annual total from each source of income; and
 - ii. details of the amount of the person's usual outgoings and living expenses, including for accommodation, mortgage payments, hire purchase, leasing, hiring and any other forms of loan or periodic payments or commitments, insurances, utilities, food, clothing, transport, medical care and health cover, income tax and other taxes and any other outgoings. Information is to be provided as to the annual total for each item of expenditure; and
 - iii. details of the person's assets and the current approximate value of each asset, including:
 1. all amounts held in bank accounts, term deposits, managed investments and the like, in which case information must be provided as to the name of the relevant institution and branch, the account number and current balance. Copies of current statements or investment certificates, and the like, must be provided; and
 2. all real estate, including the family home, holiday properties and investment properties. The addresses of the real estate must be included; and
 3. all motor vehicles, motor cycles, boats and the like. Information must be provided as to the model and year of manufacture of each; and
 4. all superannuation, shares, units in a unit trust and other similar investments; and
 5. all other assets that have significant value, including furniture, artworks, and the like; and
 - iv. details of the person's liabilities, including mortgages, secured or unsecured loans, credit card debits and other liabilities, and the approximate amount owing under each.

40. Treatment orders under the *Mental Health Act 2009*

[rule 40 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

If the initiating application is for a community treatment order or an inpatient treatment order under the *Mental Health Act 2009* for a person, the application must also include (to the extent known by or reasonably available to the applicant):

- a. the proposed length of the order; and
- b. if the person has received inpatient treatment (whether under a treatment order or otherwise) for the person's mental illness, a copy of the last relevant hospital discharge

summary for the person, and any earlier discharge summary that is relevant to the application; and

- c. if the person has received treatment in the community (whether under a treatment order or otherwise) for the person's mental illness, a copy of any review of that treatment or other relevant evidentiary material relating to that treatment; and
- d. a copy of the Treatment and Care Plan prepared under Part 6 of *the Mental Health Act 2009* for the person; and
- e. the names of the persons who have been supplied a copy of the Treatment and Care Plan (which must include the person to whom the proceedings relate); and
- f. the details required by these Rules in relation to the Treatment and Care Plan.

41. Information about Treatment and Care Plans - *Mental Health Act 2009*

[rule 41 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. This Rule applies where a Treatment and Care Plan under the *Mental Health Act 2009* must be included with, accompany or be submitted in respect of an initiating application or other document.
- b. The following information must also be provided (to the extent known by or reasonably available to the applicant) in relation to the Treatment and Care Plan prepared in respect of a person:
 - i. the aims of the Plan, including for recovery of the person; and
 - ii. how the person and the person's family, carers, health care providers and other relevant persons were involved in the preparation of the Plan; and
 - iii. the treatment, intervention or medication that will be provided to the person in order to achieve the aims of the Plan; and
 - iv. the person's views about the Plan; and
 - v. the views of the person's family, carers, health care providers and other relevant persons about the Plan; and
 - vi. who from the person's treating team will review the Plan; and
 - vii. who will be included in the review process; and
 - viii. how the person, the person's family, carers, health care providers and other relevant persons will be involved in the review process; and
 - ix. whether regular meetings been arranged with those persons; and
 - x. what arrangements have been made that protect the rights, welfare and safety of the children and other dependents of the person; and
 - xi. if the relevant initiating application is an application for a Level 3 inpatient treatment order, what rehabilitation services or other services will be provided

or made available to the person as an inpatient in the treatment centre or following the person's discharge.

42. Administration of ECT treatment under *Mental Health Act 2009*

[rule 42 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

If the initiating application is for consent to the administration of a course of Electroconvulsive Therapy ("ECT") treatment under the *Mental Health Act 2009* to a person, the application must also include (to the extent known by or reasonably available to the applicant):

- a. the proposed length of the course of ECT treatment and the number of individual ECT episodes proposed for the person; and
- b. the risk to the person if the course of ECT treatment is not administered to the person; and
- c. the location at which the course of ECT treatment is proposed to be administered to the person; and
- d. whether any emergency administration of ECT treatment has already occurred and, if so, the reasons for that emergency treatment and the person's response to that treatment; and
- e. whether the person or the person's parent, guardian or substitute decision-maker is capable of giving informed written consent to the administration of the ECT treatment to the person and, if not, the reasons that informed consent cannot be given by these individuals; and
- f. a declaration signed by the applicant that the applicant has explained to the person or the person's parent, guardian or substitute decision-maker (as the case may be) clearly and fully, to the extent practicable:
 - i. the proposed treatment, need for treatment and the benefits, risks and discomforts of the treatment; and
 - ii. the potential cognitive side effects of a standard dose of ECT, including autobiographical memory loss, short-term memory loss and confusion; and
 - iii. any alternative treatments or courses of action that could reasonably be undertaken in the circumstances; and
 - iv. that the applicant is of the opinion that neither the person nor the person's parent, guardian or substitute decision-maker (as the case may be) are capable of giving informed written consent to the course of ECT treatment proposed.

43. Medical reports

[rule 43 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If an initiating application is:
 - i. for the appointment of an administrator or guardian under the *Guardianship and Administration Act 1993* to a person; or

- ii. for the variation or revocation of an appointment of an administrator or guardian under the *Guardianship and Administration Act 1993* to a person; or
- iii. for orders under section 32 of the *Guardianship and Administration Act 1993* by an appropriate authority in respect of the person,

the application must also include the following details in the report from the medical practitioner or psychologist (“the expert”) about the person’s physical and mental condition relevant to the application (to the extent known or reasonably available to the expert):

- iv. the expert’s name and contact details; and
 - v. the expert’s professional qualifications and experience; and
 - vi. the expert’s professional relationship to the person, the duration of that relationship, the number of times the expert has seen the person in the last 12 months and the date the expert last saw the person; and
 - vii. whether, in the expert’s opinion, the person has a mental incapacity and, if so, the specific diagnosis of that mental incapacity and the duration of that mental incapacity; and
 - viii. the tests or examinations that have been conducted to support the diagnosis and the further assessments, if any, recommended for the person; and
 - ix. the general social, emotional and physical abilities of the person, the person’s impulse control or suggestibility, and the person’s ability to consider options and choices and to decide between them; and
 - x. any other health, communication or other matters relevant to the person and the application; and
 - xi. whether the person has expressed to the expert any views that may be relevant to the application.
- b. If an initiating application is for a community treatment order or an inpatient treatment order under the *Mental Health Act 2009* in respect of a person, the application must also include (to the extent known or reasonably available to the author) the following details in the report from a medical practitioner about the person’s physical and mental condition relevant to the application:
- i. the practitioner’s name and contact details; and
 - ii. the expert’s professional qualifications and experience; and
 - iii. the person’s current diagnosis, when it was made and by whom it was made; and
 - iv. the reasons for the proposed length of the order; and
 - v. if it is an application for a Level 3 inpatient treatment order, the reasons for the proposed continuation of inpatient treatment; and

- vi. what is intended to be achieved by the order; and
- vii. any prior diagnoses and when they were made; and
- viii. a brief history of the course of illness of the person; and
- ix. a summary of the person's current and recent hospitalisations and inpatient treatments; and
- x. a summary of the person's past treatments and the response to those treatments; and
- xi. the person's current treatments and response to those treatments; and
- xii. whether the practitioner is aware or has been informed that the person has or may have previously failed or refused to undergo treatment and, if so, details of that failure or refusal and the source of that information; and
- xiii. the likelihood of the person in the future failing or refusing to undergo treatment; and
- xiv. whether the practitioner is aware or has been informed of previous incidents of risk or harm to the person and, if so, details of those incidents and the source of that information; and
- xv. whether the practitioner is aware or has been informed of previous incidents of risk or harm to others from the person and, if so, details of those incidents and the source of that information.

44. Reviews - section 57 *Guardianship and Administration Act 1993*

[rule 44 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If, on the written request of any person rather than on its own initiative, the Tribunal determines to conduct a review under section 57 of the *Guardianship and Administration Act 1993* of an guardianship or administration order, the Tribunal may direct that the person making the request comply with any Rule applying to applications for the making, variation or revocation of guardianship or administration orders.
- b. If the person making the request is the person in relation to whom the guardianship or administration order was made, and the person is of the view that the order should be revoked or the scope of the order reduced, the request for the Tribunal to conduct the review must include:
 - i. details of the steps the person has taken since the order was made or last reviewed to improve the person's ability to look after his or her own health, safety or welfare or to manage his or her own affairs; and
 - ii. if relevant, details of any change in circumstances which would warrant the guardianship or administration order being revoked or reduced in scope.

45. Sensitive or confidential information in relation to persons to whom certain proceedings relate

[rule 45 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If in any proceedings under the *Advance Care Directives Act 2013*, *Consent to Medical Treatment and Palliative Care Act 1995*, *Guardianship and Administration Act 1993* or *Mental Health Act 2009*, a medical practitioner is of the view that the practitioner's report or any other written or oral evidence provided by the practitioner to the Tribunal may, if communicated to the person to whom the proceedings relate or to another person, result in serious harm to any person, including the person to whom the proceedings relate, the practitioner must inform the Registrar of that view as soon as practicable.
- b. "Serious harm" in sub-rule (a) includes serious harm to:
 - i. the psychological or physical health and wellbeing of any person (including the person to whom the proceedings relate, the practitioner, others involved in the treatment of the person to whom the proceedings relate or the carer or family members of the person to whom the proceedings relate);
 - ii. the prospects of successful treatment or recovery of the person to whom the proceedings relate; and
 - iii. relationships with persons who may support the recovery of the person to whom the proceedings relate.
- c. The Tribunal may hold any hearings or give any directions that may be necessary under this Rule, including directions under section 60 of the SACAT Act prohibiting or restricting disclosure or publication of the evidence to the person to whom the proceedings relate or to another person.
- d. The Registrar of the Tribunal is expressly authorised to constitute the Tribunal for the purposes of this Rule.

Note: To ensure that the Tribunal can meet its objective to provide natural justice and procedural fairness to the person to whom the proceedings relate, the Tribunal may order that a litigation guardian, or a recognised advocate under the Acts referred to in sub-rule (a), be appointed in respect of that person and the Tribunal may then proceed to have regard to the sensitive or confidential evidence at a hearing in the absence of the person.

46. Representation of persons to whom proceedings relate

[rule 46 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

A person who is entitled and chooses to be represented by counsel provided pursuant to the scheme established under section 65 of the *Guardianship and Administration Act 1993* or under section 84 of the *Mental Health Act 2009* must give the Tribunal a notice indicating if the person chooses a legal practitioner who is:

- a. chosen by the person himself or herself, in which case the name and contact details of the legal practitioner must also be provided; or
- b. chosen by a person or authority contemplated by the scheme.

Part 6 Special Rules for some matters in the Housing and Civil Stream and Administrative and Disciplinary Stream

[Part 6 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

47. Initiating Applications and Responses - Residential, Community Housing, etc.

[rule 45 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[sub-rule 47a amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 3)]

- a. This Rule applies to an initiating application under the *Community Housing Providers (National Law) (SA) Act 2013*, *Residential Parks Act 2007*, *Residential Tenancies Act 1995*, *Retirement Villages Act 1987*, *Retirement Villages Act 2016*, *South Australian Cooperative and Community Housing Act 1991* or *South Australian Housing Trust Act 1995*.
- b. The initiating application must also include (to the extent known by or reasonably available to the applicant):
 - i. the address of the premises (which in this sub-rule means any house, room, caravan or other site capable of separate occupation) that are the subject of the application; and
 - ii. whether the applicant is the owner, landlord, tenant, resident, occupant, registered community housing provider, residential park owner or operator, retirement village administering authority, or other interested person in respect of the premises; and
 - iii. the name and contact details of any agent acting for any applicant; and
 - iv. a copy of any relevant tenancy agreement, rooming house agreement, residential park agreement, retirement village residence contract or other agreement permitting occupation of the relevant premises (or, if a copy is not available to the applicant, sufficient details to enable the Tribunal to identify the relevant document and the person who holds the relevant document); and
 - v. whether the agreement is a fixed term or periodic tenancy; and
 - vi. if they are not a party to the application, the name and contact details of:
 1. each owner of the premises; and
 2. each landlord of the premises; and
 3. each person who is a tenant, resident or occupant of the premises; and
 4. if relevant, the relevant registered community housing provider or the relevant owner or operator of the residential park or the relevant retirement village administering authority; and
 - vii. the commencement date of occupation of the premises and, if relevant, the date of termination of occupation; and
 - viii. a copy of any statutory notice given by one party to the other party that is relevant to the subject matter of the proceedings; and

- ix. the amount of any rent or other amount payable for occupation of the relevant premises and, if relevant to the proceedings, the total of any arrears of that rent or other amount; and
 - x. the amount and identifying details of any bond or similar security that was paid in respect of the premises; and
 - xi. the documentary material that the applicant proposes to rely on during the hearing of the application.
- c. A response to the initiating application must also include (to the extent known by or reasonably available to the respondent):
- i. the name and contact details of any agent acting for the respondent; and
 - ii. a copy of any statutory notice given by one party to the other party that is relevant to the subject matter of the proceedings and not already supplied by an applicant; and
 - iii. the documentary material that the respondent proposes to rely on during the hearing of the application.
- d. Any response to an initiating application made under the *Residential Parks Act 2007*, *Residential Tenancies Act 1995* or the *Retirement Villages Act 1987* must be given to the Tribunal no later than three business days prior to the hearing of the proceedings.

48. Referrals of Bond Disputes

[rule 48 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. This Rule applies if the Commissioner for Consumer Affairs (“the Commissioner”) refers to the Tribunal under section 29 of the *Residential Parks Act 2007* or sections 63 or 105M of the *Residential Tenancies Act 1995* an application made to him or her for the payment of the whole or part of a bond.
- b. As soon as practicable after the application is referred to the Tribunal, the Tribunal will give the prescribed person notice that the referral has been received by the Tribunal.
- c. Within 28 days of the Tribunal giving notice under sub-rule (b), the prescribed person must provide to the Tribunal the information and documents that would be required if an initiating application for payment of the bond to the prescribed person were made to the Tribunal under the *Residential Parks Act 2007* or the *Residential Tenancies Act 1995* (as the case may be) and in the manner that the initiating application would be made to the Tribunal.

Note: If the prescribed person does not comply with sub-rule (c), the Tribunal may dismiss or strike out the referral for want of prosecution or may make a decision in favour of the other party to the application.

- d. Subject to this Rule, these Rules will have effect in all respects:
 - i. as if the prescribed person had given the Tribunal an initiating application under the *Residential Parks Act 2007* or the *Residential Tenancies Act 1995* (as the case may be) for payment of the bond to the prescribed person; and

- ii. the other party to the application to the Commissioner were the respondent in respect of that initiating application.
- e. For the purposes of this Rule, the “prescribed person” is:
- i. in respect of a referral made under section 29(5a) of the *Residential Parks Act 2007*, the park owner;
 - ii. in respect of a referral made under section 29(6) of the *Residential Parks Act 2007*, the park owner;
 - iii. in respect of a referral made under section 29(6a) of the *Residential Parks Act 2007*, the park owner, but if the park owner did not give the Commissioner a written notice of dispute, the third party; and
 - iv. in respect of a referral made under section 29(6c) of the *Residential Parks Act 2007*, the park owner,
 - v. in respect of a referral made under section 63(5a) of the *Residential Tenancies Act 1995*, the landlord;
 - vi. in respect of a referral made under section 63(6) of the *Residential Tenancies Act 1995*, the landlord;
 - vii. in respect of a referral made under section 63(7) of the *Residential Tenancies Act 1995*, the landlord, but if the landlord did not give the Commissioner a written notice of dispute, the third party;
 - viii. in respect of a referral made under section 63(9) of the *Residential Tenancies Act 1995*, the landlord;
 - ix. in respect of a referral made under section 105M(6) of the *Residential Tenancies Act 1995*, the rooming house proprietor;
 - x. in respect of a referral made under section 105M(7) of the *Residential Tenancies Act 1995*, the rooming house proprietor;
 - xi. in respect of a referral made under section 105M(8) of the *Residential Tenancies Act 1995*, the rooming house proprietor, but if the rooming house proprietor did not give the Commissioner a written notice of dispute, the third party; and
 - xii. in respect of a referral made under section 105M(10) of the *Residential Tenancies Act 1995*, the rooming house proprietor,

notwithstanding that the prescribed person was not the person who applied to the Commissioner for payment of the bond but was the person who gave the Commissioner a written notice of dispute in respect of that application.

49. Initiating applications and responses - Disciplinary Matters

[rule 49 deleted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

[rule 49 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. This Rule applies to an initiating application made under:
- i. section 46 of the *Conveyancers Act 1994*;
 - ii. section 44 of the *Land Agents Act 1994*;
 - iii. section 8 of the *Land Valuers Act 1994*;
 - iv. section 264 of the *Local Government Act 1999*; or
 - v. sections 37 and 38 of the *Survey Act 1992*;
- for disciplinary complaint proceedings (“disciplinary complaint proceedings”).
- b. An initiating application, in addition to complying with Rules 19 and 20, must also include:
- i. the provision or provisions of the legislation on which the applicant relies for the disciplinary orders sought;
 - ii. the conduct said to justify the disciplinary findings identifying the relevant provision of the legislation, or subordinate legislation, relied on by the applicant;
 - iii. the facts, acts and omissions that are alleged to constitute the conduct that justifies the disciplinary finding.
- c. A respondent must, as soon as practicable after being given a copy of the relevant application, advise the Tribunal of:
- i. their full name and contact details, if different from the name and contact details given for the respondent on the application; and
 - ii. the full name and contact details of any person representing the respondent or the name of a recognised advocacy service from which representation will be sought by the lodging party; and
 - iii. details of any known needs for an interpreter or assistance with a disability or special cultural, security or other needs required by a party or witness or other person proposing to attend the hearing.
- d. Within 21 days of being notified of the application the respondent must give to the Tribunal and the applicant a response which must include:
- i. the details of any preliminary issues to be determined such as an objection to lodging the application out of time, or an objection to the jurisdiction of the Tribunal to hear and determine the application, and the basis for the objection;
 - ii. whether the respondent admits or denies the conduct said to justify the disciplinary finding;

- iii. any facts on which the respondent relies in response.
- e. The respondent must provide a copy of the response to the applicant:
 - i. at the same time it is given to the Tribunal if it can be given to the applicant electronically;
 - ii. as soon as practicable after it is given to the Tribunal if it cannot be given to the applicant electronically.
- f. If the respondent fails to give a response to the Tribunal within 21 days, or within such further time as the Tribunal may allow, the respondent may not, without permission of the Tribunal, rely on evidence of any matter of which notice should have been given in a response.
- g. Notwithstanding section 53(1) of the SACAT Act, the parties to an initiating application in respect of disciplinary complaint proceedings are:
 - i. the applicant(s); and
 - ii. the person(s) concerning whom the complaint was made.
- h. A complaint under section 264 of the *Local Government Act 1999* must be made within 12 months of the time when the complainant becomes aware of the disciplinary breach.

50. Initiating applications and responses - Valuation Reviews

[rule 50 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. This Rule applies to an initiating application made under section 169 or 296 of the *Local Government Act 1999* or section 25C of the *Valuation of Land Act 1971* for the review of a valuation ("a valuation review").
- b. The initiating application must also include:
 - i. the address or sufficient other details necessary to identify the land that is the subject of the application; and
 - ii. a copy of the notice of the valuation to which the application relates or sufficient other details necessary to identify the valuation decision that is the subject of the application; and
 - iii. what the applicant says is the proper relevant value of the land that is the subject of the valuation.
- c. The respondent to a valuation review must provide a copy of the response to the applicant at the same time that it is provided to the Tribunal.
- d. Notwithstanding section 53(1) of the SACAT Act, the parties to an initiating application in respect of a valuation review are:
 - i. where the initiating application is made under section 169(1)(b) of the *Local Government Act 1999*, the applicant for the valuation review and the council whose valuer made the valuation;

- ii. where the initiating application is made under section 169(15) of the *Local Government Act 1999*, the applicant for the valuation review and the council whose valuer made the valuation (unless the applicant for the valuation review is the council whose valuer made the valuation, in which case the objector is the respondent to the initiating application);
- iii. where the initiating application is made under section 296(4) of the *Local Government Act 1999*, the applicant for the valuation review and the council whose valuer made the valuation;
- iv. where the initiating application is made under section 25C(1)(a) of the *Valuation of Land Act 1971*, the applicant for the valuation review and the Valuer-General;
- v. where the initiating application is made under section 25C(1)(b) of the *Valuation of Land Act 1971*, the applicant for the valuation review and the Valuer-General (unless the applicant for the valuation review is the Valuer-General, in which case the person who applied for a review of the valuation under section 25B of the *Valuation of Land Act 1971* is the respondent to the initiating application).

Part 7 Giving copies of documents

[Part 7 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

51. Registrar to give copies of documents to parties and other persons

[rule 51 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. Subject to these Rules, when any application or response is given to the Tribunal, a registrar must as soon as reasonably possible, but in any event within 7 days, give:
 - i. a copy of the application or response to each other party to the proceedings; and
 - ii. a copy of the application or response to any other person not a party to the proceedings as required by these Rules or any Act.
- b. If an application or response is given to the Tribunal within three business days of the hearing of the relevant proceedings:
 - i. the person lodging the application or response must without delay give a copy of the document to any person who should receive a copy of the document under these Rules, unless a registrar directs otherwise;
 - ii. a registrar may, prior to the commencement of the hearing of the proceedings, give a copy of the application or response to any person who should receive a copy of the document under these Rules.
- c. Subject to these Rules and to the extent that it is reasonably necessary to achieve a just outcome in proceedings before the Tribunal or otherwise to achieve the objectives of the SACAT Act, a Presidential or Senior Member of the Tribunal may direct a registrar to give a copy of, or any part of, any application, response, summons issued by the Tribunal, notice arising during the course of proceedings or directions or orders made by the Tribunal to any person he or she reasonably considers has a proper interest in the matter and should be given a copy.

Note: In appropriate cases, the Tribunal may at the same time also order that the relevant person be joined as a party to the proceedings or an intervener in the proceedings.

[sub-rule 51d amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- d. Nothing in this Rule permits a will or a copy of a will to be provided to a person except with the permission of a legally qualified member of the Tribunal.
- e. A registrar can give an application, response or other document under this Rule to a party or other person by any means that the registrar considers appropriate to bring the document to the attention of the party or other person, including by electronic means, and if necessary including:
 - i. by giving a copy of the document to an appropriate third person; or
 - ii. in proceedings concerning land or an occupied site or premises, by affixing the document to the door giving access to the premises or by placing it in a prominent position at the site.
- f. If a person refuses to accept a document under this Rule, it may be given to him or her by putting the document down in his or her presence and telling him or her the nature of it.
- g. A registrar is not obliged to give a copy of any document to a person if the person's whereabouts or contact details cannot be ascertained after reasonable enquiries.

51A. Who must give copies of documents to the Tribunal and other persons

[rule 51A inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. Subject to these Rules and any direction or order of the Tribunal, the following applies in relation to giving documents to the Tribunal and other persons:
 - i. if the person giving the documents is not represented by a legal practitioner, that person must give the documents to the Tribunal and the Tribunal will give the documents to all other persons it considers appropriate;
 - ii. if the person giving the documents is represented by a legal practitioner, the legal practitioner must give the documents to the Tribunal and all other parties.
- b. For the purposes of sub-rule (a):
 - i. if a document can be given to the other persons electronically, it must be given to the other persons at the same time it is given to the Tribunal;
 - ii. if a document cannot be given to, or received by, the other persons electronically, it must be given to the other persons as soon as practicable after it has been given to the Tribunal.

52. Persons involved in proceedings to give copies of documents to each other

[rule 52 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]
 [rule 52 amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. A person may be required to give a copy of a particular document to another person, in which case the document must be given to the other person:
 - i. at the same time it is given to the Tribunal if the document can be given to other persons electronically; or
 - ii. as soon as practicable after it is given to the Tribunal if the document cannot be given to other persons electronically; or
 - iii. as directed by a registrar of the Tribunal (which may include that the party give the Tribunal a sworn statement as to giving the document to the other party or person).
- b. If the relevant document is a summons issued by the Tribunal under section 40 of the SACAT Act, the applicant for the summons must ensure that the summons is given to the person named in the summons at least 5 business days before the date specified in the summons for attendance or as otherwise directed by a registrar of the Tribunal.

Part 8 Section 35 statements and relevant documents

[Part 8 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

53. Section 35 statements, documents and things in electronic form

[rule 53 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[sub-rule 53a amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- a. Subject to these Rules, a decision-maker for a reviewable decision must comply with section 35(2) of the SACAT Act electronically by providing the Tribunal in a printable electronic form:
 - i. the written statement of the reasons for the decision; and
 - ii. any document or thing in the decision-maker's possession or control that may be relevant to the Tribunal's review of the decision.
- b. Sub-rule (a) only applies to a thing to the extent that the thing is capable of being provided in electronic form.
- c. The Registrar may permit the decision-maker to comply with sub-rule (a) in whole or in part by providing a paper copy of a statement or document.

[sub-rule 53d inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]
- d. Specific provisions are set out in Part 9 of these Rules with respect to provision of section 35 documents in matters under the *Freedom of Information Act 1991*.

54. Provision of Section 35 Statements and documents to applicants

[rule 54 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[sub-rule 54a substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- a. Subject to these Rules a decision-maker must, when providing a statement of reasons, documents or other thing to the Tribunal under section 35 of the SACAT Act, provide a copy of such reasons, documents or thing, to the applicant and any other party to the review.

[sub-rule 54b substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- b. Sub-rule (a) does not apply to any document to which sub-rule (a) of Rule 55 applies.
- c. If it is not practicable to provide an applicant for review or other party with a copy of a relevant thing, a Member or a registrar of the Tribunal may permit an applicant or party to inspect the relevant thing in the Tribunal's Registry.

55. Section 35 statements and privileged or confidential, etc, documents

[rule 55 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[sub-rule 55a substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- a. Where the decision-maker is aware that one or more documents (that are required to be provided under section 35 of the SACAT Act) are the subject of a claim of privilege, public interest immunity or other immunity or a claim of non-disclosure for other proper reason, the decision-maker should divide the section 35 documents into two indexed Volumes.

[sub-rule 55b substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- b. Volume One should contain all documents concerning which such a claim is made and should be provided to the Tribunal in hardcopy form.

[sub-rule 55c substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- c. The index should indicate the basis upon which the claim is made for each document.

[sub-rule 55d substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- d. If the claim relates to part only of a document, that part must be identified.

[sub-rule 55e inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- e. Unless otherwise directed by the Tribunal or a registrar, Volume One should be provided to the Tribunal in hardcopy form, in sealed packaging which is clearly marked:
 - i. So as to identify the matter by name and number;
 - ii. Stating that the package contains confidential documents;
 - iii. With a prominent statement that:

“These documents are only to be accessed on the direction of a member of the Tribunal”; and

- iv. So as to identify the person who provided the documents and the person whom the documents should be returned to at the conclusion of the application.

[sub-rule 55f inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- f. Volume Two is to contain all other required documents and is to be provided to the Tribunal and given to the other parties as specified in Rules 53 and 54.

[sub-rule 55g inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- g. If a document is included in Volume One but the relevant claim relates to part only of the document, a redacted copy of the document should be included in Volume Two.

56. Content and Presentation of Section 35 Statements and documents

[rule 56 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[sub-rule 56a amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- a. Subject to these Rules, the material that the decision-maker must provide to the Tribunal and to each applicant or other party must be presented in one or more electronic volumes (or physical volumes if permitted by the Registrar under Rule 53) and arranged in the following order:
 - i. the application for review of the reviewable decision; and
 - ii. a copy of the decision under review, if made or recorded in writing; and
 - iii. a copy of any document notifying the applicant of the decision; and
 - iv. the statement required under section 35(2)(a) of the SACAT Act; and
 - v. all other documents and things in the decision-maker's possession or control that may be relevant to the Tribunal's review of the decision in chronological order from the earliest to the latest date.
- b. The statement required under section 35(2)(a) of the SACAT Act must:
 - i. identify the decision;
 - ii. identify any person who made a recommendation to the decision-maker prior to the making of the decision as to whether or not the decision should be made or what decision should or could be made; and
 - iii. set out the findings on material questions of fact; and
 - iv. refer to the evidence or other material on which those findings were based; and
 - v. give reasons for the decision.
- c. Each document and thing must be identified with a number commencing with the application for review as "1". Succeeding documents and things must bear numbers in sequence. Each page must be numbered.
- d. If after giving the documents and things to the Tribunal and to the applicant and other party:

- i. the decision-maker becomes aware of further documents or things that should have been also given but were not; or
- ii. further documents or things not in existence at the time of the reviewable decision that may be relevant to the Tribunal's review of the decision come into the decision-maker's possession or control,

the decision-maker must as soon as practicable give a supplementary volume or volumes to the Tribunal and to the applicant or other party incorporating a copy of all such documents and, where practicable, such things.

- e. The documents and things in a supplementary volume or volumes must be arranged in chronological order and all numbering in the supplementary volume or volumes is to be continued from the previous volume.
- f. Each volume, including each supplementary volume, must include an index which sets out the date and a brief description of each document and thing. The pagination must be set out in the index.

57. Valuation Reviews

[rule 57 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. This Rule applies to an initiating application made under section 169 or 296 of the *Local Government Act 1999* or section 25C of the *Valuation of Land Act 1971* for the review of a valuation ("a valuation review").
- b. A valuing authority that is an applicant or a respondent in a valuation review is subject to the same obligations that a decision-maker for a reviewable decision is subject to:
 - i. under section 35 of the SACAT Act; and
 - ii. under this Part,

as if the valuation review were proceedings for the review of a reviewable decision and the valuing authority were the decision-maker for the reviewable decision for the purposes of section 35 and this Part.

Note: To avoid doubt, it is not intended under this Rule that valuing authorities would be subject to the obligations of section 35(7) of the SACAT Act.

- c. Without limiting the generality of sub-rule (b), the documents and things that the valuing authority must provide include any document or thing that may be relevant to the Tribunal's review of the decision that is in the possession or control of:
 - i. in respect of an initiating application for a valuation review made under section 169(1)(b) or 169(15) of the *Local Government Act 1999*:
 - 1. the valuer employed or engaged by the council to value the land; and
 - 2. any valuer to whom a request for further review of the valuation is referred under section 169(10) of the *Local Government Act 1999*; and
 - ii. in respect of an initiating application for a valuation review made under section 296(4) of the *Local Government Act 1999*:

1. the valuer appointed by the council to value the land; and
 2. any valuer to whom a request for further review of the valuation is referred under section 169(10) of the *Local Government Act 1999*; and
 - iii. in respect of an initiating application for a valuation review made under section 25C(1)(b) of the *Valuation of Land Act 1971*, the valuer who conducted the review under section 25B of that Act.
- d. For the purposes of this Rule, “valuing authority” means:
- i. in respect of an initiating application for a valuation review made under the *Local Government Act 1999*, the council whose valuer made the valuation; and
 - ii. in respect of an initiating application for a valuation review made under the *Valuation of Land Act 1971*, the Valuer-General.

57A. Decision-maker for the purposes of the SACAT Act

[rule 57A inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 3)]
 [rule 57A amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. A reference in the Act to “the decision-maker” for a reviewable decision will be taken to include a reference to a **person or body** designated by these Rules as being a suitable entity to act jointly with the person or body that made or is taken to have made the reviewable decision.
- b. The following persons or bodies are designated as suitable entities under paragraph (a) of this Rule in relation to reviews in respect of the types of decisions indicated:
 - i. Environment Protection Authority – reviews under s 60 of the *Aquaculture Act 2001*.

Part 9 Applications for review under the *Freedom of Information Act 1991* — Claimed exempt documents

[Part 9 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]
 [Part 9 substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

58. Application of Part

[rule 58 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]
 [rule 58 substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

This Part applies to applications for review lodged with the Tribunal under the *Freedom of Information Act 1991* regarding the material to be given to the Tribunal in matters where documents which are the subject of an application for review are claimed to be exempt documents.

59. Section 35 statements and exempt documents where the decision-maker is the Ombudsman

[rule 59 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]
 [rule 59 substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]
 [rule 59 amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 3)]

- a. This Rule applies to applications where the Ombudsman is the decision-maker.

- b. The decision-maker must provide the documents required to be given to the Tribunal under section 35 of the SACAT Act in separate indexed volumes as follows:
- i. Volume One should be divided into five parts:
 1. Part A should contain all documents claimed by the relevant agency as exempt (and should identify in the index any such documents claimed to be restricted documents);
 2. Part B should contain all other documentation (including evidence and representations) submitted to the decision-maker by the relevant agency, which documents have not been disclosed to the original applicant for access;
 3. Where an interested party to a review under s 39 of the *Freedom of Information Act 1991* (other than the relevant agency) has claimed that documents other than those contained in Part A are exempt documents, Part C should contain such documents (and should identify in the index any such documents claimed to be restricted documents);
 4. Where an interested party to a review under s 39 of the *Freedom of Information Act 1991* (other than the relevant agency) has provided documentation, evidence or representations to the decision-maker which have not been disclosed to all other parties, Part D should contain those documents;
 5. Part E should contain all other relevant documents held by the decision-maker, which documents have not been disclosed to all other parties;
 - ii. Volume One should be provided to the Tribunal in hard copy unless directions are given by the Tribunal or a registrar permitting provision in some other manner.
 - iii. Volume One should be provided in sealed packaging which is clearly marked:
 1. So as to identify the matter by name and number;
 2. Stating that the package contains section 35 documents;
 3. With a prominent statement that:

“These documents are only to be accessed on the direction of a member of the Tribunal”; and
 4. So as to identify the person who provided the documents and the person whom the documents should be returned to at the conclusion of the application.
 - iv. Volume Two is to contain all other documents required to be provided under section 35.
 - v. Where a document is the subject of an application for review and has been provided to the original applicant for access in redacted form, Volume Two should contain a copy of the redacted document.

- vi. Volume Two is to be provided to the Tribunal electronically unless the Tribunal or a registrar directs otherwise.
- vii. A copy of Volume Two is to be served by the decision-maker on all other parties to the review.

59A. Section 35 statements and exempt documents where the decision-maker is an agency

[rule 59A inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- a. This Rule applies to applications where the agency is the decision-maker.
- b. The decision-maker must provide the documents required to be provided to the Tribunal under section 35 of the SACAT Act in separate indexed volumes as follows:
 - i. Volume One should be divided into four parts:
 - 1. Part A should contain all documents claimed by the decision-maker to be exempt (and should identify in the index all such documents claimed to be restricted documents);
 - 2. Part B should contain any other documents relevant to the review which the agency claims should not be provided to the applicant;
 - 3. In cases where an interested party to a review by SACAT claims exemption for documents not contained in Part A, Part C should contain those documents (and should identify in the index which such documents are claimed to be restricted documents);
 - 4. In the circumstances envisaged in sub-paragraph (3) above, Part D should contain any submissions or documentation provided by an interested party to the agency in support of the applicant's claim.
 - ii. Volume One should be provided to the Tribunal in hard copy unless directions are given by the Tribunal or a registrar permitting provision in some other manner.
 - iii. Volume One should be provided in sealed packaging which is clearly marked:
 - 1. So as to identify the matter by name and number;
 - 2. Stating that the package contains section 35 documents;
 - 3. With a prominent statement that:

“These documents are only to be accessed on the direction of a member of the Tribunal”; and
 - 4. So as to identify the person who lodged the documents and the person whom the documents should be returned to at the conclusion of the application.

- iv. Volume Two is to contain all other documents required to be provided under section 35.
- v. Where a document is the subject of an application for review and has been provided to the original applicant in redacted form, Volume Two should contain a copy of the redacted document.
- vi. Volume Two is to be provided to the Tribunal electronically unless the Tribunal or a registrar directs otherwise.
- vii. A copy of Volume Two is to be served by the decision-maker on all other parties to the review.

60. Schedules of claimed exempt documents to be provided by agency

[rule 60 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[rule 60 substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- aa. Where an application seeks a review of a decision to refuse access to documents, the agency which made the original decision to refuse access (whether or not there has been a subsequent review under s 39 of the *Freedom of Information Act 1991*) must comply with this Rule and Rules 61 to 62.
- a. Except where to do so would disclose material claimed to be exempt, the agency must, within 21 days after receiving notice of the review, provide to the Tribunal and give to other parties a schedule of the documents to which the claims of exemption relate.
- b. The schedule must list the documents sequentially by number and, except to the extent that to do so would disclose the material claimed to be exempt, must provide the following details in respect of each document:
 - i. the date of the document; and
 - ii. the person or persons by whom the document was created and, where applicable, the person or persons to whom it was directed; and
 - iii. the exemption relied upon; and
 - iv. a sufficient description of the nature of the contents of the document so as to provide a prima facie justification for the ground or grounds of exemption relied upon; and
 - v. where applicable, a statement as to the ground or grounds of public interest relied upon in support of the claim of exemption; and
 - vi. where the claim of exemption relates only to part of the document, a concise indication of the part or parts involved; and

Note: For example, a part of a document might be described as para 6, or part para 6. If the document is an audio or visual recording, the relevant part should be defined by reference to the points at which the relevant material commences and ceases.

- vii. where a document is no more than a copy of another document for which exemption is claimed, it must be so identified. The claims of exemption do not need to be repeated in respect of the copy document.
- c. The schedule is to be provided to the Tribunal in electronic form unless the Tribunal or a registrar directs otherwise.

61. Sworn statements in support of claims of exemption

[rule 61 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[rule 61 substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

- a. Unless the Tribunal otherwise directs, the agency must, within 21 days after receiving notice of the application, provide to the Tribunal a sworn statement setting out the evidence to be relied upon in support of the claims of exemption.
- b. Subject to sub-rules (c) and (d), the sworn statement is to be provided to the Tribunal in electronic form and must be served upon the applicant.
- c. In respect of any evidence for which a confidentiality or similar order is sought, such evidence is to be set out in a separate sworn statement which is not to be provided to the applicant.
- d. A sworn statement under sub-rule (c) is to be provided to the Tribunal in hardcopy in sealed packaging which is to be clearly marked:
 - i. So as to identify the matter by name and number;
 - ii. Stating that the package contains confidential evidence;
 - iii. With a prominent statement that:

“These documents are only to be accessed on the direction of a member of the Tribunal”; and
 - iv. So as to identify the person who provided the documents and the person whom the documents should be returned to at the conclusion of the application.

62. Transferred requests for access to documents

[rule 62 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[rule 62 substituted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

Where a part of a request for access to documents has been transferred to another agency under the provisions of the *Freedom of Information Act 1991*, the transferring agency must:

- a. identify clearly in its section 35 statement or material provided under Rule 60 the respects in which the request for access has been transferred, the name of the transferee agency or agencies and the date on which each transfer was made; and
- b. send to the transferee agency a copy of the notice of application for review promptly after receiving it.

62A. Application of Part 8 and reviews under the *Freedom of Information Act 1991*

[rule 62A inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 2)]

The general provisions of Part 8 of these Rules apply to applications under the *Freedom of Information Act 1991* insofar as appropriate and not inconsistent with this Part.

Part 9A Internal review

[Part 9A inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 3)]

62B. Application of Part

[rule 62B amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

This Part applies to applications for internal review **commenced** with the Tribunal under section 70 of the SACAT Act.

62C. Statement of reasons

[rule 62C amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

Where an application has been made for internal review and the reasons for decision have not previously been published, the Tribunal as constituted at first instance must provide written reasons for the decision as soon as practicable for the consideration of the **member(s)** conducting the internal review.

Part 10 Parties and representation of parties

[Part 10 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

63. Proceedings by or against certain parties

[rule 63 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If proceedings are commenced against a person in the business name in which that person carries on business then the person against whom the proceedings are commenced must include on the first document lodged by him or her in the Tribunal the name and contact details of the person carrying on business under that name at the time the subject matter of the proceedings arose.
- b. If proceedings are commenced against a trust, partnership or unincorporated association in the name of the trust, partnership or unincorporated association then the trust, partnership or unincorporated association against which the proceedings are commenced must include on the first document lodged by the trust, partnership or unincorporated association in the Tribunal the names and contact details of the trustees, partners or members of the governing body of the unincorporated association at the time that the subject matter of the proceedings arose.
- c. Proceedings to which this Rule applies will be taken to have been commenced against:
 - i. the person carrying on the business; or
 - ii. the trustees; or
 - iii. the partners; or
 - iv. the members of the governing body of the unincorporated association,

as the case may be.

64. Appearances by a party that is not a natural person

[rule 64 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. A party that is not a natural person (not including the Crown) may appear in proceedings by a trustee, partner, officer, director or member (as the case may be) who is authorised by the party to act for and bind the party in the proceedings.
- b. Joint parties may appear in a proceeding through one of them who is authorised to act for the joint parties in the proceedings.
- c. Nothing in the Rules prevents a party from appearing in proceedings personally, by counsel, a representative permitted by any Act or by other representative with the permission of the Tribunal under section 56(1)(c) of the SACAT Act.

65. Disjoinder of parties

[rule 65 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. The Tribunal may, on application or on its own initiative, order the disjoinder of a party, on any conditions the Tribunal considers appropriate, if satisfied that it is in the interests of the efficient administration of justice to do so.
- b. Before the Tribunal makes an order for the disjoinder of a party, the Tribunal must ensure that all parties to the proceedings have had notice of the application or proposal for disjoinder and an opportunity to be heard on the question.
- c. The Registrar of the Tribunal is expressly authorised to constitute the Tribunal for the purposes of this Rule.

66. Application for a legal practitioner to represent a person

[rule 66 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. This Rule applies if the Tribunal's permission or agreement is required under any Act for a party to be represented by a legal practitioner.
- b. In dealing with the application, the Tribunal is to have regard to:
 - i. whether representation will promote the interests of the party; and
 - ii. whether representation will facilitate the just, quick and efficient resolution of the real issues in the proceedings, keeping costs to a minimum insofar as is just and appropriate; and
 - iii. any disability or other factor that impedes the party's capacity to fully participate in the hearing; and
 - iv. the nature and seriousness of the interests of the party that are affected by the proceedings; and
 - v. whether the party's interests and point of view conflict with those of other parties; and
 - vi. whether the proceedings involve complex legal or factual issues; and

- vii. fairness between the parties, taking into account that it may be unfair if one party is represented but another is not, particularly if the parties are in conflict; and
 - viii. whether representation may assist a party to focus on the relevant issues and may promote a conciliatory approach in the proceedings; and
 - ix. any other factors which are relevant in the particular circumstances of the case.
- c. In making an order granting permission for a party to be legally represented in proceedings, the Tribunal may impose such conditions in relation to representation as the Tribunal thinks fit, including requiring the disclosure of the estimated cost of the legal representation of the party.
 - d. The Tribunal may revoke permission granted for a legal practitioner to represent a party in proceedings if the Tribunal is satisfied that:
 - i. the party no longer consents to the practitioner representing the party; or
 - ii. the party is, or has become, incapable of instructing the practitioner; or
 - iii. any other grounds are present that the Tribunal considers sufficient to justify the revocation.

67. Application for permission to represent a party under section 56(1)(c)

[rule 67 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. In dealing with an application under section 56(1)(c) of the SACAT Act for permission to be granted to a person to represent a party to proceedings, the Tribunal is to have regard to:
 - i. whether the proposed representative has sufficient knowledge of the issues in dispute to enable him or her to represent the applicant effectively before the Tribunal; and
 - ii. whether the proposed representative will deal fairly and honestly with the Tribunal and other persons involved in the proceedings; and
 - iii. depending on the nature of the representative or his or her relationship to the party, whether the proposed representative has the consent of and is vested with sufficient authority to bind the party; and
 - iv. whether the proposed representative is likely to be a witness in the proceedings; and
 - v. any other circumstances that it considers relevant.
- b. In giving leave under section 56(1)(c), the Tribunal may impose such conditions in relation to the representation as the Tribunal thinks fit.
- c. Without the permission of a Presidential Member of the Tribunal, permission under section 56(1)(c) cannot be granted for representation by a person:

- i. who has been the subject of disciplinary proceedings under a law of a State or Territory or the Commonwealth of Australia, or under the Rules of a professional or occupational association or other body relevant to the person; and
 - ii. the person has been found guilty in those proceedings of professional misconduct (however described) or of another breach of professional or occupational standards.
- d. The Tribunal may revoke permission granted to a person to represent a party to proceedings if the Tribunal is satisfied that:
- i. the party no longer consents to the person representing the party; or
 - ii. the person does not have the qualities referred to in this Rule to act as the party's representative; or
 - iii. the party is, or has become, incapable of instructing the representative; or
 - iv. any other grounds are present that the Tribunal considers sufficient to justify the revocation.

Part 11 Litigation Guardians

[Part 11 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

68. Responsibility of registrars

[rule 68 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

The Registrar is expressly authorised to constitute the Tribunal for the purposes of this Part.

69. Appointment, removal or substitution of litigation guardians

[rule 69 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. For the purposes of this Part, a "person under a disability" is:
- i. a child;
 - ii. a person whose affairs are administered (wholly or in part) under a law for the protection of persons suffering from mental or physical disabilities;
 - iii. a person who is not physically or mentally able:
 - 1. to manage his or her own affairs; or
 - 2. to make rational decisions about taking, defending or settling proceedings (or to communicate decisions to others).
- b. In proceedings before the Tribunal, any of the following persons may be the litigation guardian of a person under a disability:
- i. a parent or guardian of the person;

- ii. a person who holds an enduring power of attorney authorising the person to act on behalf of the person under a disability, including in respect of proceedings before the Tribunal;
 - iii. a person who as some other lawful authority to manage or administer the affairs of the person under a disability, including in respect of proceedings before the Tribunal;
 - iv. a person appointed by the Tribunal under sub-rule (d).
- c. A person who commences to act as a litigation guardian under sub-rule (b), other than a person appointed under sub-rule (d), must promptly give a notice to the Tribunal, and to all other parties to the proceedings, that includes the litigation guardian's name and contact details and the name of the person under a disability.
- d. If the interests of justice require, the Tribunal may (on application by any party or on its own initiative):
- i. appoint a litigation guardian to represent a person under a disability in proceedings before the Tribunal; or
 - ii. remove a litigation guardian; or
 - iii. substitute another person as litigation guardian.
- e. A party who becomes aware that another party is a person under a disability and is not represented by a litigation guardian must inform the Tribunal of that fact.

70. Qualifications of the litigation guardian

[rule 70 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

A person may be appointed as the litigation guardian of a person under a disability if the proposed litigation guardian:

- a. is not a person under a disability; and
- b. has no interest in the proceedings adverse to the interests of the person under a disability; and
- c. has agreed to be the litigation guardian of the person under a disability.

71. Appointment of a litigation guardian

[rule 71 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. When an application is made for the appointment of a litigation guardian or the Tribunal is considering the appointment of a litigation guardian, the Tribunal must:
 - i. advise the parties and ask the person under a disability for whom the appointment is being considered (or if an administrator has been appointed for the person, ask the administrator) whether they agree to or oppose the appointment; and
 - ii. if the appointment is agreed, ask whether the person under a disability has a suitable relative, friend or other person who can fulfil the role; and

- iii. if the Tribunal considers it necessary to do so:
 - 1. make directions for the giving to the Tribunal and to any other person of evidence of capacity or incapacity; and
 - 2. conduct a hearing either in person or on the papers as to whether a litigation guardian should be appointed; and
 - iv. if an appointment is to be made but the person under a disability has no suitable relative, friend or other person available to fulfil the role, the Tribunal must seek out and appoint a suitable person as a litigation guardian for the person under a disability.
- b. The Tribunal must provide the following details to the person to be appointed:
- i. the name of the person under a disability for whom the litigation guardian is to be appointed and whether that person is a child or an adult; and
 - ii. the names of the parties to the proceedings, the Tribunal's reference number for the proceedings and the nature of the proceedings; and
 - iii. the Tribunal's reasons for the appointment of a litigation guardian for the person under a disability; and
 - iv. a copy of all documents lodged with the Tribunal in relation to the proceedings; and
 - v. the date and time the matter is next listed and whether it is listed for directions, conference, mediation or hearing; and
 - vi. if the person under a disability is legally represented, the details of the legal representative; and
 - vii. any other matter relevant to the appointment of the person as litigation guardian.
- c. Within 2 business days of the proposed litigation guardian confirming that he or she has agreed to accept the appointment, the Tribunal must notify all parties of the proposed litigation guardian's name and contact details.

72. Role of a litigation guardian

[rule 72 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. Subject to this Rule, the role of a litigation guardian is to determine what is in the best interests of the person under a disability and conduct the proceedings in the way he or she considers to be in the person's best interests rather than on the basis of the person's views or instructions.
- b. Subject to any directions or orders of the Tribunal in a particular case, the litigation guardian must, in respect of the person under a disability:
 - i. attempt to ascertain the views of the person about the issues in dispute; and

- ii. ensure that the person understands and participates in the proceedings as much as is practicable in the circumstances; and
 - iii. assess the specific needs of the person and attempt to accommodate those needs as far as is reasonably possible and consistent with the object of promoting the best interests of that person; and
 - iv. participate in any alternative dispute resolution process which he or she considers to be in the best interests of the person.
- c. A litigation guardian may be represented by a legal practitioner, who must conduct the proceedings in accordance with the litigation guardian's instructions.
- d. Each party must deal and communicate with the litigation guardian as if the litigation guardian, rather than the person under a disability being represented by the litigation guardian, is the party to the proceedings.

Part 12 Evidence

[Part 12 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

73. Exchange of **evidentiary material**

[rule 73 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[rule 73 amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. Subject to these Rules and any direction or order of the Tribunal, the following applies in relation to giving evidentiary material to the Tribunal and other persons:
- i. if the person giving the evidentiary material is not represented by a legal practitioner, that person must give the evidentiary material to the Tribunal and the Tribunal will give it to all other persons it considers appropriate;
 - ii. if the person giving the evidentiary material is represented by a legal practitioner, the legal practitioner must give the evidentiary material to the Tribunal and all other parties.
- b. For the purposes of sub-rule (a):
- i. if the evidentiary material can be given electronically to the other persons, it must be given to the other persons at the same time it is given to the Tribunal;
 - ii. if the evidentiary material cannot be given electronically, it must be given to the other persons as soon as practicable after it is given to the Tribunal.
- c. Subject to these Rules and any direction or order of the Tribunal, all evidentiary material must be given to the Tribunal as soon as practicable after it is obtained and, in any event, at least 2 clear business days before the next hearing.
- d. A reference in this Rule to a "hearing" includes a reference to a directions hearing or conference.

74. Reliance on new evidentiary material

[rule 74 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]
 [rule 74 amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

At the hearing of the proceedings, a party cannot, without the permission of the Tribunal, rely on or present any new evidentiary material of relevance to the proceedings without the other party first having a reasonable opportunity to consider the new material.

Part 13 Summonses

[Part 13 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

75. Issue and Form of summons

[rule 75 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. A summons issued to a person under section 40 of the SACAT Act may be issued in any form a registrar considers appropriate to inform the person fully about:
 - i. what he or she must do to comply with the summons and the consequences of not complying with it; and
 - ii. that if he or she is not a party to the proceedings, that the issuing party is liable to pay his or her reasonable costs of complying with the summons, including witness fees if relevant; and
 - iii. his or her rights to apply for an order:
 1. setting aside the summons or any part of it; or
 2. in respect of any claim for privilege, public interest immunity other immunity or confidentiality; or
 3. that the issuing party pay the person his or her reasonable costs of complying with the summons, including witness fees if relevant, if the person is not a party to the proceedings and is not prepared to accept any undertaking that the issuing party may have given to pay those costs and fees.
- b. The Registrar may refuse to issue a summons if he or she considers that:
 - i. the evidence sought under the summons would not be relevant to the proceedings; or
 - ii. the evidence sought under the summons would not be appropriately provided by the person named in the summons; or
 - iii. there is good reason to do so.

76. Complying with Summonses

[rule 76 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. Subject to this Rule, unless he or she has a lawful basis for not complying, the person named in the summons must comply with that summons and in particular:

- i. in the case of a summons to attend and give evidence, he or she must come to the Tribunal to give evidence on the date and at the time specified in the summons and remain until excused by the Tribunal; and
- ii. in the case of a summons to attend and produce documents or other things, he or she must either:
 1. attend and produce the documents or other things to the Tribunal at the place and by the date and time specified in the summons; or
 2. send the summons or a copy of the summons and the documents or other things to a registrar at the place specified in the summons so that they arrive not less than 2 clear business days before the date specified in the summons.
- b. Unless a summons specifically requires the production of the original or a certified copy of any document, the person named in the summons may produce a copy of any document required to be produced by the summons, including an electronic copy of a document.
- c. Hardcopy documents or other things produced to the Tribunal in answer to a summons must be in a sealed envelope or a binder or folder (depending on the bulk of the items) with a copy of the summons attached.
- d. If the person who applied for the summons reasonably considers that, in order to facilitate the orderly conduct of the hearing, the person named in the summons should attend or produce the summoned documents on a date or at a time later than the date or time specified on the summons, he or she may give a notice to the person named in the summons of a date or time later than the date or time specified in the summons as the date or time for attendance or for production or for both.
- e. When notice is given under sub-rule (d), the summons has effect as if the date or time notified appeared in the summons instead of the date or time that in fact appeared in the summons.

77. Objections to Summonses

[rule 77 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If the person named in the summons has a lawful basis for objecting to compliance with the summons or if another person affected by the summons has a lawful basis for objecting to the summons being complied with, he or she must try to resolve the objection with the party who applied for the summons to be issued before the time for compliance.
- b. If the objector is unable to resolve the matter informally, the objector must:
 - i. before the time for compliance, in writing inform a registrar and the party who applied for the summons of the basis for the objection; and
 - ii. attend the Tribunal on the date for compliance to explain the basis for objection, or such other time as may be directed by a registrar.

- c. The Tribunal may determine that objections that cannot be resolved by discussion and agreement will be referred to a conference with the persons concerned or to the Registrar or a Member for decision.
- d. If any requirements of a summons are amended pursuant to this Rule, the summons has effect as if the summons were originally issued in those terms.
- e. A registrar is expressly authorised to constitute the Tribunal for the purposes of this Rule.

78. Access to and use of documents and other things produced on summons

[rule 78 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

The Tribunal may give directions in relation to the removal from and return to the Tribunal, and the inspection, copying and disposal, of any document or thing that has been produced to the Tribunal in response to a summons.

79. Allowances and Expenses of Complying with Summons

[rule 79 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. A party who applied for a summons to be issued will be liable to pay:
 - i. to the person named in the summons, his or her reasonable costs of complying with the summons, including witness fees if relevant, except if that person is an officer or employee within any Commonwealth, State or local government body (including a police officer), but excluding an officer or employee who is on leave during the period of attendance at the Tribunal; and
 - ii. if other loss or expense is incurred in complying with a summons, a reasonable amount for that loss or expense.
- b. If a summons to attend and give evidence is issued on the application of a party, the person named in the summons need not comply with the requirements of the summons unless:
 - i. the party pays the person his or her reasonable costs of complying with the summons, including witness fees if relevant, a reasonable time before attendance is required; or
 - ii. where the party issuing the summons has given an undertaking to pay those costs and fees, and the person has after receiving the summons notified the party in writing that he or she does not accept the undertaking, the party pays those costs and fees a reasonable time before attendance is required.
- c. The amount to be paid for costs, fees, losses or expenses is either as agreed between the person named in the summons and the party who applied for the summons or, if they cannot agree, as determined by the Tribunal under these Rules.

Part 14 Disclosure and Production of Documents

[Part 14 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

80. Details and production of documents

[rule 80 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. The Tribunal may, at any time prior to or in the course of the hearing of proceedings, order a person, whether or not a party to proceedings:
 - i. to disclose to the Tribunal any documents which are in the possession or control of that person and are directly relevant to the proceedings; and
 - ii. to produce those documents to the Tribunal and to the other party or the parties to the proceedings together with a list of the documents prepared in accordance with the Practice Directions.
- b. The Tribunal may order that compliance with this Rule is to be verified in a sworn statement.

81. Objections to production

[rule 81 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

A person with a relevant interest may object to production of a document being made on the grounds of privilege, or that the document should not be produced for some other reason, and the Tribunal may excuse the person who has made disclosure of the document from the need to produce the document or the relevant part of the document to the Tribunal or any party.

82. Responsibility of registrars

[rule 82 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

A registrar is expressly authorised to constitute the Tribunal for the purposes of this Part.

Part 15 Expert Evidence

[Part 15 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

83. Application of Part

[rule 83 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. The provisions of this Part apply, to the extent relevant, whenever a party proposes to provide the Tribunal with expert evidence in any proceedings, including in relation to a report obtained from a medical practitioner or psychologist about a person's physical and mental condition relevant to an application made under the *Advance Care Directives Act 2013*, the *Consent to Medical Treatment and Palliative Care Act 1995*, the *Guardianship and Administration Act 1993* and the *Mental Health Act 2009*.
- b. This Part applies subject to these Rules and subject to any orders or directions of the Tribunal.
- c. A registrar is expressly authorised to constitute the Tribunal for the purposes of this Part.

84. Responsibility of parties

[rule 84 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

A party must instruct any expert engaged by the party to comply with the procedures and principles of this Part and, where relevant, the provisions of the Practice Directions applying to experts.

85. Limit on number of experts

[rule 85 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

Unless the Tribunal permits a greater number, a party to a proceeding may call evidence from only one expert for each area of expertise.

86. Notice that expert evidence will be relied upon

[rule 86 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. A party who proposes to call expert evidence at a hearing must give each other party notice of each expert's name and area of expertise and the issues that each expert will address.
- b. This Rule does not apply to an expert report relating to an application made under the *Advance Care Directives Act 2013*, the *Consent to Medical Treatment and Palliative Care Act 1995*, the *Guardianship and Administration Act 1993* and the *Mental Health Act 2009*.

87. Expert's primary duty to the Tribunal

[rule 87 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. An expert owes a duty to assist and advise the Tribunal on issues in dispute within the expert's area of expertise and this duty overrides any obligation to any party to the proceeding or any person who is liable for the expert's fee or expenses.
- b. A person must not give, and an expert must not accept, instructions to adopt or reject a particular opinion in relation to an issue in dispute in a proceeding.

88. Expert evidence is based on written reports

[rule 88 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

[sub-rule 88a amended by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 4)]

- a. **Unless dispensed with by the Tribunal, each** expert must prepare a written statement of their evidence.
- b. The expert's statement of evidence must include:
 - i. the expert's qualifications, experience and area of expertise, including the expert's expertise to make the report; and
 - ii. a copy or record of all instructions provided to the expert by or on behalf of the party (original and supplementary and whether in writing or oral); and
 - iii. a reference to any private or business relationship between the expert witness and the party for whom the report is prepared; and
 - iv. all material facts and assumptions on which the report is based; and

- v. references to any inspection, examination, experiment, literature or other document or material relied on by the expert to prepare the report; and
 - vi. a copy of all photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter referred to in the expert's report; and
 - vii. the identity and qualifications of the person who carried out any tests or experiments upon which the expert relied in making the report; and
 - viii. a statement setting out:
 - 1. a summary of the conclusions reached by the expert; and
 - 2. any provisional opinions that are not fully researched for any reason (including the reasons why such opinions have not been or cannot be fully researched); and
 - 3. questions and issues falling outside the expert's expertise; and
 - 4. whether the statement of evidence is incomplete or inaccurate in any respect; and
 - 5. what, if anything, would be required for the expert to reach a more reliable conclusion.
- c. The expert must include a declaration at the end of the statement of evidence that:
- i. the factual matters stated in the report are, as far as the expert knows, true; and
 - ii. the expert has made all enquiries considered appropriate; and
 - iii. the opinions stated in the report are genuinely held by the expert; and
 - iv. the report contains reference to all matters the expert considers significant; and
 - v. the expert understands, and has complied with, the expert's duty to assist and advise the Tribunal on issues in dispute within the expert's area of expertise and understands that this duty overrides any obligation to any party to the proceeding or any person who is liable for the expert's fee or expenses.
- d. An expert may submit a further statement of evidence which relates to an issue of disagreement recorded in a joint report under this Part.
- e. The statement of evidence must be given to the Tribunal and a copy given by the Tribunal to each party.
- f. This Rule does not apply to an expert report relating to an application made under the *Advance Care Directives Act 2013*, the *Consent to Medical Treatment and Palliative Care Act 1995*, the *Guardianship and Administration Act 1993* and the *Mental Health Act 2009*.

89. Conferences of experts

[rule 89 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. The Tribunal may give directions that an expert engaged for a hearing must attend a conference with any other expert of the same area of expertise engaged by an opposing party.
- b. During the conference, the experts must attempt to identify and clarify areas of agreement and disagreement amongst them on any issue in dispute and the reasons for any disagreement.
- c. Before a conference of experts is held, a party proposing to call an expert must:
 - i. advise the expert of his or her duty to the Tribunal under this Part to assist and advise the Tribunal on issues in dispute within the expert's area of expertise and that this duty overrides any obligation to any party to the proceeding or any person who is liable for the expert's fee or expenses; and
 - ii. give the expert reasonable notice of the conference and any issues in dispute which relate to the expert's area of expertise and enough information and opportunity for the expert to investigate the relevant facts adequately.
- d. All discussions at a conference of experts are confidential and cannot be used in the proceedings unless the parties agree.

90. Joint reports

[rule 90 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. The experts who have attended a conference must prepare a joint report to the Tribunal that summarises the technical background of the matter, including the assumptions on which the experts have relied in the conference.
- b. The joint report must identify what matters the experts agree upon, what matters they disagree about, and the reasons for their disagreement.
- c. The joint report must also state that each expert understands his or her duty to the Tribunal under this Part and that he or she has complied with it.
- d. A party must give reasonable notice to the opposing party if the party's expert proposes, whether in a statement of evidence or in oral evidence:
 - i. to contradict, depart from or qualify an opinion about an issue the subject of agreement in a joint report; or
 - ii. to raise a matter not already mentioned in a joint report.
- e. The joint report must be given to the Tribunal and a copy given by the Tribunal to each party.

91. Change of opinion

[rule 91 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. An expert witness who changes an opinion on a material matter (including on the basis of another expert's report) must as soon as practicable communicate that change of opinion in writing to the party retaining the expert.
- b. The party must immediately give to the Tribunal and to the opposing party a notice of the expert's change of opinion, specifying the reasons why his or her opinion has changed and setting out his or her revised opinion.
- c. Any supplementary report by the expert witness must also promptly be given to the Tribunal and to the opposing party.

92. Format

[rule 92 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

To assist the Tribunal, each individual and joint report of an expert witness must contain a cover page that clearly identifies, as relevant:

- a. the reference number given by the Tribunal to the relevant proceeding; and
- b. the date of the report; and
- c. if the report relates to a person, the name of that person; and
- d. if the report relates to a property, the address of that property and the date(s) of any inspection; and
- e. the party who engaged the expert to prepare the report; and
- f. the person from whom the expert received his or her instructions.

Part 16 Referrals to Experts or Special Referees

[Part 16 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

93. Guide to Part

[rule 93 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

This Part applies to experts under section 42 of the SACAT Act and special referees under section 65 of the SACAT Act. The Tribunal's usual practice is to have regard to expert evidence provided by the parties in a proceeding. However, in appropriate cases, the Tribunal may appoint its own expert under section 42 of the SACAT Act or a special referee under section 65 of the SACAT Act. The Tribunal may do this at the request of the parties, or on its own initiative.

94. Referral at request of the parties

[rule 94 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If the parties jointly seek the appointment of a section 42 expert or a section 65 special referee, the parties must apply for appropriate directions to be made by consent.
- b. The application for directions must contain, as a minimum:

- i. the name of the proposed expert or special referee, details of his or her expertise, and confirmation that he or she has agreed to accept the appointment; and
- ii. the questions to be considered or determined, or the task to be performed, by the expert or special referee; and
- iii. the date by which any documents (which must be clearly identified in the application) are to be provided to the expert or special referee and by whom; and
- iv. the date by which the expert or special referee is to complete any report or determination subject to an extension of time being granted by the Tribunal; and
- v. details of arrangements made by the parties to pay the costs of the expert or special referee.

Note: The expert or special referee will generally not be required to deliver up his or her report or determination until his or her account has been paid in full by the parties.

- c. Following receipt of the application for directions, the Tribunal may make an order appointing the expert or special referee, or may refer the application to a directions hearing for decision.
- d. The Tribunal may require the parties to make an initial payment on account of the estimated costs of the expert or special referee before the expert or special referee commences any work under the appointment or may require the parties to provide security for the costs of the expert or special referee in a manner specified by the Tribunal.
- e. The Tribunal may decline to appoint an expert or special referee if the terms of appointment appear to be outside the proposed appointee's expertise or for such other reason as the Tribunal thinks fit.

95. Referral on Tribunal's initiative

[rule 95 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

If the Tribunal proposes to appoint an expert or special referee on its own initiative:

- a. the Tribunal will first obtain the views of the parties in writing or at a directions hearing;
- b. the costs of the expert or special referee will be apportioned equally between the parties, unless otherwise ordered by the Tribunal;
- c. the Tribunal may require the parties to make an initial payment on account of the estimated costs of the expert or special referee before the expert or special referee commences any work under the appointment or may require the parties to provide security for the costs of the expert or special referee in a manner specified by the Tribunal;
- d. after the expert or special referee completes his or her appointment and renders a final account, the parties will be required to pay any outstanding balance within seven days in the same proportions as the initial payment to the expert or special referee, unless otherwise ordered by the Tribunal;

Note: Payment by the parties of the full costs of the expert or special referee may be required before the expert or special referee provides his or her report to the Tribunal.

- e. the costs paid by a party to the expert or special referee will be treated as a cost in the proceeding if there is a subsequent costs application by a party.

Part 17 Conduct of Proceedings

[Part 17 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

96. Notice of hearing

[rule 96 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

Before the Tribunal hears any application, a registrar must give notice of the time and place of the hearing to the applicant and any other person given a copy of the application by the Tribunal.

97. Conferences, hearings, etc.

[rule 97 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

When hearing an initiating application or an application for internal review, the Tribunal is to conduct such conferences, directions hearings and other hearings or refer matters to mediation as it sees fit.

98. Mediation under section 51

[rule 98 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. Where mediation is to be conducted by a person who is not a registrar or a Member of the Tribunal, a registrar, no later than 7 days prior to the commencement of a mediation under section 51 of the SACAT Act, must give the person specified as the mediator by the Tribunal and the parties to the mediation a notice stating:
 - i. when, where and by whom the mediation is to be conducted; and
 - ii. the responsibilities of the mediator and the parties prior to, during and after the mediation.
- b. The person specified to conduct a mediation must conduct the mediation in accordance with recognised ethical and professional standards for mediators.
- c. If the mediator is not a Member or registrar of the Tribunal, a party to the mediation must pay or contribute to the costs of the mediation as directed by the Tribunal.
- d. The Tribunal may require the parties to make an initial payment on account of the estimated costs of the mediator before the mediation commences or may require the parties to provide security for the costs of the mediator in a manner specified by the Tribunal

99. Hearings in the case of default or absence of a party

[rule 99 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

The Tribunal may, on application or its own initiative, proceed to hear and determine proceedings:

- a. in the absence of a party who has failed to attend the hearing; or
- b. if a party has failed to do any other thing the party is required to do under the SACAT Act, the Regulations, any relevant Act or these Rules or the Practice Directions or any order or direction made by the Tribunal,

in circumstances where:

- c. the Tribunal is satisfied that notice of the hearing was given to the party or the party has had sufficient opportunity to do the thing the party is required to do; or
- d. the Tribunal considers that justice requires that the matter be dealt with in the absence of the party or without the party having done the thing the party is required to do.

100. Making and authenticating decisions

[rule 100 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

A decision, direction or document of the Tribunal is authenticated by being signed and sealed by the presiding Member or a registrar (including by affixation of the Member's or registrar's electronic signature and the Tribunal's seal).

Part 18 Costs, witness fees, etc.

[Part 18 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

101. Costs

[rule 101 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. Subject to any order of the Tribunal, if the Tribunal has not ordered the payment of a lump sum in costs:
 - i. costs awarded by the Tribunal are to be assessed at 75% of the scale of costs applicable from time to time for the purposes of the *Supreme Court Civil Rules 2006*; and
 - ii. if costs are not agreed by the parties, the Tribunal may, on the application of a party, determine the amount of costs payable.
- b. In determining the costs to be awarded to a party, the Tribunal may take into account that the party did not accept an offer as favourable as, or more favourable than, the Tribunal's order or decision in the proceedings.
- c. A registrar of the Tribunal is expressly authorised to constitute the Tribunal for the purposes of this Rule.

102. Witness fees and costs of complying with summonses

[rule 102 inserted by South Australian Civil and Administrative Tribunal Rules 2014 (Amendment No. 1)]

- a. If witness fees or the costs of complying with a summons are not agreed, the Tribunal may, on application, determine the amount payable.
- b. Subject to this Rule, the following amounts may be included in the amount determined by the Tribunal as payable in respect of a person summonsed to attend before the Tribunal and in respect of any other witness (including a witness who attended at the Tribunal but was not called to give evidence):

- i. the actual amount lost, or the expenses necessarily incurred, by the person by reason of his or her absence from home or business for the purpose of attending at the Tribunal or \$100 per day, whichever is the lesser;
- ii. an allowance for the travelling expenses of the person in attending at the Tribunal, calculated on the basis of travel by public transport to and from the place where the hearing is held, or, if the use of public transport by the person is not reasonably practicable, \$0.20 per kilometre necessarily travelled to and from the place where the hearing is held;
- iii. if the person is required at the hearing to produce documents or things referred to in the summons—the expenses incurred by the person in complying with this requirement as determined by the Tribunal to be just and reasonable in the circumstances;
- iv. if the person is necessarily absent from home overnight—the accommodation and meal expenses reasonably incurred by the person;
- v. if the person is necessarily accompanied by another person—an amount equal to that which could be determined in accordance with these Rules in respect of that other person if he or she were required to attend before the Tribunal.

c. If—

- i. the amount lost, or the expenses incurred by the person exceed the amount determined in accordance with subrule (b)(i); or
- ii. the travelling expenses incurred by the person exceed the amount determined in accordance with subrule (b)(ii),

the amount determined by the Tribunal to be payable may include such further amount as the Tribunal thinks just and reasonable in the circumstances.

- d. Subject to this Rule, where a summons is issued on the Tribunal's own initiative under section 40 of the SACAT Act, a Presidential Member may determine by which party or parties (and in what proportions) an amount payable under this Rule is to be paid.
- e. No amount is to be payable in respect of a person required to attend at the Tribunal who is an officer or employee within any Commonwealth, State or local government body (including a police officer), but excluding an officer or employee who is on leave during the period of attendance at the Tribunal.
- f. The Registrar of the Tribunal is expressly authorised to constitute the Tribunal for the purposes of this Rule.

History of Amendment

New entries appear in bold.

Entries that relate to Rules that have been deleted appear in italics.

	Provision	How varied	Commencement
Pt 1			
	r 3	Substituted by Amendment No 1	29.3.15
	r 4	Inserted by Amendment No 1	29.3.15
	r 4(b)	Amended by Amendment No 4	8.11.18
	r 5	Inserted by Amendment No 1	29.3.15
	r 5(a)		
	r 5(a)(iv)	Amended by Amendment No 4	8.11.18
	r 5A	Inserted by Amendment No 4	8.11.18
	r 6	Inserted by Amendment No 1	29.3.15
	r 6(a)		
	r 6(a)(i)	Amended by Amendment No 4	8.11.18
	r 6(a)(ii)	Amended by Amendment No 4	8.11.18
	r 6(b)	Amended by Amendment No 4	8.11.18
	r 6(c)	Inserted by Amendment No 4	8.11.18
	r 7	Inserted by Amendment No 1	29.3.15
	r 8	Inserted by Amendment No 1	29.3.15
	r 9	Inserted by Amendment No 1	29.3.15
Pt 2			
	r 10	Renumbered by Amendment No 1	29.3.15
	r 11	Renumbered by Amendment No 1	29.3.15
Pt 3		Inserted by Amendment No 1	29.3.15
	r 12		
	r 12(a)	Amended by Amendment No 4	8.11.18
	r 14		
	r 14(c)	<i>Deleted by Amendment No 4</i>	8.11.18
	r 17	<i>Deleted by Amendment No 4</i>	8.11.18
		Inserted by Amendment No 4	8.11.18
Pt 4		Inserted by Amendment No 1	29.3.15
	r 18		
	r 18(b)	Amended by Amendment No 4	8.11.18
	r 21	<i>Deleted by Amendment No 4</i>	8.11.18
		Inserted by Amendment No 4	8.11.18
	r 22	<i>Deleted by Amendment No 4</i>	8.11.18
	r 23	Amended by Amendment No 4	8.11.18
	r 30		
	r 30(a)	Amended by Amendment No 3	19.12.17
	r 34		
	r 34(c)	Amended by Amendment No 3	19.12.17

	Provision	How varied	Commencement
Pt 5		Inserted by Amendment No 1	29.3.15
Pt 6		Inserted by Amendment No 1	29.3.15
	r 47		
	r 47(a)	Amended by Amendment No 3	19.12.17
	r 48		
	r 48(e)		
	r 48(e)(i)	Inserted by Amendment No 1	9.5.15
	r 48(e)(iii)	Inserted by Amendment No 1	9.5.15
	r 48(e)(iv)	Inserted by Amendment No 1	9.5.15
	r 48(e)(v)	Inserted by Amendment No 1	9.5.15
	r 48(e)(ix)	Inserted by Amendment No 1	9.5.15
	r 48(e)(x)	Inserted by Amendment No 1	9.5.15
	r 48(e)(xi)	Inserted by Amendment No 1	9.5.15
	r 48(e)(xii)	Inserted by Amendment No 1	9.5.15
	r 49	<i>Inserted by Amendment No 1</i>	Uncommenced
		<i>Deleted by Amendment No 2</i>	11.12.16
		Inserted by Amendment No 4	8.11.18
Pt 7		Inserted by Amendment No 1	29.3.15
	r 51		
	r 51(d)	Amended by Amendment No 2	11.12.16
	r 51A	Inserted by Amendment No 4	8.11.18
	r 52	Amended by Amendment No 4	8.11.18
Pt 8		Inserted by Amendment No 1	29.3.15
	r 53		
	r 53(a)	Amended by Amendment No 2	11.12.16
	r 53(d)	Inserted by Amendment No 2	11.12.16
	r 54		
	r 54(a)	Substituted by Amendment No 2	11.12.16
	r 54(b)	Substituted by Amendment No 2	11.12.16
	r 55		
	r 55(a)	Substituted by Amendment No 2	11.12.16
	r 55(b)	Substituted by Amendment No 2	11.12.16
	r 55(c)	Substituted by Amendment No 2	11.12.16
	r 55(d)	Substituted by Amendment No 2	11.12.16
	r 55(e)	Inserted by Amendment No 2	11.12.16
	r 55(f)	Inserted by Amendment No 2	11.12.16
	r 55(g)	Inserted by Amendment No 2	11.12.16
	r 56		
	r 56(a)	Amended by Amendment No 2	11.12.16
	r 57A	Inserted by Amendment No 3	19.12.17
		Amended by Amendment No 4	8.11.18
Pt 9		Inserted by Amendment No 1	Uncommenced
		Substituted by Amendment No 2	11.12.16

	Provision	How varied	Commencement
	r 59	Amended by Amendment No 3	19.12.17
	r 59(a)	Amended by Amendment No 3	19.12.17
Pt 9A		Inserted by Amendment No 3	19.12.17
	r 62B	Amended by Amendment No 4	8.11.18
	r 62C	Amended by Amendment No 4	8.11.18
Pt 10		Inserted by Amendment No 1	29.3.15
Pt 11		Inserted by Amendment No 1	29.3.15
Pt 12		Inserted by Amendment No 1	29.3.15
	r 73	Amended by Amendment No 4	8.11.18
	r 74	Amended by Amendment No 4	8.11.18
Pt 13		Inserted by Amendment No 1	29.3.15
Pt 14		Inserted by Amendment No 1	29.3.15
Pt 15		Inserted by Amendment No 1	29.3.15
	r 88		
	r 88(a)	Amended by Amendment No 4	8.11.18
Pt 16		Inserted by Amendment No 1	29.3.15
Pt 17		Inserted by Amendment No 1	29.3.15
Pt 18		Inserted by Amendment No 1	29.3.15