

SUPREME COURT OF TASMANIA
CIRCULAR TO PRACTITIONERS

No. 5 of 2009

9 July 2009

SUPREME COURT AMENDMENT (WILLS) RULES 2009

2009 S/R 75 of 2009

The *Wills Act* 2008 commenced on 1 March 2009. As a result, amendments have been made to the *Supreme Court Rules* 2000. Those amendments took effect on 8 July 2009.

These amendments do not relate to routine non-contentious applications for grants of probate and letters of administration.

Commencement of Proceedings

As a result of the new amendments, some proceedings that would previously have been commenced by writ are now to be commenced by the filing of an originating application. The relevant provisions are now to be found in rule 89(p) and rule 90(1)(o).

Proceedings Commenced by Originating Applications

Originating applications should be filed whenever orders for any of the following types of relief are sought:

- An application relying on section 10 for a grant of probate (or letters of administration with the will annexed) when the will has not been properly executed.
- An application under section 13 for an order validating a gift under a will to one of the attesting witnesses.
- An application under section 13(3) for an extension of time in respect of an application to validate a gift to an attesting witness.
- An application under section 20 for an order authorising the making, alteration or revocation of the will of a minor.
- Applications under sections 22 and 23 for orders as to the making, alteration or revocation of a will of a person who lacks testamentary capacity.
- An application under section 42 for an order for the rectification of a will.
- An application under section 42(3) for an order extending the time for the making of an application for rectification.
- Applications based on any similar provisions in the *Wills Act* 1992 that remain in force.

All such applications will ordinarily be given a first return date when they will be listed for mention in chambers before the Associate Judge. Unless otherwise ordered, the final hearings of applications for the following will be listed in chambers:

- Grants in respect of wills not properly executed.
- Validation of gifts to attesting witnesses.
- Rectification of wills.
- Extensions of time.
- Orders granting leave.
- Orders authorising the making, alteration or revocation of wills or parts thereof.

Unless otherwise ordered, the final hearings of all other applications under the *Wills Act 1992* or the *Wills Act 2008* will be listed in Court.

Proceedings Commenced by Writ

Under rule 88(w)(iii), it will still be necessary to commence proceedings by a writ in other contentious probate cases, including the following:

- Proceedings for a grant of probate in solemn form, for example where there is a dispute as to the validity or revocation of a will.
- Proceedings for the revocation of a grant of probate or letters of administration, where there are allegations of fraud, duress, undue influence, lack of testamentary capacity, revocation of a will, etc.

New Procedural Rules

The new amendments introduce new procedural rules in relation to certain applications under the *Wills Act 2008* and, when they remain in force, the corresponding provisions of the *Wills Act 1992*. Amongst other things, these rules deal with the contents of affidavits, and the joinder of respondents. They apply to the following sorts of proceedings:

- Applications for probate (or letters of administration) in respect of wills that have not been properly executed: rule 800.
- Applications to validate dispositions to attesting witnesses: rule 801.
- Applications to authorise the making, alteration or revocation of wills by minors: rule 802.
- Applications for leave to apply for the revocation of wills of persons lacking testamentary capacity: rule 803.
- Applications for the rectification of wills: rule 803A.

Elizabeth Knight
REGISTRAR