

LICENSING COURT RULES 2012

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CHAPTER 1 – PRELIMINARY

Part 1 – Preliminary

1. Citation

These rules may be cited as the *Licensing Court Rules 2012*.

2. Commencement

These rules commence on the 19th day of April 2012 and apply to all proceedings commenced on or after that date. If the Court considers it appropriate they may be applied to proceedings commenced prior to that date with such modifications as thought necessary.

Part 2 – Purpose and Application of Rules

3. Purpose

The purpose of these rules is to provide for the just, efficient and expeditious disposition of the business of the Licensing Court of South Australia at minimum expense.

4. Application of rules

- (1) These rules do not affect rules of procedure laid down by regulation.
- (2) These rules do not derogate from any inherent jurisdiction of the Court.
- (3) In any circumstances not provided for or fully provided for by these rules, the general principles of the practice of the Supreme Court and the rules of that Court in its civil jurisdiction may be adopted and applied at the discretion of the Court with such modifications as the circumstances may require.

Part 3 – Interpretation

5. Interpretation

Words defined in the Act shall also have the same meanings when used in these rules and, unless the contrary intention appears -

the Act means the "*Liquor Licensing Act 1997*" as amended from time to time;

applicant - a party that seeks relief in a proceeding is the applicant;

approved form - a document is in an approved form if it is in the form as approved, and amended from time to time, by the Licensing Court Judge;

business day - means a day on which the Registry is ordinarily open for business;

the Clerk means the Licensing Court Clerk appointed pursuant to the Rules and includes a Deputy Licensing Court Clerk;

Commissioner means the Liquor and Gambling Commissioner;

complainant means a party authorized to lodge a complaint alleging that grounds exist for taking disciplinary action pursuant to s 120 of the Act or a party authorized to lodge a complaint under s 106 of the Act;

the Court means the Licensing Court of South Australia however constituted;

document - anything that records information is a document;

file – a document is filed in the Court –

- (a) if the document has been lodged with the Clerk or transmitted in electronic form to the Clerk for filing in the Court; and
- (b) the Clerk has accepted the document for filing and, in the case of a document transmitted in electronic form, issued a receipt for the document.

intervener means a party authorized to intervene in proceedings before the Court pursuant to the Act

Judge means a Judge of the Court;

lawyer means a legal practitioner entitled to practice as a barrister or solicitor in South Australia;

the Licensing Court Judge means the Licensing Court Judge and a Judge to whom the Licensing Court Judge has delegated powers to act as the Licensing Court Judge;

member means Judge, Clerk or Deputy Clerk as the case may be;

objector means a party who is entitled to be heard in opposition to an applicant's claim;

officer of the Court includes a person whom the Court has appointed to carry out a particular function;

order includes a direction or determination;

originating process means a document that initiates a proceeding in the Court;

proceeding includes any cause, complaint, matter, application, conference, mediation, hearing, trial, reference, case stated, review or other step before the Court or the Clerk pursuant to the Act or within any jurisdiction invested in the Court by any other statute, whether in chambers or open court;

procedural irregularity includes -

- (a) failure to comply with a procedural obligation (whether arising under these rules, a practice direction, or an order of the Court);
- (b) unnecessary delay;
- (c) prolixity in the statement of a party's case;
- (d) the unnecessary, vexatious or otherwise improper commencement of, or an unnecessary, vexatious or otherwise improper step in, a proceeding;
- (e) unreadiness to proceed with the hearing of a proceeding, or the taking of any other step in a proceeding, at the time fixed by or under these rules;

the Regulations mean Regulations promulgated under the Act;

respondent - a respondent to a proceeding is a party against whose interest the proceeding lies;

representative includes a lawyer or other duly appointed representative of a party;

tele-conference means a hearing at which the Court and the party or the party's representative communicate by telephone, video-link or other electronic means;

The *Acts Interpretation Act 1915* is to be applied to the construction of these rules in the same manner as if they had been enacted by Parliament.

CHAPTER 2 – COURT’S CONTROL OF PROCEDURE

Part 1 – Court Procedure

6. Power of the Court to control procedure

- (1) The Court may, on its own initiative, or on application by a party, give directions about the procedure to be followed in a particular proceeding.
- (2) A direction may be given under this rule -
 - (a) to resolve uncertainty about the correct procedure to be adopted; or
 - (b) to achieve procedural fairness in the circumstances of a particular case;
or
 - (c) to expedite the hearing or determination of a particular case or to avoid unnecessary delay or expense.
- (3) A direction may be given under this rule irrespective of whether it involves some departure from these rules or the established procedures of the Court.
- (4) A direction may be given under this rule superseding an earlier direction, but a step taken in a proceeding in accordance with a direction that has been superseded is to be regarded as validly taken.

7. Practice Directions

- (1) The Licensing Court Judge may make any **practice direction** contemplated by these rules or necessary for the regulation of proceedings in the Court.
- (2) A practice direction is distinguished from other directions given by the Court in that its operation is not confined to particular proceedings before the Court but applies in relation to proceedings generally, or to a particular class of proceedings, according to its terms.
- (3) A practice direction must be published in such manner as is directed by the Licensing Court Judge.

Part 2 – Conduct of the Court's business

8. The Clerk

- (1) The Clerk is the principal administrative officer of the Court. The Clerk shall maintain the Registry and the records of the Court
- (2) The Clerk may delegate any powers conferred by the rules to a Deputy Clerk.
- (3) The Clerk or a Deputy Clerk may if so directed, publish and deliver a decision on behalf of a Judge.

9. The Seal

- (1) The seal of the Court shall be in such form as shall from time to time be approved by the Licensing Court Judge and shall be kept in the Registry under the control of the Clerk.
- (2) The seal shall be affixed by the Clerk or an officer of the Court duly authorised by the Clerk to all summonses, orders of the Court and such other documents as the Licensing Court Judge may direct.

10. The Registry

- (1) There is to be a Registry at which all documents shall be lodged either physically or by other means as permitted by these rules and from which all documents to be issued by the Court shall be sent.
- (2) The Registry shall be situated at such location as shall from time to time be approved by the Licensing Court Judge.
- (3) It shall be open to the public between such hours as the Licensing Court Judge may direct.

11. Clerk may seek directions from the Licensing Court Judge

- (1) The Clerk may refer to the Licensing Court Judge any question arising in the course of -
 - (a) the exercise of the functions of the Clerk; and
 - (b) the carrying out of administrative functions by any of the Court's administrative officers.
- (2) The Licensing Court Judge may -
 - (a) give directions he or she considers appropriate; or
 - (b) assume control of the matter.

CHAPTER 3 - REPRESENTATION

12. General principles

- (1) If the Court's permission to enable representation is required the party or the representative shall seek that permission at the earliest opportunity and if granted, that permission shall continue unless revoked. Upon being granted permission the representative shall give notice to the Court, in an **approved form**, that the representative is acting for the party.
- (2) A party appearing before the Court by a representative who is not a lawyer is bound by the actions of that representative in the same manner and to the same extent as if the representative was a lawyer.
- (3) Documents may only be filed in a proceeding by a party personally or by a representative recorded in the Court's records as the representative acting for the party.

13. Representative acting for a party

- (1) A representative is to be recorded in the Court's records as the representative acting for a party if -
 - (a) the representative's name appears on the first document to be filed in the Court on behalf of the party as the name of the party's representative; or
 - (b) the representative gives notice to the Court, in an **approved form**, that the representative is acting for the party.
- (2) The Court will alter its records so that a particular representative no longer appears as the representative for a party if -
 - (a) the party files in the Court a notice, in an **approved form**, to the effect that the party is no longer represented by that representative; or
 - (b) a representative files a notice, in an **approved form**, to the effect that the representative is to be recorded as the representative now acting for the party in place of the representative previously recorded as the representative acting for the party; or
 - (c) the Court orders on its own initiative, or on the application of a party or a representative, that the Court's records be altered so that the representative no longer appears as the representative acting for the party.
- (3) If the Court makes an order under subrule (2)(c) it may make ancillary orders-
 - (a) requiring that notice be given of the order; and

- (b) providing that the order is not to take effect until notice has been given as required in it.

14. Representative' s presumptive authority

A representative who appears in the Court's records as the representative of a party is taken to have authority to represent the party as the party's agent, and to accept, on behalf of the party, service of documents related to the proceeding unless the contrary is established.

CHAPTER 4 – COMMENCEMENT OF PROCEEDINGS

Part 1 – Initiating Actions

15. Disciplinary Action - General

- (1) All complaints alleging that grounds exist for disciplinary action being taken against a person will be commenced by summons with particulars of complaint in the **approved form**, and shall be lodged in the Registry.
- (2) Upon filing of the summons, the Clerk shall set the matter down in a call-over to be conducted by a Judge at a specified date and time.
- (3) The Clerk will cause the date of issue of the summons and the date and time of the call-over to be entered on the summons, which will be regarded as the notice of the date and time of the call-over.
- (4) The complainant shall endeavour to serve the complaint at least fourteen days before the call-over.
- (5) The complainant shall be expected to be ready to proceed on the day of the call-over or at such later time as the Court may direct.
- (6) The Judge conducting the call-over may, at the Judge's discretion or upon the application of a party, adjourn the complaint to another call-over or to a specified date and time.

16. Review of or an appeal from the Commissioner's decision

- (1) An application seeking a review of the Commissioner's decision or an appeal from a party to proceedings before the Commissioner under the *Gaming Machines Act 1992* who is dissatisfied with a decision or order made or given in such proceedings must
 - (a) be in the **approved form**, and shall be lodged in the Registry; and
 - (b) be filed within one month of the receipt of the Commissioner's decision by the applicant. If an extension of time is sought the application must be accompanied by an Application for Directions seeking the extension of time together with a supporting affidavit.
- (2) On filing of an application for review or appeal, the Clerk shall set the matter down for a directions hearing before a Judge and shall endorse the date and time of the directions hearing on the application.
- (3) Unless otherwise directed by the Licensing Court Judge, the Clerk must provide a copy of the application endorsed with the date and time of the directions hearing to the applicant for service upon all relevant parties.

- (4) At the directions hearing the Court may:
 - (a) give directions with respect to service of the application on other persons who may have an interest in the proceedings;
 - (b) make such orders as are reasonable for the effective conduct of the proceedings.

17. Reference by the Commissioner

- (1) A reference of a matter by the Commissioner must be in the **approved form**, and shall be lodged in the Registry;
- (2) On filing of the reference, the Clerk shall set the matter down for a directions hearing before a Judge and shall endorse the date and time of the directions hearing on the reference.
- (3) Unless otherwise directed by the Licensing Court Judge, the Clerk must provide a copy of the reference endorsed with the date and time of the directions hearing to the applicant for service upon all relevant parties.
- (4) At the directions hearing the Court may:
 - (a) give directions with respect to service of the application on other persons who may have an interest in the proceedings;
 - (b) make such orders as are reasonable for the effective conduct of the proceedings.

Part 2 - Service

18. Time for service of originating process

- (1) Except where otherwise provided in these rules, an originating process must be served by the applicant on the other relevant parties within fourteen days after it is filed in the Court unless otherwise directed.
- (2) The Court may, from time to time, extend the period for serving the originating process, or make an order for alternative or substituted service.
- (3) The Court's discretion to extend the time for serving the originating process may be exercised even though the time allowed for service by or under this rule has expired.

Part 3 – Intervention

19. Intervention by an intervener

If a party authorized by the Act to intervene in proceedings wishes to exercise that right the party shall file in the Court and serve on each party as soon as is practicable a notice of intention to intervene in an **approved form**.

CHAPTER 5 - CASE MANAGEMENT

Part 1 – Assignment and the Court's powers to manage and control proceedings

20. Assignment and place of hearing of proceedings

- (1) It is the prerogative of the Licensing Court Judge to assign or re-assign any proceeding to a Judge either for interlocutory management or ultimate determination.
- (2) The Court may fix any appropriate place within or outside the State as the place of hearing.
- (3) The place of hearing may change during the progress of the hearing.
- (4) Subject to any direction by the Court under sub rule (2), the place of hearing of a proceeding will be in Adelaide.
- (5) A party may at any time file a written request with the Clerk that a proceeding be heard at a place other than Adelaide. The Judge to whom the proceeding has been assigned will determine such request after hearing each party affected.
- (6) Proceedings may be conducted by **tele-conference** at the discretion of the Judge concerned.

21. Court's power to manage proceedings

- (1) The Court has the power to manage litigation to the extent necessary to ensure that it is conducted -
 - (a) fairly; and
 - (b) as expeditiously and economically as is consistent with the proper administration of justice.
- (2) The Court may, at any time, on its own initiative or on application of a party, review the progress of a proceeding in the Court and -
 - (a) exercise its power under sub rule (1) by giving directions appropriate to the circumstances of the case; and
 - (b) make any other order that may be appropriate in the circumstances including orders dealing with non-compliance with these rules.
- (3) A Judge hearing a matter in open court may adjourn a proceeding for further consideration in Chambers or, if sitting in Chambers, may adjourn a proceeding to be heard in open court.

- (4) A Judge may, with the concurrence the Licensing Court Judge and for proper reason, direct that any interlocutory proceeding that is part heard before that Judge be assigned to another Judge for determination.

22. Application for directions

- (1) A party seeking directions about the conduct of proceedings must apply by an application for directions in an **approved form**.
- (2) The Clerk must, on receipt of an application for directions, list it for hearing by a Judge.
- (3) The party filing the application must serve a copy on all other parties whose interests are affected and give them not less than five clear days written notice of the time and place appointed for the hearing of it. If the circumstances of the case require the application to be dealt with urgently the application shall be endorsed “Specially returnable” in which case the applicant must serve a copy on all other parties whose interests are affected as soon as is reasonably practicable.
- (4) The application for directions must specify each order sought. Where necessary, it shall be supported by an affidavit setting out all relevant facts.

Part 2 – Entry and Inspection

23. Entry and Inspection

- (1) When in respect of proceedings the Court proposes to exercise its right of entry and inspection of a land or building it shall issue a written instrument setting out the nature and extent of the powers it intends to exercise.
- (2) The written instrument shall be under the seal of the Court and shall be signed by the Clerk on behalf of the Court.

Part 3 – Evidence

24. Oral and Affidavit Evidence

- (1) The evidence of a witness at a hearing will be taken orally upon the personal attendance of the witness unless the Court orders that evidence may be taken by other means including by video-link, by telephone or by affidavit.
- (2) At or before the hearing the Court may order that evidence of a particular fact be given in a particular manner including by affidavit or sworn transcript of evidence in other proceedings.
- (3) Any document purporting to be an order or determination of the Court or any other Court and bearing the seal of the Court or the relevant Court shall be accepted as such unless the Clerk certifies to the contrary.

Part 4 – Summons to attend or Produce documents or things

25. Issue of summons

- (1) On the direction of a Judge or the Commissioner, the Clerk must issue a summons ordering a person the subject of the summons to –
 - a. attend to give evidence as directed by the summons; or
 - b. to produce any document or thing as directed by the summons; or
 - c. to do both those things; or
- (2) A summons to attend to give evidence or to produce any document or thing must –
 - (a) be in the **approved form**; and
 - (b) state the name or designation by office or position of the person to whom the summons is directed, unless the Court directs otherwise; and
 - (c) be filed.
- (3) A summons requiring only the production of a document or thing must–
 - (a) adequately describe the document or thing;
 - (b) be served at least five days before the earliest date on which the addressee is required to comply with the summons or an earlier or later date fixed by the Court;
 - (c) contain a notice, in the approved form, telling the person to whom the summons is directed that the person has the right to apply to the Court to have the summons set aside on any sufficient grounds, including –
 - (i) the document or thing is not relevant to the proceedings; or
 - (ii) the document or thing is privileged; or
 - (iii) oppressiveness, including the possible incurring of substantial expense which may not be reimbursed; or
 - (iv) non-compliance with these rules.
- (4) A summons may only be directed to a single person.

26. Compliance with summons

- (1) If a summons requires only the production of a document or thing it may be complied with by delivering the document or thing to the Clerk not less than two clear business days prior to the date for compliance.

- (2) Upon delivery of a document or thing to the Clerk following service of a summons to produce, the Clerk must forthwith notify the parties in order that they or any other interested person have the opportunity to consider taking action to restrict access to the document or thing in accordance with sub rule (6).
- (3) If a document or thing is delivered to the Clerk prior to the date of hearing, the parties must, within not less than seven days of delivery, and subject to any contrary ruling by a member, be given unrestricted access to the document or thing subject to the giving of an undertaking that the document or thing will be returned to the Clerk in the same order and state as it was at the time access is taken.
- (4) A party may apply to the Clerk for permission to inspect the document or thing at a time earlier than seven days from delivery to the Clerk.
- (5) A party shall not be permitted to remove the document or thing from the Court without permission and upon such terms as may be imposed.
- (6) If a party, the recipient of the summons or some other relevant and interested person seeks an order restricting access to the document or thing produced under this rule, an application seeking appropriate relief shall be filed within seven days of the filing of the document or thing and shall be referred to a Judge for determination. Pending such determination the parties shall not have access to the document or thing. If no such application is filed within the prescribed time, the parties shall be deemed to consent to all parties having unrestricted access to the document or thing.
- (7) Any application under this rule must be made on an application for directions.

27. Setting aside summons

The Court may, by order, set aside part or all of a summons.

28. Costs and expenses of compliance

- (1) A person who attends the Court under summons is entitled to –
 - (a) the person's reasonable expenses of travelling to attend; and
 - (b) the allowance payable to a witness in a civil action in the Supreme Court;
 - (c) any other reasonable costs.
- (2) If a party has required the person's attendance by summons that party, subject to any contrary ruling by the Court, is responsible for paying the allowance and the expenses to the person.
- (3) The costs and expenses are to be fixed by agreement between the responsible party and the person summonsed, or in default of agreement, by the Court.

29. Failure to comply with a summons

A person who fails to comply with a summons without lawful excuse may be guilty of an offence under the Act.

Part 5 – Discontinuance of proceedings

30. Discontinuance of a proceeding or part of it

An applicant may discontinue a proceeding by filing a notice of discontinuance in an **approved form**.

Part 7 – Miscellaneous powers

31. Power to excuse non-compliance with procedural obligations

- (1) A procedural irregularity does not make a proceeding void.
- (2) If a party commits a procedural irregularity in bringing or in the conduct of a proceeding the Court may, on its own initiative or on the application by a party -
 - (a) dismiss the proceeding; or
 - (b) set aside a particular step in the proceeding.
 - (c) issue such directions as considered appropriate
- (3) An application for an order dismissing a proceeding, setting aside a particular step in a proceeding or some other order under this rule should be made as soon as practicable after the procedural irregularity becomes apparent to the applicant party.

32. Court's power to dismiss or deal summarily with a proceeding

- (1) The Court may dismiss a proceeding if -
 - (a) the relevant documents disclose no reasonable cause of action; or
 - (b) the proceeding is frivolous, vexatious or an abuse of the process of the Court.
- (2) The Court may, on application of a party, make a summary order in favour of that party if satisfied that -
 - (a) if the applicant is the applicant in the proceeding - there is no reasonable basis for resisting the applicant' claim; or
 - (b) if the applicant is a respondent in the proceeding - there is no reasonable basis for pursuing a proceeding against that applicant.

- (3) The Court may, in its discretion, make a summary order as to a particular issue without disposing of the proceeding as a whole.
- (4) If the Court makes a summary order without disposing of the proceeding as a whole, the Court may give directions about the determination of the remaining issues and, in the absence of any such direction, the proceeding will continue in the normal way as to the remaining issues.
- (5) If, when a proceeding is called on for hearing, the applicant or complainant does not attend (or no party attends) the Court may make an order dismissing the proceeding for want of prosecution.
- (6) If, when a proceeding is called on for hearing, the applicant or complainant attends, but a respondent, objector or intervener, as the case may be, does not, the Court may hear and dispose of the proceeding in a summary manner in the absence of that other party.

33. Court's power to stay

The Court may stay a proceeding if the justice of the case so requires.

34. The suspense list

- (1) If, at any stage, all parties to a proceeding do not then seek any orders or assistance from the Court or wish to defer progressing the proceeding for an indefinite period, the Court may, on its own initiative or on the application of a party, direct that the proceeding be placed in the suspense list.
- (2) A proceeding cannot be removed from the suspense list except by order of the Court.
- (3) If a proceeding has been in the suspense list for a period of twelve months the Clerk must, on not less than seven days notice to the parties, list it before a member for consideration as to whether it ought to be dismissed for want of prosecution.
- (4) A Judge may make such order as to the disposition of the proceeding as is appropriate in the circumstances.

35. Death or incapacity of a Judge

- (1) If a Judge dies or becomes incapacitated before completing a hearing and determination of a proceeding, or, for some reason, it becomes impractical for the Judge to complete the hearing and determination the Licensing Court Judge may assign another Judge to complete the hearing and determination.
- (2) The Judge so assigned may complete the hearing and determination having regard to the existing transcript and exhibits and such other evidence as the parties may wish to adduce.

- (3) The judge may on his or her own initiative or shall, if requested by party, recall any witness whose evidence is material and in dispute.
- (4) If reasons for decision in final form were prepared before the Judge died or became incapacitated, the Judge to whom the proceeding is reassigned must publish the reasons and give a decision in accordance with them.

36. Case stated

Where the Court decides to state a case for consideration by the Supreme Court pursuant to the Act it may issue directions generally.

CHAPTER 6 - DOCUMENTS

37. Form of documents to be filed

- (1) A document to be filed in the Court must be in an **approved form** and lodged at the Registry.
- (2) The Court may, in a particular proceeding, give directions -
 - (a) about the form in which documents are to be filed in the Court;
 - (b) imposing additional requirements about the filing or form of documents.
- (3) Documents may be filed physically or by other means including electronically in accordance with practice directions.

38. Issue of sealed copy

- (1) An officer of the Court must issue a sealed copy of any document that has been filed in the Court that is required for service on another party to the proceeding.
- (2) A document in electronic form is taken to bear the Court's seal if, when called up in readable form, a computer-generated image of the Court's seal appears on the document.
- (3) If the document is required for service on different parties, the officer of the Court must, at the request of a party who is to serve the document, issue different versions of the same document with the variations appropriate to the circumstances in which service is to be affected.

39. Issue of certified copy

An officer of the Court must, at the request of a party, issue a certified copy of a document filed in the Court.

40. Power to reject documents submitted for filing

- (1) A document is an abuse of the process of the Court if it contains matter that is scandalous, frivolous or vexatious.
- (2) If it appears to the Clerk that a document submitted for filing is an abuse of the process of the Court, the Clerk must refer the matter to a Judge.
- (3) If the Judge so directs, the Clerk will reject the document.
- (4) If it appears to the Court that a document that is an abuse of the process of the Court has been filed, a Judge may direct that it be struck from the file. Such a direction may be given either on the initiative of the Court or on application by a party.

41. Court's power to amend

- (1) The Court may at any stage of a proceeding -
 - (a) order the amendment of any document; or
 - (b) itself amend a document.
- (2) The Court may make an amendment, or order for amendment, on its own initiative or on application by a party.

CHAPTER 7 - ORDERS AND DETERMINATIONS

42. When orders and determinations take effect

- (1) Subject to this rule, an order that the Court makes following a process of adjudication takes effect when the Court pronounces that order.
- (2) The Court may order that an order take effect earlier or later than the time prescribed under sub rule (1).

43. Clerk to settle and record orders and determinations

- (1) Subject to this rule, an order must be formally entered in the Court's records.
- (2) The Clerk must cause all orders that finally determine an issue arising in a proceeding to be drawn up signed and sealed with the seal of the Court.
- (3) Within seven days of receipt of a sealed order, either party, upon notification to the other of their intention to do so, may apply to the Clerk to be heard on the form of the order if it is contended that the sealed order does not properly reflect the terms of the final determination. Upon receipt of such application the Clerk shall refer the matter to the presiding Judge who shall allow each party an opportunity to be heard, and if the Judge sees fit, the terms of the order may be amended accordingly.