

1994—No. 400

SUPREME COURT ACT 1970—RULES

(Supreme Court Rules (Amendment No. 286) 1994)

NEW SOUTH WALES



[Published in Gazette No. 106 of 19 August 1994]

1. These rules are made by the Rule Committee on 15 August 1994.

2. The Supreme Court Rules 1970 are amended as follows:

(a) Part 51

After rule 8A insert:

Intervention by the ASC

8B. (1) Where a ground of appeal involves a matter arising under the Corporations Law and the Australian Securities Commission (“the ASC”) did not intervene in the proceedings in the court below, the Court of Appeal or a Judge of Appeal may direct service of a copy of the notice of appeal or cross-appeal on the ASC.

(2) A party directed to serve a copy of a notice under subrule (1) shall:

(a) serve the copy, endorsed “Served pursuant to SCR Pt 51 r 8B (2)” and marked for the attention of its General Counsel for New South Wales, on the ASC; and

(b) promptly file an affidavit of service of the copy.

(3) The copy notice may be served on the ASC by leaving it, addressed to the ASC, in an exchange box of the ASC in a document exchange of Australian Document Exchange Pty Limited or at another exchange box for transmission to that exchange box.

(4) The ASC may intervene under section 1330 (1) of the Corporations Law in an appeal by filing, before the date of the appointment to settle the index to the appeal papers, a notice of

appearance that includes a statement that the ASC intervenes under the section.

(5) Upon complying with subrule (4), the ASC shall be added as a respondent.

(b) Part 51 rule 32C (1) (c):

Omit “original return” and insert instead “hearing”.

3. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 78 rules 24–26A

Omit the rules and insert instead:

Court may require further evidence, documents and notices

23A. On an application under rules 24–26A or rule 28, the Court may require further evidence to be furnished, further documents to be filed, and notices to be given.

Proof of death otherwise than by death certificate

23B. On an application under rules 24–26A or rule 28, the Court may allow a death to be proved otherwise than by means of a death certificate.

Evidence in support of application for probate

24. (1) An application for probate shall be supported by affidavit:

(a) in Form 97;

(b) where the deceased died on or after 1 November 1989 and he or she made any informal testamentary document—of the name and address of every person who is an affected person in relation to the estate of the deceased (designating as a disable person any person who, in the plaintiff's opinion, is or may be a disable person) or, where the name and address of an affected person cannot be ascertained, the best information the plaintiff can give to assist in ascertaining the name, address and identity of the affected person;

(c) where the plaintiff relies on section 15A of the Probate Act (relating to termination of marriage)—stating the facts upon which the plaintiff relies; and

(d) where the deceased died before 1989—of search in the registry for, and no evidence of any prior application for, any grant or resealing.

(2) Where an executor has renounced probate:

(a) evidence of the renunciation shall be furnished; and

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(b) where a renunciation has been signed by the executor—the renunciation shall be filed.

(3) Where an executor is not joining in the application and leave is sought to be reserved to him or her to come in and apply for probate, evidence shall be furnished that he or she has been served, not less than 14 days before the proceedings for grant are commenced, with notice of the intended proceedings or that he or she is not in New South Wales or that he or she is a minor.

(4) The notice referred to in subrule (3) shall be served personally or by sending the notice by certified mail to the executor and obtaining from the postal authorities a written acknowledgement, purporting to be signed by him or her, of receipt of the certified article.

(5) Where the testator died before 31 December 1981:

- (a) an affidavit in form “D” prescribed by regulations made under the Stamp Duties Act 1920 and a duplicate duly sworn shall be filed;
- (b) paragraphs 12–15 of Form 97 shall be omitted; and
- (c) the affidavit required by subrule (1) (a) shall state that the plaintiff will administer the estate of the deceased according to law and will render a just and true account of the administration of it to the Court within 12 months from the date of grant.

Evidence in support of application for administration

25. (1) This rule applies to an application for administration (other than an application by or on behalf of a de facto wife or de facto husband or for administration with the will annexed or as referred to in section 41A (1) of the Probate Act, which subsection relates to administration for the purposes only of an application under the Family Provision Act 1982).

(2) The application shall be supported by affidavit:

- (a) in Form 98;
- (b) where the deceased died on or after 1 November 1989 and he or she made any informal testamentary document—of the name and address of every person who is an affected person in relation to the estate of the deceased (designating as a disable person any person who, in the plaintiff’s opinion, is or may be a disable person) or, where the name and address of an affected person cannot be ascertained, the best information the plaintiff can give to assist in ascertaining the name, address and identity of the affected person;

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- (c) where the deceased died before 1 July 1977 without issue—whether he was born legitimate;
- (d) where the deceased died before 1978 and, pursuant to the Probate Act, the estate of the deceased held in statutory trust for issue is divisible into shares—of the particulars and value of any money or property which by way of advancement or on marriage of a child of the deceased has been paid to that child by the deceased for the benefit of that child;
- (e) where the deceased died before 1989—of search in the registry for, and no evidence of any prior application for, any grant or resealing; and
- (f) where the deceased died on or after 1 July 1985—in the prescribed form, showing that the deceased did not leave a person for whom the estate or part is required to be held in trust under section 61B (3A) (a) or (3B) (a) or (b) (ii) of the Probate Act or, by the operation of section 32G (2) of that Act (which provisions relate to a de facto wife, etc.) under any other provision of that Act.

(3) A certificate by the Principal Registrar of Births, Deaths and Marriages of searches:

- (a) where the deceased died before 1 July 1977—for adoptions and legitimisations;
- (b) where the deceased died on or after that date—under section 48A of the Registration of Births, Deaths and Marriages Act 1973 (which section relates to children of deceased persons),

shall be filed.

(4) Where the grant is applied for by less than all the persons who are in New South Wales and are entitled to a grant of administration, the application must be supported by:

- (a) the consent, in the form prescribed, of each such person entitled to a grant but not applying for the grant, to the grant being made to the plaintiff, with an affidavit verifying the consent endorsed on the document containing the consent; or
- (b) an affidavit as to service, not less than 14 days before the proceedings are commenced, upon each of those persons whose consent to the grant is not filed, of notice of intention to make the application.

(5) The notice referred to in subrule (3) (b) shall be served:

- (a) personally; or

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- (b) by sending a copy of the notice:
 - (i) in the case of service within Australia—by certified mail to the person to be served; and
 - (ii) in the case of service outside Australia—registered post to the person to be served,
 and by obtaining from the postal authorities a written acknowledgement, purporting to be signed by that person, of receipt of the certified or registered article.
- (6) Subject to subrule (7):
 - (a) an administration bond, in the form prescribed, shall be filed; and
 - (b) except where the bond is given by a guarantee company approved by the Court, there shall be 2 sureties to the bond.
- (7) The Court may:
 - (a) dispense with the bond;
 - (b) dispense with one or both of the sureties; or
 - (c) reduce the penalty of the bond.
- (8) Where dispensing with the bond or with one or both of the sureties, or reduction of the penalty of the bond, is sought, an affidavit shall be filed in support of the dispensing or the reduction.
- (9) Where there is a surety to a bond, an affidavit of justification by the surety, in the form prescribed, shall be filed.
- (10) Where the deceased died before 31 December 1981:
 - (a) an affidavit in form “D” prescribed by regulations made under the Stamp Duties Act 1920 and a duplicate duly sworn shall be filed;
 - (b) paragraphs 9, 11, 12 and 13 of Form 98 shall be omitted; and
 - (c) the affidavit required by subrule (2) (a) shall state that the plaintiff will administer the estate of the deceased according to law and will render a just and true account of the administration of it to the Court within 12 months from the date of grant.

Evidence in support of application for administration by de facto wife or de facto husband

25A. (1) This rule applies to an application for administration by or on behalf of a de facto wife or de facto husband (other than administration as referred to in section 41A (1) of the Probate Act,

which subsection relates to administration for the purposes only of an application under the Family Provision Act 1982).

- (2) The application shall be supported by affidavit:
 - (a) in Form 98;
 - (b) where the deceased died on or after 1 November 1989 and he or she made any informal testamentary document—of the name and address of every person who is an affected person in relation to the estate of the deceased (designating as a disable person any person who, in the plaintiff's opinion, is or may be a disable person) or, where the name and address of an affected person cannot be ascertained, the best information the plaintiff can give to assist in ascertaining the name, address and identity of the affected person;
 - (c) where the deceased died before 1989—of search in the registry for and no evidence of any prior application for any grant or resealing; and
 - (d) in the form prescribed, sworn by the de facto wife or de facto husband, showing that the estate or part is required to be held in trust for her or him.
- (3) A certificate by the Principal Registrar of Births, Deaths and Marriages of searches:
 - (a) for marriage of the deceased; and
 - (b) under section 48A of the Registration of Births, Deaths and Marriages Act 1973 (which section relates to children of deceased persons),shall be filed.
- (4) The application must be supported by:
 - (a) in the form prescribed, the consent of each person who is not applying for a grant and who is entitled in distribution of the estate or would, if the deceased had not left a de facto wife or de facto husband, have been so entitled, to the grant being made to the plaintiff, with an affidavit verifying the consent endorsed on the document containing the consent; or
 - (b) an affidavit as to service:
 - (i) within the State—not less than 42 days before proceedings are commenced; or
 - (ii) outside the State—not less than three months before proceedings are commenced,

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upon each of those persons whose consent to the grant is not filed of:

(iii) affidavits required by subrule (2) (a), (b) and (d) duly sworn; and

(iv) notice in the prescribed form.

(5) The affidavits and notice referred to in subrule (4) (b) shall be served:

(a) personally; or

(b) by sending copies of them:

(i) in the case of service within Australia—by certified mail to the person to be served; and

(ii) in the case of service outside Australia—by registered post to the person to be served,

and by obtaining from the postal authorities a written acknowledgement, purporting to be signed by that person, of receipt of the certified or registered article.

(6) Where the deceased died before 31 December 1981:

(a) an affidavit in form “D” prescribed by regulations made under the Stamp Duties Act 1920 and a duplicate duly sworn shall be filed;

(b) paragraphs 9, 11, 12 and 13 of Form 98 shall be omitted; and

(c) the affidavit required by subrule (1) (a) shall state that the plaintiff will administer the estate of the deceased according to law and will render a just and true account of the administration of it to the Court within 12 months from the date of grant.

(7) Rule 25 (6)–(9) apply to an application to which this rule applies.

Evidence in support of application for administration with will annexed

26. (1) An application for administration with the will annexed shall be supported by:

(a) the affidavits and documents, so far as appropriate, referred to in rule 25 or 25A; and

(b) the affidavits and documents which, if the application were an application for probate of the will, would be required by rule 24 (1) (a), (b) and (c) and (2).

(2) An affidavit of the plaintiff pursuant to subrule (1) shall be in Form 104.

(3) Where the executor or the executors named in the will renounces or renounce probate in favour of the Public Trustee, in the form prescribed, administration with the will annexed may be granted to the Public Trustee without the consent or citation of any person.

(4) Where the deceased died before 31 December 1981:

- (a) an affidavit in form “D” prescribed by regulations made under the Stamp Duties Act 1920 and a duplicate duly sworn shall be filed;
- (b) paragraphs 11, 13, 14 and 15 of Form 104 shall be omitted; and
- (c) the affidavit required by subrule (1) shall state that the plaintiff will administer the estate of the deceased according to law and will render a just and true account of the administration of it to the Court within 12 months from the date of grant.

Evidence in support of application for administration for the purposes only of the Family Provision Act 1982

26A. (1) An application for a grant of administration as referred to in section 41A (1) of the Probate Act shall be supported by affidavit:

- (a) in Form 105A;
- (b) where the plaintiff is aware of any proposal by any other person to make an application for a grant—of service, not later than 14 days before commencement by the plaintiff of the proceedings for a grant, on the other person, of a notice of the plaintiff’s intention to commence the proceedings; and
- (c) where the deceased died before 1989—in the form prescribed, of search in the registry for and no evidence of any prior application for any grant or resealing.

(2) The notice referred to in subrule (1) (b) shall be served:

- (a) personally; or
- (b) by sending a copy of the notice:
 - (i) in the case of service within Australia—by certified mail to the person to be served; and
 - (ii) in the case of service outside Australia—by registered post to the person to be served,

and by obtaining from the postal authorities a written acknowledgement, purporting to be signed by that person, of receipt of the certified or registered article.

(b) Part 78 rule 28

Omit the rule and insert instead:

Evidence in support of application for resealing

28. (1) An application for resealing shall be supported by affidavits:

(a) in Form 106;

(b) where the deceased died on or after 1 November 1989 and made any informal testamentary document—of the name and address of every person who is an affected person in relation to the estate of the deceased (designating as a disable person any person who, in the plaintiff's opinion, is or may be a disable person) or, where the name and address of an affected person cannot be ascertained, the best information the plaintiff can give to assist in ascertaining the name, address and identity of the affected person;

(c) annexing certified copies of any relevant documents; and

(d) where the deceased died before 1989—of search in the registry for and no evidence of any prior application for any grant or resealing.

(2) Subrules (6), (7), (8) and (9) of rule 25 apply as if the application were an application for administration.

(3) A copy of the document sought to be sealed, certified by the Court or by the court which made the grant, must be filed.

(4) All relevant original documents must be produced.

(5) Where the testator died before 31 December 1981:

(a) an affidavit in form "D" prescribed by regulations made under the Stamp Duties Act 1920 and a duplicate duly sworn shall be filed; and

(b) paragraphs 12, 13 and 14 of Form 106 shall be omitted;

(c) Part 78 rule 75 (2)

Omit "an accounts clerk" and insert instead "the registrar".

(d) Part 78 rule 76 (2)

Omit the subrule and insert instead:

(2) The notice shall be published:

(a) if the deceased was resident at the date of his or her death in the State—in a newspaper circulating in the district where the deceased resided; or

(b) otherwise—in a Sydney daily newspaper.

(e) Part 78 rules 78–85

Omit the rules and insert instead:

Inspection and appearance

78. (1) Where proceedings have been commenced for an order passing accounts and for commission, and the hearing of the proceedings has not been completed:

- (a) any person may, unless the registrar otherwise directs, inspect the accounts without the leave of the Court; and
- (b) any person who seeks to object to the passing of the accounts or the allowance of commission shall, at any time before completion of the hearing, enter an appearance in the proceedings.

(2) A person entering an appearance under subrule (1) shall be a defendant in the proceedings.

Vouching

79. (1) Where the plaintiff has complied with the rules, the registrar shall proceed with the vouching before him or her of the accounts on the day appointed under subrule (2) of rule 75 and thereafter as convenient.

(2) Where the registrar does not proceed with the vouching of the accounts, the plaintiff shall obtain from the registry a further appointment to vouch the accounts.

Procedure on vouching

80. (1) Any person, whether or not a defendant in the proceedings, may attend on the vouching of the accounts unless the Court, of its own motion, otherwise orders.

(2) The registrar may permit any person to ask, through him or her, any question relevant to the vouching of the accounts.

(3) Where the vouching of the accounts is not concluded on the day appointed, the registrar may decline to proceed with the vouching at any time of which reasonable notice has not been given to any person interested.

Certificate

81. (1) Upon the conclusion of the vouching the registrar shall inform the plaintiff of matters necessary for preparation by the plaintiff of a draft minute of a certificate by the registrar of the vouching of the accounts.

(2) The certificate vouching the accounts shall certify as to:

- (a) the correctness of the accounts;

(b) the balance of the accounts; and

(c) such other information as the registrar may direct.

(3) Where the plaintiff seeks commission, the certificate shall in addition certify as to:

(a) the amount of capital realised;

(b) the amount of income collected;

(c) the value of any assets transferred to beneficiaries; and

(d) where a business was carried on—the gross receipts and net profit earned or loss incurred,

during the period of the accounts.

(4) The plaintiff shall lodge the draft minute with the registrar.

(5) The registrar shall sign a correct minute of his or her Certificate.

(6) The registrar may of his or her own motion set aside or vary the certificate.

Uncontested proceedings for passing of accounts

83. (1) This rule applies where:

(a) there is no defendant in the proceedings; and

(b) the plaintiff does not seek commission.

(2) The proceedings may be heard:

(a) in the absence of the public; and

(b) without the appearance before the Court of any person.

(3) The proceedings shall be heard without an appointment being obtained for the hearing.

(4) Part 5 (which relates to proceedings by summons) does not apply.

(5) The plaintiff shall file a draft minute of order passing the accounts.

Commission

85. (1) Where the plaintiff seeks commission he or she shall file with the draft minute of certificate referred to in rule 81:

(a) an affidavit in support of the application; and

(b) where the accounts were not filed within the time fixed by the rules or any order of the Court—an affidavit explaining the delay.

(2) Upon signing a correct minute of his or her certificate pursuant to rule 81, the registrar may give an appointment for hearing of the application.

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(f) SCHEDULE F Forms 96—100, 100B, 104, 105A, 106 and 106A
 Omit the forms.

(g) SCHEDULE F Form 100A
 Renumber the form as 99.

(h) SCHEDULE F
 Insert in numerical order:

Form 96

Forms 97, 98, 104, 106.

ANNEXURE “.....”**INVENTORY OF PROPERTY**
 of the estate of (*name*) of (*place, occupation*), deceased.

Property owned solely by deceased

Description	Estimated or known value
(Describe each item sufficiently to identify it)	\$ <small>(Amount)</small> <small>(Total)</small>

Property owned by deceased as joint tenant with another or others

Description	Particulars of other joint owner	Estimated or known value
(Describe each item sufficiently to identify it)	(Name and address of other joint owner)	\$ <small>(Amount)</small> <small>(Total)</small>

This is Annexure “.....” to the affidavit of (*name*) sworn at (*place*) this (*date*) before me.

(signatures of the applicant and the person before whom the affidavit is sworn)

Form 97

P. 78, r. 24 (1) (a).

AFFIDAVIT OF EXECUTOR

On *(date)* I, (name, address and occupation), say on oath:

1. My full residential address is *(address)*.
2. The document dated *(date)* and signed in the margin by me and by the person before whom this affidavit is sworn is, I believe, the last will of *(name)*, late of *(place, occupation)*, the deceased, and I am not aware of the existence of any other document purporting to embody the testamentary intentions of the deceased [where applicable except for *(specify document)*].
3. My means of identifying the will are *(state these)*.
4. The attesting witnesses to the will are *(name)* and *(name)*.
5. The deceased died on *(date)* aged *(number)* years and I believe that the deceased is *(name in certificate of registration of death)* referred to in the certificate of registration of death which is annexed and marked "A".
6. The deceased did {did or did not} marry after the will was made [where applicable namely to *(name)* on *(date)*].
7. The deceased left assets within New South Wales.
8. I am the executor named in the will and I am over 18 years of age.
9. [Where applicable *(name)* one of the executors named in the will {died on *(date)* as evidenced by the death certificate annexed and marked "..." or renounced probate of the will on *(date)*}.]
10. If I am granted probate of the will of the deceased:
 - (a) I will administer the estate according to law; and
 - (b) I will:
 - (i) verify and file; or
 - (ii) verify, file and pass,my accounts relating to the estate of the deceased within 12 months from the date of grant [where neither paragraph (a) nor (b) of section 85 (1AA) of the Probate Act applies and the whole of the estate does not pass to one or more charities or public benevolent institutions, add if so required by the Court].

11. [Where the deceased resided at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a newspaper circulating in the district where the deceased resided at the date of the deceased's death, evidenced by the tear sheet annexed and marked “..”.]

or

[Where the deceased did not reside at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a Sydney daily newspaper, as evidenced by the tear sheet annexed and marked "...:]"

12. The names, ages and entitlements of the persons entitled in distribution of the estate of the deceased are: (*state these*).

13. A statement of all assets of the deceased of which I am presently aware (signed in the margin by me and by the person before whom this affidavit is sworn) is annexed and marked “...”.] I will disclose to the Court any other asset which comes to my notice.

(The statement shall be in Form 96)

14. The liabilities of the deceased of which I am presently aware are as follows:

LIABILITIES

Date	Name of creditor, etc.	Description of liability	Estimated or known amount	
			Secured	Unsecured
<i>(date liability incurred eg 3-8-93) (date)</i>	<i>(name) (name)</i>	<i>(description) (description)</i>	<i>\$ (amount) (total)</i>	<i>\$ (amount) (total)</i>

15. The estate has a gross value of \$ *(amount)* and a net value of \$ *(amount)*.

Sworn at }
before me }

Form 98

P. 78, rr 25 (2) (a), 25A1.(2)(a).

AFFIDAVIT OF APPLICANT FOR ADMINISTRATION

On *(date)* I, *(name, address and occupation)*, say on oath:

1. My full residential address is *(address)*.
2. I am *(state relationship to deceased)* of *(name, occupation)* late of *(place)* who died on *(date)* aged *(number)* years and I believe that the deceased is *(name in certificate of registration of death)* referred to in the certificate of registration of death which is annexed and marked "A".
3. I believe that the deceased did not leave a will or document purporting to embody the testamentary intentions of the deceased [where applicable except for *(specify document)*].
4. *(State what searches have been made for a will or document purporting to embody the testamentary intentions of the deceased.)*
5. The names, ages, relationship to the deceased and entitlements of the persons entitled in distribution of the estate of the deceased are: *(state these)*.
6. *(State the facts establishing that the persons named in paragraph 5 are the persons entitled in distribution of the estate. Annex appropriate certificate evidence.)*
7. The deceased left assets within New South Wales.
8. I am not an undischarged bankrupt, I have not assigned or encumbered my interest in the estate and I am over 18 years of age.
9. If I am granted administration of the will of the deceased:
 - (a) I will administer the estate according to law; and
 - (b) I will:
 - (i) verify and file; or
 - (ii) verify, file and pass,
 my accounts relating to the estate of the deceased within 12 months from the date of grant [where neither paragraph (a) nor (b) of section 85 (IAA) of the Probate Act applies, add if so required by the Court].

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10. [Where the deceased resided at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a newspaper circulating in the district where the deceased resided at the date of {his or her} death, evidenced by the tear sheet annexed and marked "B".]

or

[Where the deceased did not reside at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a Sydney daily newspaper, as evidenced by the tear sheet annexed and marked "B".]

11. A statement of all assets of the deceased of which I am presently aware (signed in the margin by me and by the person before whom this affidavit is sworn) is annexed and marked "C". I will disclose to the Court any other asset which comes to my notice.

(The statement shall be in Form 96)

12. The liabilities of the deceased of which I am presently aware are as follows:

LIABILITIES

Date	Name of creditor, etc.	Description of liability	Estimated or known amount	
			Secured	Unsecured
(date liability incurred eg 3-8-93) (date)	(name) (name)	(description) (description)	\$ (amount) (total)	\$ (amount) (total)

13. The estate has a gross value of \$ (amount) and a net value of \$ (amount).

[Where Part 78 rule 25A applies

14. The names, ages and relationship to the deceased of the persons who, if the deceased had not left a de facto spouse, would have been entitled in distribution of the estate are: (state these).

15. (State the facts establishing that the persons named in paragraph 14 are the persons who would have been entitled in distribution of the estate. Annex appropriate certificate evidence.)]

Sworn at }
before me }

Form 104

P. 78, r. 26.

**AFFIDAVIT OF APPLICANT FOR ADMINISTRATION WITH
THE WILL ANNEXED**

On (date) I, (name, address and occupation), say on oath:

1. My full residential address is *(address)*.
2. The document dated *(date)* and signed in the margin by me and by the person before whom this affidavit is sworn is, I believe, the last will of *(name)*, late of *(place, occupation)*, the deceased, and I am not aware of the existence of any other document purporting to embody the testamentary intentions of the deceased *[where applicable except for specify document]*.
3. My means of identifying the will are *(state these)*.
4. The attesting witnesses to the will are *(name)* and *(name)*.
5. The deceased died on *(date)* aged *(number)* years and I believe that the deceased is *(name in certificate of registration of death)* referred to in the certificate of registration of death which is annexed and marked "A".
6. The deceased { did or did not} marry after the will was made.
7. The deceased left assets within New South Wales.
8. I am the not an undischarged bankrupt, I have not assigned or encumbered my interest in the estate of the deceased and I am over 18 years of age.
9. *[Where applicable (name) the executor named in the will died on (date) as evidenced by the death certificate annexed and marked "... or renounced probate of the will on (date).]*
10. The names, ages and entitlements of the persons entitled in distribution of the estate are *(state these)* *[where the names of all the persons entitled do not appear on the face of the will, state the facts establishing that the persons named in this paragraph are the persons entitled]*.
11. If I am granted administration of the will of the deceased:
 - (a) I will administer the estate according to law; and
 - (b) I will:
 - (i) verify and file; or
 - (ii) verify, file and pass,

my accounts relating to the estate of the deceased within 12 months from the date of grant [*where neither paragraph (a) nor (b) of section 85 (1AA) of the Probate Act applies and the whole of the estate does not pass to one or more charities or public benevolent institutions, add if so required by the Court*].

12. Where the deceased resided at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a newspaper circulating in the district where the deceased resided at the date of his or her death, evidenced by the tear sheet annexed and marked “...”]

or

[*Where the deceased did not reside at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a Sydney daily newspaper, as evidenced by the tear sheet annexed and marked “...”.*]

13. A statement of all assets of the deceased of which I am presently aware (signed in the margin by me and by the person before whom this affidavit is sworn) is annexed and marked “...” I will disclose to the Court any other asset which comes to my notice.

(The statement shall be in Form 96)

14. The liabilities of the deceased of which I am presently aware are as follows:

LIABILITIES

Date	Name of creditor, etc.	Description of liability	Estimated or known amount	
			Secured	Unsecured
(date liability incurred eg 3-8-93) (date)	(name) (name)	(description) (description)	\$ (amount) (total)	\$ (amount) (total)

15. The estate has a gross value of \$ (amount) and a net value of \$ (amount).

Sworn at }
before me }
 }

Form 105A

P. 78, r. 26A (1) (a).

(Affidavit of applicant for administration for the purposes of the Family Provision Act 1982.)

AFFIDAVIT OF APPLICANT FOR ADMINISTRATION

On (date) I, (name, address and occupation), say on oath:

1. My full residential address is *(address)* and I am over the age of 18 years.

2. I am (*state relationship to deceased*) of (*name, occupation*) late of (*place*) who died on (*date*) aged (*number*) years and I believe that the deceased is (*name in certificate of registration of death*) referred to in the certificate of registration of death which is annexed and marked "A".

3. I am not aware of any will or document purporting to embody the testamentary intentions of the deceased.

or

The document dated *(date)* and signed in the margin by me and by the person before whom this affidavit is sworn is a copy of the {last will *or* document purporting to embody the testamentary intentions} of the deceased.

or

I believe that the deceased left a {will or document purporting to embody the testamentary intentions of the deceased} but no copy of it is available.

4. I am not aware of any proposal by any other person to make an application for a grant.

or

I believe that *(name)* of *(address, occupation)*, proposes to make an application for a grant.

5. *[If applicable I intend to make an application under the Family Provision Act 1982 on behalf of (name, address and occupation)].*

6. (State the facts showing that:

(a) if the plaintiff intends to make an application under the Family Provision Act 1982 on behalf of another person—that person; or

(b) otherwise—the plaintiff,
is an eligible person within the meaning of the Family Provision Act, 1982.)

7. A copy of an affidavit which {has been or will be} sworn and which I intend to file in compliance with Part 77 rule 59 (a)–(d) in the proceedings on the application intended to be made under the Family Provision Act 1982 is annexed and marked “B”.

8. The matters referred to in paragraphs (*identify numbers of paragraphs in the lastmentioned annexure relating to the matters mentioned in Part 77 rule 59 (a)–(d)*) of annexure “B” are true.

9. [Where the deceased resided at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a newspaper circulating in the district where the deceased resided at the date of his or her death, evidenced by the tear sheet annexed and marked “C”.]

or

[Where the deceased did not reside at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a Sydney daily newspaper, as evidenced by the tear sheet annexed and marked “C”.]

Sworn at }
before me }

Form 106

P. 78, r. 28.

AFFIDAVIT OF APPLICANT FOR RESEALING

On (date) I, (name, address and occupation), say on oath:

1. My full residential address is (address).
2. The deceased died intestate on (date) aged (number) years.

or

The deceased died intestate on (date) aged (number) years and left a will dated (date) by which {he or she} appointed {me or (name)} executor.

3. I am not aware of the existence of any document purporting to embody the testamentary intentions of the deceased [where applicable except for {the said will or (specify document)}].
4. (Probate of the will was or Letters of Administration of the estate of the deceased were) granted by (name of court) to {me or (name)} on (date).

5. The grant has not been revoked.
6. The deceased left assets within New South Wales.
7. The names, ages, relationship to deceased and entitlements of the persons entitled in distribution of the estate of the deceased are: (state these).
8. *[Where the application is for resealing Letters of Administration I am not an undischarged bankrupt and I have not assigned or encumbered my interest (if any) in the estate.]*
9. I am over 18 years of age.
10. I am aware that, if the grant is sealed by this Court, accounts relating to the estate must be:
 - (a) verified and filed; or
 - (b) verified, filed and passed,
 within 12 months after the sealing *[where neither paragraph (a) nor (b) of section 85 (1AA) of the Probate Act applies and the whole of the estate does not pass to one or more charities or public benevolent institutions, add if so required by the Court].*
11. *[Where the deceased resided at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a newspaper circulating in the district where the deceased resided at the date of (his or her) death, evidenced by the tear sheet annexed and marked "A".]*

or

[Where the deceased did not reside at the date of his or her death in the State Notice of this application was published on (date) in the (name), which is a Sydney daily newspaper, as evidenced by the tear sheet annexed and marked "A".]
12. A statement of all assets of the deceased of which I am presently aware (signed in the margin by me and by the person before whom this affidavit is sworn) is annexed and marked "B". I will disclose to the Court any other asset which comes to my notice.

(The statement shall be in Form 96)

13. The liabilities of the deceased of which I am presently aware are as follows:

LIABILITIES

Date	Name of creditor, etc.	Description of liability	Estimated or known amount	
			Secured	Unsecured
(date liability incurred eg 3-8-93) (dare)	(name) (name)	(description) (description)	\$ <u>(amount)</u> <u>(total)</u>	\$ <u>(amount)</u> <u>(total)</u>

14. The estate has a gross value of \$ (amount) and a net value of \$ (amount).

[Where the application for reseal is made pursuant to a Power of Attorney]

15. By Power of Attorney dated (date, name) appointed me {his or her} attorney to apply to this Court to reseal the grant.

16. A certified copy of the Power of Attorney is annexed and marked "C".

17. I have not received any notice of revocation of the Power of Attorney by death, unsoundness of mind, act of donor or otherwise.]

Sworn at }
before me }

Form 106A

P. 78, r. 28A.

AFFIDAVIT OF ADDITIONAL ASSETS (or LIABILITIES or ASSETS AND LIABILITIES)

On (date) I, (name, address and occupation), say on oath:

- I am the {executor or (as the case may be)} of the estate of the deceased.
- (Assets or (as the case may require)) of the deceased not disclosed to the Court before the date of swearing this affidavit are listed below:

(list)

Sworn at }
before me }

(i) SCHEDULE F Form 116

Omit “an accounts clerk of the Court” and insert instead “the registrar”.

(j) SCHEDULE F Index of Forms

Omit the entries relating to Forms 96 and 98–100A and insert instead:

96. Inventory of Property (Forms 97, 98, 104, 106).

98. Affidavit of applicant for administration (P. 78, K 25 (1) (a), 25A (2) (a)).

99. Affidavit negating existence of de facto wife or de facto husband (P. 78, r. 25 (1) (e)).

4. Applications for grant of probate or administration or for resealing that:

(a) are filed within 3 months after the date on which the amendments contained in paragraph 3 take effect; and

(b) comply with the Supreme Court Rules 1970 as in force immediately before that date,

shall be taken to comply with the rules as amended by paragraph 3.

5. SCHEDULE F Form 154B

Omit “rule 7 (1)” and insert instead “rule 9 (1)”.

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendments contained in paragraph 2 (a) is to:
 - (a) allow the Court to direct service of a notice of appeal involving a matter arising under the Corporations Law to be served on the Australian Securities Commission; and
 - (b) allow the Australian Securities Commission to intervene under section 1330 (1) of the Corporations Law in an appeal by filing an appearance.
2. The object of the amendment contained in paragraph 2 (b) is to enable the hearing date for a motion or summons to be made by consent more than once.

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3. The object of the amendments contained in paragraph 3 is to reduce the number of forms required to be used in applications for probate, administration and resealing and to simplify the rules relating to those applications and to make other provisions of a minor, consequential or ancillary nature.

4. The object of the amendment contained in paragraph 5 is to correct an incorrect reference to rule in a form.

M. A. Blay,
Secretary of the Rule Committee
