

MAGISTRATES COURT OF SOUTH AUSTRALIA
CONSOLIDATED CIVIL PRACTICE DIRECTIONS
SUMMARY OF PROVISIONS

	Page
PRELIMINARY	1
DEFINITIONS.....	1
CLAIM	1
STATUTORY ACTIONS	1
FILING AND SERVICE OF DOCUMENTS	2
ACTIONS NOT DEFENDED.....	2
APPLICATIONS	2
MEDIATION, CONCILIATION AND ARBITRATION	5
CASE MANAGEMENT AND SETTLEMENT CONFERENCES	7
SCHEDULE 1.....	9

I, ANDREW JAMES CANNON, Acting Chief Magistrate in and for the State of South Australia, pursuant to rule 6 of the *Magistrates Court (Civil) Rules 2013* issue these Practice Directions.

PRELIMINARY

1. (1) These Practice Directions may be cited as the "*Magistrates Court Consolidated Civil Practice Directions*".
- (2) These Practice Directions commence on 27 September 2015.
- (3) All previous practice directions made under the *Magistrates Court (Civil) Rules 2013* are revoked with effect on 27 September 2015.
- (4) There will be additional numbered Practice Directions issued in relation to court sitting dates, locations and registry opening hours as required by the Chief Magistrate. These will be titled "Court Sitting Directions" and will not cause amendment to this document.

DEFINITIONS

2. (1) In all Practice Directions, unless the contrary intention appears, expressions defined in the Rules have the same meaning.
- (2) In these Practice Directions, unless the contrary intention appears –

"*the Rules*" means the *Magistrates Court (Civil) Rules 2013*.

"clause" refers to a numbered item in a Practice Direction.

CLAIM

3. Parties wishing a monetary claim commenced in the Civil (General Claims) or Civil (Consumer and Business) Divisions may apply to have it heard and determined as a minor civil action under section 10AB of the *Magistrates Court Act 1991* by adopting any of the procedures in rule 93 of the Rules.

STATUTORY ACTIONS

4. A claim under the *Corporations Act 2001* (Cth) is to be commenced on Form 2 or Form 3, according to whether it is a general claim or minor civil action and the defendant must file a defence on Form 4 or Form 5 within 21 days of service of the claim upon the defendant.
5. The costs applicable to such a claim shall be those costs prescribed by the Rules.

FILING AND SERVICE OF DOCUMENTS

6. (1) Practitioners and self represented litigants are reminded of their obligations pursuant to Rule 71(1) to make discovery by filing and serving a list of all documents that are directly relevant to any issue raised in the pleadings not less than 7 days before the first directions hearing.
- (2) Subject to any order of the Court copies of all discovered documents are not to be filed in the registry. Accordingly, the registry will not accept copies of discovered documents unless a Magistrate has made an order that such documents be filed.

ACTIONS NOT DEFENDED

7. (1) Where the Court has jurisdiction in respect of an action or claim that arises, wholly or in part, under or by virtue of a law of the Commonwealth (a “Federal matter”), no judgment or order of the Court can be given, made or signed—

- (a) in default of the filing of any pleading;
- (b) in default of the attendance by a party;
- (c) for want of prosecution;
- (d) for failure to comply with an order of the Court or a requirement of the Rules;

except if a Magistrates does it.

- (2) In the above circumstances, an application for a judgment or order in a Federal matter must be:
 - (a) in Form 18A contained in Schedule 1 to these Practice Directions which contains all information (financial or otherwise), that the applicant wants the Court to take into account;
 - (b) referred to the Chamber Magistrate;

and may, unless the Magistrate orders otherwise, be dealt with ex parte and in the absence of the parties.

- (3) Only a Magistrate may give or make a judgment or order, with the consent of the parties, in a Federal matter.
- (4) This Direction does not affect the functions or powers of a Registrar in respect of a non-Federal matter.

APPLICATIONS

8. (1) This Direction applies to Applications in the following types in Actions where the trial court is the Adelaide Civil Registry—

- (a) an Application to extend the time for service of an action;
 - (b) an Application to appoint a person to carry out the duties of the Sheriff under section 7 of the *Sheriff's Act 1978*;
 - (c) an Application to amend any aspect of a Claim before service of it;
 - (d) an Application to issue an enforcement process in respect of a judgment that is more than six years old; and
 - (e) an Application for the reinstatement of an action dismissed under rule 28(3).
- (2) A party seeking to have an Application dealt with by electronic means must do so by filing it as an attachment to an e-mail, addressed to magistrates.efiling@courts.sa.gov.au or AMCRegistry@courts.sa.gov.au together with an signed copy of any sworn affidavit material that the Applicant holds in the party's file to support the Application, and any brief submissions, each formatted in MS WORD or Adobe Acrobat.
- (3) The Application must bear an e-mail address for the Applicant. The Registry must acknowledge receipt of the Application once it is viewed, which will be the date of filing of it. If it is an Application to appoint a person to carry out the duties of the Sheriff under section 7 of the *Sheriff's Act 1978*, the Registrar must serve a copy on the Sheriff and wait at least one business day for any response. The Registrar must and forward the Application and any documents in support of it, and any response from the Sheriff, where applicable, to a Duty Magistrate, who will decide whether to hear the Application by electronic means.
- (4) If the Duty Magistrate decides not to hear the Application by electronic means s/he must promptly advise the Registrar by email of that decision and s/he must list it for hearing in the usual way, and advise the Applicant of that decision and the time and place appointed for the hearing. The Applicant must file the sworn original of any affidavit material a copy of which was filed by electronic means prior to the hearing.
- (5) If a Duty Magistrate decides to hear the Application by electronic means s/he may rely on the signed copies of sworn affidavit material, as if they were the sworn original and may request further information by any means including email to the Applicant.
- (6) By filing an Application by electronic means the Applicant undertakes that it has and will retain and produce to the Court, upon request made by the Court within six months of the date of filing of the Application, the sworn original of any affidavit a copy of which was filed by electronic means.
- (7) Any order of the Court, other than a decision not to hear a matter electronically, must be reduced to writing, signed and placed on the paper file for the Action in the usual way with paper copies of the Application and any document filed

electronically, or otherwise, in relation to the Application. The Registrar must advise the Applicant of the order by e-mail to the address given by the applicant or by any other means authorised by the Rules.

9. An application may be heard and determined by the Court without service of the application where it is—
- (a) to appoint a person to serve or execute any action, proceeding or process or carry out the duties of the Sheriff in relation to any matter;
 - (b) to amend any name or other particular, or pleadings in respect of an action, before service of it;
 - (c) to add or remove a party to an action before service of it;
 - (d) for leave to file an application in respect of a minor civil action pursuant to rule 65; or
 - (e) pursuant to rules 28(2), 112(3)(b) or 123 of the Rules.
10. (1) A party, legal practitioner or company representative involved in a general or minor civil claim may request the Court to conduct a directions hearing by telephone where it is impracticable for the party, legal practitioner or company representative to personally attend.
- (2) The request must be made in writing and given to the Registry where the directions hearing is to be conducted, at least 2 days before the scheduled hearing.
 - (3) The request must contain the name and direct telephone number of the party, legal practitioner or company representative (“the nominated person”) who will be available to attend the directions hearing by telephone within 15 minutes of the scheduled hearing time.
 - (4) Where a request satisfies the requirements stated above, the Court may grant leave for the nominated person to appear by telephone, with such leave to be conveyed to the applicant within 24 hours of the hearing.
 - (5) The nominated person must be present during the entirety of the conference by telephone.
 - (6) The Court will contact the nominated person on the number provided at the scheduled hearing time or as soon as practicable thereafter. If the nominated person cannot be successfully contacted, the directions hearing may proceed in their absence.
 - (7) If the Court attempts to contact the nominated person and the number is engaged or is not answered, the presiding judicial officer or Registrar may leave a message stating any orders made during the directions hearing.

MEDIATION, CONCILIATION AND ARBITRATION

11. (1) **What is the process of mediation?**

Mediation is a process in which the participants, with the assistance of a mediator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. A mediator has no advisory or determinative role in relation to the content of the dispute. The mediator will make the process clear before it commences.

(2) **What are the benefits of mediation?**

Mediation gives parties to a dispute an early opportunity to settle the dispute in private - saving costs, time and stress.

It encourages effective communication under the direction of an impartial mediator, and is often more conducive to maintaining ongoing relationships.

(3) **Prior to mediation**

When the Court refers a matter to mediation the parties must indicate if they wish to choose a mediator from the Court panel and notify that choice to the Manager Mediation Unit within 7 days. The Manager Mediation Unit shall contact any chosen mediator or if none is chosen s/he shall nominate one and contact the mediator to arrange a time and place for the mediation to occur and notify the parties of that time and place.

The parties must file all discovered documents with the Court 7 days before the mediation. A party may be excused from filing documents if it would be considered unduly onerous to do so. See rule 71(6) of the Rules.

(4) **What happens during the mediation?**

The mediator will begin by explaining the process and any ground rules.

The mediator will give each party a chance to explain what they think the problem is. All parties will be given an opportunity to be heard and to respond.

The mediator will assist the parties to identify the key issues in dispute.

The mediator may talk to the parties separately to clarify issues and discuss settlement options. These private sessions are confidential and the mediator will not disclose anything said in those sessions without consent.

Parties can request to speak to the mediator privately and confidentially at any time during the mediation.

Mediation is voluntary and therefore any party may withdraw at any time.

(5) **Confidentiality**

Anything discussed during the mediation cannot be used in a trial of the matter. The mediation will not be recorded. See section 67C of the *Evidence Act 1929* and section 27(3) of the *Magistrates Court Act 1991*.

However, an agreement reached at mediation may be produced in a hearing, for example, if the other party does not comply with the terms of the settlement.

By entering the mediation process the parties agree that they must not disclose to others what was said or done during mediation or disclose any confidential documents produced in the process. They may in addition be asked to sign a confidentiality agreement.

At the conclusion of the mediation, the notes of the parties and/or their legal representatives must be provided to the mediator, who will destroy them. The notes will not be kept on the Court file.

(6) Cost of Mediation

The costs of the mediator will be 2% of the amount claimed (for claims between \$25,000 and \$100,000) or \$500 (for claims under \$25,000).

See <http://www.courts.sa.gov.au/ForLawyers/Pages/Magistrates-Court-Fees.aspx>

The mediator's costs will be paid by the parties in equal shares unless the Court orders otherwise.

The costs of mediation are to be paid directly to the Court not less than 14 clear days before the date fixed for the mediation.

If the parties do not have the means to pay for mediation, the Court may provide mediation at no cost.

(7) Recording the outcome

If the parties reach agreement on any aspect of the matter, including any factual matters that are agreed, the mediator will assist the parties to record the agreement before leaving the mediation.

The mediator may adjourn the mediation if s/he has the view that there is good cause. If this is to a date beyond the next court date the mediator must report the adjournment and reason for it to the Court before that court date. Once the mediation is complete the mediator must report to the Court:

that the mediation took place;

any agreement made;

any other matters that the mediator considers appropriate; and

forward her or his invoice for the scale or other fee ordered by the Court.

All communication by the mediator to the Court will in first instance be to the Manager Mediation Unit.

(8) **Further information**

Rule 72 of the Magistrates Court Rules provides more detail on some of these matters.

See [http://www.courts.sa.gov.au/ForLawyers/Pages/MC-RulesDirectionsFormsFees-\(Civil\).aspx](http://www.courts.sa.gov.au/ForLawyers/Pages/MC-RulesDirectionsFormsFees-(Civil).aspx)

12. An application or request under the *Commercial Arbitration Act 2011* shall be filed in Form 7 with an affidavit in support of it.

CASE MANAGEMENT AND SETTLEMENT CONFERENCES

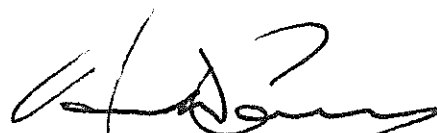
13. (1) An action in the Civil (General Claims) Division and the Civil (Consumer and Business) Division of the Magistrates Court will not be set for hearing or trial unless each party has filed with the Court a list of the witnesses (“List”) the party intends to call at the hearing or trial.
- (2) A List must provide the full name, address, occupation and telephone (including mobile telephone) contact number of each witness.
- (3) A List–
- (a) must be filed not less than 2 days before a Pretrial Directions Hearing is conducted on the matter; and
- (b) may, but need not, be served on any other party.
- (4) If, at a hearing or trial, a party calls a witness who has not been disclosed in a List, that party will, unless special reasons apply, be solely responsible for all costs of and incidental to that witness’s attendance.

14. For the purposes of rule 119(1), the following prefixes are designated:

AMCCI	Adelaide Civil Registry
BERCI	Berri Civil Registry
CHBCI	Christies Beach Civil Registry
ELZCI	Elizabeth Civil Registry
LINCI	Port Lincoln Civil Registry
MTBCI	Mount Barker Civil Registry

MTGCI	Mount Gambier Civil Registry
MUBCI	Murray Bridge Civil Registry
PADCI	Port Adelaide Civil Registry
PAUCI	Port Augusta Civil Registry
PIRCI	Port Pirie Civil Registry
WHYCI	Whyalla Civil Registry

DATED this *1st* day of October 2015



MAGISTRATE ANDREW JAMES CANNON
ACTING CHIEF MAGISTRATE

SCHEDULE 1

APPLICATION TO A MAGISTRATE IN RESPECT OF A FEDERAL MATTER

Magistrates Court of South Australia (Civil Division)

www.courts.sa.gov.au

From 18A

Court Use
Date Filed:

Registry				Action No		
Address	Street			Telephone	Facsimile	DX
	City/Town/Suburb	State	Postcode	Email Address		

Plaintiff

Full Name			
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Defendant

Full Name			DOB	dd/mm/yyyy
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Address	Street		
	City/Town/Suburb	State	Postcode

_____ : (Name of Party) hereby makes application to a Magistrate of the Court for

1. Judgment in sum of _____ \$
- Costs in the sum of _____ \$
- Interest in the sum of _____ \$
2. Judgment with damages, costs and interest to be assessed at a time and day to be fixed by the court
3. A Judgment or order by consent to the parties in the following terms:

.....

.....
4. An order in the following terms.....
5. Other.....

.....

JUDGMENT/ORDER

I hereby give judgment and make order in the terms of

1. Paragraph (s).....and.....
- 2.

.....
Date	Magistrate