



New South Wales

# Supreme Court Rules (Amendment No 402) 2005

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 18 April 2005.

Steven Jupp  
Secretary of the Rule Committee

## **Explanatory note**

The object of these Rules is to make amendments to Part 76 of the *Supreme Court Rules 1970* which relate to protective business. The amendments are consequential on the enactment of the *Protected Estates Amendment (Missing Persons) Act 2004* and apply existing provisions of the rules to missing persons.

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Rule 1 Supreme Court Rules (Amendment No 402) 2005

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### **Supreme Court Rules (Amendment No 402) 2005**

under the

Supreme Court Act 1970

#### **1 Name of Rules**

These Rules are the *Supreme Court Rules (Amendment No 402) 2005*.

#### **2 Amendment of Supreme Court Rules 1970**

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

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**Schedule 1 Amendments**

(Rule 2)

**[1] Part 76 Protective Business**

Omit “section 13” from the definition of *subject person* in rule 1.  
Insert instead “section 13, 21C or 68”.

**[2] Part 76, Division 2, heading**

Omit the heading to the Division. Insert instead:

**Division 2 Applications under section 13, 21C or 68****[3] Part 76, rule 8**

Omit “section 13 and section 68”. Insert instead “section 13, 21C or 68”.

**[4] Part 76, rule 9**

Omit the rule. Insert instead:

**9 Parties**

- (1) Where an application is made under section 13 or 68 of the subject Act, the subject person shall be made a defendant.
- (2) Where an application is made under section 21C of the subject Act, the subject person shall be made a defendant but need not be served.

**[5] Part 76, rule 11**

Insert at the end of the rule:

- (2) Subrule (1) (a) and (b) do not apply in respect of an application made under section 21C of the subject Act.

**[6] Part 76, rule 13A**

Insert after rule 13:

**13A “Usual orders”, s 21C**

Where, under section 21C of the subject Act the court makes a declaration that the defendant is a missing person and, with or without further order or orders, makes *the usual orders*, that expression means orders:

- (a) that the estate of the defendant be subject to management under the subject Act, and

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- (b) that, subject to the giving of security to the satisfaction of the Commissioner, the person proposed in the summons be appointed to be manager of the estate of the defendant to act in relation thereto under the order and direction of the Court or, where the Protective Commissioner is proposed, that the management of the estate be committed to the Protective Commissioner, and
- (c) (*where two or more are appointed*) that on the death or discharge of either (*one* or more) of the managers that custody of the estate of the defendant shall continue to the surviving or continuing manager (*or managers*), and
- (d) that the assessed costs of the plaintiff (and, *where the defendant appears*, of the defendant) of and incident to these proceedings be paid to the parties entitled thereto out of the estate of the defendant, and
- (e) all parties be at liberty to apply as they may be advised.

**[7] Part 76, rule 17**

Omit “section 13” from rule 17 (1) wherever occurring.

Insert instead “section 13 or 21C”.

**[8] Part 76, Division 3A**

Insert after rule 23:

**Division 3A Applications under section 35A**

**23A Mode of application**

This Division applies to applications made under section 35A of the subject Act (which relates to orders when a person is no longer missing).

**23B Notice of Motion**

- (1) The application is to be made by motion in the proceedings in which the declaration and order under section 21C of the subject Act were made.
- (2) Notice of the motion is to be served on the manager or on the person on whose application the declaration and order were made.

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**23C Business in the absence of the public**

Where, at the time fixed for the hearing of the motion, there is no attendance by any person opposing the claim, the Court may determine or deal with the application in the absence of the public and without any attendance by or on behalf of any person.

**23D Form of order**

An order under section 35A may be made in or to the effect of Form 86A.

**[9] Part 76, rule 30**

Omit “section 13”. Insert instead “section 13 or 21C”.

**[10] Part 76, rule 34**

Omit “section 13” from rule 34 (1). Insert instead “section 13 or 21C”.

**[11] Schedule F Forms**

Insert after Form 83:

**Form 83A**

*(Order under section 21C)*

P 76, r 13A.

**ORDER**

THE COURT DECLARES that the defendant is a missing person.

THE COURT ORDERS that—

1. the estate of the defendant be subject to management under the subject Act.
2. (*name of manager(s)*) be appointed without security (*or, subject to the giving of security to the satisfaction of the Commissioner (name of manager(s)) be appointed*) manager(s) of the estate of the defendant to act in relation thereto under the order and direction of the Court;
3. (*where two or more persons are appointed, on the death or discharge of either (or any one or more) of the said manager(s) the management of the estate shall continue to the surviving or continuing manager(s)*);
4. the assessed costs of the plaintiff (and, *where the defendant appears, of the defendant*) of and incident to these proceedings be paid to the parties entitled thereto out of the estate of the defendant;
5. all parties are at liberty to apply as they may be advised.

*(Complete as in general form of minute of order under Part 41, rule 11 Form 51.)*

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**[12] Schedule F, Form 86A**

Insert after Form 86:

**Form 86A**

*(Order pursuant to section 35A)*

P 76, r 23D.

**ORDER**

THE COURT DECLARES that it has been proved to its satisfaction that (*name of protected person*) is alive.

THE COURT ORDERS that—

1. (*name of manager*) is discharged from the office of manager of the estate of (*name of protected person*);
2. the said (*name of manager*) shall within (*state period of time*) file and pass his account in the registry in accordance with the rules;
3. the said (*name of manager*) shall, within            days after the taking of the said account, hand over and transfer the residue, if any, of the said estate to the said (*name of protected person*);
4. The assessed costs of all parties be paid to the persons entitled thereto out of the estate of the said (*name of protected person*).

*(Complete as in general form of order under Part 41, rule 11 Form 51.)*

**[13] Schedule F, Index of Forms**

Insert after the matter relating to Form 83 in the Index of Forms at the end of the Schedule:

83A.            Order under s 21C of the *Protected Estates Act 1983* (P 76, r 13A).

**[14] Schedule F, Index of Forms**

Insert after the matter relating to Form 86 in the Index of Forms at the end of the Schedule:

86A.            Order under s 35A of the *Protected Estates Act 1983* (P 76, r 23D).

BY AUTHORITY

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