



New South Wales

Supreme Court Rules (Amendment No 413) 2008

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 3 March 2008.

Steven Jupp
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend the *Supreme Court Rules 1970*:

- (a) to update references in the Rules to the *Wills, Probate and Administration Act 1898* to reflect its renaming as the *Probate and Administration Act 1898* by the *Succession Act 2006* and to make other amendments consequent on the commencement of the *Succession Act 2006*, and
- (b) to repeal Parts 58, 59A, 68, 70, 73 and 76, and
- (c) to make other consequential amendments and amendments in the nature of law revision.

2008 No 62

Rule 1 Supreme Court Rules (Amendment No 413) 2008

Supreme Court Rules (Amendment No 413) 2008

under the

Supreme Court Act 1970

1 Name of Rules

These Rules are the *Supreme Court Rules (Amendment No 413) 2008*.

2 Amendment of Supreme Court Rules 1970

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

Schedule 1 Amendments

(Rule 2)

[1] Parts 58, 59A, 68, 70, 73 and 76

Omit the Parts.

[2] Part 78, rule 1 InterpretationOmit “section 18A of the Probate Act” from the definition of *affected person*.

Insert instead “section 18A of the former Wills Act or section 8 of the Succession Act (as applicable)”.

[3] Part 78, rule 1Omit the definition of *the Probate Act*.

Insert in alphabetical order:

the former Wills Act means the *Wills, Probate and Administration Act 1898*, as in force before the commencement of the Succession Act.

the Probate Act means the *Probate and Administration Act 1898*.

the Succession Act means the *Succession Act 2006*.

[4] Part 78, rule 5 Powers of the registrar

Omit “section 18A of the Probate Act” from rule 5 (1) (g1).

Insert instead “section 18A of the former Wills Act or section 8 of the Succession Act (as applicable)”.

[5] Part 78, rule 5 (1) (q)

Omit “section 13 (2) (c), section 15A (2) (a) or section 29A (1) of the Probate Act”.

Insert instead “section 13 (2) (c), 15A (2) (a) or 29A (1) of the former Wills Act or under section 10 (3) (c) or 27 (1) of the Succession Act (as applicable)”.

[6] Part 78, rule 5 (1) (u)

Insert after rule 5 (1) (t):

- (u) requiring further evidence to be furnished, further documents to be filed or notices to be given in any proceedings.

[7] Part 78, rule 6 Review of registrar’s decision

Omit “Part 45”. Insert instead “Part 49”.

2008 No 62

Supreme Court Rules (Amendment No 413) 2008

Schedule 1 Amendments

[8] Part 78, rule 6 (a)

Omit “section 13 (2) (c), section 15A (2) (a), section 18A or section 29A (1) of the Probate Act”.

Insert instead “section 13 (2) (c), 15A (2) (a), 18A or 29A (1) of the former Wills Act or under section 10 (3) (c) or 27 (1) of the Succession Act (as applicable)”.

[9] Part 78, rule 23A Court may require further evidence, documents and notices

Omit the rule.

[10] Part 78, rule 24 Evidence in support of application for probate

Omit “Probate Act” from rule 24 (1) (c).

Insert instead “former Wills Act”.

[11] Part 78, rule 25A Evidence in support of application for administration by de facto wife, de facto husband or de facto spouse

Omit “42 days” from rule 25A (3) (b) (i). Insert instead “14 days”.

[12] Part 78, rule 25A (3) (b) (ii)

Omit “three months”. Insert instead “28 days”.

[13] Part 78, Division 5A, heading

Omit the heading. Insert instead:

**Division 5A Proceedings under sections 13, 15A and 29A
of the former Wills Act or sections 10 and 27
of the Succession Act**

[14] Part 78, rule 34A Form of consent

Omit “section 13 (2) (b) of the Probate Act” from rule 34A (1).

Insert instead “section 13 (2) (b) of the former Wills Act or section 10 (3) (b) of the Succession Act (as applicable)”.

[15] Part 78, rule 34B, heading

Omit the heading. Insert instead:

**34B Plaintiff sole executor etc (s 13 of former Wills Act; s 10 of
Succession Act)**

-
- [16] **Part 78, rule 34B (1)**
Omit “section 13 (2) (c) of the Probate Act”.
Insert instead “section 13 (2) (c) of the former Wills Act or section 10 (3) (c) of the Succession Act (as applicable)”.
- [17] **Part 78, rule 34B (4)**
Omit “section 13 (2) (c) of the Probate Act”.
Insert instead “section 13 (2) (c) of the former Wills Act or section 10 (3) (c) of the Succession Act (as applicable)”.
- [18] **Part 78, rule 34C, heading**
Omit the heading. Insert instead:
34C Citations etc (ss 13, 15A and 29A of former Wills Act; ss 10 and 27 of Succession Act)
- [19] **Part 78, rule 34C (1)**
Omit “section 13 (2) (c), section 15A (2) (a) or section 29A (1) of the Probate Act”.
Insert instead “section 13 (2) (c), 15A (2) (a) or 29A (1) of the former Wills Act or under section 10 (3) (c) or 27 (1) of the Succession Act (as applicable)”.
- [20] **Part 78, rule 34D, heading**
Omit the heading. Insert instead:
34D Notice of intention to distribute (s 13 (3) of former Wills Act)
- [21] **Part 78, rule 34D**
Omit “Probate Act”. Insert “former Wills Act”.
- [22] **Part 78, Division 5B, heading**
Omit the heading. Insert instead:
Division 5B Proceedings under section 18A of the former Wills Act and section 8 of the Succession Act
- [23] **Part 78, rule 34E Consent of or notice to affected persons**
Omit “section 18A of the Probate Act” from rule 34E (1).
Insert instead “section 18A of the former Wills Act or section 8 of the Succession Act (as applicable)”.

2008 No 62

Supreme Court Rules (Amendment No 413) 2008

Schedule 1 Amendments

[24] Part 78, rule 34F Consenting or notified person to be bound by declaration

Omit “section 18A of the Probate Act”.

Insert instead “section 18A of the former Wills Act or section 8 of the Succession Act (as applicable)”.

[25] Part 78, rule 34I Person appearing becomes party

Omit “section 18A of the Probate Act” from rule 34I (c) (i).

Insert instead “section 18A of the former Wills Act or section 8 of the Succession Act (as applicable)”.

[26] Part 78, rule 62A Caveat in respect of informal testamentary document

Omit “section 18A of the Probate Act” from rule 62A (1).

Insert instead “section 18A of the former Wills Act or section 8 of the Succession Act (as applicable)”.

[27] Schedule D Powers of associate Judges

Omit the matter the *Wills, Probate and Administration Act 1898* from Part 1.

Insert after the matter relating to the *Offshore Minerals Act 1999*:

Probate and Administration Act 1898
(including former provisions of the *Wills, Probate and Administration Act 1898* with continuing application):

- former section 13 Gifts to interested witnesses
- former section 15A Effect of termination of marriage
- section 84 Application for legacy, etc
- section 146 Caveat: application for grant to proceed

[28] Schedule F Forms

Omit Forms 69A, 69B, 72, 74, 75–86A and 121A.

[29] Schedule F, Form 90

Omit “(If a declaration under section 18A of the Probate Act is claimed, alter the claim accordingly.)”.

Insert instead “(If a declaration under the former section 18A of the Wills, Probate and Administration Act 1898 or under section 8 of the Succession Act 2006 is claimed, alter the claim accordingly.)”.

[30] Schedule F, Forms 91, 92, 92A and 93

Insert “Probate List” after “Equity Division” wherever occurring.

[31] Schedule F, Form 103B

Omit “42 days or 3 months”. Insert instead “14 days or 28 days”.

[32] Schedule F, Form 106B

Insert “or disposition” after “avoidance of the beneficial gift”.

[33] Schedule F, Forms 106D, 106E, 106F, 108, 109, 111, 114, 118 and 120

Omit the following wherever occurring:

In the Supreme Court
of New South Wales
Equity Division
Probate

Insert instead:

In the Supreme Court
of New South Wales
Equity Division
Probate List

[34] Schedule F, Form 106D

Omit “Wills, Probate and Administration Act 1898”.

Insert instead “Succession Act 2006 (or where still relevant, the Wills, Probate and Administration Act 1898)”.

[35] Schedule F, Form 106E

Omit “Wills, Probate and Administration Act 1898”.

Insert instead “Succession Act 2006 (or where still relevant, the Wills, Probate and Administration Act 1898)”.

2008 No 62

Supreme Court Rules (Amendment No 413) 2008

Schedule 1 Amendments

[36] Schedule F, Form 114

Omit “s 18A of the *Wills, Probate and Administration Act 1898*” from paragraph (c).

Insert instead “section 8 of the *Succession Act 2006* (or where still relevant, section 18A of the *Wills, Probate and Administration Act 1898*)”.

[37] Schedule F, Form 114

Omit item (4) from the Notes. Insert instead:

- (4) This paragraph is appropriate where the only issue is whether an appropriate declaration should be made under section 8 of the *Succession Act 2006* (or where still relevant, section 18A of the *Wills, Probate and Administration Act 1898*) (relating to testamentary documents and amendments to testamentary documents which are not executed in accordance with the formal requirements of the Act concerned).

[38] Schedule F, Forms 117, 118 and 121

Omit “*Wills, Probate and Administration Act 1898*” wherever occurring.

Insert instead “*Probate and Administration Act 1898*”.

[39] Schedule F, Form 121

Omit “P 78, r 91, P 77, rr 31, 69 and P 70 r 16 (2) (b)”.

Insert instead “P 78, r 91 and P 77, rr 31, 69”.

[40] Schedule F, Form 121

Omit paragraph (c) from the note at the beginning of the Form.

[41] Schedule F, Index of Forms

Omit the matter relating to the following Forms 69A, 69B, 72, 74, 75–88 and 121A.

[42] Schedule F, Index of Forms

Omit the matter relating to Form 121. Insert instead:

121. Notice of intended distribution of an estate under s 92 of the Probate Act, s 11 of the Testator’s Family Maintenance etc Act, and s 35 of the Family Provision Act (P 78, r 91, and P 77, rr 31, 69).

BY AUTHORITY
