

TASMANIA

PROBATE RULES 2017
STATUTORY RULES 2017, No. 69

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PROBATE RULES 2017

IN THE SUPREME COURT OF TASMANIA

Dated 5 October 2017.

We, the Honourable Alan Michael Blow, OAM, Chief Justice, and the Honourable Shan Eve Tennent, the Honourable Helen Marie Wood, the Honourable Stephen Peter Estcourt, the Honourable Robert William Pearce and the Honourable Michael Joseph Brett, Puisne Judges of the Supreme Court of Tasmania, on the recommendation of the Rule Committee, make the following Rules of Court under the *Supreme Court Civil Procedure Act 1932* for the purposes of the *Administration and Probate Act 1935*.

PART 1 – PRELIMINARY

1. Short title

These Rules of Court may be cited as the *Probate Rules 2017*.

2. Commencement

These Rules of Court take effect on the fourteenth day after the day on which their making is notified in the *Gazette*.

3. Interpretation

(1) In these Rules of Court –

Act means the *Administration and Probate Act 1935*;

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approved form means a form approved by the Chief Justice;

attorney, in relation to a person, means another person to whom a power of attorney is given by the person in accordance with the *Powers of Attorney Act 2000* or other Act;

Civil Registry means the registry relating to the civil jurisdiction of the Supreme Court;

corresponding law means a law of another State, a Territory, the Commonwealth or a foreign country that corresponds, or substantially corresponds, to the *Births, Deaths and Marriages Registration Act 1999*;

deceased means a testator or intestate to whom the context relates;

election means an election filed in respect of an estate –

(a) by the Public Trustee under section 20 or 21 of the *Public Trustee Act 1930*; or

(b) by a trustee company under section 10A of the *Trustee Companies Act 1953*;

exemplification means a record of a search of the Probate Registry that bears the official seal of the Court;

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foreign court means any court, including any person or body authorised to take or receive evidence, whether on behalf of a court or otherwise and whether or not the person or body is empowered to require the answering of questions or the production of documents, of –

- (a) a state or territory of Australia that is not Tasmania; or
- (b) a country that is not Australia, or a part of such a country;

grant means a grant of probate or a grant of letters of administration;

inventory of assets and liabilities of the deceased's estate means an inventory referred to in rule 35;

minor means a person who has not attained the age of 18 years;

notice of intention means –

- (a) a notice of intention to apply for a grant published under rule 33; or
- (b) a notice of intention to apply for the reseal of a grant published under rule 61;

person without capacity to consent means –

- (a) a minor; or

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- (b) a person who is incapable of managing and administering his or her affairs as a result of any absence, loss or abnormality of mental or psychological function;

Probate Registry means the registry that administers applications for grants made to the Supreme Court and related matters;

Registry-certified copy, in relation to an order, means a copy of that order certified by the Registrar as a true copy of the order as filed with the Civil Registry;

spouse has the same meaning as in the *Intestacy Act 2010*;

trustee company means –

- (a) a trustee company as defined in the *Trustee Companies Act 1953*;
or
- (b) an entity approved by the Registrar as equivalent to a trustee company referred to in paragraph (a);

will includes a codicil to a will and any other testamentary disposition;

Wills Act, in relation to a will, means –

- (a) the provisions of the *Wills Act 2008* and any other legislation

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that are applicable to the will by virtue of section 5 of that Act; or

- (b) if the deceased died prior to 1993 and the *Wills Act 1840* applies to the will by virtue of section 4 of the *Wills Act 1992*, the *Wills Act 1840*.
- (2) In these Rules of Court, a reference to letters of administration includes a reference to letters of administration with the will annexed and letters of administration upon intestacy.
- (3) Unless the contrary intention appears, an expression used in these Rules of Court has the same meaning as in the Act and, if the expression is also not defined in the Act, the expression has the same meaning in these Rules of Court as in the *Supreme Court Civil Procedure Act 1932*.

4. Powers of Court

If the Court or a judge considers it appropriate, the Court or a judge may order that compliance with any of these Rules of Court be dispensed with.

5. Application of *Supreme Court Rules 2000*

Unless the contrary intention appears, proceedings to which these Rules of Court apply are to be conducted in accordance with the

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applicable provisions of the *Supreme Court Rules 2000*.

PART 2 – POWERS AND DUTIES OF REGISTRAR

6. Registrar may issue grant

- (1) The Registrar may order the issue of a grant under these Rules of Court for the purposes of the Act unless –
 - (a) a caveat relating to the estate to which the grant would apply is entered under Part 11; or
 - (b) the original will is not available or a copy of a will has not been authenticated to the satisfaction of the Registrar in accordance with rule 43; or
 - (c) the grant is claimed by more than 4 persons; or
 - (d) in the case of letters of administration, 2 or more persons claim priority to that grant and the Court or a judge has not determined which person has priority; or
 - (e) the Chief Justice otherwise directs by practice direction.
- (2) The Registrar may, at any time, decline to order the issue of a grant –
 - (a) if a grant has already been ordered to be issued by the Court or a judge; or
 - (b) until a matter arising from the grant has been determined by the Court or a judge.

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Part 2 – Powers and Duties of Registrar

7. Registrar may exercise power of Court

In any application under these Rules of Court that may be determined by the Registrar, the Registrar may exercise the following powers of the Court or a judge under the Act:

- (a) to extend or reduce any period in which an act must be done;
- (b) to set aside, wholly or in part, or amend or otherwise deal with in any manner and on such terms the Registrar considers fit, any application that does not comply with these Rules of Court;
- (c) if no form or manner of procedure is provided for, or in cases of difficulty or doubt as to the proper procedure, to give directions as to proper procedure.

8. Registrar may refer to Court or judge

- (1) The Registrar may refer to the Court or a judge any of the following matters:
 - (a) any matter arising from an application for a grant;
 - (b) any application for a grant;
 - (c) any other matter relating to the interpretation or exercise of a power or duty of the Registrar under these Rules of Court.

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(2) If the Registrar refers a matter under subrule (1), the Registrar must –

(a) notify –

(i) the applicant for a grant; and

(ii) any person whose interests may be affected by the issue of a grant in relation to the matter –

that the Registrar will not order the issue of a grant until the matter under subrule (1) has been determined by the Court or a judge; and

(b) send a statement to the applicant for a grant stating the matter arising from the application for a grant and giving the reason for declining to order the issue of the grant.

9. Registrar is to give effect to orders of Court or judge

If the Court or a judge has made an order in respect of a grant, the applicant must provide the Registrar with either a sealed copy or a Registry-certified copy of the order.

10. Registrar may require evidence

(1) The Registrar may require evidence of any matter that he or she considers necessary in considering whether to order the issue of a grant.

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- (2) Unless otherwise determined by the Registrar, evidence required under subrule (1) must be given by affidavit.
- (3) The Registrar may refuse to deal with an application for a grant unless evidence required under subrule (1) is supplied to his or her satisfaction.

11. Registrar may accept draft documents

The Registrar may accept a draft application for a grant, or a draft of any document that is required under these Rules of Court to form part of an application, for provisional assessment.

12. Registrar may correct clerical mistakes or omissions

- (1) If a grant is found to be inaccurate or deficient in any detail by reason of a clerical mistake, or omission, it may be corrected by the Registrar.
- (2) Before a correction may be made under this rule, the grant containing the inaccuracy or deficiency must be returned to the Probate Registry.
- (3) Unless subrule (4) applies, the correction must be made on the face of the grant and must be signed by the Registrar.
- (4) If a grant requires correction under this rule and all personal representatives of the deceased to whom the grant relates depose that the grant has not yet been deployed, the Registrar may order the issue of a fresh grant, and in that case the

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returned grant containing the inaccuracy or deficiency must be –

- (a) clearly marked on each page to indicate that it is invalid due to error and that a fresh grant has been issued; and
 - (b) placed on the Court records; and
 - (c) noted in the relevant Court records.
- (5) The Registrar may refuse to correct an inaccuracy or deficiency in a grant under this rule if –
- (a) the grant has been deployed and the inaccuracy or deficiency relates to a detail of importance in the application for the grant; and
 - (b) in the opinion of the Registrar, a fresh application to amend or revoke the grant ought to be made to the Court or a judge.

13. Registrar may allow inspections of documents

- (1) The Registrar may grant permission for a relevant person in respect of a deceased to –
- (a) search, inspect or make a copy of a will or other document filed with the Registrar in respect of the deceased; or
 - (b) inspect or make a copy of information contained in an election filed by the Public Trustee, or a trustee company in respect of the deceased.

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- (2) For the purposes of subrule (1), a relevant person in relation to a deceased is one of the following people:
- (a) the executor or administrator of the deceased's estate;
 - (b) a beneficiary of the deceased's estate;
 - (c) a person named or referred to in the will of the deceased, whether as beneficiary or not;
 - (d) the surviving spouse, parent or guardian or issue of the deceased;
 - (e) a beneficiary of a prior will or purported will of the deceased;
 - (f) a person who would be entitled to a share of the deceased's estate, if the deceased had died intestate;
 - (g) a parent or guardian of a person referred to in this subrule, if that person is a minor;
 - (h) an attorney of a person referred to in this subrule;
 - (i) in the case of an election referred to in subrule (1)(b) filed by the Public Trustee, the Public Trustee;
 - (j) in the case of an election referred to in subrule (1)(b) filed by a trustee company, an officer or employee of that company;

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- (k) a person having a valid reason in the opinion of the Registrar to –
 - (i) in the case of an affidavit, search, inspect or make a copy of that affidavit; or
 - (ii) in the case of an election, inspect or make a copy of that election;
 - (l) an Australian legal practitioner acting for a person referred to in this subrule.
- (3) If a grant has been ordered to be issued by the Court, or an election has been filed by the Public Trustee, or a trustee company, a person may be provided with a copy of the grant or election if the Registrar is satisfied that the person is a relevant person.

PART 3 – ENTITLEMENT TO APPLY FOR GRANT

Division 1 – Entitlement to apply for probate

14. Persons entitled to apply for probate

The following persons are entitled to apply for probate in respect of a deceased:

- (a) an executor of the deceased’s estate;
- (b) the Public Trustee or a trustee company.

15. Reserving leave to apply for probate

(1) Unless otherwise directed by the Court, a judge or the Registrar, a notice reserving leave to apply for probate at some later time will have the effect of reserving the entitlement of an executor of a deceased’s estate to apply for probate if the notice is –

- (a) filed with the Court; and
- (b) in an approved form.

(2) A notice reserving leave filed under subrule (1) need not be provided if the executor to whom leave may be reserved is –

- (a) a minor; or
- (b) a person in relation to whom the Court or a judge has made an order to the effect that the person is temporarily incapable of performing the functions of an executor.

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- (3) Unless subrule (4) applies, a person –
- (a) who has reserved leave to apply for probate at some later time in accordance with subrule (1); or
 - (b) is referred to in subrule (2)(a) or (b); or
 - (c) on whose behalf leave has been reserved in accordance with rule 16(1) –

may apply for a grant in accordance with these Rules of Court.

- (4) If a person –
- (a) has reserved leave to apply for probate at some later time in accordance with subrule (1); or
 - (b) is a person referred to in subrule (2)(a) or (b); or
 - (c) has had leave to apply for probate at some later time reserved in accordance with rule 16(1) on his or her behalf –

and there is a dispute as to that person's entitlement to apply for probate, such a person must apply to the Court or a judge for an order giving leave to the person to apply for probate.

16. Reserving leave on behalf of another

- (1) An executor of a deceased's estate may serve, on another executor of the deceased's estate who has not renounced his or her entitlement to apply

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for probate, or has not reserved leave to apply for probate at some later time, a notice in an approved form –

- (a) indicating his or her intention to apply for probate; and
 - (b) reserving leave for the other executor to apply for probate at some later time.
- (2) If a notice is served under subrule (1) on another executor –
- (a) an application for probate in relation to the deceased's estate may not be made until 14 days after the date of service of the notice on the other executor; and
 - (b) the affidavit in support of the application for probate is to state that such notice has been served and the date of the service.
- (3) If a notice is to be served under subrule (1) on the partners of a law firm, that notice may be served by serving it on the law firm at its principal, or last known, place of business.

17. Renunciation of entitlement to grant of probate

- (1) Unless otherwise directed by the Court, a judge or the Registrar, if a person entitled to apply for probate in relation to a deceased files with the Court a renunciation of that entitlement in an approved form, the person is no longer entitled to apply for, in respect of the deceased –
- (a) probate; or

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- (b) any other form of grant.
- (2) Subject to the *Powers of Attorney Act 2000*, a person without capacity to consent may not renounce the entitlement to apply for a grant under this rule.
- (3) A person may apply to the Court or a judge, in accordance with the *Supreme Court Rules 2000*, for an order allowing the person to withdraw a renunciation filed under subrule (1).
- (4) Leave allowing a person to withdraw a renunciation under subrule (3) may not be given if a grant has been issued to another person who is entitled to apply for such a grant, unless the Court or a judge is satisfied that there are exceptional circumstances.

Division 2 – Entitlement to apply for letters of administration

18. Priority of persons entitled to apply for letters of administration with will annexed

Subject to rule 20, the person or persons entitled to apply for letters of administration with the will annexed are to be determined in accordance with the following order of priority:

- (a) a trustee of the residuary estate;
- (b) a beneficiary of the residuary estate;
- (c) a person entitled to all or part of the residuary estate by intestacy or partial intestacy;

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- (d) a beneficiary of a specific or pecuniary legacy;
- (e) a personal representative of a beneficiary of the residuary estate;
- (f) a person appointed by the Court, a judge or the Registrar, including a creditor of the deceased's estate.

19. Priority of persons entitled to apply for letters of administration upon intestacy

- (1) Subject to rule 20, the person or persons entitled to apply for letters of administration upon intestacy are to be determined in accordance with the following order of priority:
 - (a) the spouse of the deceased;
 - (b) a child of the deceased;
 - (c) the issue of any child of the deceased, if –
 - (i) the child of the deceased has failed to survive the deceased; and
 - (ii) the issue is entitled to a share of the deceased's estate taking *per stirpes*;
 - (d) the parents of the deceased;

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- (e) the brothers and sisters of the deceased, whether or not they have one or both parents in common;
 - (f) the issue of any brother or sister of the deceased, if –
 - (i) the brother or sister has failed to survive the deceased; and
 - (ii) the issue is entitled to a share of the deceased’s estate taking *per stirpes*;
 - (g) the grandparents of the deceased;
 - (h) the aunts and uncles of the deceased;
 - (i) the issue of any aunt or uncle of the deceased, if –
 - (i) the aunt or uncle has failed to survive the deceased; and
 - (ii) the issue is entitled to a share of the deceased’s estate taking *per stirpes*;
 - (j) the State;
 - (k) the creditors of the deceased.
- (2) A person is not entitled to apply for letters of administration upon intestacy unless he or she has survived the deceased in accordance with the rules of survivorship in section 8 of the *Intestacy Act 2010*.

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20. Preference of interest

Unless otherwise directed by the Court, a judge or the Registrar, a grant of letters of administration may be issued to –

- (a) a person who is entitled to the grant and who has attained the age of 18 years in preference to the guardian of a minor who is entitled to the grant; and
- (b) a living person entitled to a grant in preference to the personal representative of a deceased who was entitled to the grant.

21. Consent to application for letters of administration

- (1) Unless otherwise directed by the Court, a judge or the Registrar, a consent filed by a person who is entitled to apply for letters of administration will have the effect of giving consent to an application for letters of administration by another person if the consent is –
 - (a) filed with the Court; and
 - (b) in an approved form.
- (2) A person without capacity to consent may not consent to the application for letters of administration by another person under this rule.

22. Renunciation of entitlement to apply for letters of administration

- (1) Unless otherwise directed by the Court, a judge or the Registrar, if a person entitled to apply for letters of administration in respect of a deceased files with the Court a renunciation in an approved form, the person is no longer entitled to apply for any form of grant for the same deceased.
- (2) Subject to the *Powers of Attorney Act 2000*, a person without capacity to consent may not renounce the entitlement to apply for a grant under this rule.
- (3) A person may apply to a judge, in accordance with the *Supreme Court Rules 2000*, for an order allowing the person to withdraw a renunciation filed under subrule (1).
- (4) Leave to withdraw a renunciation under subrule (3) may not be given if a grant has been issued to another person who is entitled to apply for such a grant, unless the Court or a judge is satisfied that there are exceptional circumstances.

Division 3 – Entitlement to apply for a grant generally

23. Non-resident may be refused grant

If the Registrar receives an application for a grant that has been made by a person who does not reside in Australia or New Zealand, the

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Registrar may refuse the application solely on that basis.

24. Death of person entitled to apply for grant

Unless otherwise directed by the Court, a judge or the Registrar, a statement in the affidavit supporting the application for a grant that a person entitled to apply for a grant has died, giving, where possible, the date of the person's death, will be sufficient to account for the failure of that person to apply for the grant.

25. Passing over person entitled to apply for grant due to incapacity

(1) This rule applies if –

(a) a person entitled to apply for a grant –

(i) is a person without capacity to consent, other than a minor; or

(ii) is, by reason of physical incapacity, incapable of managing his or her affairs and of performing the functions of a deceased's personal representative; and

(b) in the case of a grant of probate, or a grant of letters of administration with the will annexed, all beneficiaries to the will of the deceased agree that the person specified in paragraph (a) is incapable of

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- performing the functions of a deceased's personal representative; and
- (c) in the case of a grant of letters of administration upon intestacy, all persons having a beneficial interest in the estate of the deceased upon intestacy agree that the person specified in paragraph (a) is incapable of performing the functions of a deceased's personal representative; and
 - (d) all persons with lawful authority to administer the affairs of the person specified in paragraph (a) agree that such a person is incapable of performing the functions of a deceased's personal representative; and
 - (e) the applicant for the grant applies to the Registrar to pass over the entitlement to the grant of the person specified in paragraph (a).
- (2) If subrule (1) applies, the applicant for the grant must, as part of the application for the grant –
- (a) make an application for the entitlement of the person specified in subrule (1)(a) to the grant to be passed over due to incapacity; and
 - (b) file an affidavit, in an approved form, by a medical practitioner; and
 - (c) file consents, in an approved form, to the application for the grant, and to the passing over of the person entitled to the

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grant due to incapacity, from all persons referred to in subrule (1)(b) or (c), whichever is relevant in the circumstances; and

- (d) provide any further evidence, consents, information or material as directed by the Registrar.
- (3) An affidavit under subrule (2)(b) must be made by a medical practitioner familiar with –
- (a) the mental or physical health of the person referred to in subrule (1)(a); and
 - (b) the extent of any relevant incapacities of that person; and
 - (c) the likely duration of any relevant incapacities of that person.
- (4) If a beneficiary referred to in subrule (1)(b) or (c) is a minor, the consent required under subrule (2)(c) in respect of the minor may be given on the minor’s behalf by –
- (a) the guardian of the minor, including a statutory or testamentary guardian; or
 - (b) any other guardian of the minor appointed by a court of competent jurisdiction.
- (5) If a beneficiary referred to in subrule (1)(b) or (c) is also a person without capacity to consent, other than a minor, the consent required under

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subrule (2)(c) in respect of the beneficiary may be given on the beneficiary's behalf by –

- (a) a person appointed by a court of competent jurisdiction, or the Guardianship and Administration Board established under the *Guardianship and Administration Act 1995*, to manage the affairs of the beneficiary; or
 - (b) a person who is the attorney of the beneficiary, so long as the giving of consent by the attorney does not exceed the scope of the authority under which the attorney is acting.
- (6) Unless otherwise ordered, if a grant is made in circumstances where a person suffering from an incapacity has been passed over under this rule, the Court, a judge or the Registrar may give leave to the person suffering from the incapacity to make an application for a grant at some later time if he or she becomes capable at that later time to act as the personal representative of the deceased.
- (7) The Registrar may refuse to deal with an application for a person's entitlement to apply for a grant to be passed over under this rule if –
- (a) a consent is not provided as required under this rule; or
 - (b) there is some dispute or doubt about whether the person to be passed over is or is not capable of performing the functions of an executor; or

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- (c) the Registrar is of the view that the application should be determined by the Court or a judge.
- (8) If the Registrar refuses under subrule (7) to deal with an application to pass over a person entitled to apply for a grant under this rule, a fresh application to pass over a person entitled to apply for a grant may be made to a Court or a judge.

26. Passing over person entitled to grant in other circumstances

Nothing in rule 25 affects the discretion of the Court, a judge or the Registrar, in any circumstances, to –

- (a) refuse to order the issue of a grant to a person otherwise entitled to apply for a grant; and
- (b) order the issue of a grant to –
 - (i) without limiting subparagraph (ii), if there is more than one person entitled to a grant – any or all of the other persons so entitled; or
 - (ii) any other person whom the Court, a judge or the Registrar considers appropriate.

27. Person convicted of offence relating to deceased's death may be refused grant

The Registrar may refuse to order the issue of a grant to a person solely on the basis that –

- (a) the person is otherwise entitled to apply for a grant in relation to a deceased's will or estate but has been convicted of an offence relating to the deceased's death; and
- (b) a beneficiary indicates that they are opposed to having a grant issued to the person.

PART 4 – REQUIREMENTS FOR DOCUMENTS

28. Title, heading and footer of documents

Unless otherwise directed by the Registrar, the Court or a judge, each form is to include such title, header and footer set out in an approved form as is appropriate in the circumstances.

29. Lodgement for filing

The following actions must take place at the Probate Registry:

- (a) the lodgement and filing of an application for a grant and associated documents;
- (b) the lodgement and filing of a caveat against the issue of a grant, or a citation, and associated documents;
- (c) the lodgement of a written request for certified and other copies of a grant or the exemplification of a grant.

30. Swearing of affidavits

- (1) Subject to subrule (2), an affidavit will be sufficient under the Act and these Rules of Court if it is sworn before –
 - (a) a person specified in rule 511 or 512 of the *Supreme Court Rules 2000*; or

- (b) an Australian legal practitioner acting for the person on whose behalf the affidavit is to be used; or
 - (c) an employee or an agent, who is also a person specified in paragraph (a), of the law practice of a person specified in paragraph (b).
- (2) An affidavit is not sufficient under the Act and these Rules of Court if it is sworn before a person who is an executor of the estate to which the affidavit relates.

31. Affidavits not to be handwritten

Unless the Registrar determines otherwise, all documents required under these Rules of Court must be typed.

32. Service of documents

Unless otherwise directed by the Court, a judge or the Registrar, or permitted by these Rules of Court, service of any document under these Rules of Court must be by personal service.

**PART 5 – APPLICATION REQUIREMENTS FOR
GRANTS GENERALLY**

Division 1 – Application for grant

33. Notice of intention to apply for grant

- (1) A person intending to apply to the Registrar for a grant must, at least 14 days before filing the application, ensure that a notice of intention is published on the website maintained by or on behalf of the Court.
- (2) A notice of intention in respect of a deceased published under subrule (1) must include the following information:
 - (a) the name, including all known aliases, of the person intending to apply for the grant;
 - (b) the name, including all known aliases, of the deceased in relation to whom the grant is sought;
 - (c) the address of –
 - (i) the person intending to apply for the grant; and
 - (ii) the Australian legal practitioner acting for that person in respect of the application for the grant, if any;
 - (d) the last known residential address of the deceased;

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- (e) if the deceased left a will –
 - (i) the date of the will and of any other testamentary dispositions for which the grant is sought; and
 - (ii) the names of the people identified in the will as executors of the will;
 - (f) the relationship between the person intending to apply and the deceased;
 - (g) a statement that, at least 14 days after the publication of the notice of intention, the person specified in paragraph (a) intends to apply for the grant in respect of the deceased's estate, and indicating the type of grant that will be applied for.
- (3) In order for publication to occur in accordance with subrule (1), the person intending to apply for a grant must provide to the Registrar an electronic copy of the notice of intention in an approved form.
- (4) After receiving a notice of intention under subrule (3), the Court, a judge, or the Registrar may require the person intending to apply for the grant to perform one or more of the following actions:
- (a) publish more than one notice of intention;

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- (b) publish a notice of intention in a manner other than on the website maintained by the Court;
- (c) serve a copy of a notice of intention on a person whose interests, in the opinion of the Court, a judge or the Registrar, may be affected by the issue of the grant.

34. Application for grant

- (1) Unless otherwise directed by the Court, a judge or the Registrar, an application for a grant must be commenced by application in an approved form.
- (2) An application for a grant must include the following annexures or exhibits:
 - (a) if there is a will –
 - (i) an unstapled photocopy of the original will on A4-size paper; and
 - (ii) an affidavit in support of the application for a grant in accordance with Part 6; and
 - (iii) any other document required under Part 6;
 - (b) if the deceased was intestate –
 - (i) an affidavit in support of the application for a grant in accordance with Part 7; and

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- (ii) any other document required under Part 7;
 - (c) such other affidavits and annexures as required by these Rules of Court, or as otherwise required by the Court, a judge or the Registrar.
- (3) Unless otherwise directed by the Court, a judge or the Registrar, an application for a grant need not be served on any person.
- (4) If there is another person who has an entitlement to apply for the grant that is equal or has priority to the entitlement of the person making an application under this rule, the other person must request for a citation to issue under rule 85 prior to the application being made, unless the other person has, under Part 3 –
- (a) consented to the grant; or
 - (b) reserved leave, or had leave reserved on his or her behalf; or
 - (c) renounced his or her entitlement to apply for a grant.

35. Inventory of assets and liabilities of deceased's estate

- (1) An inventory of the assets and liabilities of the deceased's estate must be annexed to an affidavit in support of the application for a grant.

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- (2) The inventory of the assets and liabilities is to be in an approved form and is to include particulars of the following matters:
 - (a) the real and personal estate which the deceased possessed, or was entitled to, at the time of his or her death;
 - (b) the jurisdiction in which each item of the real and personal estate of the deceased is located;
 - (c) an assessment of the fair and reasonable gross value of each item of the real and personal estate of the deceased, as at the date of death of the deceased;
 - (d) the source of the assessment of the fair and reasonable gross value as specified in paragraph (c);
 - (e) the amount of each liability, if any, owed by the deceased as at the date of the swearing of the affidavit supporting the application for a grant in relation to the estate;
 - (f) the amount of any funeral expenses, or related expenses incurred with respect to the deceased.
- (3) Unless otherwise directed by the Registrar, an assessment of the fair and reasonable gross value of the real and personal estate of the deceased does not require the evidence of an expert.

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- (4) If the deceased held any property in the name of an alias, the inventory of assets and liabilities must state that alias and identify the property held in the name of the alias.
- (5) If, after it has been lodged with the Court, the inventory of the assets and liabilities is found to be inaccurate or incomplete in a way that materially affects the value of the deceased's estate, the applicant for the grant is to lodge an affidavit, in an approved form, annexing a further inventory of assets and liabilities correcting the inaccuracy or deficiency.

36. Additional requirements for supporting affidavit if application by corporation or association

- (1) If an application for a grant is made by a trust corporation other than the Public Trustee, the affidavit in support of the application signed by the officer appointed by the corporation must –
 - (a) contain a statement that the corporation is a trust corporation; and
 - (b) unless the corporation has been appointed executor, contain details of how the corporation has been authorised to apply for the grant by the persons entitled to apply for the grant.
- (2) For the purposes of rules 40 and 55, if the applicant is a corporation or association, the affidavit in support of the application is to be made by –

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- (a) in the case of a trust corporation, its director or other responsible officer; and
 - (b) in the case of a non-trust corporation, or unincorporated association, its authorised representative.
- (3) For the purposes of subrule (2)(b), the Registrar may require proof of the appointment of the authorised representative of a non-trust corporation or unincorporated association.

37. Additional requirements for supporting affidavit if existing court order affects application

- (1) If the Court or a judge, or a foreign court, has made an order, or issued a judgment, affecting an application for a grant, the applicant for the grant in addition to any other requirements relating to the application must, in the affidavit supporting the application for the grant –
- (a) identify the proceeding resulting in the order or judgment affecting the application for the grant; and
 - (b) annex a sealed copy or a Registry-certified copy of the order or judgment affecting the application for the grant; and
 - (c) provide any other details or material necessary in the circumstances, or as directed by the Court, a judge or the Registrar.

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- (2) This rule need not be complied with if the particulars of an order or judgment of the Court, a judge or a foreign court will be, or have been, supplied as part of the application in accordance with these Rules of Court.

Division 2 – Applications generally

38. Period for issue of grant

- (1) Unless otherwise ordered by the Court or a judge, no grant will be issued until 14 days after the death of the deceased.
- (2) If an application for a grant is made, for the first time, more than 2 years after the date of the deceased's death, the applicant for the grant must include, in the affidavit supporting the application for the grant, the following matters:
- (a) an inventory of assets and liabilities of the deceased's estate at the time of the deceased's death;
 - (b) an inventory of assets and liabilities of the deceased's estate at the date of the making of the application;
 - (c) the reasons why an application in respect of the deceased has not been made previously;
 - (d) the reasons why the application is now being made.

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Part 5 – Application Requirements for Grants Generally

39. Notification to Attorney-General in certain cases

- (1) After receiving an application for a grant under this Part in respect of a deceased's estate, the Registrar must notify the Attorney-General if the Registrar is satisfied that the State may have an interest in the administration of the estate.
- (2) The Registrar must not order the issue of a grant on an application notified under subrule (1) until the Attorney-General has –
 - (a) determined whether he or she will intervene in the matter on the part of the State; and
 - (b) advised the Registrar in writing as to the course he or she intends to adopt.

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**PART 6 – SPECIFIC APPLICATION REQUIREMENTS
FOR PROBATE OR LETTERS OF ADMINISTRATION
WITH WILL ANNEXED**

*Division 1 – Affidavit supporting application for probate or
letters of administration with will annexed*

**40. Supporting affidavit for probate or letters of
administration with will annexed**

- (1) An affidavit in support of an application for probate or letters of administration with the will annexed is to be –
 - (a) made by the applicant; and
 - (b) in an approved form.
- (2) In addition to the requirements of Part 5 and subrule (1), the affidavit in support of an application for probate or letters of administration with the will annexed must contain the following matters:
 - (a) the name, and details of the relationship to the deceased, of the applicant;
 - (b) if the applicant is a natural person, a statement that he or she has attained the age of 18 years;
 - (c) a statement of the capacity in which the applicant applies for a grant with the will annexed, providing the following particulars if necessary in the circumstances:

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- (i) in the case of an application for probate, the facts that establish the applicant's entitlement to the grant, and account for the failure of the executor, or some of the executors, to apply for the grant;
 - (ii) in the case of an application for letters of administration with the will annexed, the facts that establish the applicant's entitlement to the grant and account for the failure of each person who has an equal or higher priority of entitlement to apply for the grant;
- (d) particulars of the date and place of the deceased's death or, if the date of death is not known –
 - (i) the date on which the deceased was last seen alive; and
 - (ii) if known, the date on which the deceased's body was found;
- (e) a statement that the deceased left property in Tasmania;
- (f) a statement identifying the last will of the deceased, giving the particulars of codicils and other testamentary disposition in relation to the will;

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- (g) a statement that the will has not been revoked by the operation of law, including –
 - (i) a statement of the age of the deceased at the date of the execution of the will; and
 - (ii) statements appropriate to the circumstances indicating whether the will, or a part of the will, has been revoked, including as a consequence of the provisions of the Wills Act relating to the effect on a will of marriage, registration of a relationship, ending of a marriage, or the revocation of a deed of relationship;
- (h) the name and details of the place of residence, or place of business, of each executor of the will;
- (i) if possible, the name of each subscribing witness to the will;
- (j) in the case of an application for letters of administration with the will annexed, a statement as to whether any person entitled to a share in the estate is –
 - (i) a minor; or
 - (ii) entitled to a life interest in the estate –

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and the names of any such persons;

- (k) a statement as to whether the applicant has made an earlier application under these Rules of Court, or the *Supreme Court Rules 2000*, for a grant in respect of the estate of the deceased in Tasmania and, if such an application has been made, particulars of that application and its outcome;
- (l) particulars of the date on which the notice of intention to apply for a grant in respect of the estate of the deceased in Tasmania as required under rule 33 was published in respect of the application;
- (m) an undertaking that, if the applicant obtains a grant in respect of the estate of deceased in Tasmania, the applicant will administer the estate according to law, and, if required by the Court, will provide true and just inventories and accounts of the deceased's estate, or deliver up the grant to the Court;
- (n) a statement that, if an affidavit in support of an application is found to be inaccurate or incomplete, the applicant will, as soon as practicable, lodge with the Registrar a further affidavit correcting the inaccuracy or deficiency;

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- (o) any further statements and particulars relevant to the circumstances and required –
 - (i) under these Rules of Court; or
 - (ii) by the Court, a judge or the Registrar.

41. Attachments to supporting affidavit

- (1) Unless otherwise directed by the Court, a judge or the Registrar, and in addition to the requirements of rule 34, the following documents must be annexed to the affidavit supporting the application for probate or letters of administration with the will annexed:
 - (a) an original extract of the deceased's death registration record given under the *Births, Deaths and Marriages Registration Act 1999*, or an equivalent document under a corresponding law;
 - (b) an inventory of the assets and liabilities of the deceased's estate in accordance with rule 35;
 - (c) a copy of the published notice of intention in respect of the application, showing the publication date;
 - (d) if consent has been given in accordance with rule 21 or 25 by a person in relation to the grant, the consent;

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- (e) if a person has reserved leave under rule 15, or had leave reserved under rule 16 on his or her behalf, in relation to the grant, the notice so reserving leave;
 - (f) if a person has renounced his or her entitlement to apply for the grant under rule 17 or 22, that renunciation.
- (2) The will to which the application relates must be –
- (a) exhibited, in an approved form, to the affidavit supporting the application; and
 - (b) signed by –
 - (i) the applicant; and
 - (ii) the person before whom the applicant has sworn the affidavit and exhibited the will to the affidavit.
- (3) If the applicant is unable to comply with subrule (1)(a), and the Court or a judge has given leave to swear to the death of the deceased under rule 88, a sealed copy or a Registry-certified copy of the order to that effect must be annexed to the affidavit supporting the application for a grant.
- (4) If the applicant is unable to comply with subrule (2), but is able, in accordance with an order of the Court or a judge, to admit other material or documents to proof as the will of the

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deceased, the applicant must exhibit the following items to the affidavit supporting the application for probate or letters of administration with the will annexed:

- (a) a sealed copy or a Registry-certified copy of the order of the Court or a judge;
- (b) the material or documents admitted to proof as the will.

42. Witnesses to will to swear to certain facts

An affidavit made by a witness to a will must contain particulars as to the manner in which the will was executed and attested.

*Division 2 – Additional requirements in certain
circumstances relating to will*

43. Original will detained in foreign court

- (1) If the original will to which the application for probate or letters of administration with the will annexed relates is not available to be exhibited to the affidavit supporting the application because it is detained in the custody of a foreign court, or foreign official, the applicant must provide each of the following:
 - (a) in the affidavit, the particulars of the detention of the will;
 - (b) as an exhibit to the affidavit, a duly authenticated copy of the will;

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- (c) if the will is in a language other than English, a translation of the will –
 - (i) from the language of the will into English; and
 - (ii) certified as a true and accurate translation of the will by the person who undertook the translation.
- (2) A copy of a will is duly authenticated for the purposes of subrule (1)(b) if it is authenticated, to the satisfaction of the Court, a judge or the Registrar, by the foreign court, or foreign official, detaining the will.

44. Deceased a minor at execution of will

If the deceased was a minor at the date of the execution of his or her will, the affidavit supporting the application for probate or letters of administration with the will annexed, in addition to the requirements of rule 40, must –

- (a) state the relevant statutory provision relied on to assert that the will of the deceased is valid; and
- (b) state the facts and circumstances relied on to establish the validity of the will of the deceased; and

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- (c) include, as an annexure to the affidavit, a certified copy of each of the following documents:
- (i) the deceased's birth certificate given under the *Births, Deaths and Marriages Registration Act 1999*, or an equivalent document under a corresponding law;
 - (ii) if the deceased was married, the certificate of marriage given under the *Births, Deaths and Marriages Registration Act 1999*, or an equivalent document under a corresponding law, if any;
 - (iii) any lawfully recognised order or document that is relevant in the circumstances;
 - (iv) any of the material providing evidence of the circumstances asserted to support the validity of the will.

45. Effect of marriage or registered relationship on will

- (1) This rule applies in respect of an application for probate or letters of administration with the will annexed if the will, or part of the will, may be revoked as a consequence of provisions in the Wills Act relating to the effect on a will of –

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- (a) marriage or the registration of a deed of relationship; or
 - (b) the end of marriage or the revocation of a deed of relationship.
- (2) If this rule applies in respect of an application, in addition to the requirements of these Rules of Court, the applicant must –
- (a) in the affidavit supporting the application –
 - (i) state whether the whole of the will is, or clearly identify the part of the will that is, affected by the relevant provisions; and
 - (ii) state which provision of the Wills Act is relied on to assert that the will or part of the will has not been revoked; and
 - (b) annex to the affidavit supporting the application certified copies of each of the following documents that is applicable in the circumstances:
 - (i) a certificate of marriage given under the *Births, Deaths and Marriages Registration Act 1999*, or an equivalent document under a corresponding law;
 - (ii) an order or other document showing the registration of a deed

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of relationship in accordance with
the *Relationships Act 2003*;

(iii) an order or other document
proving the end of a marriage;

(iv) an order or other document
revoking a deed of relationship in
accordance with the
Relationships Act 2003.

(3) If an application to which this rule applies is an application for probate or letters of administration with the will annexed which relies on facts and circumstances not clearly expressed in the will to assert that the will or part of the will is not revoked as a consequence of the relevant provisions, then the applicant must also do the following in the affidavit supporting the grant:

(a) state the facts and circumstances relied on to assert that the will, or part of the will, has not been revoked as a consequence of the relevant provisions;

(b) provide any additional affidavit material necessary to support the application, or required by the Court, a judge or the Registrar.

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46. Question of date and manner of execution of will

- (1) Except as otherwise specified, this rule applies in respect of an application for probate or letters of administration with the will annexed where –
 - (a) there is insufficient evidence of due execution of the will; or
 - (b) the will bears no date of execution or there is doubt as to the date of execution; or
 - (c) the will was executed by the deceased affixing his or her mark to the will; or
 - (d) the will was or appears to have been executed by a blind or illiterate person, or by another person at the direction of the testator; or
 - (e) the deceased's signature is not at the foot, or the end, of his or her will; or
 - (f) evidence of due execution of a will is required by the Court, a judge or the Registrar.
- (2) If this rule applies to an application, the applicant must provide evidence, by affidavit in an approved form, of the execution of the will.
- (3) An affidavit under subrule (2) may be made by –
 - (a) one or more of the persons who witnessed the will; or

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- (b) if none of the persons who witnessed the will is available, any other person who was present at the time when the will was witnessed; or
 - (c) if the persons specified under paragraph (a) or (b) are not available, a person able to provide evidence –
 - (i) identifying the signature of the deceased; or
 - (ii) identifying the signature of the witnesses who signed the will; or
 - (iii) of such other facts relied on to say that the will has been executed in accordance with the relevant statutory provision.
- (4) Unless the Court, a judge or the Registrar otherwise requires, this rule does not apply in respect of the execution of a will in the circumstances mentioned in subrule (1)(c) or (d) if –
- (a) it is clearly stated in the will that the person –
 - (i) is blind; or
 - (ii) is apparently illiterate; or
 - (iii) will sign the will by affixing his or her mark to the will; and

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- (b) the attestation of the witnesses who signed the will acknowledges that the testator knew and approved of the contents of the will.

- (5) Unless the Court, a judge or the Registrar otherwise requires, this rule does not apply in respect of the execution of a will in the circumstances mentioned in subrule (1)(e) if the extent of the will, or number of pages, that the deceased intended to give effect to as his or her will by his or her signature, is clearly apparent from the will.

- (6) In circumstances where a person specified in subrule (3)(a) or (b) is unavailable, the applicant for a grant must explain the unavailability of that person in the affidavit supporting the application or in a separate affidavit.

47. Foreign rules relating to due execution apply to will

- (1) This rule applies in respect of an application for a grant in circumstances where the application relies on the provisions of foreign law to assert the validity of the will to which the application relates.

- (2) An application to which this rule applies must be accompanied by an affidavit, from a legal practitioner who is qualified and experienced in the law of the jurisdiction where the will was executed, which includes –

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- (a) the provisions of any legislation, rules and other material which form the foreign law relied on to support the validity of the will; and
 - (b) a statement that the will was made in conformity with such foreign law and is valid under the foreign law; and
 - (c) the facts and circumstances justifying reliance on the relevant foreign law; and
 - (d) details of his or her qualifications and experience relied on to provide such affidavit.

48. International wills convention applies to will

- (1) This rule applies to an application for a grant if the application relies on the provisions of the *Convention Providing a Uniform Law on the Form of an International Will 1973* signed in Washington, D.C. on 26 October 1973 to assert the validity of the will.
- (2) An application to which this rule applies must be accompanied by –
 - (a) a certificate, in the form contained in Article 10 of Schedule 5 to the *Wills Act 2008*, drawn up by an authorised person as defined in section 62C of the *Wills Act 2008*; and

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- (b) an international will that complies with Schedule 5 to the *Wills Act 2008*.

49. Validity of interlineations, alterations and erasures to will

- (1) If there appears in a will any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed in the Wills Act, the applicant must file an affidavit with the Court providing evidence as to whether the obliteration, interlineation or alteration was present at the time of the execution of the will, including in the following circumstances:
 - (a) if there is reasonable doubt about whether a mark or initials placed in the will to execute an alteration forming part of the will is the signature of the testator, or the subscription of the witnesses;
 - (b) if there is reasonable doubt about whether the signature of the testator and subscription of the witnesses refer to an alteration forming part of the will;
 - (c) if there is any other doubt about whether the obliteration, interlineation or alteration was executed in accordance with the Wills Act;
 - (d) if required by the Court, a judge or the Registrar.

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- (2) Unless the circumstances require otherwise, the evidence of due execution for this rule is to be provided by the same persons and in the same manner as evidence of due execution is provided under rule 46.
 - (3) This rule does not apply to obliterations, interlineations, or other alterations, that are, in the opinion of the Registrar, of no practical importance.

50. Documents mentioned in will

- (1) No document or paper, other than a codicil, may form part of a will unless it was in existence at the time of the execution of the will.
- (2) Unless otherwise directed by the Court, a judge or the Registrar, if the content of a will suggests that there may be a document, a paper or part of a paper that may form part of the will, an applicant for a grant in relation to that will must –
 - (a) produce the document, paper or part of a paper as an exhibit to the affidavit; and
 - (b) if it is not possible to comply with paragraph (a), file affidavit evidence with the Court explaining in detail, and to the satisfaction of the Registrar, the searches undertaken for such document, paper or part.

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Administration with Will Annexed

51. Documents missing from will

- (1) Unless otherwise directed by the Court, a judge or the Registrar, if the appearance of a will suggests that there may be a document, paper or part of a paper that may or may not form part of the will, an applicant for a grant in relation to that will must –
 - (a) file affidavit evidence with the Court explaining in detail and to the satisfaction of the Registrar the reasons for the will's appearance; and
 - (b) if possible, produce the missing document, paper or part of a paper as an exhibit to the affidavit.
- (2) The suggestion referred to in subrule (1) may be raised by circumstances including –
 - (a) if there are staple marks or other marks on the will supporting an inference that a document, paper or part of a paper may have been attached to the will; and
 - (b) if part of the paper on which the will was written has been torn or cut off and the missing piece may have contained or had attached to it writing of practical importance to the will.

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Part 6 – Specific Application Requirements for Probate or Letters of
Administration with Will Annexed

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52. Will partially inoperative

- (1) This rule applies in respect of a will that does not appear to dispose of the whole of the deceased's estate.
- (2) The Court, a judge or the Registrar may require an applicant applying for a grant in relation to a will to which this rule applies to state, in the affidavit supporting the application, a list of the persons who would be entitled in distribution of the estate upon intestacy.

53. Part of will not admitted

- (1) This rule applies in respect of a will that –
 - (a) contains obliterations, alterations or additions; or
 - (b) is partially revoked by marriage, divorce or a deed of relationship registered or revoked in accordance with the *Relationships Act 2003*.
- (2) The Court, a judge or the Registrar may require an applicant applying for a grant in relation to a will to which this rule applies to file a copy of the will in which –
 - (a) all such obliterations, alterations or additions are omitted; and
 - (b) if the obliteration of a word is complete and the word cannot be deciphered, a

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Administration with Will Annexed

blank space is left in the copy where the
obliterated word appears.

54. Will available is oral will or copy

- (1) A person wishing to admit to proof an oral will, or a will contained in a copy or reconstruction where the original is not available, must make application to the Court or a judge for an order permitting the admission to proof of such a will.
- (2) If an application is made under subrule (1), the applicant must file an affidavit with the Court providing evidence –
 - (a) in the case of an oral will, of the contents of that will; and
 - (b) in the case of the reconstruction of a will, the accuracy of that reconstruction; and
 - (c) in the case of a copy of a will, the will's existence after the death of the testator or, if there is no such evidence, the facts on which the applicant replies to rebut the presumption that the will has been revoked by destruction.
- (3) The Court or a judge may require additional evidence in the circumstances of a particular case and may direct that notice be given to persons whose interests may be affected by the application.

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Part 7 – Specific Application Requirements for Letters of Administration
upon Intestacy

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**PART 7 – SPECIFIC APPLICATION REQUIREMENTS
FOR LETTERS OF ADMINISTRATION UPON
INTESTACY**

**55. Supporting affidavit for letters of administration
upon intestacy**

- (1) An affidavit in support of an application for letters of administration upon intestacy must be –
 - (a) made by the applicant; and
 - (b) in an approved form.
- (2) In addition to the requirements of Part 5 and subrule (1), the affidavit in support of an application for letters of administration upon intestacy must contain the following matters:
 - (a) the name, and details of the relationship to the deceased, of the applicant;
 - (b) if the applicant is a natural person, a statement that he or she has attained the age of 18 years;
 - (c) the name, and details of the relationship to the deceased, of any person entitled to apply to administer the estate in priority to the applicant;
 - (d) a statement of such facts as establish the applicant's entitlement to the grant and account for the failure of each person who has an equal or higher priority of

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upon Intestacy

entitlement to the grant to apply for the grant;

(e) if –

(i) there has been a consent or renunciation under these Rules by a person entitled to apply to administer the estate; or

(ii) any special or limited grant is applied for; or

(iii) leave to pass over a person entitled to apply to administer the estate –

details of the particular circumstances relevant to the application;

(f) particulars of the date and place of the deceased's death or, if the date of death is not known –

(i) the date on which the deceased was last seen alive; and

(ii) if known, the date on which the deceased's body was found;

(g) a statement that the deceased left property in Tasmania;

(h) a statement that the applicant is satisfied after careful enquiries and searches that the deceased died without leaving a will, together with full details of the searches

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that have been made for a will (including searches in other jurisdictions, if appropriate) or the reason for knowing that there is no will;

- (i) a statement as to whether or not the deceased had a spouse and particulars of the relationship;
- (j) so far as is known to the applicant, the names of any persons having a beneficial interest in the estate in accordance with the provisions of the *Intestacy Act 2010*;
- (k) a statement as to whether a person entitled to share in the estate is a minor and the full name and address of any such minor;
- (l) a statement as to whether the applicant has made an earlier application under these Rules of Court, or the *Supreme Court Rules 2000*, for a grant in respect of the estate of the deceased in Tasmania and, if such an application has been made, particulars of that application and its outcome;
- (m) particulars of the date on which the notice of intention to apply for letters of administration upon intestacy, in respect of the estate of the deceased in Tasmania, as required under rule 33 was published in respect of the application;

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- (n) an undertaking that, if the applicant obtains the grant, the applicant will administer the estate according to law, and will provide true and just inventories and accounts of the deceased's estate, or deliver up the grant to the Court;
- (o) a statement that, if an affidavit made in support of the application is found to be inaccurate or incomplete, the applicant will, as soon as practicable, lodge with the Registrar a further affidavit correcting the inaccuracy or deficiency;
- (p) any further statements and particulars relevant to the circumstances and required –
 - (i) under these Rules of Court; or
 - (ii) by the Court, a judge or the Registrar.

56. Attachments to supporting affidavit

- (1) Unless otherwise directed by the Court, a judge or the Registrar, the following documents are to be annexed to the affidavit supporting the application for letters of administration upon intestacy:
 - (a) an original extract of the deceased's death registration record given under the *Births, Deaths and Marriages Registration Act 1999*, or an equivalent

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Part 7 – Specific Application Requirements for Letters of Administration
upon Intestacy

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- document under a corresponding law, if any;
- (b) an inventory of the assets and liabilities of the deceased's estate in accordance with rule 35;
 - (c) a copy of the published notice of intention in respect of the application, showing the publication date;
 - (d) if consent has been given in accordance with rule 21 or 25 by a person in relation to the grant, the consent;
 - (e) if a person has renounced his or her entitlement to apply for the grant under rule 17 or 22, that renunciation.
- (2) If the applicant is unable to comply with subrule (1)(a), and the Court or a judge has given leave to swear to the death of the deceased under rule 88, a sealed copy or a Registry-certified copy of the order to that effect must be annexed to the affidavit supporting the application for letters of administration upon intestacy.

57. Additional requirements for supporting affidavit if application by creditor

If the applicant for letters of administration upon intestacy is a creditor, the applicant must, in addition to the requirements of rule 55, do the following in the affidavit supporting the application:

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upon Intestacy

- (a) state that the applicant is a creditor of the deceased;
- (b) provide particulars of the debt due to the applicant from the deceased;
- (c) annex any documents providing evidence of the debt;
- (d) provide any further evidence required by the Court, a judge or the Registrar.

PART 8 – SPECIAL OR LIMITED FORMS OF GRANT

58. Grant during minority

- (1) Unless otherwise ordered by the Court, a judge or the Registrar, if a minor –
- (a) is appointed sole executor under a will; or
 - (b) is appointed executor under a will and no other executor applies for probate; or
 - (c) is entitled to apply for letters of administration with the will annexed; or
 - (d) is entitled to apply for letters of administration upon intestacy –

the Court, a judge or the Registrar may grant letters of administration with the will annexed, or letters of administration upon intestacy, to another person under subrule (2), subject to such limitations and conditions as the Court, a judge or the Registrar thinks fit.

- (2) A grant made under subrule (1) must be issued to –
- (a) a trust corporation; or
 - (b) no fewer than two persons, each of whom must be –
 - (i) the guardian of the minor, including a statutory or testamentary guardian; or

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- (ii) another guardian of the minor appointed by a court of competent jurisdiction; or
 - (iii) a person or persons considered suitable by the Court, a judge or the Registrar.
- (3) An application for a grant in accordance with subrule (1) must be determined by a Court or a judge if –
 - (a) any necessary consent is not provided in accordance with this rule; or
 - (b) the question of who is to be guardian is in dispute; or
 - (c) if the Registrar is unable to order the issue of a grant because of one of the circumstances indicated in rule 6; or
 - (d) if the Registrar is of the view that the matter is to be determined by the Court or a judge.
- (4) Despite subrule (2), if a minor is –
 - (a) sole executor in relation to an estate of the deceased; and
 - (b) not a beneficiary in relation to the residuary estate of that deceased –

a grant made under subrule (1) in respect of the minor and the estate –

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(c) is to be issued to the person or persons entitled to apply for letters of administration with the will annexed in accordance with the order of priority set out in rule 18; and

(d) is only to have duration until the minor is an adult –

unless the Court, a judge or the Registrar otherwise directs.

(5) Despite subrules (2) and (3), the Court, a judge or the Registrar may assign any person to be guardian for the purpose of a grant in accordance with this rule in default of, jointly with or to the exclusion of any person mentioned in subrule (2)(a) or (b).

(6) A minor's entitlement to apply for a grant under these Rules of Court may not be renounced by a guardian of the minor unless the guardian has been expressly authorised to renounce by the Court, a judge or the Registrar.

(7) Unless otherwise directed by the Court, a judge or the Registrar, an application for a grant during minority must –

(a) state that the application is made for the grant for the use and benefit of the minor and subject to any limitations and conditions that the Court, a judge or the Registrar thinks fit; and

(b) give particulars of the relationship of the applicant to the minor.

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- (8) When the minor attains majority, the Court, a judge or the Registrar may, on that person's application, order the issue of a grant to that person.

59. Documents to support application for grant during minority

The application for a grant during minority made under rule 58 must be supported by –

- (a) an affidavit by the applicant –
- (i) stating that the person next entitled to apply for a grant is a minor; and
 - (ii) stating the minor's date of birth; and
 - (iii) stating the particulars of the relationship of the applicant to the minor; and
 - (iv) stating if there is someone who is a guardian of the minor but who is not applying for a grant under this rule and giving the reason why that person is not applying for the grant; and
 - (v) if an order has been made in relation to a matter specified in rule 58(3), annexing a sealed copy or a Registry-certified copy of that order; and

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- (vi) if relevant in the circumstances, annexing a sealed copy or a Registry-certified copy of any order of the Court or a judge assigning guardianship to any person; and
- (b) if relevant in the circumstances, any consent to a renunciation, in an approved form, by a guardian of the minor to whom the application relates; and
- (c) if relevant in the circumstances, consent to the application, of all other guardians in relation to that minor, in an approved form; and
- (d) if the applicant is a person described in rule 58(2)(b)(iii), an affidavit of suitability sworn by a responsible person.

60. Grant during incapacity other than minority

- (1) If a person who would otherwise be entitled to apply for a grant is incapable of performing the functions of an executor or administrator of the estate of the deceased due to being a person without capacity to consent, other than a minor, the Court or a judge may order the issue of a grant to a suitable person for the duration of the incapacity.
- (2) A grant made in accordance with this rule is to be subject to such limitations and conditions as the Court or the judge thinks fit.

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- (3) Unless otherwise directed by the Court or the judge, an application for a grant during incapacity must –
- (a) state that the application is made for the grant for the use and benefit of the incapacitated person during his or her incapacity and subject to any limitations and conditions the Court or the judge thinks fit; and
 - (b) give particulars of the applicant’s relationship to the incapacitated person; and
 - (c) provide any further information or material as directed by the Court or the judge.
- (4) The applicant must –
- (a) file affidavit evidence that the executor is incapable of performing the functions of an executor; and
 - (b) file consents to the application by whomever is relevant of –
 - (i) all beneficiaries to the will; and
 - (ii) all persons having an interest in the estate of the deceased upon intestacy; and
 - (c) annex a sealed copy or a Registry-certified copy of any relevant order to the affidavit supporting the application.

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- (5) An affidavit under subrule (4)(a) must be made by a medical practitioner familiar with –
- (a) the mental or physical health of the person referred to in subrule (1); and
 - (b) the extent of any relevant incapacities of that person; and
 - (c) the likely duration of any relevant incapacities of that person.
- (6) If the person who is the subject of the incapacity recovers from his or her incapacity, the Court or a judge may, irrespective of who obtained the original grant, on that person's application, order the issue of a grant to that person.

PART 9 – RESEALS

61. Notice of intention to apply for reseal

- (1) In addition to the publication requirements relating to the reseal of a grant contained in section 49 of the Act, a person intending to apply for a reseal of a grant must, at least 14 days before filing the application, also ensure that a notice of intention to apply for a reseal is published on the website maintained by or on behalf of the Court.
- (2) The notice of intention to apply for a reseal of a grant published under subrule (1) must include the following information:
 - (a) the name, including all known aliases, of the person proposing to apply for the reseal;
 - (b) the name, including all known aliases, of the deceased in relation to whom the reseal is sought;
 - (c) the address of –
 - (i) the person proposing to apply for the reseal; and
 - (ii) the Australian legal practitioner acting for the person in respect of the reseal;
 - (d) the last known residential address of the deceased;

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- (e) if the deceased left a will –
 - (i) the date of the will and of any other testamentary dispositions for which the grant is sought; and
 - (ii) the names of the people identified in the will as executors of the will;
 - (f) the relationship of the person proposing to apply for the grant to the deceased in relation to whom the reseal is sought;
 - (g) a statement that, 14 days after the publication of the notice of intention to apply for a reseal, the proposed applicant intends to apply for a reseal in respect of the deceased estate.
- (3) A person proposing to apply for a reseal of a grant must provide to the Registrar an electronic copy of the notice referred to in subrule (1) in an approved form.
- (4) After receiving a notice of intention to apply for a reseal of a grant under subrule (1), the Court, a judge, or the Registrar may require an applicant for a reseal of a grant to perform the following actions:
- (a) publish more than one notice of intention to apply for a reseal of a grant;
 - (b) publish a notice of intention to apply for a reseal of a grant in a manner other than on the website maintained by the Court;

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- (c) serve a copy of a notice of intention to apply for a reseal of a grant on a person whose interests, in the opinion of the Court, a judge or the Registrar, may be affected by the issue of the grant.

62. Supporting affidavit for reseal

- (1) An application under Part VI of the Act for the reseal of a grant must be accompanied by an affidavit in support of that application –
 - (a) made by –
 - (i) all executors or administrators therein named within the meaning of that Part; or
 - (ii) an attorney in respect of each executor or administrator therein named; and
 - (b) in an approved form.
- (2) In addition to the requirements of subrule (1), the affidavit in support of an application under Part VI of the Act must contain the following matters:
 - (a) the name, and details of the relationship to the deceased, of the applicant;
 - (b) if the applicant is a natural person, a statement that he or she has attained the age of 18 years;

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- (c) a statement of the capacity in which the applicant has applied for a reseal;
- (d) if the applicant is the attorney of the executor or administrator of the estate, a statement that the attorney is duly authorised by the power of attorney of the executor or administrator to apply to the Court for the sealing of the grant;
- (e) particulars of the date and place of the deceased's death or, if the date of death is not known –
 - (i) the date on which the deceased was last seen alive; and
 - (ii) if known, the date on which the deceased's body was found;
- (f) particulars of the jurisdiction in which the deceased was domiciled at the date of his or her death;
- (g) a statement that the deceased left property in Tasmania;
- (h) a statement identifying the grant of probate (or letters of administration of the estate) issued by a foreign court, to which the application relates, stating the date on which the grant was issued and the particulars of the Court that issued the grant;
- (i) a statement as to whether the applicant has made an earlier application under

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these Rules of Court, or the *Supreme Court Rules 2000*, for the reseal of a grant in respect of the estate of the deceased in Tasmania and, if such an application has been made, particulars of that application and its outcome;

- (j) particulars of the date on which the notice of intention to apply for the reseal of the grant, in respect of the estate of the deceased in Tasmania, as required under rule 61 was published in respect of the application;
- (k) a statement that –
 - (i) a public notice in accordance with section 49 of the Act was published in the *Gazette* and in two newspapers published in different parts of Tasmania and giving particulars of the dates of publication; and
 - (ii) 14 days has elapsed since that notice was so published;
- (l) an undertaking that, if the applicant obtains a reseal of a grant in respect of the estate of the deceased in Tasmania, the applicant will administer the estate according to law, and, if required by the Court, will provide true and just inventories and accounts of the deceased's estate, or deliver up the reseal to the Court;

- (m) a statement that, if an affidavit in support of the application is found to be inaccurate or incomplete, the applicant will, as soon as practicable, lodge with the Registrar a further affidavit correcting the inaccuracy or deficiency;
- (n) any further statements and particulars relevant to the circumstances and required –
 - (i) under these Rules of Court; or
 - (ii) by the Court, a judge or the Registrar.

63. Attachments to supporting affidavit

- (1) Unless otherwise directed by the Court, a judge or the Registrar, the following documents must be annexed to the affidavit supporting the application for the reseal of a grant:
 - (a) an affidavit of caveat search in an approved form made in accordance with rule 64 by –
 - (i) the applicant; or
 - (ii) a legal practitioner for the applicant;
 - (b) a certified copy of the original grant issued by a foreign court to which the application relates;

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- (c) an inventory of the assets and liabilities of the deceased's estate made in accordance with rule 35 as if the application for the reseal of a grant were an application for an original grant in this jurisdiction;
 - (d) a copy of the published notice of intention referred to in rule 61, showing the publication date;
 - (e) a copy of the public notice required under section 49 of the Act.
- (2) The original grant issued by a foreign court to which the application relates must be exhibited, in an approved form, to the affidavit supporting the application.

64. Affidavit of caveat search

An affidavit of caveat search annexed to the affidavit supporting the application for reseal of a grant in accordance with rule 63(1)(a) must contain the following matters:

- (a) a statement that the person making the affidavit has, on the date on which the application for a reseal was lodged at the Probate Registry, caused a search to be made at the Probate Registry to ascertain whether a caveat has been lodged in relation to the resealing of probate or letters of administration in the estate of the deceased to whom the application relates;

- (b) a statement that the person referred to in paragraph (a) was advised by the Probate Registry at the time of that search that no caveat had been lodged.

65. Application of rules to application for reseal

Rules 36, 38 and 39 apply to an application for the reseal of a grant as if that application were an application for an original grant in this jurisdiction.

66. Reseal of grant not to be issued in certain cases

- (1) This rule applies to a grant issued, in respect of a deceased, by a foreign court of a jurisdiction other than the jurisdiction in which the deceased was domiciled at the time of his or her death.
- (2) The Registrar must not reseal a grant to which this rule applies unless he or she is satisfied that, had an application for the initial grant been made in this jurisdiction, he or she would have ordered the issue of the grant in this jurisdiction.

67. Bonds on resealing letters of administration

The Registrar may require an administrator making application to reseal letters of administration, or the attorney of that administrator, to provide security under rule 72 to the gross value of the estate of the deceased within the jurisdiction of the Court.

68. Copies of testamentary papers to be included

The grant to be resealed, and the certified copy of the grant to be deposited in the Registry, must include certified copies of all testamentary papers originally admitted to probate.

69. Notice of resealing to be given

If a grant is resealed by the Court, notice of the resealing is to be sent to the Court from which the original grant issued.

70. Notice relating to resealing of Tasmanian grants

If the Court receives notice that a grant originally issued in Tasmania has been resealed by another court, notice of any revocation of or alteration to that grant is to be sent to the court by whose authority the reseat of the grant has taken place.

71. Reseal of special or limited grant

A reseal of a special or limited grant is not to be issued without an order of a judge.

PART 10 – ADMINISTRATION BONDS

72. Giving of security

- (1) The Registrar may require an applicant for letters of administration to provide security for the proper administration of the estate to which the application relates.
- (2) This rule does not apply to an application for letters of administration made by the Public Trustee, a trust corporation, or any person applying for letters of administration for the use, or for the benefit, of the Crown.
- (3) The Registrar may require the provision of security required under subrule (1) in one or more of the following ways:
 - (a) the giving of an undertaking to the Court to make good any loss that any person with an interest in the administration of the estate may suffer as a consequence of a breach by the administrator of his or her duties as an administrator;
 - (b) the execution and delivery of a deed covenanting to make good any loss that any person interested in the administration of the estate may suffer as a consequence of a breach by the administrator of his or her duties as an administrator;
 - (c) the giving of an administration bond to the Registrar –

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- (i) specifying conditions on the applicant duly collecting, getting in and administering the real and personal property of the deceased; and
 - (ii) requiring a payment to the Registrar if the applicant breaches any such condition;
 - (d) any other form of security that the Registrar thinks fit.
- (4) Despite subrule (1), the Registrar may require the security to be provided by a person other than the applicant, whom the Registrar considers suitable, in addition to any security provided by the applicant.

73. Witnessing of administration bonds

- (1) The signing of an administration bond by the person executing the bond is to be witnessed by the Registrar, a justice of the peace or an Australian legal practitioner.
- (2) Despite subrule (1), an administration bond is not to be witnessed by –
 - (a) an Australian legal practitioner acting for –
 - (i) the person executing the bond; or
 - (ii) the estate to which the bond relates; or

- (b) a justice of the peace who is an employee of the law practice of the person specified in paragraph (a).
- (3) The signature of the person executing the administration bond, if not taken in the Registry, must be witnessed by the same person before whom the affidavit supporting the application for the grant, to which the bond relates, is sworn.

74. Amount and form of administration bonds

- (1) An administration bond is to be given in the amount of an assessment of the fair and reasonable gross value of the property to be placed in the possession of, or dealt with by, the administrator by means of the grant.
- (2) The value of such property is to be verified by affidavit if required by the Registrar.
- (3) An administration bond must be in an approved form.

75. Registrar to ensure sureties are responsible persons

The Registrar is to ensure, as far as possible, that the sureties to administration bonds are responsible persons.

76. Sureties on behalf of others

If a person takes letters of administration –

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- (a) in default of the appearance of persons cited, but not personally served with the citation; or
- (b) for the use and benefit of a person without capacity to consent –

the sureties to the administration bond must file affidavits containing a statement that the gross value of his or her real and personal property is equal to an amount that is at least half of the penalty in the bond.

77. Breach of condition of administration bond

- (1) If it appears to the satisfaction of the Court or a judge that a condition of an administration bond has been broken, the Court or judge may order that the bond is to be assigned to such a person as may be specified in the order.
- (2) The person to whom an administration bond is assigned under subrule (1) has standing –
 - (a) to sue in relation to that bond in his or her own name as if it had been originally given to him or her; and
 - (b) to recover, as trustee for all persons with an interest in the estate, the full amount recoverable in respect of the breach of the condition of the bond.

PART 11 – CAVEATS

78. Persons may enter caveat

- (1) A person who intends to oppose the issue of a grant is to enter a caveat in the Probate Registry, either personally or by means of an Australian legal practitioner acting for the person.
- (2) A caveat is to be –
 - (a) in an approved form; and
 - (b) signed and dated by the caveator or an Australian legal practitioner acting for the caveator.
- (3) The Registrar is not to order the issue of a grant while an effective caveat exists.

79. Registrar to give notice of caveat

If there is a caveat entered against the issue of a grant, whether that caveat is entered before or after the making of an application in relation to that grant, the Registrar is to give notice, if the circumstances allow, of –

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

80. Expiry or lapse of caveat

- (1) Subject to subrule (2), a caveat expires –
 - (a) 6 months after the date it is lodged; or
 - (b) if the Registrar gives notice to a caveator under rule 79(b), 28 days after that notice is given.

- (2) A caveat does not expire by reason of subrule (1)(b) if –
 - (a) within the period referred to in subrule (1)(b), the caveator –
 - (i) serves on the applicant, or the Australian legal practitioner acting for the applicant; and
 - (ii) files with the Registrar –

a statement under rule 81 of the grounds of his or her objection to the issue of the grant; or
 - (b) the Court or a judge otherwise orders.

- (3) A caveat in force under subrule (2)(a) will lapse if the caveator fails to –
 - (a) commence proceedings under Part 29 of the *Supreme Court Rules 2000* within 28 days after the filing of a statement of the grounds of objection under rule 81; or
 - (b) advise an officer in the Probate Registry in writing of the commencement of

proceedings on the day that such proceedings are commenced in the Civil Registry.

81. Grounds of caveator’s objection

- (1) A statement, in an approved form, of the grounds of a caveator’s objection to the issue of a grant in relation to a will, or a document intended to be a will, may include, but is not limited to, the following matters:
 - (a) that there is a later will, or act of revocation of the will, and the date of that later will or revocation;
 - (b) that the will was not executed by the testator;
 - (c) that the will was not executed as required by law, specifying the relevant statutory provision;
 - (d) that the document of which the grant is being sought was not executed as required by law and was not known to and approved by the deceased to be his or her will;
 - (e) that the testator lacked testamentary capacity at the time of execution of the will;
 - (f) that the testator acted under undue influence, specifying the person exercising that influence.

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- (2) A statement, in an approved form, of the grounds of a caveator's objection to the issue of a grant upon intestacy may include, but is not limited to, the following matters:
 - (a) that a will exists and the date of that will;
 - (b) that the applicant for the grant does not have the capacity or standing in the relationship in which he or she seeks the grant;
 - (c) that the caveator or some other person seeking the grant has a prior or equal entitlement to apply for the grant as set out in rule 18 or rule 19, stating the nature of the entitlement;
 - (d) that the proposed administrator for the grant is disentitled to apply for the grant, including a statement as to the reason for the disentitlement.
- (3) Unless the Court or a judge otherwise orders, the caveator may not rely on any ground of objection in relation to which notice has not been given in accordance with this rule.

82. Withdrawal of caveat

- (1) A caveat may be withdrawn by the caveator at any time by filing a notice of withdrawal in an approved form.
- (2) If a caveator is acting in person, and is not an Australian legal practitioner, the Registrar may

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not accept the notice of withdrawal unless the caveator attests the notice whilst in attendance before –

- (a) the Registrar; or
- (b) an Australian legal practitioner.

83. Fresh caveat

A person may lodge a fresh caveat opposing the issue of a grant on a deceased's estate before or after the expiry of an earlier caveat lodged on that estate by that person.

PART 12 – CITATIONS

84. Person cited to apply for grant

If a person entitled to apply for a grant has not applied for a grant and this failure to apply has not been accounted for, the person may be cited to apply for the grant.

85. Citations generally

- (1) A person with an interest in an estate of a deceased may request that the Registrar issue a citation under this Part in respect of the estate.
- (2) A request for a citation under subrule (1) must include –
 - (a) a draft of the citation; and
 - (b) an affidavit verifying each statement contained in the citation, or such other information as the Registrar may require.
- (3) A citation must be issued from the Probate Registry and must be settled by the Registrar before being issued.
- (4) Before any citation is issued under this Part, a caveat must be entered to prevent any grant being made in respect of the estate of the deceased to which the citation relates.
- (5) A caveat entered under subrule (4) is to be in an approved form.

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- (6) A will referred to in a citation must be lodged at the Probate Registry before the citation is issued unless –
 - (a) the will is not in the possession of the person issuing the citation; and
 - (b) the Registrar is satisfied that it is impractical to require it to be lodged before the citation is issued.

- (7) A person who has been cited to appear –
 - (a) may enter an appearance in an approved form; and
 - (b) if an appearance is entered by the person, must serve a copy of that appearance on the person issuing the citation, or the Australian legal practitioner acting for the person issuing the citation.

86. Citation to accept or refuse to apply for grant

- (1) A citation to accept, or refuse, a grant in relation to an estate may be issued at the request of any person who would be entitled to a grant in relation to that estate in the event of the person to be cited renouncing his or her entitlement to apply for a grant in relation to that estate.

- (2) If the entitlement of an executor of an estate to apply for a grant has been reserved, a citation calling on that executor to appear to accept, or refuse, the grant may be issued on the request of

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an executor of that estate who has applied for the grant.

- (3) A citation calling on an executor who has intermeddled in an estate to appear to show cause why he or she should not be ordered to accept the grant may be issued at the request of a person with an interest in the estate.
- (4) A citation may not be issued under this rule while proceedings as to the validity of any relevant will are pending.
- (5) A person who is cited and is willing to apply for a grant may, after entering an appearance, apply *ex parte* for a grant to himself or herself.
- (6) If no appearance in response to a citation is entered under rule 85(7) within 14 days after the service of the citation, or within such other time as determined by the Registrar, the person who requested the citation may –
 - (a) in the case of a citation issued under subrule (1), apply to the Registrar for an order for a grant to himself or herself; or
 - (b) in the case of a citation issued under subrule (2), apply to the Registrar for an order that the executor in respect of whom the power has been reserved has not appeared and that his or her entitlement in respect of the executorship has ceased; or
 - (c) in the case of a citation issued under subrule (3), apply to the Registrar for an

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order requiring the person cited to apply for a grant within a specified time, or if this does not occur, requiring a grant to be issued to the person or some other specified person.

- (7) An application under subrule (6) must be supported by an affidavit showing that the relevant citation was served in accordance with rule 32.
- (8) If the person cited has entered an appearance but has not applied for a grant under subrule (5), or has failed to proceed with his or her application with reasonable diligence, the person who requested the citation may –
 - (a) in the case of a citation issued under subrule (1), apply to the Registrar for an order for a grant to himself or herself; or
 - (b) in the case of a citation issued under subrule (2), apply to the Registrar for an order striking out the appearance, stating that the executor in respect of whom power has been reserved has not appeared and that his or her entitlement in respect of the executorship has ceased; or
 - (c) in the case of a citation issued under subrule (3), apply to the Registrar for an order requiring the person cited to apply for a grant within in a specified time, or if this does not occur, requiring a grant to

be issued to the person or some other specified person.

87. Citation to propound will

- (1) A citation to apply for probate in solemn form –
 - (a) is to be directed to –
 - (i) an executor or executors named in the will; and
 - (ii) to all persons who have an interest in that will; and
 - (b) may be issued on the request of any person who has an interest in the estate contrary to that of the executors or other interested persons.
- (2) If –
 - (a) there has been no appearance entered within 14 days of a citation issued as in subrule (1), or within such time as determined by the Registrar; or
 - (b) a person has entered an appearance in response to a citation issued as in subrule (1) within 14 days of the issue of the citation, or within such time as determined by the Registrar, but has not proceeded with reasonable diligence to propound the will –

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the person issuing the citation may apply to the Registrar for an order to issue a grant as if the will were invalid.

- (3) An application for an order to issue a grant as if the will were invalid made under subrule (2) must be supported by an affidavit showing that the relevant citation was served under rule 32.
- (4) An order made by the Registrar under subrule (2) is to be served on each person cited in the citation who has entered an appearance in response to the citation.

PART 13 – MISCELLANEOUS

88. Application for leave to swear to death of person

- (1) A person may apply to a judge under the *Supreme Court Rules 2000* for leave to swear to the death of a person alleged to be dead.
- (2) An application made under subrule (1) must be supported by an affidavit setting out the grounds of the application.
- (3) An affidavit made under subrule (2) is to include evidence of –
 - (a) the identity of the person alleged to be dead; and
 - (b) the date of death of the person alleged to be dead; and
 - (c) the place of death of the person alleged to be dead; and
 - (d) particulars of every policy of insurance on the life of the person alleged to be dead; and
 - (e) the means of the knowledge of the deponent of these matters –

to the satisfaction of the Registrar, the Court or a judge.

89. Joinder of administrator

A person entitled in priority to apply for letters of administration may jointly apply for letters of administration with a person entitled in a lower priority, if –

- (a) any person with a prior entitlement to that of the person entitled in a lower priority has renounced his or her entitlement to a grant or has consented to such an application; or
- (b) a judge has ordered that a joint grant be made.

90. Applications by creditors

An application by a creditor under section 51 of the Act is to be made by application supported by affidavit under the *Supreme Court Rules 2000*.

91. Persons who may lodge an application

An application made under these Rules of Court may be filed with the Probate Registry by –

- (a) the applicant; or
- (b) an Australian legal practitioner acting for the applicant.

92. Registrar may issue subpoena to produce papers

- (1) The Registrar may issue a subpoena to any person, requiring them to deliver or send to the Registrar, at the address specified in the subpoena, any paper or writing being or purporting to be testamentary which may be shown to be in the possession, or within the power, or under the control, of such a person.
- (2) Such a person, on being served with a subpoena under subrule (1), must deliver or send such paper or writing, and is to be held in contempt if they fail to do so as if they had been ordered by a judge to produce and bring in such paper or writing.

93. Fees and charges

The fees specified in Schedule 1 are the fees payable to the Registrar under these Rules of Court in respect of the matters to which they relate.

94. Transitional provision

Where an application for a grant or reseal has been received by the Probate Registry before the commencement date of these Rules of Court, the *Probate Rules 1936*, as in force immediately before the commencement of these Rules of Court, will apply to the determination of such an application as if those Rules of Court were still in force.

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Part 13 – Miscellaneous

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95. *Probate Rules 1936* revoked

The *Probate Rules 1936* are revoked.

96. Consequential Amendments

The legislation specified in Schedule 2 is amended as specified in that Schedule.

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SCHEDULE 1 – FEES

		Rule 93
	Item	Fee (Fee units)
1.	For provisional assessment of application documentation by Registrar	96 (per provisional assessment)
2.	For assessment of draft citation documentation by Registrar	96 (per draft citation)
3.	For a requisition	32
4.	For granting probate or letters of administration or for resealing a foreign grant –	
	(a) if the gross value of the estate in Tasmania as stated in the short form affidavit is less than \$50 000	280
	(b) if that gross value is equal to or greater than \$50 000 but is less than \$250 000	506
	(c) if that gross value is equal to or greater than \$250 000 but is less than \$500 000	548
	(d) if that gross value is equal to or greater than \$500 000 but is less than \$1 000 000	690
	(e) if that gross value is equal to or greater than \$1 000 000 but is less than \$2 000 000	874

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	Item	Fee (Fee units)
	(f) if that gross value is equal to or greater than \$2 000 000 but is less than \$5 000 000	993
	(g) if that gross value is equal to or greater than \$5 000 000	1 193
5.	For filing an election to administer an estate	77
6.	Searches, copies or certificates –	
	(a) for a search	19
	(b) for exemplification	174
	(c) for an office copy of a document	0.64 (each page or part of a page)
	(d) for preparation and certification of certified copies of documents	32
7.	For lodging a caveat	32
8.	For correcting a grant where the source of the error was not the Registry	32

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SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Rule 96

Administration and Probate Act 1935

1. Schedule III is repealed.

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A. M. BLOW
Chief Justice

S. E. TENNENT
Puisne Judge

H. M. WOOD
Puisne Judge

S. P. ESTCOURT
Puisne Judge

R. W. PEARCE
Puisne Judge

M. J. BRETT
Puisne Judge

Countersigned,

J. A. CONNOLLY
Registrar

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 25 October 2017.

EXPLANATORY NOTE

(This note is not part of the Rules of Court)

These Rules of Court –

- (a) regulate procedures in the Supreme Court in relation to non-contentious applications for grants of letters of administration or grants of probate under the *Administration and Probate Act 1935*; and
- (b) repeal Schedule III of that Act and revoke the *Probate Rules 1936*.