



New South Wales

Supreme Court Rules (Amendment No. 331) 1999

1. These rules are made by the Rule Committee on 16 August 1999.
2. The Supreme Court Rules 1970 are amended as follows—

Part 77

After Division 53, insert—

Division 54—Protection of the Environment Operations Act 1997

Assignment of business

142. Proceedings in the Court under the Protection of the Environment Operations Act 1997 (the “**subject Act**”) are assigned to the Common Law Division.

Statement in summons or notice of motion

143. The applicant under section 232(1) or section 235(3) or section 238(2) or section 239(1) of the subject Act shall file with his or her summons or notice of motion a statement in summary form of the general nature of the facts and circumstances relied on.

Examination order: prescribed officer (s. 235(2)(a))

144. An officer prescribed for the purposes of section 235(2) (a) of the subject Act is a master or registrar.

3. The Supreme Court Rules 1970 are further amended as follows—
 - (a) Part 74 rule 1(5)

Omit “under section 23(1) of the Residential Tribunal Act 1998” and insert instead “pursuant to an Act that allows transfer by agreement”.

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(b) Part 55 rule 11(6)

Omit “to be dealt with as if it were a contempt of the Court” and insert instead “with a view to the Court dealing with a possible contempt of the court, body or person”.

(c) Schedule H

(i) Omit the reference to the Credit (Administration) Act 1984 and the matter relating to it.

(ii) Insert, in alphabetical order in the appropriate columns—

Fair Trading Tribunal Act 1998 61 Appeal

62 Referral

4. The Supreme Court Rules 1970 are further amended as follows—

(a) Part 52A rule 34, Part 60 rule 17, Part 77 Division 19, Schedule D Part 1 and Schedule E Part 2

Omit “De Facto Relationships” wherever appearing and insert instead “Property (Relationships)”.

(b) Part 78 rule 1

Insert in alphabetical order—

“de facto spouse” has the meaning which it has in the Property (Relationships) Act 1984.

(c) Part 78 rule 23(2)(b)

Omit “wife or de facto husband” and insert instead “wife, de facto husband or de facto spouse”.

(d) Part 78 rule 24(5)

Omit the subrule and insert instead—

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

(a) paragraph 10 of Form 97 shall be omitted; and

(b) 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.

- (e) Part 78 rules 25, 25A and 26

Omit the rules and insert instead—

Evidence in support of application for administration

24A. (1) This rule applies to an application for administration of the estate of a deceased who died after the commencement of Schedule 2.25 of the Property (Relationships) Legislation Amendment Act 1999 (other than an application by or on behalf of a de facto spouse 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 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; and
- (c) 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 spouse) under any other provision of that Act.

(3) 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

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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.
- (4) The notice referred to in subrule (3) (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—registered post to the person to be served,and by obtaining from the postal authorities a written acknowledgment, purporting to be signed by that person, of receipt of the certified or registered article.
- (5) Subject to subrule (6):
- (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.
- (6) 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.
- (7) 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.

(8) Where there is a surety to a bond, an affidavit of justification by the surety, in the form prescribed, shall be filed.

Evidence in support of application for administration

25. (1) This rule applies to an application for administration of the estate of a deceased who died before the commencement of Schedule 2.25 of the Property (Relationships) Legislation Amendment Act 1999 (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;
- (c) where the deceased died before 1 July 1977 without issue—whether he or she 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) Rule 24A (3)–(8) apply to an application to which this rule applies.
- (4) Where the deceased died before 31 December 1981:
- (a) paragraph 9 of Form 98 shall be omitted; and
 - (b) 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, de facto husband or de facto spouse

25A. (1) This rule applies to an application for administration by or on behalf of a de facto wife, de facto husband or de facto spouse (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) which:
- (i) if the deceased died before the commencement of Schedule 2.25 of the Property (Relationships) Legislation Amendment Act 1999—is in Form 103A sworn by the de facto wife or de facto husband;
 - (ii) otherwise—is in Form 103AA sworn by the de facto spouse,

showing that the estate or part is required to be held in trust for her or him.

(3) 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, de facto husband or de facto spouse, 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,

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.

(4) The affidavits and notice referred to in subrule (3) (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 acknowledgment, purporting to be signed by that person, of receipt of the certified or registered article.

(5) Rule 24A (5)–(8) 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 24A, 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) paragraph 11 of Form 104 shall be omitted; and
- (b) 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.

(f) Part 78 rule 28(5)

Omit the subrule.

(g) Schedule D Part 1

Omit the matter relating to Act No 147, 1984, and insert instead in the appropriate Columns—

Act No. 147, 1984; Property (Relationships) Act 1984.	De facto relationships
	Domestic relationships

(h) Schedule F Index of Forms

- (i) Omit the reference to Form 98 and the matter relating to it and insert instead, in the appropriate columns—
 - 98. Affidavit of applicant for administration (P. 78, rr. 24A (1) (a), 25 (1) (a), 25A (2) (a)).
 - 98A. Affidavit negating existence of de facto spouse (P. 78, r. 24A (1) (c)).
- (ii) Omit the reference to Forms 100B, 101, 102 and 103 and the matter relating to them and insert instead, in the appropriate columns—
 - 101. Consent to administration (P. 78, rr. 24A, 25, 25A).
 - 102. Administration bond (P. 78, rr. 24A, 25, 26).

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- 103. Affidavit of surety (P. 78, rr. 24A, 25, 25A, 26, 34.)
- (iii) Omit the reference to Form 103B and the matter relating to it and insert instead, in the appropriate columns—
 - 103AA. Affidavit relating to de facto relationships (P. 78, r. 25A (2) (d)).
 - 103B. Notice where the deceased leaves a de facto wife or de facto husband (P. 78, r. 25A (3) (b) (iv)).
- (i) Schedule F Form 90
Omit “de facto widow” and insert instead “de facto spouse”.
- (j) Schedule F Form 92A
Omit “Probate Division” and insert instead “Equity Division”.
- (k) Schedule F Form 98
Omit the form and insert instead—

Form 98

P. 78, rr. 24A(2)(a), 25 (2) (a), 25A (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)]*.

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

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.)]
16. I am not aware of any circumstances which raise doubt as to my entitlement to a grant of administration of the estate of the deceased [where applicable except for (specify matter)].

Sworn at _____ }
before me _____ }

before me

(* If deceased died before the commencement of Schedule 2.25 of the Property (Relationships) Legislation Amendment Act 1999, substitute de facto wife or de facto husband.)

Form 98A

(Affidavit negating existence of de facto spouse)

P. 78, rr. 24A (2)(c).

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

State the facts showing the competency of the deponent to make this affidavit, for example—

1. I am the widow of the deceased.
2. I lived with the deceased up to the time of his death and for a continuous period of years beforehand.

State the facts complying with Part 78 rule 24A (2) (c) for example, where the widow is the deponent and the following is true—

3. The deceased did not leave any person who at the time of his death was a partner with him in a de facto relationship within the meaning of section 4 of the Property (Relationships) Act 1984.
4. I am aware that sections 4 and 5A of the Property (Relationships) Act 1984 are as follows:

(Here set out the sections)

Sworn at

before me

(I) Schedule F Form 101

Omit the Form and insert instead—

Form 101

P. 78, rr. 24A, 25, 25A.

CONSENT TO ADMINISTRATION

I, *(name)* of *(place)* labourer am *(state relationship)* of *(name)* late of *(place)* labourer. I am over 18 years of age. I am not an undischarged bankrupt and I have not assigned or encumbered my interest in the estate of the deceased.

I consent to letters of administration being granted to *(name)* who is *(state relationship)* of the deceased *(where applicable)* and to administration bond being dispensed with).

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[Where the estate or part is required to be held in trust for a de facto spouse of the deceased, add—*

I have read the Affidavit of the Applicant for Administration and understand how the entitlement of the de facto spouse* affects the distribution of the estate of the deceased.]

Dated: *(date)*

Signed in the presence

of

}

[If deceased died before the commencement of Schedule 2.25 of the Property (Relationships) Legislation Amendment Act 1999, substitute de facto wife or de facto husband.]*

AFFIDAVIT OF WITNESS TO CONSENT

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

1. The above document was signed in my presence on *(date)* by *(name)*.
2. The signatures *(set these out)* are respectively my signature and that of *(name of person consenting)*.

Sworn at

before me

}

(m) Schedule F Form 102

Omit “*rr. 25,*” and insert instead “*rr. 24A, 25,*”.

(n) Schedule F Form 103

Omit “*P. 78, rr. 25, 25A, 26, 34.*” and insert instead “*P. 78, rr. 24A, 25, 25A, 26.*”

(o) Schedule F Form 103B

Omit the form and insert instead—

(Affidavit relating to de facto relationships)

AFFIDAVIT

1. The deceased {left or did not leave} a {husband or wife}
2. At the time of death of the deceased [*and, where either s. 61B (3A) (a) of the Probate Act applies (deceased leaving a husband or wife) or s. 61B (3B) (a) of the Probate Act applies (no husband or wife but issue) add and for a continuous period of not less than two years prior to the death of the deceased*]
 - (a) I was the sole partner with the deceased in a de facto relationship; and
 - (b) I was not a partner in any other de facto relationship.
[Where the deceased left a wife or husband, add; and
 - (c) the deceased did not, during the whole or any part of that period, live with the person to whom the deceased was married.]
3. *(State the facts showing that the deponent is a person for whom the estate of the deceased or part thereof is required to be held in trust, including dates and periods of the relationship, places where the partners lived together, financial and property matters, children and so on).*
4. In this affidavit “de facto relationship” has the same meanings as it has in the Property (Relationships) Act 1984. I am aware that sections 4 and 5A of that Act are as follows:

(Here set out the sections)

Sworn at _____ }
before me: _____ }

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Form 103B

(Notice, where the deceased leaves a de facto wife or de facto husband or de facto spouse)

P. 78, r. 25A (3) (b) (iv).

NOTICE OF APPLICATION FOR ADMINISTRATION

To: *(name and address:)*

After (42 days or 3 months: see Part 78, rule 25A (3) (b)) from the date of service of this notice on you, an application for a grant of administration of the estate of the deceased will be made by (name). There is a claim that the deceased left a de facto spouse, (name). Served on you with this notice are—*

- (a) affidavits setting out facts relating to the de facto relationship claimed and other matters;*
- (b) an affidavit showing the assets and liabilities of the estate and the persons who are entitled in distribution of the estate and who would, if the deceased had not left a de facto spouse* have been so entitled.*

If you do not oppose the application, the Court may grant administration to the applicant who may then be at liberty to distribute in due course to the de facto spouse the estate or part of the estate to which she is entitled.*

If the deceased did not leave a de facto spouse and you were entitled to the estate or part, you may have been entitled to a grant of administration of the estate of the deceased.*

Dated:

(signature)

Solicitor for the applicant.

(address for service)

(or as the case may be)

(If deceased died before the commencement of Schedule 2.25 of the Property (Relationships) Legislation Amendment Act 1999, substitute de facto wife or de facto husband.)*

- (p) Schedule F Form 106F
Omit “Probate Division” and insert instead—
Equity Division
Probate
- 5. The amendments contained in paragraphs 4(b)–(f) and (h)–(p) shall commence on the date when Schedule 2.25 of the Property (Relationships) Legislation Amendment Act 1999 commences.
- 6. The Supreme Court Rules 1970 are amended as follows—
SCHEDULE E
 - (i) Omit the reference to Part 14 and the matter relating to it.
 - (ii) From the reference to Part 14A, omit “6” and insert instead “4(1)(b)”.

EXPLANATORY NOTE

(This note does not form part of the rules).

- 1 The object of the amendment contained in paragraph 2 is to—
 - (a) assign proceedings under the Protection of the Environment Operations Act 1997 to the Common Law Division;
 - (b) require a statement in summary form of the general nature of facts and circumstances relied on where an application is made for certain orders under that Act; and
 - (c) prescribe a master or registrar as an officer for the purpose of s235(2)(a) of that Act.
- 2 The object of the amendment contained in paragraph 3(a) is to require parties to reduce to writing and lodge with the court an agreement under s 23 of the Fair Trading Tribunal Act 1998 and any other Act that allows transfer to the Court by agreement.
- 3 The object of the amendment contained in paragraph 3(b) is to adapt the wording of a rule (dealing with contempt of a tribunal) to s 39 of the Fair Trading Tribunal Act 1998.
- 4 The objects of the amendment contained in paragraph 3(c) are to omit a reference to a repealed Act and to assign proceedings under ss 61 and 62 of the Fair Trading Tribunal Act 1998 to the Common Law Division and include them in the administrative Law List.

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- 5 The object of the amendment contained in paragraph 4 is to adapt forms and rules relating to deceased estates to the changes made by the Property (Relationships) Legislation Amendment Act 1999 and to amend references to the superseded name of the Property (Relationships) Act 1984.
- 6 The objects of the amendments contained in paragraph 6 are to—
 - (a) omit an incorrect reference to Part 14;
 - (b) to replace an incorrect reference to *Part 14A rule 6* with a reference to *Part 14A rule 4(1)(b)*, which will enable the power of the Court to make orders transferring proceedings to the Equity Division and entering them in the Construction List in certain circumstances to be exercised by registrars.

M A Blay

The Secretary of the Rule Committee

BY AUTHORITY