

SOUTH AUSTRALIA

SUPREME COURT

PROBATE RULES

(as amended to the 1 October 2007 – Amendment No. 3)

The Probate Rules dated 1 April 1998, which came into operation on 1st July 1998, have been amended by Supreme Court Rules dated:

		<i>Gazette</i>	<i>Date of operation</i>
1	24 November 2003	4 December 2003, p. 4362	4 December 2003
2	25 October 2004	16 December 2004, p. 4558	1 March 2005
3	27 August 2007	13 September 2007, p. 3693	1 October 2007

By virtue and in pursuance of section 122 of the Administration and Probate Act, 1919, the Supreme Court Act, 1935 and all other powers us thereunto enabling; We the Judges of the Supreme Court of South Australia do hereby revoke the Rules and Forms mentioned in the Second Schedule hereto, and do make the following Rules and Forms to take effect on and from the 1st day of July 1998.

Title

- 1 These Rules may be cited as “**The Probate Rules 2004**”.

Arrangement of Rules

- 2 These Rules are arranged as follows:

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PART 1 – PRELIMINARY

Interpretation

3.01 In these Rules unless a contrary intention appears or the context otherwise requires -

(i) words and expressions defined in the Administration and Probate Act, 1919 and the Wills Act, 1936 shall have the same meanings as are assigned to them in those Acts;

(ii) "**the Act**" means the Administration and Probate Act, 1919, and any Act amending the same or substituted therefor and where a section is mentioned the reference is to that section of the Administration and Probate Act, 1919, or the corresponding provision of any amending or substituted Act;

"**the Court**" means the Supreme Court of South Australia, or any Judge thereof or a Master when exercising in accordance with Rules of Court the jurisdiction of the Court;

"**the Crown**" means the Crown in right of this State;

"**Domestic partner**" means a person declared under the Family Relationships Act 1975 to have been a domestic partner of a deceased person as at the date of his or her death;

"**Grant**" means a grant of probate or administration or an order under section 9 of the Public Trustee Act, 1995 authorising Public Trustee to administer the estate of a deceased person;

"**Gross value**" in relation to any estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;

"**Judge**" means a Judge of the Supreme Court;

"**Market value**" in relation to an estate asset means its gross value in the market under the state of things existing at the relevant time;

"**Oath**" means the oath required by Rule 11 to be sworn by every applicant for a grant;

"**Personal applicant**" means a person including a trust corporation who seeks to obtain a grant, without the intervention of a practitioner, and "personal application" has a corresponding meaning;

"**Practitioner**" means a person duly admitted and enrolled as a barrister, solicitor, attorney and proctor of the Court who holds a practising certificate issued pursuant to the provisions of the Legal Practitioners Act, 1981;

"**Registrar**" means the Registrar of Probates, and any acting or deputy Registrar of Probates;

"**Registry**" means the office of the Registrar of Probates;

"**Statutory guardian**" means a surviving parent of an infant who is a guardian of the infant by virtue of section 12 of the Guardianship of Infants Act, 1940;

"**Supreme Court Rules**" (or a reference to a Supreme Court Rule) means the Supreme Court Rules 1987;

"**Testamentary guardian**" means a person appointed by deed or will to be guardian of an infant under the power conferred by section 13 of the Guardianship of Infants Act, 1940;

"**Trust corporation**" means a body corporate authorised by the Trustee Companies Act, 1988 or other special Act to administer the estates of deceased persons.

- 3.02 It is sufficient in an application brought under these Rules to use the description "testator", "executor" or "administrator" whatever the person's gender.
- 3.03 A form referred to by number means the form so numbered in the First Schedule.
- 3.04 The Acts Interpretation Act, 1915, shall apply to the construction of these Rules in the same manner as if these Rules had been enacted by Parliament.

Practice and Procedure

- 4.01 The Supreme Court Rules and the course of practice and procedure in Chambers shall apply in relation to proceedings to which these Rules relate so far as may be practicable except if and so far as the Act or these Rules otherwise provide.
- 4.02 The Court or the Registrar shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging or abridging the time for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.
- 4.03 Non-compliance with any of these Rules shall not render the proceedings in any matter void unless the Court or the Registrar so directs, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or the Registrar thinks fit.
- 4.04 The Court or the Registrar may dispense with the observance of any Rule.
- 4.05 In all matters in which there are no Rules regulating or applicable to the procedure the Court or the Registrar may give directions regulating the mode and manner of procedure and directing the persons upon whom any summons or proceedings shall be served, and the manner of service and what shall be deemed sufficient service on any person.
- 4.06 In any case in which these Rules do not expressly stipulate the procedure to be followed, an application with respect to non-contentious probate matters for any order direction or dispensation may be made to the Registrar by summons in the Form No. 33 intitled in the matter or proceeding to which such application shall relate.
- 4.07 If there is any doubt as to what is the correct procedure, the Registrar may direct (and without notice to any other party if the Registrar thinks fit) what shall be done in each particular instance, or that the procedure which has been adopted shall be sufficient and every such direction shall be subject to review by the Registrar who may give such further or other directions as may be necessary or proper.

Application to Pending Proceedings

- 5 Subject in any particular case to any direction given by the Court or the Registrar, these Rules shall apply to any proceeding which is pending on the date on which they come into operation as well as to any proceeding commenced on or after that date:
- Provided that where the deceased died before the 29th January 1976, the right to a grant shall, subject to any Act, be determined by the practice in accordance with which the Court would have acted at the date of the death.

PART II – RULES RELATING TO NON-CONTENTIOUS PROBATE MATTERS

Applications for grants through practitioners

- 6.01 An application by a person applying through a practitioner may be lodged at the Registry or may be lodged by post

- 6.02 Every practitioner through whom an application for a grant is made must endorse upon the backsheet of every document lodged for filing:
- (i) the name and telephone number of the practitioner;
 - (ii) the address of the practitioner or, if applicable, the name and address of the practitioner's firm or practice; and
 - (iii) the "L Code" being the designator issued by the Law Society of South Australia ("the Society") to the practitioner's firm or to the practitioner (if a sole practitioner) for practice identification purposes and the "P Code" being the designator issued by the Society to the practitioner for personal identification purposes.
 - (iv) the facsimile number and (if applicable) the email address of the practitioner.

Personal Applications

- 7.01 A personal applicant, other than Public Trustee, or an officer of a trust corporation who is authorised to make an application for a grant on behalf of the corporation, must attend before the Registrar in person.
- 7.02 No personal application will be received through an agent nor may a personal applicant be attended by any person acting or appearing to act as the applicant's adviser unless with the permission of the Registrar.
- 7.03 No personal application will be received or proceeded with if an application has already been made through a practitioner on behalf of the applicant and has not been withdrawn.
- 7.04 Applications for grants in cases which have already been before the Court must be made through a practitioner unless the Registrar otherwise directs.
- 7.05 Whenever it becomes necessary, in the course of proceeding upon a personal application, to obtain the direction of the Court, the Registrar may if it appears expedient in the circumstances of the case direct that the application be not proceeded with except through a practitioner.
- 7.06 The papers necessary for a personal application for a grant must be brought into the Registry unsworn by the applicant, and the same, if correct, may be received. A will or any other testamentary document once deposited in the Registry will not be given out, unless under special circumstances and then only by permission of the Registrar.
- 7.07 Every personal applicant for a first grant must produce a certificate of the death of the deceased, or such other evidence of the death as the Registrar may approve.
- 7.08 Where the death of the deceased occurred prior to the 1st July 1987, every personal applicant must depose in the oath to the gross value of the real and personal estate of the deceased situate in the State of South Australia and a statement of the value of the property of the deceased in the Form No 67 must be annexed to the oath.
- 7.09 No legal advice shall be given to a personal applicant by any officer of the Registry upon any matter connected with the application but such officer shall, as far as practicable, assist such applicant by providing directions as to the course he or she must pursue.
- 7.10 Unless the Registrar otherwise directs every oath, affidavit or surety's guarantee required on a personal application (other than a surety's guarantee given by a guarantee company approved by the Registrar) must be sworn or executed by all the deponents or sureties before the Registrar.
- 7.11 Every personal applicant must satisfy the Registrar of his or her identity.
- 7.12 The functions of the Registrar under Rules 7.01 and 7.11 may be performed by an officer of the Registry designated by the Registrar for that purpose.

Disclosure of Assets and Liabilities

- 8.01 A person who applies for a grant or for the re-sealing of a grant under section 17 of the Act, in respect of the estate of a deceased person who has died on or after the 1st July 1987, must, for the purposes of section 121a (1) of the Act, lodge with the application an affidavit, in the Form No 68, disclosing the assets and liabilities of the deceased at the date of the deceased's death which are known to the applicant at the time of making the application.
- 8.02 An executor, administrator or trustee of the estate of a deceased person who has died on or after the 1st July 1987 (being an estate in respect of which a grant has been made or re-sealed under section 17 of the Act), must, pursuant to section 121a (2) of the Act, lodge at the Registry an affidavit in the Form No 69, disclosing the assets and liabilities not previously disclosed under Rule 8.01 which come to his or her knowledge while acting in that capacity:
- Provided that where there are liabilities only which have not been previously disclosed, then such disclosure may be made by letter to the Registrar.
- 8.03 If the affidavit lodged for the purposes of Rule 8.01 or Rule 8.02 is inaccurate or incomplete, unless the Registrar otherwise directs a further affidavit must be lodged with the Registrar correcting the inaccuracy or supplying the deficiency.

Evidence of Disclosure

- 9.01 On the filing of an affidavit under Rule 8.01 or Rule 8.02 by the executor, administrator or trustee of the estate of a deceased person, the Registrar shall issue to such executor, administrator or trustee as evidence of disclosure (for the purposes of section 44(1) of the Act), a photocopy of the statement of assets and liabilities annexed to such affidavit with the Registrar's certificate attached, certifying the same to be a true copy of the statement of assets and liabilities disclosed to the Court pursuant to section 121a of the Act.
- 9.02 In addition to the Certificate issued under Rule 9.01 the Registrar may on the lodgment of a certificate in the Form No 70, by an executor, administrator or trustee of the estate of a deceased person, describing an asset (or assets) which has (or have) been disclosed to the Court in compliance with section 121a of the Act certify, for the purposes of section 44(1) of the Act, that such asset has been disclosed.

Duty of Registrar on receiving application for grant

- 10.01 The Registrar shall not allow a grant to issue until all the inquiries which the Registrar may see fit to institute have been answered to the Registrar's satisfaction.
- 10.02 The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.
- 10.03 Except with the permission of the Court or the Registrar, no grant shall issue within 28 days from the death of the deceased.
- 10.04 Where permission is sought under Rule 10.03, the application must be made by affidavit setting out the facts on which the applicant relies, including:
- (a) That to the best of the applicant's knowledge and belief no-one is likely to be prejudiced by the issue of the grant.
 - (b) That the applicant has made due inquiry and is satisfied that the will which is tendered for proof is the last will of the deceased or if the deceased died intestate, the nature of the search and inquiry made for a will.
 - (c) That the applicant has no notice of any opposition to the grant.

(d) An undertaking not to distribute the estate within 28 days from the date of death.

10.05 Where an application is made for proof of a will which, in the Registrar's opinion, contains words of an offensive or libellous nature, the Registrar shall not allow the grant to issue until an application has been made under Rule 66 to have such words excluded from the grant copy of the will.

Oath in support of grant

11.01 Every application for a grant must be supported by an oath in the form applicable to the circumstances of the case, which must be contained in an affidavit sworn by the applicant, and by such other papers as the Registrar may require.

11.02 On an application for probate, the deponent to the oath must depose in the oath to the fact that the deceased died possessed of assets in the State of South Australia:

Provided that where the deceased died before the 1st July 1987, the deponent must identify in the oath at least one such asset.

11.03 On an application for administration the deponent must depose in the oath to the fact that the deceased died possessed of real and/or personal property in the State of South Australia and to the respective estimated or known value of such property:

Provided that where -

(a) the application is for a *de bonis non* or *cessate* administration, the property to be sworn in the oath is that which at the time of making the application remains unadministered;

(b) the deceased died before the 1st July 1987, a statement of the value of such property in the Form No 67 must be annexed to the oath.

11.04 Where there is a codicil (or more than one codicil), the codicil (or the number of codicils) must be mentioned in the oath and in the grant and the deposition in the oath concerning the will and codicil or codicils must refer to the "paper writings".

11.05 Upon the application of Public Trustee for a grant it shall be sufficient if the oath and any affidavit necessary to procure the grant are made by the Public Trustee, a Deputy Public Trustee, an Assistant Public Trustee or by a person delegated for the purpose pursuant to section 8 of the Public Trustee Act, 1995.

11.06 On an application for proof of a will of a testator who has died on or after the 5th day of August 1996 under which the testator's spouse is named as a beneficiary, executor, trustee or guardian, or as an appointor or an appointee under a power of appointment granted by the will then:-

(1) if the applicant's title to the grant is dependent upon the revocation pursuant to subsection 20A(1) of the Wills Act, 1936 of the said beneficial interest, appointment or power, the applicant must depose in the oath to the manner in which the testator's marriage was terminated and a sealed copy of any decree terminating the marriage must be annexed to the oath;

and

(2) if the applicant's title to the grant is dependent upon the said beneficial interest appointment or power not having been revoked by subsection 20A(1) of the Wills Act, 1936, then the oath must disclose such facts as are necessary to exclude the operation of the aforesaid subsection.

11.07 The oath of administrator and of administrator with the will must be so worded as to clear off all persons having a prior entitlement to the grant.

11.08 Where the deceased died on or after the 29th January 1976, wholly intestate, the wording in the following table must be used in the oath to clear off all persons having a prior entitlement to the grant under Rule 32.01:

TABLE

<i>Applicant for grant of letters of administration</i>	<i>Wording</i> <i>In order to clear off the persons having the prior entitlement to the grant it must be sworn in the oath that the deceased died -</i>
1 spouse or domestic partner	"intestate"
2 child, or issue of a child	"intestate a widower [widow] [bachelor] [spinster] [single man] [single woman] without any other person entitled in priority to share in his [or her] estate by virtue of any enactment." N.B. - <i>Where a grandchild or remoter issue apply for administration the beneficial interest of the applicant must be established in the oath. Refer to note under "Issue of a child" in Rule 14.01.</i>
3 father or mother	"intestate a widower [widow] [bachelor] [spinster] [single man] [single woman] without issue or any other person entitled in priority to share in his [or her] estate by virtue of any enactment."
4 brother or sister, or issue of a brother or sister	"intestate a widower [widow] [bachelor] [spinster] [single man] [single woman] without issue or a parent or any other person entitled in priority to share in his [or her] estate by virtue of any enactment." N.B. - <i>Where a nephew or niece or remoter issue apply for administration the beneficial interest of the applicant must also be established in the oath. Refer to note under "Issue of a brother or sister" in Rule 14.01.</i>
5 grandparent	"intestate a widower [widow] [bachelor] [spinster] [single man] [single woman] without issue parent brother or sister or issue thereof or any other person entitled in priority to share in his [or her] estate by virtue of any enactment."

<i>Applicant for grant of letters of administration</i>	<i>Wording</i>
6 uncle or aunt, or issue of an uncle or aunt	<p><i>In order to clear off the persons having the prior entitlement to the grant it must be sworn in the oath that the deceased died -</i></p> <p>"intestate a widower [widow] [bachelor] [spinster] [single man] [single woman] without issue parent brother or sister or issue thereof or grandparent or any other person entitled in priority to share in his [or her] estate by virtue of any enactment."</p> <p>N.B. - <i>Where a cousin german or remoter issue apply for administration the beneficial interest of the applicant must be established in the oath. Refer to the note under "Issue of an uncle or aunt" in Rule 14.01</i></p>

11.09 In all administrations of a special character the recitals in the Oath shall be framed in accordance with the facts of the case.

Description of testator in oath

12.01 As a general rule the signature of the testator should be adopted as the testator's name, although it differs from the name written in the heading of the will:

Provided that where the heading of a will gives the true name of the testator, but the signature omits names or initials the testator must be described by the true name alone.

12.02 In the case of a variation between the name of the testator in the heading of the will and the name signed, if the former is the more correct of the two the testator must be described by the name signed, the word "otherwise", followed by the name given in the will being added.

12.03 If the testator's name is wrongly spelt in the will and the will is signed by the testator's initials or by a mark or by an abbreviated Christian name the testator must be described by his or her correct name, the word "otherwise", followed by the name written in the will being added.

12.04 The testator's last place of residence and occupation must appear as part of the testator's description in the oath.

12.05 The address of the testator in the will (if any) must be given as part of the testator's description in the oath; but, if such address is not the last place of residence the testator must be described as "formerly of", [as in the will] "but late of", but not more than three places of residence must be stated.

Description of executor in oath

13.01 The capacity in which an executor claims the grant must be worded in the oath in the manner shown in the following table:

When only one executor is named in the will	"the sole executor"
When more than one executor is named in the will and all apply for the grant	"the executors"
When one or more of the executors has died	"the surviving executor(s)"
When leave is reserved to one or more of the executors	"one (or two etc.) of the executors"
When an executor is appointed on attaining 18 years	"the said A.B. having attained the age of 18 years"
When an executor is appointed for life [or until remarriage]	"the executor for life [or until remarriage]"
When an executor is appointed but another executor is substituted in the event of the former being unable or unwilling to take the grant the latter is described as	"the sole substituted executor" N.B. - <i>the former executor must be cleared off in the oath eg "AB ... (relationship) ... the sole instituted executor having died during the lifetime of the testator" (or as the case may be)</i>
When an executor is appointed during life and on his or her death another is appointed, the latter is described as	"the executor substituted"
When the appointment of the executor is limited, the testator having substituted another or other executors in the event of the termination of the executorship prior to the completion of the administration of the estate, the former is described as	"the executor therein named as therein mentioned" <i>(see In the Estate of Kavanagh deceased (1977) 16 SASR 342 at 346)</i>

NB:- *The descriptions set out in this Table are not intended to be exclusive and the wording should where appropriate be varied to suit the circumstances of the case.*

- 13.02 If the name of an executor is mis-spelt or is imperfectly or incompletely given in the will the words "in the will called (*as in the will*)" must be added to the executor's correct name in the oath.
- 13.03 If an executor's name has changed since the date of the will the words "formerly called (*as in the will*)" must be added to the executor's name in the oath, and the oath must include evidence in proof of the change of name:
Provided that such evidence if not included in the oath, must be given in an affidavit of identity.
- 13.04 If the relationship of an executor is erroneously stated in the will, the oath must include a statement that the executor was erroneously so described and that the testator had no such relation bearing the name of the deponent at the date of the will.
- 13.05 If an executor is the widow or widower of the testator or is related in blood to the testator as father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter,

- brother, sister, uncle, aunt, great uncle, great aunt, nephew, niece, great nephew, or great niece, such relationship must be disclosed in the oath.
- 13.06 An executor who is a legally adopted son (or daughter) of the testator may be described in the oath as son (or daughter) of the deceased.
- 13.07 An executor who is a son (or daughter) of the testator but born outside marriage and not legitimated by subsequent marriage may be described in the oath as son (or daughter) of the deceased.
- 13.08 The place of residence or business of every executor must be given in the oath:
Provided that if the executor is described in the will by a former address (or otherwise) such address must be included as part of the executor's description (or otherwise explained) in the oath.
- 13.09 The executors must be named in the oath in the order in which they appear in the will:
Provided that if a variation of the order of executors is sought in the grant, then the consents of the executors to such variation must be lodged.

Description of administrator in oath

- 14.01 Where the deceased died on or after the 29th January 1976, a person applying for -
- (a) letters of administration, or
 - (b) letters of administration with the will annexed where the residuary estate has not been disposed of by the will and the applicant is a person entitled to share in the residue of the estate not so disposed of,
- must be described in the oath in the manner shown in the following table:

TABLE

A husband	"the lawful widower"
A wife	"the lawful widow"
A domestic partner	"the domestic partner"
	<i>and the widower, widow or domestic partner shall be further described in the oath as:-</i>
	(i) "and one of the persons entitled to share in the estate", or
	(ii) "and the only person now entitled to the estate", (<i>ie where the value of the intestate estate as ascertained in accordance with section 72f of the Act does not exceed \$10,000 and there is a person who may become entitled to share in the estate in the event of an accretion thereto</i>), or
	(iii) "and only person entitled to the estate"
	<i>as the case may be.</i>

A child	<p>"the lawful son (<i>or</i> daughter) and only person entitled to the estate", <i>or</i> "the lawful son (<i>or</i> daughter) and one of the persons entitled to share in the estate".</p> <p><i>A child born outside marriage and not legitimated per subsequens matrimonium should be described as "the natural son (<i>or</i> daughter) and only person entitled to the estate", <i>or</i> "the natural son (<i>or</i> daughter) and one of the persons entitled to share in the estate".</i></p> <p><i>An adopted child should be described as "the lawful adopted son (<i>or</i> daughter) and only person entitled to the estate", <i>or</i> "the lawful adopted son (<i>or</i> daughter) and one of the persons entitled to share in the estate".</i></p>
Issue of a child	<p>"the lawful grandson (<i>or</i> granddaughter) and only person entitled to the estate", <i>or</i> "the lawful grandson (<i>or</i> granddaughter) and one of the persons entitled to share in the estate",</p> <p>N.B. - <i>In the case of grandchildren or remoter issue it must be shown in the oath that the applicant has a beneficial interest in the estate i.e. that the deceased died without child. In such case the following wording is to be used - "intestate a widow without child or any other person entitled in priority" etc. - refer to the Table in Rule 11.08 or that the applicant is "the lawful (<i>or</i> lawful adopted) son (<i>or</i> daughter) of A.B, the lawful (<i>or</i> natural or lawful adopted) son (<i>or</i> daughter) of the intestate, who died in the lifetime of the intestate."</i></p>
A father or a mother	<p>"the lawful (<i>or</i> natural) father (<i>or</i> mother) and only person entitled to the estate", <i>or, where the father and mother of the deceased are living, "the lawful (<i>or</i> natural) father (<i>or</i> mother) and one of the persons entitled to share in the estate."</i></p>
A brother or a sister	<p>"the lawful brother (<i>or</i> sister) and only person entitled to the estate", <i>or</i> "the lawful brother (<i>or</i> sister) and one of the persons entitled to share in the estate".</p> <p><i>A half brother or sister shall be described as "the lawful brother (<i>or</i> sister) of the half blood ... etc."</i></p>

Issue of a brother or a sister	<p>"the lawful nephew (<i>or</i> niece) and only person entitled to the estate", or "the lawful nephew (<i>or</i> niece) and one of the persons entitled to share in the estate."</p> <p>N.B. - <i>In the case of nephews or nieces or remoter issue of a brother or sister the oath must establish that the applicant has a beneficial interest in the estate, e.g. that the applicant is the lawful (or lawful adopted) son (or daughter) of A.B. the lawful brother (or sister) of the intestate who died in the lifetime of the intestate.</i></p>
A grandparent	<p>"the lawful grandfather (<i>or</i> grandmother) and only person entitled to the estate", or "the lawful grandfather (<i>or</i> grandmother) and one of the persons entitled to share in the estate."</p>
An uncle or an aunt	<p>"the lawful uncle (<i>or</i> aunt) and only person entitled to the estate", or "the lawful uncle (<i>or</i> aunt) and one of the persons entitled to share in the estate."</p>
Issue of an uncle or an aunt	<p>"the lawful cousin german (<i>or as the case may be</i>) and only person entitled to the estate", or "the lawful cousin german (<i>or as the case may be</i>) and one of the persons entitled to share in the estate."</p> <p>N.B. - <i>The oath must establish that the applicant has a beneficial interest in a similar manner to that given under "Issue of a brother or sister."</i></p>

14.02 Except as provided by Rule 14.01, in all cases where a person applies for a grant of letters of administration with the will annexed, if such person is the widow or widower of the testator or is related in blood to the testator as father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, great uncle, great aunt, nephew, niece, great nephew or great niece, such relationship, whether mentioned in the will or not, must be disclosed in the oath.

Marking of wills

- 15 Every will and any testamentary document or copy or reconstruction of the same and any document proving or tending to prove the contents of a nuncupative will -
- (a) in respect of which an application for a grant is made must be marked on the back of it (if practicable) by the signatures of the applicant and the person before whom the oath is sworn, the authority of such person to administer oaths and the date on which the oath is sworn:

Provided that if a will has been executed in duplicate, then both copies must be produced for probate and marked in the above manner and the deposition in the oath concerning the will must refer to “the paper writings”.

- (b) must be exhibited to any affidavit which may be required under these Rules as to the validity, terms, condition or date of execution of the will:

Provided that where the Registrar is satisfied that compliance with this Rule might result in the loss or damage of the will, the Registrar may allow a photocopy to be marked or exhibited instead of the original document.

Engrossments for purposes of record

- 16.01 Where the Registrar considers that a will or other document required to be photocopied is unsuitable for the purpose of a grant, sealing or record, the Registrar may require an engrossment of any such document suitable for photocopying to be lodged.
- 16.02 Where a will contains alterations which are not admissible to proof, an engrossment of the will must be lodged in the form in which it is to be proved.
- 16.03 An engrossment lodged under Rules 16.01 or 16.02 must have a backsheet intitled in the name of the estate and must reproduce the punctuations, spacing and division into paragraphs of the will, and must be legibly typed with double spacing between the lines on one side only of International size A4 white paper of good quality with a left hand margin of at least 4 centimetres.
- 16.04 Should a will or any part of a will be written in pencil a facsimile copy of the will or of the pages or sheets containing the pencil writing must be lodged and those portions which appear in pencil in the original must be underlined in red ink in the facsimile copy.

Evidence as to due execution of will

- 17.01 Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the will, the Registrar shall, before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.
- 17.02 If no affidavit can be obtained in accordance with Rule 17.01, the Registrar may, if the Registrar thinks fit, accept evidence on affidavit to show that the signatures on the will are in the handwriting of the deceased and of the subscribing witnesses or of any other matter which may raise a presumption in favour of the due execution of the will.
- 17.03 The Registrar may admit a will to proof without evidence as aforesaid upon being satisfied that the distribution of the estate is not thereby affected.

Evidence as to execution of will of blind or illiterate testator

- 18 Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person at the direction of a testator (signing either his or her own name or the testator's name), or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the Registrar must be satisfied that the testator had such knowledge:
Provided that such evidence need not be required if the Registrar is satisfied that the attestation clause contains the necessary information.

Evidence as to date of execution of will

- 19.01 Where there is doubt as to the date on which a will was executed the Registrar shall require an affidavit from one of the attesting witnesses in proof of the actual date.
- 19.02 If neither of the attesting witnesses nor any other person can make this affidavit, evidence must be given showing that the will is the latest or only will of the testator.
- 19.03 In all cases in which the fact is disclosed that the will was executed on some other day than the day of the date it bears, or if the will is undated or imperfectly dated, the true date of execution must appear on the face of the grant; therefore, if the will is not dated it must be described in the grant as "without date but in fact executed on (*or* on or about) the day of " (as the case may be), and if the date in the will is incorrect or imperfect, the will must be described as "bearing date the day of , but in fact executed on the day of " (as the case may be).

Evidence as to obliterations interlineations and alterations in will

- 20 Where there appears in a will any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed in section 24 of the Wills Act, 1936, or by the re-execution of the will, or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the will was executed, and shall give directions as to the form in which the will is to be proved:
- Provided that this Rule shall not apply to any alteration which appears to the Registrar to be of no practical importance.

Evidence as to condition of will

- 21 If from any mark on or hole in the will or other testamentary document it appears to the Registrar that a paper, memorandum, or other document has been annexed or attached to the same, it must be satisfactorily accounted for and the production of such paper, memorandum, or other document (if any) shall be required; and, if not produced, its non-production must be accounted for.

Evidence as to whether deeds etc referred to in a will constitute part of will

- 22 If a will contains a reference to any deed, paper, memorandum, or other document of such a nature as to raise a question whether it ought to form a constituent part of the will, the production of such deed, paper, memorandum, or other document shall be required, with a view to ascertaining whether it is entitled to proof; and, if not produced, its non-production must be accounted for.

Evidence refuting attempted revocation of will

- 23 Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, must be accounted for to the Registrar's satisfaction.

Certain affidavits to include mode of execution

- 24 Where an affidavit is made by a subscribing witness or other person present at the time of the execution of the will in respect of any of the matters referred to in Rules 18, 19, 20, 21, 22 and 23, the deponent must depose as to the mode in which the will was executed and attested.

Informal wills

- 25 Nothing in Rules 17, 18, 19, 20, 21, 22, 23 or 24 shall apply to any will which it is sought to establish otherwise than by reference to section 8 of the Wills Act, 1936.

Evidence of Foreign Law

- 26 Where evidence as to the law of any country, state or territory outside the State of South Australia is required on any application for a grant, the Registrar may accept an affidavit from any person, whom, having regard to the particulars of that person's knowledge or experience given in the affidavit, the Registrar regards as suitably qualified to give expert evidence of the law in question.

Evidence as to death and/or date of death

- 27.01 In all cases where the death occurred outside the State of South Australia, a death certificate must be lodged with the application for the grant or order as the case may be.
- 27.02 Where the death occurred in a country which is not a member of the British Commonwealth, the death certificate issued from such country must be authenticated in the manner prescribed by sections 66, 66A and 67 of the Evidence Act, 1929; or if such country is a signatory to, and has ratified, the Hague Convention Abolishing the Requirements of Legislation for Foreign Public Documents, in the manner prescribed by the Foreign Evidence Act, 1994 (Cth).
- 27.03 Where the death has been registered under the Registration of Deaths Abroad Act, 1984 (Cth), or under section 33(4) of the Births Deaths and Marriages Registration Act, 1996 (SA), a death certificate issued under such Act may be lodged in lieu of a death certificate issued from the country of the place of death.
- 27.04 Where the fact of death is certain but the exact date of death is unknown and cannot be proved to the satisfaction of the Registrar by medical evidence, the Registrar shall require an affidavit or evidence on oath from the last person known to have seen the deceased alive; and such person shall depose to the date on which and the circumstances in which he or she last saw the deceased alive. The Registrar shall also require an affidavit or evidence on oath from the person who found the deceased's body; and such person shall depose to the date on which and the place at which the body was found.
- 27.05 In all cases to which Rule 27.04 shall apply the oath of the executor or administrator must state the date on which the deceased was last seen alive, the date on which the deceased's dead body was found and the place where it was found, and the circumstances of the deceased's death shall be described in the grant in the following manner:-
"who was last seen alive (*or* 'who died intestate having last been seen alive') on the day of 19... and whose dead body was found at in the State of on the day of 19..."
- 27.06 Where the fact of death is uncertain but there is evidence from which death may be presumed to have occurred, an application must be made under Rule 67 for an order giving permission to swear to such death.
- 27.07 In any case where the Registrar is satisfied that a death certificate required under this Rule cannot be obtained, the Registrar may accept such other evidence of death as the Registrar may approve.

Affidavits

- 28.01 An affidavit must be drawn in the first person, and the occupation and place of residence (even if only temporary) of every deponent must, unless the Registrar otherwise directs, be given as part of the deponent's description:
Provided that the true place of business (but not employment) of every deponent may be inserted in lieu of the place of residence.
- 28.02 In an affidavit made by two or more persons the names of the deponents must be written in the jurat, except that if the affidavit of all the deponents is taken at one time by the same person before whom it is sworn, it shall be sufficient to state that it was sworn by both (or all) of the "abovenamed" deponents.
- 28.03 A person taking an affidavit must give the date when and the place where the affidavit is sworn. Each separate sheet of an affidavit must be signed by each of the deponents, and by the person before whom the affidavit is taken, and must bear the date on which it is sworn, otherwise the affidavit shall not be held authentic, nor received, without the permission of the Registrar.
- 28.04 Affidavits may be sworn and declarations made -
- (a) in the State of South Australia - before any of the persons mentioned in section 123 of the Act or in the Evidence (Affidavits) Act, 1928;
 - (b) outside the State of South Australia - before any of the persons mentioned in section 123 of the Act or in sections 66 and 66a of the Evidence Act, 1929.
- 28.05 No affidavit which has in the jurat or text any interlineation, alteration, or erasure, shall without permission of the Registrar be used unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the person taking the affidavit, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the person taking it.
- 28.06 Where it appears to a person before whom an affidavit is sworn that the deponent is illiterate, blind or otherwise physically incapable of reading the affidavit, the person before whom such affidavit is made must state in the jurat that the affidavit was read in the presence of the deponent, and that the deponent seemed perfectly to understand and approve the same and also made his or her mark, or wrote his or her signature, in the presence of the person by whom the affidavit is taken.
- 28.07 No affidavit shall be sufficient if it is sworn before the party on whose behalf it is to be used or before any clerk or employee of that party:
Provided that an affidavit to be used on behalf of any party being a corporation (including the Public Trustee) shall not be deemed insufficient under this Rule by reason of the same having been sworn before an officer, clerk or employee of such corporation.
- 28.08 No affidavit shall be insufficient merely because it is sworn before the practitioner acting for the party and on whose behalf it is to be used or before the partner, agent or employee of that practitioner:
- 28.09 With the permission of the Registrar an affidavit or affirmation may be received for the purpose of any matter, notwithstanding any defect by mis-description of parties or otherwise in the title or jurat, or any other irregularity.

Evidence on oath

- 29 Any evidence on oath, other than by affidavit under any of these Rules shall be taken before the Registrar or such other person as may be directed by a Judge.

Affirmation in lieu of oath

- 30 In every case where an oath is required, an affirmation may be made instead. Such affirmation must be in the Form No. 19 and the requirements of these Rules with regard to affidavits, and the jurats of affidavits shall apply to affirmations, with such alterations as may be necessary.

Order of priority for grant where deceased left a will

- 31 The person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with the following order of priority, namely -
- (i) The executor;
 - (ii) Any residuary devisee and/or legatee in trust for any other person;
 - (iii) Any residuary devisee and/or legatee for life;
 - (iv) The universal or residuary devisee and/or legatee (including one entitled on the happening of any contingency), or, where the residue is not wholly disposed of by the will, any person entitled to share in the residue not so disposed of or, subject to Rule 35.03, the personal representative of any such person:

Provided that -

- (a) unless the Registrar otherwise directs a residuary devisee or legatee whose devise or legacy is vested in interest shall be preferred to one entitled on the happening of a contingency; and
- (b) where the residue is not in terms wholly disposed of, the Registrar may, if the Registrar is satisfied that the testator has nevertheless disposed of the whole, or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made to any devisee or legatee entitled to, or to a share in, the estate so disposed of or, subject to Rule 35.03, the personal representative of any such person without regard to the persons entitled to share in any residue not disposed of;
- (v) Any specific devisee or legatee or any creditor or, subject to Rule 35.03, the personal representative of any such person or, where the estate is not wholly disposed of by the will, any person who, notwithstanding that the value of the estate is such that he or she has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto;
- (vi) Any specific devisee or legatee entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

Order of priority for grant in case of intestacy

- 32.01 Where the deceased died on or after the 29th January 1976, wholly intestate, the persons entitled in distribution under Part IIIA of the Act shall be entitled to a grant of administration in the following order of priority, namely -
- (i) Where the spouse [*or* the domestic partner] of the deceased has survived the deceased for 28 days, the surviving spouse [*or* the domestic partner];
 - (ii) The children of the deceased, or the issue of any such child who died before the deceased;
 - (iii) The father or mother of the deceased;
 - (iv) Brothers and sisters of the deceased, or the issue of any deceased brother or sister who died before the deceased;

- (v) Grandparents of the deceased;
 - (vi) Uncles and aunts of the deceased and the issue of any deceased uncle or aunt who died before the deceased.
- 32.02 In default of any person having a beneficial interest in the estate, administration shall be granted to the Attorney-General if the Attorney-General claims *bona vacantia* on behalf of the Crown.
- 32.03 If all persons entitled to a grant under Rule 32.01 have been cleared off, a grant may be made to a creditor of the deceased or to any person who, notwithstanding that he or she has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto:
- Provided that the Registrar may give permission to a creditor to take a grant if the persons entitled in Rule 32.01(i) have been cleared off and if the Registrar is satisfied that in the circumstances of the case it is just or expedient to do so.
- 32.04 Subject to Rule 35.03, the personal representative of a person in any of the classes mentioned in Rule 32.01 or the personal representative of a creditor shall have the same right to a grant as the person whom he or she represents:
- Provided that the persons mentioned in Rule 32.01(ii) shall be preferred to the personal representative of a spouse [*or* a domestic partner] who has died without taking a beneficial interest in the whole estate of the deceased as ascertained at the time of the application for the grant.
- 32.05 For the purposes of this Rule it is immaterial whether a relationship is of the whole blood or the half blood and references to "children of the deceased" include references to the deceased's natural or adopted children and "father or mother of the deceased" shall be construed accordingly.

Right of assignee to a grant

- 33.01 Where all the persons entitled to the estate of the deceased (whether under a will or an intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall, with the permission of the Registrar replace, in the order of priority for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest priority.
- 33.02 Where there are two or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding three) of them.
- 33.03 In any case where administration is applied for by an assignee, the instrument of assignment must be lodged in the Registry together with the renunciation and consent of all persons entitled to a general grant.

Joint grants of administration

- 34.01 An application for a joint grant of administration by two or more persons entitled in the same order of priority must be supported by an affidavit setting out the grounds upon which the joint administration is sought:
- Provided that where representation is sought by more than three persons the Registrar's order must be obtained.
- 34.02 An application to join with a person entitled to a grant of administration a person entitled in distribution but in a lower order of priority must be supported by an affidavit by the person entitled to the grant acknowledging the right to take administration solely, the consent of the person to be joined as administrator and the renunciation of all persons entitled in priority to such last mentioned person:

Provided that in default of the renunciation of all such persons entitled in priority the Registrar's order must be obtained.

Grants where two or more persons entitled in same order of priority

- 35.01 A grant may be made to any person entitled to a grant without notice to other persons entitled in the same order of priority.
- 35.02 A dispute between persons entitled to a grant in the same order of priority must be brought by summons before the Registrar in Chambers.
- 35.03 Unless the Registrar otherwise directs, administration shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same order of priority and to a person not under disability in preference to a person under disability in the same order.
- 35.04 If the issue of a summons under Rule 35.02 is known to the Registrar, the Registrar shall not allow any grant to be sealed until such summons is finally disposed of.

Exceptions to Rules as to priority

- 36.01 Nothing in Rules 31 or 32 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any enactment.
- 36.02 Neither Rule 31 nor Rule 32 shall apply where the deceased died domiciled outside the State of South Australia, except in a case to which the proviso to Rule 40.01 applies.

Grants to persons having *spes successionis*

- 37 Where the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his or her right to a grant and has consented to administration being granted to the person or persons who would be entitled to the estate of the renunciant if he or she had died intestate, administration may be granted to such other person or one or more of such other persons:

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he or she would be entitled to the whole of the estate, whatever its value may be.

Limited and special grants

- 38.01 Except by direction of the Registrar limited administration shall not be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear.
- 38.02 No person entitled to a general grant of administration of the estate of the deceased will be permitted to take a limited grant, except under the direction of the Registrar.

Grants limited to trust property

- 39.01 Where an application for a grant is made limited to the property of which the deceased was trustee, it must be sworn in the oath that the deceased died possessed of such property as a trustee only and that the deceased had no beneficial interest in it.
- 39.02 The will or deed creating the trust of which the deceased was trustee must be lodged in the Registry with the application for the grant.

Grants where the deceased died domiciled outside a State or Territory of the Commonwealth of Australia

40.01 Where the deceased died domiciled outside a State or Territory of the Commonwealth of Australia, the Registrar may order (except where the deceased has appointed executors in the State of South Australia to administer the estate in this State) that a grant do issue -

- (a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;
- (b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;
- (c) if there is no such person as is mentioned in paragraph (a) or (b) of this Rule or if in the opinion of the Registrar the circumstances so require, to such person as the Registrar may direct:

Provided that without any such order as aforesaid –

- (1) probate of any will which is admissible to proof may be granted –
 - (i) if the will is in the English language, to the executor named in the will;
 - (ii) if the will describes the duties of a named person in terms sufficient to constitute such person executor according to the tenor of the will, to that person;
- (2) where the whole of the estate in the State of South Australia consists of immovable property, a grant limited to such property may be made in accordance with the law which would have been applicable if the deceased had died domiciled in the State of South Australia.

40.02 An application for an order under Rule 40.01 may be made to the Registrar by affidavit.

Grants to attorneys

41.01 Where a person entitled to a grant resides outside the State of South Australia, administration may be granted to his or her lawfully constituted attorney for the use and benefit of such person, and until he or she shall duly apply for and obtain a grant:

Provided that where the person so entitled is an executor, administration shall not be granted to such person's attorney without notice to the other executors, if any, unless the Registrar dispenses with such notice.

41.02 Where the Registrar is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant of administration and resident in the State of South Australia, the Registrar may direct that administration be granted to such attorney for the use and benefit of such person, limited until such person shall obtain a grant, or in such other way as the Registrar may direct.

41.03 The power of attorney for the purposes of obtaining a grant must be under seal and witnessed by a disinterested person and must be lodged in the Registry with the application for the grant:

Provided that if the power of attorney in addition to the specific powers required for obtaining administration, contains general powers required for other purposes, it may be given out after the grant has issued on an examined copy being lodged.

41.04 Every attorney who makes application for a grant or for the re-sealing of any grant on behalf of an executor or administrator shall be liable to make and file all estate and administration accounts, and to render all particulars and notices of succession and to file all succession accounts under any Act now or hereafter in force, and to pay all fees and

duties, and shall be subject to the same liabilities and penalties as if the grant had been originally made by the Court to such attorney.

Grants of administration to guardians on behalf of minors

- 42.01 Where the person to whom a grant would otherwise be made is a minor, administration for the minor's use and benefit until the minor attains the age of eighteen years shall, subject to Rules 42.03 and 42.04 be granted -
- (a) to both parents of the minor jointly or to one parent with the consent of the other or to the statutory or testamentary guardian or any guardian appointed by a Court of competent jurisdiction, or
 - (b) if there is no such guardian able and willing to act and the minor has attained the age of sixteen years, to any next of kin elected by the minor or, where the minor is married, to any such next of kin, or to the husband or wife of the minor if elected by her or him.
- 42.02 Any person elected under Rule 42.01(b) may represent any other minor whose next of kin he or she is, being a minor below the age of sixteen years and entitled in the same degree as the minor who made the election.
- 42.03 Notwithstanding anything in Rule 42, administration for the use and benefit of the minor until the minor attains the age of eighteen years may be granted to any person assigned as guardian by order of the Registrar, in default of, or jointly with, or to the exclusion of, any such person as is mentioned in Rule 42.01 and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Registrar, an affidavit of fitness sworn by a responsible person.
- 42.04 Where a minor who is sole executor has no interest in the residuary estate of the deceased, administration for the use and benefit of the minor until the minor attains the age of eighteen years, shall be granted to the person entitled to the residuary estate unless the interest of such person is adverse to that of the minor or the Registrar otherwise directs.
- 42.05 A minor's right to administration may be renounced only by a person assigned as guardian under Rule 42.03 and authorised to renounce by the Registrar.

Grants where minor co-executor

- 43.01 Where one of two or more executors is a minor, probate may be granted to the other executor or executors not under disability, with leave reserved to the minor to apply for probate on the minor attaining the age of eighteen years and administration for the use and benefit of the minor until the minor attains the age of eighteen years may be granted under Rule 42 if, and only if, the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application.
- 43.02 A minor executor's right to probate on attaining the age of eighteen years may not be renounced by any person on the minor's behalf.

Grants in case of mental or physical incapacity

- 44.01 Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his or her affairs, the Registrar may order that administration for such person's use and benefit limited during such person's incapacity or in such other way as the Registrar may direct, be granted -
- (a) in the case of mental incapacity -

- (i) to the committee of a lunatic so found by inquisition, or
 - (ii) to the administrator of the estate of such person appointed pursuant to section 35 of the Guardianship and Administration Act, 1993, or
 - (iii) to the manager of the property of such person appointed under the Aged and Infirm Persons' Property Act, 1940.
 - (b) Where there is no such committee, administrator or manager appointed or in the case of physical incapacity -
 - (i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to the residuary estate;
 - (ii) if the person incapable is entitled otherwise than as executor, or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to the grant in respect of his or her estate if he or she had died intestate;or to such other person as the Registrar may by order direct.
- 44.02 Where after a grant has been made the sole executor or administrator, or the surviving executor or administrator, becomes by reason of mental or physical incapacity incapable of managing his or her affairs, upon the grant being impounded, an application for a grant of administration *de bonis non* for the use and benefit of the incapable grantee, limited during his or her incapacity may be made in accordance with Rule 44.01.
- 44.03 Where a grant of probate has been made to one executor with leave reserved to one or more executors and the proving executor becomes, by reason of mental or physical incapacity, incapable of managing his or her affairs, upon the grant being impounded, an application for double probate may be made by one or more of the non-proving executors.
- 44.04 Where a grant of probate has been made to two or more executors of whom one becomes by reason of mental or physical incapacity incapable of managing his or her affairs, upon the grant being revoked, a grant of probate may be made to the capable executor or executors leave being reserved to the incapable executor to apply for probate when such executor becomes capable of managing his or her affairs.
- 44.05 Where a grant of administration has been made to two or more persons pursuant to Rule 34 of whom one becomes by reason of mental or physical incapacity incapable of managing his or her affairs, upon the grant being revoked, a grant of administration may be made to the capable administrator or administrators:
Provided that if the incapable administrator had a superior title to that of the capable administrator or administrators leave must be reserved to the former to apply for administration when he or she becomes capable of managing his or her affairs.
- 44.06 Unless the Registrar otherwise directs, no grant of administration shall be made under Rule 44 unless all persons entitled in the same order of priority as the person incapable have been cleared off.
- 44.07 In the case of physical incapacity the application for the grant under Rule 44 must, unless the Registrar otherwise directs, be supported by the consent of the person alleged to be so physically incapacitated.
- 44.08 The committee of a lunatic or the administrator appointed under section 35 of the Guardianship and Administration Act, 1993, or the manager appointed under the Aged and Infirm Persons' Property Act, 1940, of a person incapable of managing his or her affairs may, on such person's behalf, renounce probate or administration except where such person is also a minor.

Grants to trust corporations

- 45 Where a trust corporation applies for a grant through one of its officers, such officer must depose in the oath to his or her authority to make the application and such officer must lodge with the application a certified copy of the resolution of the board of directors of such corporation authorising such officer to make the application:

Provided that it shall not be necessary to lodge a certified copy of the resolution if the officer through whom the application is made is included in a list of persons authorised to make such applications filed in the Registry by the trust corporation.

Grants to corporate bodies

- 46 Where a corporation (not being a trust corporation) would, if an individual, be entitled to a grant, administration for its use and benefit may be granted to its syndic or, where it has its principal place of business out of the State of South Australia, to its syndic or lawfully constituted attorney and a copy of the resolution appointing the syndic or, as the case may be, the power of attorney, sealed by the corporation or otherwise authenticated to the Registrar's satisfaction must be lodged with the application for the grant:

Provided that a grant may not be made to a syndic or attorney of a body corporate (not being a trust corporation) and to one or more individuals.

Grants in more than one name

- 47 Except in the cases provided in Rules 12.02 and 12.03, if a grant is required to issue in more than one name, the grounds for requiring the grant to so issue (for example, that the deceased held assets in each alternate name) and the identity of the deceased under the respective names must be established to the Registrar's satisfaction.

Renunciation of probate and administration

- 48.01 At any time after the death of his or her testator, an executor or, if there is no executor, the person who would be entitled under Rule 31 to a grant of administration with the will annexed or, if the deceased died intestate, the person who would be entitled to a grant of administration under Rule 32, may renounce probate or administration (as the case may be) by filing a renunciation in the prescribed form in the Registry:

Provided that if the renunciation is of probate or administration with the will annexed, the original will must be deposited in the Registry with the renunciation.

- 48.02 A person who has not renounced probate or administration in respect of a will which has been deposited in the Registry under Rule 48.01 and who intends to make application to the Court to prove the same may apply by affidavit in the Form No. 7 for its withdrawal.

- 48.03 Renunciation of probate by an executor shall not operate as a renunciation of any right which the executor may have to a grant of administration in some other capacity unless the executor expressly renounces such right.

- 48.04 Unless the Registrar otherwise directs no person who has renounced administration in one capacity may obtain a grant of administration in some other capacity.

- 48.05 Where an executor to whom leave has been reserved to apply for probate renounces probate after the issue of the grant to a co-executor, the original grant must be produced and a Registrar's order to file the renunciation obtained:

Provided that if the original grant cannot be produced an office copy may be produced in its stead.

48.06 An application for permission to retract a renunciation of probate or administration must be made to the Registrar by summons:

Provided that only in exceptional circumstances may permission be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

48.07 An application under Rule 48.06 must be supported by an affidavit showing that the retraction of the renunciation is for the benefit of the estate, or of the parties interested.

Surety's Guarantee

49.01 Subject to these Rules a guarantee must be provided as a condition of granting administration where –

- (a) a guarantee is required under sections 18 and 31(1) of the Act;
- (b) it is proposed to grant administration –
 - (i) under Rule 31(v) or Rules 32.03 or 32.04 to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
 - (ii) under Rule 31(vi) to a person having no interest under the will of the deceased but who would have been entitled to a grant if the deceased had died wholly intestate;
 - (iii) under Rule 37 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his or her estate;
 - (iv) under Rules 41.01 and 41.02 to the attorney of a person entitled to a grant;
 - (v) under Rule 42 for the use and benefit of a minor;
 - (vi) under Rule 44 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his or her affairs;
 - (vii) under Rule 63; or
 - (viii) under Rule 70 to an administrator *pendente lite*.
- (c) the Registrar considers that there are special circumstances making it desirable to require a guarantee.

49.02 Unless the Registrar or the Rules otherwise direct -

- (a) a guarantee shall be given by two sureties: Provided that only one surety shall be required if the administrator is the widower or widow or domestic partner of the deceased or his or her personal representative or where the surety is a corporation;
- (b) no person shall be accepted as a surety unless he or she is resident in South Australia;
- (c) The limit of the liability of the surety or sureties under a guarantee given for the purposes of sections 18 or 31 of the Act shall be the gross amount of the South Australian estate as sworn in the Oath.
- (d) Every surety, other than a corporation, must justify the guarantee given by affidavit in the Form No 5.

49.03 Where the Registrar has directed that a person who is resident outside South Australia may be accepted as a surety he or she must submit to the jurisdiction of the Supreme Court of South Australia to determine any liability of such surety under the law of South Australia.

- 49.04 Except where the surety is a corporation the signature of the surety on every such guarantee shall be attested by a person authorised by law to administer an oath.
- 49.05 Each separate sheet of the guarantee must be signed by each of the sureties and by the person attesting the guarantee.
- 49.06 Where the surety is a corporation an affidavit must be filed by its proper officer in the Form No.8 to the effect that the corporation has power to act as surety and has executed the guarantee in accordance with section 127 of the Corporations Act, 2001 and containing sufficient information of the financial position of the corporation to satisfy the Registrar that it has sufficient assets to meet any claim under the guarantee:
Provided that the Registrar may accept an affidavit from a corporation once in every two years instead of requiring an affidavit in every case in which that corporation is a surety together with an undertaking by the corporation to notify the Registrar forthwith in the event of any alteration in its constitution or its financial position affecting its power to become a surety.
- 49.07 Unless the Registrar otherwise directs no guarantee shall be required on an application for a grant of administration or the re-sealing of a grant of administration if -
- (a) the gross value of the South Australian estate does not exceed \$100,000;
 - (b) the person or persons beneficially entitled to the South Australian estate are sui juris and the gross value of the South Australian estate does not exceed \$250,000, or
 - (c) the application is limited to the prosecution or defence of an action.
- 49.08 The Registrar may, upon being satisfied by affidavit that it is beneficial or expedient to do so -
- (a) dispense with the requirement to provide a guarantee;
 - (b) reduce the liability of a surety under a guarantee;
 - (c) require as a condition of dispensing with the requirement of a guarantee or reducing the liability of a surety under a guarantee that administration be granted to not less than two individuals:
- Provided that the Registrar may impose such other conditions as the Registrar may see fit.
- 49.09 (1) An application for directions under sections 18 (12) and 31(13) of the Act shall be made to the Registrar by summons supported by an affidavit by the applicant setting out the facts of the case and such other evidence as the Registrar may require.
- (2) Where a grant of administration has been made to two or more persons under Rule 49.08(c) and an administrator dies or is no longer sui juris the Registrar may appoint a substituted administrator.
- (3) On the appointment of a substituted administrator the Registrar may direct that a note shall be made on the original grant of such appointment or the Registrar may impound or revoke the grant or make such other order as the circumstances of the case may require.
- 49.10 An application for permission to sue on a guarantee given for the purposes of sections 18 and 31 of the Act shall, unless the Registrar otherwise directs, be made by summons to the Registrar, and notice of the application must be served on the administrator, the surety and any co-surety.
- 49.11 Where a guarantee is not required under Rule 49.01 the proposed administrator must lodge an affidavit in the Form No. 6 with the application for administration disclosing-

- (a) that the proposed administrator is resident in the State of South Australia;
 - (b) that the proposed administrator has no legal or equitable claim or interest in the estate of the deceased arising from a liability incurred by the deceased before death, and is not contemplating a claim against the estate under the Inheritance (Family Provision) Act, 1972;
 - (c) that all persons entitled to participate in the distribution of the estate are *sui juris*:
Provided that if there is any person who is not *sui juris*, and who may in the event of an accretion to the estate become entitled in distribution, the proposed administrator must give an undertaking that in such a case he or she will forthwith provide a guarantee;
 - (d) that all persons referred to in Rule 49.11(c) are resident in the State of South Australia, or if any such person is not so resident that such person has for the purposes of section 65(1)(b) of the Act appointed an agent or attorney within the State in the Form No. 6B;
 - (e) details of all liabilities of the estate and that there are sufficient assets in the estate for payment of such liabilities.
- 49.12 Where a guarantee is required under Rule 49.01(a) or (b) but in the circumstances of the case Rule 49.07(a) or (b) applies the proposed administrator must lodge an affidavit in the Form No. 6A with the application disclosing –
- (a) the place of residence of the proposed administrator;
 - (b) whether the proposed administrator has a legal or equitable claim or interest in the estate of the deceased arising from a liability incurred by the deceased before death;
 - (c) whether the proposed administrator is contemplating a claim against the estate under the Inheritance (Family Provision) Act, 1972;
 - (d) whether all persons entitled to participate in the distribution of the estate are *sui juris* and where any person so entitled is not *sui juris* then the date of birth of such person must be disclosed in the affidavit;
Provided that if there is any person who is not *sui juris*, and who may in the event of an accretion to the estate become entitled to participate in distribution, the proposed administrator must give an undertaking that in such a case he or she will forthwith provide a guarantee or make an application to the Registrar to dispense with a guarantee;
 - (e) that all persons entitled to participate in the distribution of the estate are resident in South Australia, or if any such person is not so resident that such person has for the purposes of section 65(1)(b) of the Act appointed an agent or attorney within the State in the Form No. 6B;
 - (f) details of all liabilities of the estate and whether there are sufficient assets in the estate for payment of such liabilities.
- 49.13 Upon receiving the affidavit referred to in either Rule 49.11 or Rule 49.12 the Registrar may allow the grant to issue without a guarantee unless in the circumstances of the case the Registrar is of the opinion that a guarantee should be provided.

Re-sealing of grants under section 17 of the Act

- 50.01 Application for the re-sealing of a grant under section 17 of the Act may be made either in person or through a practitioner -

- (a) by the executor or administrator, or by one of the executors or administrators with the consent by affidavit of the co-executors or co-administrators to whom the grant was made, or
- (b) by the attorney (lawfully authorised for that purpose) of such executor, or administrator, or
- (c) by a practitioner authorised in writing to apply on behalf of the executor or administrator,

or, in the case of a trust corporation being the executor, administrator, or attorney -

- (d) by an officer of such corporation who must depose in the oath to his or her authority to make the application and such officer must lodge with the application a certified copy of the resolution of the board of directors of such corporation authorising such officer to make the application for the re-sealing of the grant:

Provided that it shall not be necessary to lodge a certified copy of the resolution if the officer through whom the application is made is included in a list of persons authorised to make such applications filed in the Registry by the trust corporation

- 50.02 An application under Rule 50.01 must be accompanied by an oath of the applicant or officer of the company, as the case may be, in the Form No. 64 or as nearly in such form as the circumstances of the case allow.
- 50.03 If the Registrar so requires, notice of the application shall be advertised in such manner as he may direct, and in such case the form of advertisement in the Form No. 65 may be used.
- 50.04 (a) On application for the re-sealing of a grant of administration the administrator or the administrator's attorney must provide a guarantee in the Form No 66 to cover the gross value of the estate of the deceased within the jurisdiction of the Court and the same practice as to sureties and the limit of the liability of the guarantee shall be observed as on an application for administration.
- (b) Where a guarantee is not required under section 18(1) of the Act, the administrator must lodge an affidavit in the Form No. 6 disclosing such information as is required to be disclosed by Rule 49.11 paragraphs (a), (b), (c) and (e) or in the Form No. 6A disclosing such information as is required to be disclosed by Rule 49.12 paragraphs (a), (b), (c), (d) and (f) as the case may be.
- 50.05 If on an application for the re-sealing of a grant the domicile of the deceased at the date of death as sworn to in the oath differs from that suggested by the description in the grant, the Registrar may require further evidence as to domicile.
- 50.06 If the deceased was not at the date of death domiciled within the jurisdiction of the Court from which the grant issued, the seal shall not be affixed except by order of the Registrar.
- 50.07 The grant lodged for re-sealing must include a copy of any testamentary papers to which the grant relates or must be accompanied by a copy of such papers certified as correct by or under the authority of the Court by which the grant was made.
- 50.08 Special or limited or temporary grants shall not be re-sealed except by order of the Registrar.
- 50.09 Notice of the re-sealing in South Australia of any grant must be sent by the Registrar to the Court from which the grant issued.
- 50.10 Where notice has been received in the Registry of the re-sealing of a South Australian grant, notice of any amendment or revocation of the grant must be sent by the Registrar to the Court by which it was re-sealed.

Amendment and revocation of grants

- 51.01 An application for an order to amend or revoke a grant may be made to the Registrar by affidavit setting out the grounds of the application.
- 51.02 If the Registrar is satisfied that a grant should be amended or revoked, the Registrar may make an order accordingly:
- Provided that -
- (a) a grant may be revoked without being called in if it cannot be called in;
 - (b) except in special circumstances no grant shall be revoked or amended under this Rule unless it is on the application or by the consent of the person to whom the grant was made.

Caveats

- 52.01 Any person who wishes to ensure that no grant is sealed without notice to such person may enter a caveat in the Registry.
- 52.02 Any person who wishes to enter a caveat (in this Rule called "the caveator") may do so by making an entry in the appropriate book at the Registry in accordance with the Form No.72
- 52.03 Where the caveat is entered by a practitioner on the caveator's behalf, the name of the caveator must be given in the caveat.
- 52.04 A caveat must bear the date on which it is entered and shall remain in force for a period of six months only, and then expire and be of no effect; but caveats may be renewed from time to time for additional periods of six months.
- 52.05 No caveat shall affect any grant made on the day on which the caveat is entered.
- 52.06 Any person claiming to have an interest in the estate of the deceased may cause to be issued from the Registry, a warning against the caveat in the Form No. 73 and the person warning must state his or her interest in the estate and if such person claims under a will, the date of the will, and shall require the caveator to give particulars of any contrary interest in the estate, and a copy of the warning must be served on the caveator forthwith.
- 52.07 A caveator who has not entered an appearance to a warning may at any time subduct the caveat and the caveat shall thereupon cease to take effect and, if it has been warned, the caveator must forthwith give notice of withdrawal of the caveat to the person warning.
- 52.08 A caveator having an interest contrary to that of the person warning may, within the time limited for appearance by the warning, or at any time thereafter if no affidavit has been filed under Rule 52.10 enter an appearance in the Form No. 74 at the Registry.
- 52.09 A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to the person warning may, within the time limited for appearance by the warning, or at any subsequent time if no affidavit has been filed under Rule 52.10, issue and serve a summons in the Form No. 33 for directions, which shall be returnable before the Registrar in Chambers.
- 52.10 If the time limited for appearance has expired and the caveator has not entered an appearance the person warning may file an affidavit in the Form No. 10 showing that the warning was duly served, that no appearance has been entered and that the person warning has not received a summons for directions under Rule 52.09, and thereupon the caveat shall cease to have effect.
- 52.11 Unless the Registrar by order made on summons otherwise directs -
- (a) any caveat in force at the commencement of proceedings by way of citation or summons shall, unless subducted pursuant to Rule 52.07, remain in force until an

application for a grant is made by the person shown to be entitled by the decision of the Court or the Registrar in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;

- (b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until discontinued by the order of the Court or the Registrar;
- (c) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant (other than a grant of administration *pendente lite*) until application for a grant is made by the person shown to be entitled by the decision of the Court in such action, and upon such application any caveat entered by a party who has been cited to see proceedings shall cease to have effect.

52.12 Except with the permission of the Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat is either in force or has ceased to have effect under Rules 52.10 and 52.11

52.13 In this rule "grant" includes a grant made by any Court outside this State which is produced for re-sealing by the Court.

Citations

53.01 Every citation must issue from the Registry and must be settled by the Registrar before being issued.

53.02 Every averment in a citation, and such other information as the Registrar may require, must be verified by an affidavit sworn by the person issuing the citation (in these Rules called "the citor") or, if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn by the citor's practitioner.

53.03 The citor must enter a caveat before issuing a citation.

53.04 Every citation must be served personally by leaving a true copy of the citation with the person cited, and, if required by the person cited, showing him or her the original unless the Court or the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

53.05 Except in the case of a citation to see proceedings, every will referred to in a citation must be lodged in the Registry before the citation is issued, unless the will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

53.06 Except in the case of a citation to see proceedings a person who has been cited to appear may, within the time limited for appearance by the citation or at any time thereafter if no application has been made by the citor under Rule 54.05 or Rule 55.02 enter an appearance in the Form No. 74 at the Registry.

Citation to accept or refuse or to take a grant

54.01 A citation to accept or refuse a grant may be issued at the instance of any person who would be entitled to a grant in the event of the person cited renouncing his or her right thereto.

54.02 Where leave has been reserved to an executor to apply for probate, a citation calling on such executor to accept or refuse a grant may be issued at the instance of the executors who have proved the will or the survivors of them or of the executors of the last survivor of deceased executors who have proved.

- 54.03 A citation calling on an executor who has inter-meddled in the estate of the deceased to show cause why such executor should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of four months from the death of the deceased:
- Provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.
- 54.04 A person cited who is willing to accept or take a grant may apply without notice to any other party to the Registrar for an order for a grant on filing an affidavit showing that he or she has entered an appearance and has not been served with notice of any application for a grant to the citor;
- 54.05 If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may -
- (a) in the case of a citation under Rule 54.01 apply without notice to any other party to the Registrar for an order for a grant to the citor;
 - (b) in the case of a citation under Rule 54.02 apply without notice to any other party to the Registrar for an order that a note be made on the grant that the executor in respect of whom leave was reserved has been duly cited and has not appeared and that all the said executor's rights in respect of the executorship have wholly ceased;
 - (c) in the case of a citation under Rule 54.03 apply to the Registrar by summons (which must be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to the citor or to some other person specified in the summons.
- 54.06 An application under Rule 54.05 or Rule 55.02 must be supported by an affidavit showing that the citation was duly served, the means by which the person serving the citation knew the identity of the person cited and that the person cited has not entered an appearance.
- 54.07 If the person cited has entered an appearance but has not applied for a grant under Rule 54.04, or has failed to prosecute his or her application with reasonable diligence, the citor may -
- (a) in the case of a citation under Rule 54.01, apply by summons to the Registrar for an order for a grant to the citor;
 - (b) in the case of a citation under Rule 54.02, apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such note as is mentioned in Rule 54.05(b);
 - (c) in the case of a citation under Rule 54.03, apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to the citor or to some other person specified in the summons;
- and the summons must be served on the person cited.

Citation to propound a will

- 55.01 A citation to propound a will must be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.
- 55.02 If the time limited for appearance has expired, the citor may -
- (a) in the case where no person has entered an appearance apply to the Registrar by summons in the Form No.33 supported by an affidavit of service search and non-appearance for an order for a grant as if the will were invalid;

- (b) in the case where no person who has entered an appearance, proceeds with reasonable diligence to propound the will, apply to the Registrar by summons (which must be served on every person cited who has entered an appearance) for such an order as is mentioned in paragraph (a) of this Rule.

Citation to bring in grant

- 56.01 A citation to bring in a grant may be issued at the instance of a citor who is the intended plaintiff in a probate action for the revocation of such grant and must be extracted prior to, or contemporaneously with, the issue of the summons under Supreme Court Rule 104 commencing the action.
- 56.02 The citation must be directed to the executor or administrator named in the grant and shall require such person to bring into and leave in the Registry the grant in order that the citor may proceed for the revocation of the same.
- 56.03 Every citation issued under this Rule must, unless the Court or the Registrar otherwise orders, have endorsed on it a warning to the person to whom it is directed of the possible consequences of failure to comply with the citation.
- 56.04 If within 21 days after the grant has been brought into the Registry the citor fails to commence a probate action for the revocation of the grant, the executor or administrator may apply by summons to the Registrar for the redelivery out to him or her of the grant.

Citation to see proceedings

- 57 A citation to see proceedings may be extracted from the Registry on the application of any party to a probate action, being an action relating to the grant or recall of probate or administration otherwise than according to common form procedure.

Appearances

- 58 All appearances to warnings and citations (other than citations to see proceedings) shall be entered in the Registry. The entry must set out in the Form No. 74 the interest which the person on whose behalf it is entered has in the estate of the deceased.

Address for service

- 59.01 All summonses, caveats, citations, warnings and appearances must contain an address for service being an address at a place where proceedings, notices and other documents may be left for the party giving such address.
- 59.02 Every document required by Rule 59.01 to contain an address for service must where a practitioner is acting have endorsed on it -
- (a) the name, place of business and telephone number of the practitioner and the code number allocated by the Court to such practitioner; and
- (b) where that practitioner is acting as agent for a principal practitioner, the name, place of business and telephone number of the principal practitioner and the code number allocated by the Court to such practitioner.
- 59.03 Except where otherwise specifically provided in these Rules unless the Registrar otherwise directs an address for service shall be at a place within 50 kilometres of the General Post Office at Adelaide.
- 59.04 The term summons in Rule 59 shall be deemed to mean and include any form of originating process designated under these Rules.

Application for order to bring in testamentary papers or to attend for examination

- 60 An application under section 25 of the Act for an order requiring a person to bring in any paper writing being or purporting to be testamentary or to attend for examination may be made to the Court by summons.

Subpoena to bring in testamentary papers

- 61.01 An application for the issue by the Registrar of a subpoena to bring in any paper or writing being or purporting to be testamentary must be supported by an affidavit in the Form No.18 setting out the grounds of the application, and if any person served with the subpoena denies that the paper or writing is in his or her possession or control such person may file an affidavit to that effect.
- 61.02 Any person bringing in a will or testamentary paper, in obedience to an order under section 25 of the Act or a subpoena issued by the Registrar under Rule 61.01 must take it to the Registrar, who will record its delivery and issue a receipt.

Time allowed for appearing to a warning citation or subpoena

- 62 Unless the Registrar otherwise directs the time fixed by a warning or citation for entering an appearance, or by a subpoena to bring in a testamentary paper, shall be 21 days from the service of the warning, citation or subpoena, inclusive of the day of such service.

Grants of administration under discretionary powers of Court and grants *ad colligenda bona*

- 63 An application for an order for -
- (a) a grant of administration of the kind formerly granted under section 67 of the Testamentary Causes Act, 1867, or
 - (b) a grant of administration *ad colligenda bona*;
- may be made to the Registrar by summons and shall be supported by an affidavit setting out the grounds of the application.

Grants under section 12(2) of the Wills Act, 1936

- 64.01 Unless a probate action has been commenced an application under section 12(2) of the Wills Act, 1936 for an order admitting to proof a document purporting to express the testamentary intentions of a deceased person must be made by summons to the Registrar in the Form No. 33 (1) and must be supported by an affidavit setting out the facts upon which the applicant relies together with the written consents to the application of all persons not under disability who may be prejudiced by the admission of the document to proof.
- 64.02 The Registrar may dispose of an application under Rule 64.01 if the Registrar is satisfied that all persons who may be prejudiced by the admission of the document to proof are *sui juris* and have consented to the application
- Provided that if it appears to the Court or the Registrar expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) the Court or the Registrar may dispense with compliance for the purpose of saving expense.
- 64.03 Where a person who may be prejudiced by the admission of the document to proof and who is not under disability, has not given a written consent to the application, the Registrar may deem that person to have consented if that person fails to attend before the

Registrar after such service upon him or her as the Registrar may direct of the proceedings and notice of the application.

64.04 Where -

- (a) any person who may be prejudiced by the order sought under this Rule is not *sui juris* or cannot be ascertained or found or has not consented, or
- (b) the Registrar is in doubt or difficulty about any order which should be made pursuant to this Rule,

the Registrar may refer the application to a Judge in Court or in Chambers.

Revocation of a document under section 12(3) of the Wills Act 1936

64A.01 Unless a probate action has been commenced an application for an order under section 12(3) of the Wills Act, 1936 that a document that has not been executed with the formalities required by that Act expresses an intention by a deceased person to revoke a document that might otherwise have been admitted to proof must be made by summons to the Registrar in the Form No. 33(1) and must be supported by an affidavit setting out the facts upon which the applicant relies together with the written consents of all persons not under disability who may be prejudiced by the application.

64A.02 The Registrar may dispose of an application under Rule 64A.01 if the Registrar is satisfied that all persons who may be prejudiced are *sui juris* and have consented:

Provided that if it appears to the Court or the Registrar expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) the Court or the Registrar may dispense with compliance for the purpose of saving expense.

64A.03 Where a person who is *sui juris* may be prejudiced by the order sought but has not given a written consent to the application and who is not under disability, the Registrar may deem that person to have consented if that person fails to appear before the Registrar after service upon him or her as the Registrar may direct of the proceedings and notice of the application.

64A.04 Subject to these Rules where –

- (a) any person who may be prejudiced by the order sought under this Rule is not *sui juris* or cannot be ascertained or found or has not consented, or
- (b) the Registrar is in doubt or difficulty about any order which should be made pursuant to this Rule,

the Registrar may refer the application to a Judge in Court or in Chambers.

64A.05 Where an application for a grant is made following an order under section 12(3) of the Wills Act 1936:

- (a) the order must be recited in the administrator's oath; and
- (b) where the document revokes all former testamentary acts the document and its revocatory effect must be recited in the grant of letters of administration; viz.-“(the deceased having made a document dated the.....day of20.. revoking all former testamentary acts).

Application for rectification of a will

65.01 An application under section 25AA of the Wills Act, 1936 for an order for rectification of a will or other testamentary document prior to the issue of the grant must be made by summons to the Registrar in the Form No. 33 unless a probate action has been commenced.

- 65.02 The application must be supported by an affidavit setting out the facts upon which the applicant relies including such evidence as can be adduced as to the testator's testamentary intentions with regard to the document sought to be rectified.
- 65.03 Unless otherwise directed notice of the application must be given to every person whose interest might be adversely affected by the rectification applied for and any consents of such persons to the application must be exhibited to the affidavit in support of the application.
- 65.04 In every case in which an order for rectification is made -
- (a) if the will has been admitted to proof, and unless the Court or the Registrar shall otherwise direct, a certified copy of the order for rectification must be made upon the grant under which the estate is administered, and the grant shall for that purpose be produced to the Registrar;
 - (b) if the will has not been admitted to proof, an engrossment of the will in the form in which it is to be proved must be lodged with the application for the grant and such engrossment must comply with the provisions of Rule 16.03 so far as the same are applicable.

Application for omission of words of an offensive or libellous nature from grant

- 66.01 An application for an order for the omission of words of an offensive or libellous nature from the copy of the will to be admitted to proof may be made without notice to any other party to the Registrar by summons in the Form No. 33
- 66.02 The application must be supported by an affidavit (to which the will must be exhibited) setting out the grounds of the application, together with the consents in writing to the application given by all persons who may be prejudiced by the order:
- Provided that if a person who is prejudiced by the application is not *sui juris* or cannot be ascertained or found, or if the Registrar is satisfied that in the circumstances it is just and expedient to do so, the Registrar may dispense with such consent.

Application for permission to swear death

- 67 An application for permission to swear to the death of any person in respect of whose estate a grant is sought may be made to the Registrar by summons in the Form No. 33 (1), and shall be supported by an affidavit setting out the grounds of the application and shall contain particulars of any policies of insurance effected on the life of the presumed deceased.

Grants in respect of copies of wills

- 68.01 An application for an order admitting to proof a nuncupative will made in accordance with section 11 of the Wills Act, 1936, or a will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original will is not available, may be made without notice to any other party to the Registrar by summons in the Form No. 33.
- Provided that where a will is not available owing to its being retained in the custody of a foreign Court or official or a Court or official of any of the Australian States or Territories a duly authenticated copy of the will may be admitted to proof without such order as aforesaid.
- 68.02 The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to -
- (a) the due execution of the will;

(b) its existence after the death of the testator (*or* if the will cannot be found at the testator's death such evidence as shall rebut a presumption of its revocation by the testator); and

(c) the accuracy of the copy or other evidence of the contents of the will; together with the consents in writing to the application given by all persons who may be prejudiced by the grant:

Provided that if a person who is prejudiced by the application is not *sui juris* or cannot be ascertained or found, or if the Registrar is satisfied that in the circumstances it is just and expedient to do so, the Registrar may dispense with such consent.

Grants *durante absentia*

69 An application for an order for a grant of special administration under section 37 of the Act where the personal representative is residing out of this State may be made to the Registrar by summons in the Form No. 33(1).

Grants *pendente lite*

70 An application for a grant of administration *pendente lite* must be made by the administrator appointed pursuant to an order of the Court pending a probate action instituted in the Court touching the validity of the will of any deceased person or for obtaining or revoking any grant and a sealed copy of such order must be annexed to the oath.

Preparation of grants

71.01 All grants and exemplifications or certified copies of grants shall be prepared in the Registry unless the Registrar otherwise directs.

71.02 All certified and office copies of grants, and all copies of wills and all other documents issued from or required to be filed in the Registry must, unless otherwise directed by the Registrar, be photocopies made in the Registry.

Restrictions on searches and removal of documents

72.01 No person shall, without the permission of the Registrar or of the Court be allowed to inspect, or to order a copy, or any extract of, any will or document deposited under section 29 of the Act, or filed in the Registry other than the registered copy of the will of a deceased person or the administration act, or order.

72.02 No affidavit or record of the Court in its Testamentary Causes Jurisdiction shall be taken out of the Court without an order of the Court or the Registrar and no subpoena for the production of any such document shall be issued.

72.03 Where an order has been obtained under Rule 72.02 the Registrar may require that before the document is taken out of the Court, an office copy of the document be filed in the Registry by the person requiring the document to be produced.

Issue of copies of original wills and other documents

73 Subject to Rule 72.01 where a copy is required of the whole or any part of an original will or other document deposited under section 29 of the Act or of any grant, such copy must, unless otherwise directed by the Registrar, be a photocopy made in the Registry and shall issue as a search (non-official) copy:

Provided that if the copy required is -

- (a) an office copy (pursuant to section 30 of the Act), or
 - (b) a copy certified under the hand of the Registrar to be a true copy;
- such copy shall be issued only if it is required that the seal of the Court be affixed thereto.

Disclosure of estate to parties having interest

- 74.01 Any person claiming to be entitled to share in the estate of a deceased person under the will or the intestacy, or otherwise claiming a proper interest in the estate of the deceased or any creditor of the deceased, may apply by summons to the Registrar for an order directing the executor or administrator to furnish particulars of the assets and liabilities of the estate.
- 74.02 Upon the hearing of an application under this Rule, the Registrar may order that the executor or administrator file in the Registry an affidavit setting out in the manner directed by the Registrar, particulars of the assets and liabilities of the estate, wherever situated, insofar as the same are then known to the executor or administrator, or may give such other direction as the Registrar shall in the circumstances of the case think fit.
- 74.03 Nothing in Rules 74.01 and 74.02 shall be deemed to affect the power of the Court as heretofore to require personal representatives to exhibit an inventory and account.

Drawing up and filing of orders

- 75 Rule 84 of the Supreme Court Rules shall apply to the drawing up of orders made in Court or Chambers in relation to non-contentious probate matters, provided that -
- (a) the Registrar may exercise any power vested in the Registrar of the Supreme Court thereunder; and
 - (b) orders shall be drawn up under the supervision of the Registrar and shall be settled and signed by the Registrar, and filed in the Registry.

Appeals from Registrar

- 76.01 An appeal shall lie to a Judge in Chambers from any judgment, determination, order, direction or decision given or made by the Registrar or Deputy Registrar and shall be instituted in the manner prescribed by Supreme Court Rule 97.03(1).
- Provided that where any person aggrieved is desirous of appealing from any judgment, determination, order, direction or decision of the Deputy Registrar the matter must first be referred to the Registrar for a direction (unless the Registrar is absent) and the Deputy Registrar must act in accordance with such direction.
- 76.02 The notice of appeal must be in the Form No.77 and must be issued within seven days after the judgment, determination, order, direction or decision complained of, or if the matter has been referred for the direction of the Registrar, within seven days of such direction being given, and there shall be at least two clear days between service of the notice of appeal and the day of hearing.
- 76.03 In the case of an appeal under Rule 76.01, if any person besides the appellant has appeared or has been represented before the Registrar from whose judgment, determination, order, direction or decision the appeal is brought the notice must be served on every such person.
- 76.04 Except by permission of the Judge, the appellant shall not be entitled at the hearing of the appeal to rely on any ground not set out in the notice of appeal.

Power to require application to be made by summons

- 77 The Registrar may require any application made to the Registrar to be brought before the Registrar by summons, and may refer any application made to the Registrar, or any matter, whether by summons or otherwise, to a Judge or require the same to be brought before the Court by summons.

Notices

- 78 Unless the Registrar otherwise directs or these Rules otherwise provide, any notice or other document required to be given to or served on any person may be given or served by leaving it at, or sending it by registered mail to, that person's address for service or, if the person has no address for service, the person's last known address.

Estate and administration accounts

- 79 The statement and account required to be delivered at the office of Public Trustee, pursuant to section 56 of the Act shall be in the Form No. 78.

Summonses

- 80 A summons to be issued under these Rules shall be in the Form No.33.

Statutory matters in common form dealt with by the Registrar

- 81 Every application to the Court under the statutory powers referred to in the Schedule to this Rule shall be brought by summons and may be made to the Registrar.

Schedule

- (a) Sections 18, 23 and 31 of the Act;
- (b) Sections 9, 14 and 15(1)(a) and (b) of the Public Trustee Act, 1995;
- (c) Section 4(4) of the Trustee Companies Act, 1988;

The application of the provisions of Rules 89, 90 and 91 to this part

- 82 The provisions of Rules 89, 90 and 91 shall apply to applications or proceedings brought under this part as the circumstances may require.

Forms

- 83 The forms set out in the First Schedule, must be used with such modifications as the circumstances may require.

Practitioners' Charges

- 84 The charges which may be paid and allowed to practitioners with respect to non-contentious probate matters in the Testamentary Causes Jurisdiction of the Court shall be assessed pursuant to the scales laid down by the Supreme Court Rules as if the work done was contentious business in the Supreme Court.

PART III – RULES RELATING TO PART III OF THE ACT AND PART 3 OF THE PUBLIC TRUSTEE ACT, 1995**Applications or proceedings to which Rules under this part shall not apply**

- 85 Subject to the provisions of Rule 82 the Rules contained in this part shall not apply to applications or proceedings for which provision is made in Part II.

Title of proceedings

- 86 All proceedings under Part III of the Act or Part 3 of the Public Trustee Act, 1995 shall be entitled "In the matter of the trusts of the will of" or "In the matter of the estate of [testator or intestate by name, late address, and occupation or other description]" and "In the matter of the Administration and Probate Act, 1919", or "In the matter of the Public Trustee Act, 1995" (as the case may be).

Applications by Public Trustee

- 87 Applications by Public Trustee under Part 3 of the Public Trustee Act, 1995 brought in the Testamentary Causes Jurisdiction must be made to the Court or the Registrar by summons in the Form No. 33.

Applications by summons

- 88 Wherever the Act provides that an application may be made without notice to any other party, or is silent as to the mode of procedure, the application must except where these Rules otherwise provide, be made to the Court by summons and if the application is brought in the Testamentary Causes Jurisdiction the summons must be in the Form No.33 with such variations as the circumstances may require.

Notice of application

- 89.01 The Court or the Registrar may direct that notice of any application shall be given to such person interested as the Court or the Registrar may think fit.
- 89.02 Notice of an application shall be given by serving the summons together with such other documents filed in support of the application as the Court or Registrar may direct.
- 89.03 At the time of service of the summons there must be endorsed on the copy of the summons which is to be served a memorandum addressed to the person to be served stating the time limited for appearance by that person, which must be in accordance with the time limits prescribed under Rule 8 of the Supreme Court Rules. A copy of the order directing service must be served along with the summons.
- 89.04 The Court or Registrar may dispense with service of the summons on all or any one or more of the persons beneficially interested, and may direct substituted service on any person on behalf of any person beneficially interested.
- 89.05 The term summons in Rule 89 shall be deemed to mean and include any form of originating process designated under these Rules.

Appearances

- 90.01 Any person served with a summons must enter an appearance within the time limited by the endorsement on the summons and must on the day on which the appearance is entered deliver or send by post to the applicant a sealed copy of the memorandum of appearance.
- 90.02 An appearance entered under Rule 90.01 by a party opposing the application must state with sufficient particularity the grounds of the opposition to the application.
- 90.03 All persons served shall be entitled to adduce evidence either for or against any application.

Representation orders and procedure where no personal representative

- 91 The Registrar may, if the Registrar thinks fit, make an order under Rules 29.01 and 30.03 of the Supreme Court Rules for the time being in force.

Applications for Trustees Commission

- 92.01 Applications for remuneration under section 70 of the Act must be made by summons issued out of the Supreme Court Registry, supported by the affidavit and the accounts of the applicant, verified on oath, with respect to the estate or the trust property and its administration.
- 92.02 The Court may upon its own initiative and without requiring the attendance of parties if it sees fit refer the summons to a Master or the Registrar for an inquiry and a report.
- 92.03 Unless any appearance has been entered under Rule 92.16 the Court may without requiring the attendance of the parties make an order on a summons based on a report of a Master or the Registrar.
- 92.04 Where an order for payment of remuneration has been made on a summons, unless the Court otherwise orders, that summons shall remain on foot and be available to be used for applications for remuneration by the applicant for subsequent periods but Rule 92.02 shall apply in respect of any subsequent application for remuneration based on the summons as if a further summons had been taken out by the applicant.
- 92.05 The application must state whether any previous application having the same or a similar object has been made to the Court with respect to the same estate or trust property.
- 92.06 The accounts supporting the summons must contain separate items of capital and income giving particulars and the date of each receipt and payment and must show with respect to each item of receipt whether the getting in or realisation has been effected by the applicant personally or with the paid assistance of agents or practitioners, and in the latter case the amount of the expense incurred.
- 92.07 Where estate or trust funds have been retained in the hands of the applicant, the accounts must contain a statement showing the present state of investment, distinguishing from re-investments those assets which are still in the same state of investment as they were when they vested in the applicant.
- 92.08 The accounts must also contain a summary of the assets and income got in, realised, specifically appropriated in specie, or distributed, showing what portion of such assets or income were got in or realized with the paid assistance of agents or practitioners, and where any estate or trust funds have been retained in the hands of the applicant, a plan of the distribution of such funds.
- 92.09 Upon the hearing of the summons, or any subsequent application made in the same matter, the Court or the Registrar may make such orders as to service upon any of the parties interested, or as to the advertisement of the application, as may be appropriate.
- 92.10 Where an applicant is one of several executors, administrators or trustees, notice of the application shall be served on the other or others of them.
- 92.11 Where the applicant is administrator of an intestate estate notice of the application must be served on Public Trustee:
Provided that the Court or the Registrar may dispense with the observance of this Rule.
- 92.12 No order shall be made on the summons until and unless an affidavit is filed proving service of the notice required to be given under Rules 92.10 and 92.11.
- 92.13 Any person wishing to object to the allowance of commission or other remuneration may at any time enter a caveat in the Supreme Court Registry in the Form No. 78. A copy of the caveat must be served on the applicant or the applicant's practitioner.

- 92.14 Every caveator shall be entitled to be served with notice of all applications and shall be entitled to attend all proceedings on the summons or any subsequent application, until and unless the caveator withdraws the caveat referred to in Rule 92.13, by filing a notice of withdrawal a copy of which must be served on the applicant or on the applicant's practitioner, but if the Court or the Registrar shall be of the opinion that any costs occasioned to the applicant by entering of the caveat, or the attendance of the caveator upon any proceedings, should not be borne by the estate, or the trust fund, or the applicant, the Court or the Registrar may direct that such costs, be taxed, or a gross sum in lieu thereof, be paid by the caveator.
- 92.15 Any person interested in an application for an order for commission or other remuneration, or such person's practitioner shall, during the pendency of the application be entitled to inspect any affidavit, account, or other document in the possession of the applicant, or the applicant's practitioner relating to the application or any previous application and to take copies of or extracts from such documents, and shall be entitled to be furnished by the applicant or the applicant's practitioner with a copy of any such document or extract on paying for such copy or extract at the rate prescribed by the Supreme Court Rules for photostating copies.
- 92.16 No person shall be permitted to attend before a Master or the Registrar on the inquiry or upon the application to consider a Master's report or the Registrar's report, until such person has entered an appearance in the Supreme Court Registry and forthwith, after such entry, given notice of the appearance to the applicant.
- 92.17 The costs of the applicant and of the parties attending before a Master or the Registrar or on the application, of and incidental to the proceedings, shall be in the discretion of the Court or the Registrar.

Application by Public Trustee

- 93.01 In any case -
- (a) where the net value of the whole estate trust or fund or any share thereof in respect whereof approval, advice, power or direction is sought under section 69 of the Act or otherwise does not exceed \$50,000, or
 - (b) under section 64 of the Act, or
 - (c) under sections 5(3), 14(2), 34(2), 35(1)(k), 37 and 45(3)(b), (4) and (5) of the Public Trustee Act, 1995
- Public Trustee may apply without notice to any other party to the Court for approval, advice, power or directions upon a written statement setting out the facts.
- 93.02 It shall not be necessary, on any such application unless the Court so directs, for Public Trustee to serve notice of the application on any person interested.
- 93.03 If the Court sees fit to approve, advise, empower or direct on such without notice to any other party statement such approval, advice, authority or direction shall be sufficiently evidenced by the fiat endorsed on it, and unless otherwise directed, it shall not be necessary to draw up any formal order.
- 93.04 Upon the making of an order the statement together with the fiat, or the sealed order, must be filed in the Registry of the Supreme Court.

Taxation of costs rendered to Public Trustee

- 94.01 Public Trustee may, by request in writing, refer any bill of costs and disbursements rendered to Public Trustee by a practitioner to the Court for taxation, and upon notice to the practitioner the Court shall tax the same without any special order for the purpose.

- 94.02 The costs of the taxation shall be paid according to the event of the taxation, that is to say, if one-sixth of the amount of the bill is taxed off, the practitioner shall pay the costs, but otherwise Public Trustee shall pay the costs:
Provided that a Master may certify special circumstances relating to the bill or its taxation, and the Court may make any such order as it thinks fit respecting the payment of the costs of the taxation.

Trustees executors and administrators other than Public Trustee

- 95 In any case where the net value of the whole estate, trust or fund or any share in such estate, trust or fund in respect of which approval, advice, power or direction pursuant to section 69 of the Act (or otherwise under the Act) is sought does not exceed \$50,000, any trustee, executor or administrator (other than Public Trustee) may apply without notice to any other party to the Court under this Rule for approval, advice, power or directions upon a written statement setting out the facts and verified upon oath by the applicant. The provisions of Rules 93.02 to 93.04 shall, *mutatis mutandis*, apply to applications made pursuant to this Rule.

PART IV – RULES RELATING TO SECTIONS 6 AND 7 OF THE WILLS ACT, 1936

Title of Proceedings

- 96 All proceedings under sections 6 and 7 of the Wills Act, 1936 must be entitled “In the matter of the Wills Act, 1936”.

Will of minor pursuant to permission of Court

- 97.01 An application by a minor under section 6 of the Wills Act, 1936 shall be made to a Judge in Chambers by his or her next friend by summons in the Form No. 33 (1) with such variations as the circumstances may require.
- 97.02 Before the name of any person may be used in an application as next friend of the minor, there shall be filed contemporaneously with the summons under Rule 97.01:-
- (a) the written consent of the person to act as next friend of the minor;
 - (b) an affidavit by the practitioner on the record stating:-
 - (1) that the practitioner is aware that the person for whom the practitioner acts is a minor;
 - (2) that the person named as next friend of the minor has no interest in the application;
 - (3) that to the best of the practitioner’s knowledge information and belief there is no reason why that person is not a fit and proper person to act as next friend:

Provided that Rule 97.02(b) shall not apply where Public Trustee has filed a consent to act as next friend.

- 97.03 The application must be supported by affidavit setting out all the facts on which the applicant relies including:-
- (a) The full name, age and residential address of the minor.
 - (b) The full names and addresses of the persons having the guardianship and custody of the minor and where a guardian has been appointed by a Court of competent jurisdiction a sealed copy of the guardianship order must be exhibited to the affidavit.

- (c) The names and addresses of the persons who would be entitled to share in the minor's estate whether under an existing will of the minor or in the event of the minor dying intestate.
 - (d) The minor's assets and living expenses and whether there may be a variation in such expenses.
 - (e) A history of the circumstances of the minor and the reasons for the manner in which the minor is seeking to dispose of his estate.
 - (f) Evidence in the Form No. 34 that the proposed executor or executors consent to act.
- 97.04 The Court or the Registrar may order that notice of the application shall be served on such person who appears to the Court or the Registrar to be interested as the Court or the Registrar may direct.
- 97.05 A person who has been served under Rule 97.04 may enter an appearance within the time specified in the order or afterwards by permission of the Court or the Registrar.
- 97.06 Notice of the application shall be given in the manner prescribed by Rules 89.02 and 89.03.
- 97.07 Every application under section 6 of the Wills Act, 1936 shall be heard by a Judge in Chambers unless the Judge otherwise directs.

Will for person lacking testamentary capacity pursuant to permission of Court

- 98.01 "Proposed testator" under Rule 98 means a person lacking testamentary capacity who is the subject of an application under section 7 of the Wills Act, 1936.
- 98.02 Every application under section 7 of the Wills Act 1936 shall be heard by a Judge in Chambers unless the Judge otherwise directs.
- 98.03 An application under section 7 of the Wills Act, 1936 for an order authorising the making or alteration or revocation of a will on behalf of a proposed testator must include an application for permission to apply for such order and shall be made by *inter partes* summons in the Form No. 33 modification (3) and the applicant must be described as plaintiff and the proposed testator as defendant.
- 98.04 (1) The application for permission to apply shall be heard by a Judge in Chambers without notice to any other party or upon such notice to other interested persons as the Court or Judge may direct and must be supported by an affidavit setting out the grounds on which such permission is sought and any facts necessary to substantiate those grounds.
- (2) Where all necessary parties are represented on the hearing for permission to apply the Judge may treat that hearing as the substantive application and determine the summons accordingly.
- 98.05 Except in a case to which Rule 98.04(2) applies the summons must be served on the defendant personally and an affidavit of service filed before the application is set down for hearing and the affidavit of service must state the means by which it was established that the person served was the proposed testator and what such person said or did when served:
- Provided that the Court or the Registrar may in special circumstances dispense with any of the requirements of this Rule.
- 98.06 Where no appearance to the summons has been entered on behalf of the proposed testator the applicant must before proceeding with the summons obtain an order from the Court or the Registrar appointing a guardian *ad litem* for the proposed testator.

- 98.07 In any proceeding to which the proposed testator has entered an appearance the Court or the Registrar may, if it is in the interest of the proposed testator to do so, appoint a guardian *ad litem* for the proposed testator, and may remove or substitute any such guardian.
- 98.08 Subject to these Rules upon permission being granted under Rule 98.04(1) notice of the application shall be given to:
- (1) such of the persons mentioned in section 7(7) of the Wills Act, 1936; and
 - (2) such other persons who appear to the Court or the Registrar to be interested as the Court or the Registrar may direct.
- 98.09 Unless the Court or the Registrar shall otherwise direct the time limited for filing an appearance by any person served with the summons or notice of the application shall be in accordance with Rule 8 of the Supreme Court Rules.
- 98.10 Except where these Rules otherwise provide, the substantive application must be supported by an affidavit setting out all the facts on which the applicant relies, including:
- (a) The full name, residential address and age of the proposed testator.
 - (b) Evidence that the proposed testator lacks testamentary capacity.
 - (c) The full name and address and details of the appointment of the proposed testator's administrator, guardian or enduring guardian, if one has been appointed under the Guardianship and Administration Act 1993, or the proposed testator's manager, if one has been appointed under the Aged and Infirm Persons' Property Act 1940, or the proposed testator's attorney if one has been appointed under an enduring power of attorney and where any such appointment has been made a sealed copy of the order or a certified copy of the enduring power of attorney must be exhibited to the affidavit:
Provided that if the applicant is not able to exhibit a copy of the enduring power of attorney, then it must be so stated in his or her affidavit.
 - (d) Full details relating to all of the matters referred to in sub-paragraphs (a) to (h) inclusive of section 7(4) of the Wills Act 1936.
 - (e) The terms of any will, codicil, draft of a will or codicil, written instructions for the same or any other document of a testamentary nature made by or under the direction of the proposed testator of which the applicant has knowledge, and whether the applicant has or has not such documents in his or her possession and where any document is not in the applicant's possession, the name and address of the person in whose possession it is, or is believed to be, or if the applicant does not know that information it should be so stated:
Provided that every such document in the custody or control of the applicant must be exhibited to the affidavit.
 - (f) Evidence in the Form No. 34 that the proposed executor or executors consent to act.
 - (g) The reasons why in all the circumstances the applicant considers that the order should be made.
- 98.11 The evidence of a legally qualified medical practitioner in an application under section 7 of the Wills Act 1936 may be given by a report signed by the medical practitioner which is duly exhibited to an affidavit sworn by the applicant or the applicant's solicitor who must depose to the fact that he or she has received the report in relation to the proceedings:

Provided that the Court or a Judge may at the request of any other party, or may of its or the Judge's own volition, decline to receive the evidence of a medical practitioner adduced in such manner and may require such evidence to be proved in such way as the Court or the Judge thinks fit.

- 98.12 (1) Notwithstanding Rule 98.10, the Court or a Judge may accept and act upon a statement of facts or such other evidence, whether oral or written, as the Court or the Judge considers sufficient, although not given on oath.
- (2) A statement of facts or other written evidence under Rule 98.12(1) must:
- (a) be drawn up in numbered paragraphs and dated;
 - (b) set out the matters specified in paragraphs (a) to (f) of Rule 98.10; and
 - (c) be signed by the person by whom it is made.

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FORM 1**Rules 17, 18, 19 and 20****AFFIDAVIT OF DUE EXECUTION****South Australia
In the Supreme Court
Testamentary Causes Jurisdiction****In the Estate of A.B. deceased**

I, C.D. of [*address and occupation*] make oath and say that:

- 1 I am one of the subscribing witnesses to the [codicil to the] last will and testament (“the document”) of A.B. late of [*address and occupation*] deceased (“the deceased”) the document dated the day of19... being now produced to me and marked “A”.
- 2 The deceased executed the document on the above date [*or on the day of 19...*] by signing his [her] name [*or by making his [her] mark*] at the foot or end of the document [*or as the case may be*] as the same now appears on it in the presence of me and of E.F. the other subscribed witness to the document both of us being present at the same time and we then at the request of the deceased attested and subscribed the document in the deceased’s presence.

If the deceased acknowledged his [her] signature to the attesting witnesses then for paragraph 2 above substitute -

- 2 The deceased executed the document on the above date [*or on the day of 19...*] by acknowledging the signature “AB”, as the same now appears at the foot or end of the document [*or as the case may be*] to be his [her] signature in the presence of me and of E.F., the other subscribed witness to it, both of us being present at the same time, by producing the document to us and pointing to his [her] signature which was clearly visible and saying to us “Will you witness my signature to my will [*or as the case may be*] and we then in compliance with his [her] request attested and subscribed the document in the deceased’s presence.

If evidence is required to show that the deceased had knowledge of the contents of his [her] will [or codicil] at the time it was executed the following additional paragraph should be added -

- 3 Prior to the execution of the document by the deceased I read the document over to him [her] [*or the document was read over to him [her] by E.F. in my presence*] [*or the deceased read over the document in my presence*] [*or as the case may be*] and the deceased at such time appeared thoroughly to understand the same and to have full knowledge of its contents.

If evidence is required to show whether an unauthenticated alteration was present at the time the will was executed, then the following paragraph may be added or substituted as the case may require -

- 4 Having observed the alteration made to the document by the interlineation of the words between the and the lines of the page of the document [*or as the case may be*] I am able to say that those words were written and made in the document

prior [*or* subsequent] to its execution [*or* that I am unable to say whether those words were written and made prior or subsequently to the execution of the document.]

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

Notes

- 1 *If the deceased died on or after 1st July 1994, it is not necessary for the formal validity of the will or codicil (irrespective of the date on which it was executed) for it to have been signed at “the foot or end thereof”. Section 8 of the Wills Act, 1936 (as substituted by section 5 of the Wills (Miscellaneous) Amendment Act, 1994) makes no stipulation as to the position of the deceased’s signature. However, “it must appear on the face of the will or otherwise, that the testator intended by the signature to give effect to the will”. Additional affidavit evidence may therefore be required to show that the deceased intended to give effect by that signature to the document signed as his or her will or codicil.*
- 2 *Acknowledgment of a previously subscribed signature by an attesting witness is now permitted in respect of a will or codicil of a testator dying on or after 1st July 1994. In such circumstances paragraph 2 of the affidavit should be modified as the case may require.*

FORM 2

Rule 21

AFFIDAVIT OF PLIGHT AND CONDITION AND FINDING

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of *[address and occupation]* make oath and say that:

- 1 I am the sole executor *[or one of the executors or as the case may be]* named in the last will and testament (“the document”) of A.B. late of *[address and occupation]* deceased, the document bearing date the day of 19...., being now produced to me and marked “A”, and having viewed and perused the document and particularly observed *[here recite the various obliterations, interlineations, erasures, and alterations (if any) or describe the plight and condition of the document or any other matters required to be accounted for [e.g. pin holes, perforations, etc], and describe the finding of the document in its present state, and, if possible, trace the document from the possession of the deceased up to the time of making the affidavit].*

- 2 The document is now in all respects in the same state, plight and condition as when found by me *[or as the case may be]*.

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

FORM 3

Rule 47

AFFIDAVIT AS TO ALIAS

(1) Will

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of John Smith otherwise Cyril John Smith deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 John Smith otherwise Cyril John Smith late of [*address and occupation*] deceased (“the deceased”) died at on the day of 19... having made and duly executed his last will and testament dated the day of 19... (“the will”) of which he appointed me the sole executor [*or one of the executors or as the case may be*].
- 2 The deceased is described in the will as John Smith and has subscribed his name to the will in execution of it as John Smith.
- 3 [*Here establish the identity of the deceased under the different name e.g.: The birth of the deceased was registered in the name of Cyril John Smith as appears by the certified copy of the Certificate of Birth now produced to me and marked “A” (or as the case may be).*]
- 4 [*Here set out the ground justifying the issue of the grant in the different name eg: The deceased is registered in the name of Cyril John Smith as the proprietor of an estate in fee simple in the whole of the land comprised in Certificate of Title Register Book Volume Folio A photocopy of the said Certificate of Title is now produced to me and marked “B”.*]

or

At the time of death of the deceased the amount of \$..... was standing to his credit in Account No. at X Savings Bank in the name of Cyril John Smith, as appears by a letter signed by the Manager of the bank now produced to me and marked “C” (*or as the case may be*).]

- 5 In the aforesaid circumstances it is desired that the grant of probate of the will of the said testator (*or as the case may be*) should issue in the names of John Smith otherwise Cyril John Smith deceased.

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

FORM 4

Rule 47

AFFIDAVIT AS TO ALIAS

(2) Intestacy

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of Miriam Sarah Smith otherwise Sarah Smith deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 I am the intended administrator of the estate of Miriam Sarah Smith otherwise Sarah Smith late of [*address and occupation*] deceased (“the deceased”) who died at on the day of 19... intestate.
- 2 [*Here establish the identity of the deceased under the alternative names e.g.: The deceased’s correct name is Miriam Sarah Smith but that she usually referred to herself as Sarah Smith and was generally known by that name.*]
- 3 [*Here set out details of property justifying the issue of the grant in the alternative names e.g.: The deceased effected a policy of assurance on her own life in the name of Sarah Smith in the X Insurance Company Ltd. A letter signed by the Manager of the Company verifying the name in which the policy is held is now produced to me and marked “A”.*]

and

- 4 The deceased is registered in the name of Miriam Sarah Smith as the proprietor of an estate in fee simple in the whole of the land comprised in Certificate of Title Register Book Volume Folio A photocopy of the Certificate of Title is now produced to me and marked “B” (*or as the case may be*).]
- 5 In order to deal with the above property it is desired that the grant should issue in the names of Miriam Sarah Smith otherwise Sarah Smith deceased.

Sworn at by C.D.)
 on the day of)
 19) C.D.

Before me:

FORM 5

Rule 49.02(d)

AFFIDAVIT OF JUSTIFICATION OF SURETIES

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, E.F. of [*address and occupation*] and G.H. of [*address and occupation*] jointly and severally make oath and say that:

- 1 We are the proposed sureties on behalf of C.D. the intended administrator [*with the will annexed*] of the estate of A.B. late of [*address and occupation*] deceased in the penal sum of \$.....* for his [her] due administration of the estate.
- 2 I the said E.F. for myself say that I am after payment of all my debts and liabilities worth in liquidated or unliquidated assets the sum of \$.....*.
- 3 I the said G.H. for myself say that I am after payment of all my debts and liabilities worth in liquidated or unliquidated assets the sum of \$.....*.

Sworn atby both of)
the abovenamed deponents)
on the.....day of)
.....19...)
Before me:
.....

E.F.
G.H.

***Notes**

- (1) *If a surety is entitled to share in the estate the following additional deposition must be made:*
“save and apart from any beneficial interest that I may have in the said estate”.
- (2) *The amount to be sworn in each instance is the gross value of the estate in South Australia.*

FORM 6**Rule 49.11****AFFIDAVIT IN LIEU OF SURETY'S GUARANTEE**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 I am the intended administrator of the estate of A.B. late of [*address and occupation*] deceased ("the estate").
- 2 I am resident in the State of South Australia ("South Australia").
- 3 I have no legal or equitable claim against or interest in the estate arising from a liability incurred by the deceased before his [her] death.
- 4 I am a person entitled to claim the benefit of the Inheritance (Family Provision) Act, 1972 ("the Act"), against the estate but that I am not contemplating making an application under the Act for such benefit.

or

I am not a person entitled to claim the benefit of the Inheritance (Family Provision) Act, 1972.

- 5 I am the only person entitled to participate in the distribution of the estate.

or

The persons entitled to participate in the distribution of the estate are myself and [*give the full name, address, occupation and the relationship (if any) to the deceased of each person entitled to share in the estate*].

- 6 All persons entitled to participate in the distribution of the estate are *sui juris*.
- 7 All persons entitled to participate in the distribution of the estate are resident in South Australia.

or

The only person(s) entitled to participate in the distribution of the estate who is [*or are*] not resident in South Australia is [*or are*]: [*Here list the name(s) of such person(s) not resident in South Australia*] and the aforesaid person(s) has [*or have*] for the purposes of section 65(1) of the Administration and Probate Act, 1919, appointed an agent or attorney within South Australia a copy [*or copies*] of the appointment(s) being now produced to me and marked "A" [*or "A" and "B" respectively or as the case may be*]

8 To the best of my knowledge, information and belief the liabilities in the estate consist of the following -

[Here set out all the liabilities in the estate, e.g. funeral expenses, unsecured debts, debts on mortgages and other secured debts etc.]

9 There are sufficient assets in the estate to meet payment of the liabilities.

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

Note

*If there is any person who is not **sui juris** and who may become entitled to share in the estate in the event of an accretion to the estate, the administrator must give an undertaking that in the event of any such accretion giving rise to a beneficial entitlement to such person, he or she will forthwith execute a bond.*

FORM 6A**Rule 49.12****AFFIDAVIT IN LIEU OF GUARANTEE**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

1. I am the intended administrator of the estate of A.B. late of [*address and occupation*] deceased (“the estate”).
2. The gross value of the South Australian estate does not exceed \$100,000 [or \$250,000].
3. I am resident in [*give State or Country of residence*]
4. I have no legal or equitable claim against or interest in the estate arising from a liability incurred by the deceased before his [her] death.

or

I have a legal or equitable claim (*as the case may be*) particulars of which are: (*give a short summary of the details of the claim*).

5. I am not a person entitled to claim the benefit of the *Inheritance (Family Provision) Act 1972*.

or

I am a person entitled to claim the benefit of the *Inheritance (Family Provision) Act 1972* (“the Act”) but that I am not contemplating making an application under the Act for such benefit.

or

I am a person entitled to claim the benefit of the *Inheritance (Family Provision) Act, 1972* and I am contemplating making an application under the Act for such benefit.

6. I am the only person entitled to participate in the distribution of the estate.

or

The persons entitled to participate in the distribution of the estate are myself and [*give the full name, address, occupation and the relationship (if any) to the deceased of each person entitled to share in the estate*].

7. All persons entitled to participate in the distribution of the estate are *sui juris*

or

The persons entitled to participate in the distribution of the estate who are not *sui juris* are: *(give the names and dates of birth of all persons referred to in the above paragraph who are not sui juris).*

8. All persons entitled to participate in the distribution of the estate are resident in South Australia.

or

The person(s) entitled to participate in the distribution of the estate who is [are] not resident in South Australia is [or are]: [Here list the name(s) of such person(s) not resident in South Australia] and the aforesaid person(s) has [or have] for the purposes of section 65(1) of the *Administration and Probate Act 1919*, appointed an agent or attorney within South Australia a copy [or copies] of the appointments being now produced to me and marked “A” [or “A” and “B” respectively *or as the case may be*].

9. To the best of my information and belief the liabilities in the estate consist of the following:

[Here set out all the liabilities in the estate, e.g. funeral expenses, unsecured debts, debts on mortgages and other secured debts etc.]

10. There are sufficient assets in the estate to meet payment of the liabilities.

Sworn atby C.D.)
on theday of) C.D.
..... 20...)

Before me:
.....

Note

If there is any person who is not sui juris and who may become entitled to share in the estate in the event of an accretion to the estate, the administrator must give an undertaking that in the event of any such accretion giving rise to a beneficial entitlement to such person, he or she will forthwith lodge a guarantee or make an application to the Registrar to dispense with a guarantee.

Form 6B

Section 65(1)(b) of the Act

APPOINTMENT OF AGENT

I, A.B. of [*address and occupation*], appoint and authorise C.D. of **[address and occupation]* to be and act as my agent in the State of South Australia for the purpose of receiving all monies payable to me in respect of my beneficial interest in the estate of X.Y. late of [*address and occupation*] deceased and I direct that the receipt of the said C.D. shall be a good and sufficient discharge for monies payable to me by virtue of the foregoing.

Signed by A.B. at
thisday of.....20..
in the presence of E.F.

.....

* The agent must be resident in the State of South Australia.

FORM 7

Rule 48.02

AFFIDAVIT TO WITHDRAW WILL DEPOSITED WITH RENUNCIATION

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, E.F. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased (“the deceased”) died at on the day of 19... having made and duly executed his [her] last will dated the day of 19... (“the will”) wherein he [she] named C.D. sole executor [and the residuary devisee and legatee in trust *or as the case may be*].
- 2 C.D. by renunciation filed in this Court on the day of 19... renounced probate [and letters of administration (with the will annexed) of the estate of the deceased].
- 3 I am the widow of the deceased [*or as the case may be*] and the residuary devisee and legatee [*or as the case may be*] named in the will.
- 4 The deceased died possessed of property in the State of South Australia.
- 5 I intend to make an application to this Court for a grant of letters of administration with the will annexed of the estate of the deceased and I therefore request that the will which has been deposited in this Court be delivered out to me [*or to my solicitor XY of*]

Sworn at by E.F.)
 on the day of)
 19) E.F.

Before me:

FORM 8**Rule 49.06****AFFIDAVIT OF JUSTIFICATION BY A CORPORATION
AUTHORISED UNDER THE INSURANCE ACT 1973 (CTH)**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Matter of X. Co. Limited ACN

I, C.D. of [*address and occupation*] make oath and say that:

- 1 I am the (attorney *or* manager *or as the case may be*) of X.Y. Limited ACN (“the corporation”) and am authorised to make this affidavit on its behalf.
- 2 The (principal office *or* registered office) of the corporation in South Australia is situated at and the principal business of the corporation is that of insurance and for that purpose it is authorised under the Insurance Act, 1973 (Cth).
- 3 There is no restriction or prohibition contained in the memorandum or articles of association of the corporation excluding it from entering into and executing surety guarantees conditioned upon the due administration by administrators of the estates of deceased persons within the State of South Australia.

If the guarantee is to be executed by an agent or attorney of the corporation then the following clause is applicable:

- 4 By power of attorney under the common seal of the corporation dated the day of 19.... I am appointed the lawful attorney of the corporation in the State of South Australia (which said appointment has not to the best of my knowledge information and belief been revoked) and pursuant to that power of attorney I am empowered to carry on in the name of the corporation and on its behalf the business of the corporation and for such purpose (*inter alia*) to enter into and execute surety guarantees. A copy of the power of attorney is now produced to me and marked “A”.

or

If the guarantee is to be executed under the common seal or official seal of the corporation then the following clause is applicable:

- 4 The memorandum and articles of association of the corporation provide the following regulation as to the affixing of the common seal or official seal to surety guarantees or other instruments:

[Recite from memorandum and articles of association the relevant provisions relating to the affixation of the common seal or official seal]

- 5 As at the date hereof I have no notice of the revocation cancellation or suspension of the corporation's authority to carry on the business of insurance nor am I aware of any matter which may cause the revocation cancellation or suspension of that authority.
- 6 No application or other proceeding is pending in any Court for the purpose of winding up the corporation.

Sworn at by C.D.)
 on the day of)
 19) C.D.

Before me:

Note

The undertaking required by Rule 49.06 must be filed with the affidavit of the corporate surety.

FORM 9

**AFFIDAVIT VERIFYING THE TRANSLATION OF A WILL
OR OTHER DOCUMENT**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 I am well acquainted with the [*Italian or as the case may be*] and English languages, and have had experience in the translation of documents from [*Italian*] into English. [*Provide details of any further qualifications*]
- 2 The paper writing now produced to me and marked “A” is a true and faithful translation of the last will and testament of A.B. deceased which will bears date the day of..... 19... and is written in the [*Italian*] language and is now produced to me and marked “B”. [*Wording to be suitably modified if document is other than a will*].

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

FORM 10

Rule 52.10

**AFFIDAVIT OF SERVICE OF WARNING AND OF SEARCH
AND NON-APPEARANCE**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [address and occupation or if applicable clerk to XY & Co. solicitors] make oath and say that:

1 On the day of 19... I duly served E.F. of with a true copy of the warning now produced to me and marked "A" by delivering to and leaving the same at[or by sending the same by registered mail addressed to him[her] at a copy of the Registered Post Lodgment Document being now produced to me and marked "B"]

or

On the day of 19... I duly served GH & Co. of Solicitors with a true copy of the warning now produced to me and marked "A" by delivering to and leaving the same with a clerk of the said GH & Co. solicitors at their office aforesaid [or leaving the same at their office aforesaid at the hour of in thenoon] or by sending the same by registered mail to their office aforesaid a copy of the Registered Post Lodgment Document being now produced to me and marked "B"].

2 I did on the day of 19... carefully search the records in the Probate Registry of this Court for entering of appearances from the day of 19... [day of service] to the present day inclusive, to ascertain whether or not any appearance to the warning had been entered, and I say that no appearance to the warning has been entered either by or on behalf of any person or persons whomsoever.

3 No summons for directions under Rule 52.09 of The Probate Rules 2004 has been received by my firm.

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

FORM 11

Rule 54.01

AFFIDAVIT TO LEAD CITATION TO ACCEPT OR REFUSE PROBATE

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased (“the deceased”) died at on the day of 19... having made and duly executed his [her] last will bearing date the day of 19... (“the will”) now remaining in the Probate Registry of this Court.
- 2 E.F. of [*address and occupation*] is the sole executor [*or the surviving executor*] [*or as the case may be*] named in the will [G.H. the other executor having died during the lifetime of the deceased *or as the case may be*].
- 3 E.F. has not yet taken probate of the will.
- 4 I am the residuary devisee and legatee [*or one of the residuary devisees and legatees*] named in the will [*or as the case may be*].
- 5 I wish to obtain letters of administration with the will annexed of the estate of the deceased.
- 6 The deceased left real and personal estate [*or real estate only*] [*or personal estate only*] in the State of South Australia.

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

[Form of citation, No. 23]

FORM 12

Rule 54.01

AFFIDAVIT TO LEAD CITATION TO ACCEPT OR REFUSE ADMINISTRATION

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased (“the deceased”) died at on the day of 19...intestate leaving E.F. of [*address and occupation*] her lawful widower and one of the persons entitled to share in her estate.
- 2 There is no person adjudged under the Family Relationships Act, 1975 to have been a domestic partner of the deceased as at the date of her death.
- 3 The said E.F. has not yet taken upon himself letters of administration of the estate of the deceased.
- 4 I am the lawful son and one of the persons entitled to share in the estate of the deceased.
- 5 I wish to obtain letters of administration of the estate of the deceased.
- 6 The deceased left real and personal estate [*or real estate only*] [*or personal estate only*] in the State of South Australia.

Sworn at by C.D.)
 on the day of)
 19) C.D.

Before me:

[Form of citation, No. 24]

FORM 13

Rule 54.02

**AFFIDAVIT TO LEAD CITATION AGAINST EXECUTOR
TO WHOM LEAVE HAS BEEN RESERVED
TO ACCEPT OR REFUSE DOUBLE PROBATE**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [address and occupation] make oath and say that:

- 1 A.B. late of [address and occupation] deceased (“the deceased”) died at on the day of 19... having made and duly executed his [her] last will bearing date the day of 19... (“the will”) and therein named E.F. of [address and occupation] and G.H. [address and occupation] his [her] executors.
- 2 On the day of 19... probate of the will was granted by the Supreme Court of South Australia to the said E.F. one of the executors named in the will, leave being reserved for G.H. the other executor to apply for probate.
- 3 E.F. died on the day of 19... leaving part of the estate unadministered.
- 4 G.H. has not yet taken probate of the will.
- 5 I am the sole executor of the will of the said E.F. probate whereof was granted to me by the aforesaid Court on the day of 19... and I wish to act as executor by transmission of executorship of the will of the said A.B. deceased.
- 6 To the best of my knowledge information and belief the gross value of the estate of A.B. deceased left unadministered is \$.....

Sworn at by C.D.)
 on the day of)
 19) C.D.

Before me:
.....

[Form of citation, No. 25]

FORM 14

Rule 54.03

AFFIDAVIT TO LEAD CITATION CALLING ON AN EXECUTOR WHO HAS INTERMEDDLED IN AN ESTATE TO TAKE PROBATE

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of *[address and occupation]* make oath and say that:

- 1 A.B. late of *[address and occupation]* deceased (“the deceased”) died at on the day of 19... having made and duly executed his [her] last will bearing date the day of 19... (“the will”) which now remains in the Probate Registry of this Court and in the will named E.F. of *[address and occupation]* sole executor and myself one of the residuary devisees and legatees *[or as the case may be]*.
- 2 More than four months have elapsed since the date of the death of the deceased and no proceedings as to the validity of the will are now pending.
- 3 E.F. has neglected to prove the will.
- 4 E.F. has intermeddled in the estate of the deceased by collecting the rents owing to the deceased *[or as the case may be - instances must be set out]*.
- 5 I am desirous of compelling E.F. to take probate of the will.

Sworn at by C.D.)
 on the day of)
 19) C.D.

Before me:

[Form of citation, No. 26]

FORM 15

Rule 55.01

AFFIDAVIT TO LEAD CITATION TO PROPOUND A WILL

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased (“the deceased”) died at on the day of 19... a widow leaving me this deponent her lawful son and the only person entitled to her estate in case she died intestate (there being no other person entitled in priority to share in her estate by virtue of any enactment) [*or having made and duly executed her last will and testament bearing date the..... day of 19... wherein she named me the sole executor*].
- 2 The deceased left a document dated the day of 19... purporting to be a will (“the document”) wherein she appointed E.F. of [*address and occupation*] sole executor and residuary devisee and legatee and which document now remains in the Probate Registry of this Court.
- 3 I am desirous of issuing a citation against E.F. to propound the document should he [*she*] think it in his [*her*] interest so to do and that in default letters of administration of the estate of the deceased as having died intestate be granted to me [*or that in default probate of the said last will and testament of the deceased bearing date the day of June 19... be granted to me*].
- 4 The deceased left real and personal estate [*or real estate only*] [*or personal estate only*] in the State of South Australia.

Sworn at by C.D.)
 on the day of)
 19) C.D.

Before me:

[Form of citation, No. 27]

FORM 16

Rule 56

AFFIDAVIT TO LEAD CITATION TO BRING IN GRANT

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 Probate of the alleged last will and testament dated the day of 19... of A.B. late of [*address and occupation*] deceased (“the deceased”) who died at on the day of 19... was on the day of 19... granted to E.F. of [*address and occupation*] the sole executor [*or the surviving executor*] [*or as the case may be*] named in the will [G.H. the other executor having died during the lifetime of the deceased *or as the case may be*].
- 2 The deceased made and duly executed his [her] last will and testament bearing date the day of 19... of which he [she] appointed me sole executor.
- 3 The said grant of probate ought to be called in and revoked.

or

- 2 The deceased died intestate a bachelor [spinster] without issue [*or as the case may be*].
- 3 There is no person adjudged under the Family Relationships Act, 1975 to have been a domestic partner of the deceased at the date of his [her] death.
- 4 I am the lawful father and one of the persons entitled to share in the estate [*or as the case may be*].
- 5 The said grant of probate ought to be called in and revoked.

Sworn at by C.D.)
 on the day of)
 19) C.D.

Before me:
.....

[Form of citation, Nos. 28 to 31]

FORM 17

Rule 57

AFFIDAVIT TO LEAD CITATION TO SEE PROCEEDINGS

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 There is now depending in the Supreme Court of South Australia a probate action entitled “South Australia In the Supreme Court No. of 19... In the estate of A.B. deceased Between C.D. plaintiff and E.F. defendant” wherein I as plaintiff am proceeding to prove in solemn form of law the last will and testament dated the day of 19... of A.B. late of [*address and occupation*] deceased (“the deceased”) who died at on the day of 19... [and also for revocation of the probate of the alleged will of the deceased bearing date the day of 19... which said probate was granted by the aforesaid Court to the defendant E.F. on the day of 19... and to have the said alleged will pronounced against].
- 2 G.F. of [*address*] is the lawful ... of the deceased and one of the persons entitled to share in his [her] estate in the event of an intestacy [*or is one of the residuary devisees and legatees under the alleged will of the deceased dated the day of 19... (or as the case may be)*] and his [her] interests are adversely affected by the will which is propounded by me.

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

[Form of citation, No. 32]

FORM 18

Rule 61.01

**AFFIDAVIT TO LEAD SUBPOENA TO BRING IN
TESTAMENTARY DOCUMENT**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 A.B. of [*address and occupation*] deceased died at on the day of 19... having duly made his [her] last will and testament bearing date the day of 19... (“the document”) of which he [she] appointed E.F. sole executor and myself residuary legatee [*or as the case may be*] (a photocopy of the document being now produced to me and marked “A”).
- 2 The document is now in the possession custody or power of the said E.F. who has neglected or declined to prove the document or renounce probate of it and I request that the document be brought into the Probate Registry of this Court in order that I may prove the same or otherwise act as I may be advised.
- 3 The said E.F. resides at

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

FORM 19

AFFIRMATION IN LIEU OF OATH

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] declare and affirm that:

[*Here add the matter affirmed*]

Affirmed.....)
at.....this.....)
day of.....19.....)

Before me:

.....

FORM 20

JURAT TO AFFIDAVIT

Sworn at by C.D.)
on the day of)
..... 19) C.D.

Before me:
.....

Notes

- 1 *The jurat should be placed at the end of the affidavit adjacent to the left hand margin of the page but not on a page on which no part of the text appears.*
- 2 *The name of the person before whom the affidavit is sworn must be legibly printed or typed below his [her] signature in the jurat [see Supreme Court Rule 83.01(1)(g)].*
- 3 *The person taking the affidavit must disclose his or her authority for taking affidavits beneath his [her] signature in the jurat, e.g. “A Commissioner for taking affidavits in the Supreme Court of South Australia” or “A Justice of the Peace in and for the State of South Australia” or as the case may be.*
- 4 *If the affidavit is taken out of South Australia by a person not being authorised to take affidavits in the Supreme Court of South Australia, then the person before whom the affidavit is sworn must disclose his or her authority to administer oaths in the place where it is sworn, e.g. “A Justice of the Peace in and for the State of Victoria and a person duly authorised to administer oaths in that State”.*
- 5 *Where an affidavit is on more than one page, it must be signed by the deponent on each page and the person taking the oath must also sign on each page and add the date in figures (see Rule 28.03).*
- 6 *Where a testamentary document is referred to in an affidavit, e.g. “the document dated the day of 19... being now produced to me and marked ‘A’ (as the case may be)” the document must be marked “A” on the back of it beneath which a suitable exhibit endorsement must be made and which must be dated and signed by the person taking the affidavit, e.g.*

“A”

This is the document marked “A” referred to in the affidavit of C.D. sworn before me this day of 19....

.....
A Commissioner, etc

Modifications of Form

(a) Where the deponent is blind, illiterate or physically incapable of reading -

Sworn at)
 this day of 19...)
 by C.D., this affidavit having)
 been previously read over to)
 him [her] (*where there are exhibits the*)
following words must be added and)
 the nature and effect of the exhibits)
 having been explained to him [her]) and) C.D.
 he [she] appearing perfectly to understand)
 the same and having made his [her])
 mark (*or signed his [her] name*) to it in)
 my presence)

Before me:

Note

The Commissioner (or as the case may be) must first read over the affidavit to the deponent, or cause it to be read over to the deponent in the Commissioner’s presence, and be satisfied that the deponent understands it and the exhibits (if any) to which the affidavit refers, and the deponent must make his or her mark or (if able) sign his or her name to the affidavit in the Commissioner’s presence.

(b) Where the deponent is physically capable of reading but incapable of signing:

Sworn at)
 by C.D. on the day of)
 19... C.D. having made his [her] mark to this)
 affidavit in my presence, he [she])
 being physically incapable of writing) X
 his [her] name)

Before me:

(c) Where the deponent is physically capable of reading but incapable of making a mark or signing:

Sworn at)
 by C.D. on the day of)
 19... without C.D. making his [her] mark or)
 signing this affidavit, he [she] being physically)
 incapable of so doing)

Before me:

(d) Where the deponent does not understand English:

Sworn at by C.D. on the)
 day of 19... through)
 the interpretation of X.Y. of [*address and*)
occupation] X.Y. having first been sworn)
 that he [she] had truly, distinctly and audibly)
 interpreted the contents of this affidavit [and)
 explained the nature and effect of the exhibits]) C.D.
 to C.D. in the language and that)
 he [she] would truly and faithfully interpret)
 the oath to be administered to him [her])

Before me:
.....

Note

The interpreter must first take the following oath:

“You do swear that you well understand the English and (*language of the deponent*) languages, and that you have truly, distinctly, and audibly interpreted the contents of this affidavit [and explained the nature and effect of the exhibits] to the deponent, and that you will truly and faithfully interpret the oath about to be administered to him [her] So help you God.”

The Commissioner (or as the case may be) must then repeat the ordinary form of oath, and the interpreter must interpret it to the deponent.

FORM 21

Rule 61.01

ORDER FOR SUBPOENA TO BRING IN TESTAMENTARY DOCUMENT

South Australia

**In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Before the Registrar of Probates in Chambers

..... day the day of 19...

Upon reading the affidavit of C.D. of [*address and occupation*] sworn on the day of 19... and filed in the Probate Registry of this Court whereby it appeared that a certain document being or purporting to be testamentary namely, a will and testament dated the day of 19.. of A.B. late of [*address and occupation*] deceased is now in the possession, custody or power of E.F. of [*address and occupation*] I do order that a subpoena do issue under seal of this Court requiring the said E.F. within *21 days after service thereof to produce and bring into and leave in the Probate Registry of this Court the said document.

Registrar of Probates

This order was obtained by solicitors for C.D.

Note

**The time to produce the document shall be 21 days after service unless the Registrar otherwise directs.*

FORM 22

Rule 61.01

SUBPOENA TO BRING IN TESTAMENTARY DOCUMENT

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

To: E.F. of [address]

It appearing by an affidavit of C.D. of [address and occupation] sworn on the day of 19.. and filed in the Probate Registry of the Supreme Court of South Australia that a certain document being or purporting to be testamentary, namely, [*here describe the document e.g. the last will and testament bearing date the day of 19..*] of A.B. of [address and occupation] deceased is now in your possession, custody or power:

The Supreme Court of South Australia orders that within 21 days after service of this subpoena on you, inclusive of the day of such service, you do bring into and leave with the proper officer in the Probate Registry of this Court the said document now in the possession, custody or power of you the said E.F.

Witness, the Honourable Chief Justice of the aforesaid Court at Adelaide, the day of 19..

Registrar of Probates

Subpoena issued by of
Solicitors for the said C.D.

NB: The Probate Registry of the Supreme Court of South Australia is situated at 1 Gouger Street Adelaide and the proper officer referred to is the Registrar of Probates.

Notes

1 To be endorsed on copy served:

If you the within named E.F. neglect to obey this subpoena by the time therein limited you will be liable to process of execution for the purpose of compelling you to obey the same.

2 *To be endorsed on subpoena after service:*

This subpoena was served by on the within named E.F. on [Monday]
the day of 19..

Endorsed the day of 19..

[Signed]

[Address]

3 *If the person served with the subpoena denies that the testamentary document is in his [her] possession, custody or power he or she may file an affidavit to that effect - see Rule 61.01.*

FORM 23

Rule 54

CITATION TO ACCEPT OR REFUSE PROBATE

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

To: E.F. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 A.B. late of [address and occupation] deceased (“the deceased”) died at on the day of 19..
- 2 The deceased made and duly executed his [her] last will dated the day of 19.. which now remains in the Probate Registry of this Court.
- 3 You are the sole executor [or the surviving executor] [or as the case may be] named in the will [G.H. the other executor having died during the lifetime of the deceased or as the case may be].
- 4 He [She] is the residuary devisee and legatee [or one of the residuary devisees and legatees] named in the will [or as the case may be].

You are cited to accept or refuse probate of the will. If you wish to comply with this citation, you must within 21 days after service on you of this citation, enter an appearance in the Probate Registry of this Court at 1 Gouger Street Adelaide either:

- (1) stating that you intend to apply to this Court for a grant of probate of the will;
- or
- (2) showing cause why letters of administration with the will annexed of the estate of the deceased should not be granted to C.D.

If you do not comply with this citation, your right in respect of the executorship shall wholly cease and the representation of the deceased and the administration of the estate will devolve as if you had not been appointed executor and the Court will proceed to grant letters of administration with the will annexed of the estate of the deceased to C.D.

Dated at Adelaide the day of 19..

Registrar of Probates

Extracted by of
Solicitor for C.D. whose address for service is

[Form of affidavit to lead citation No .11]

FORM 24

Rule 54

CITATION TO ACCEPT OR REFUSE ADMINISTRATION

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

To: E.F. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 A.B. late of [address and occupation] deceased (“the deceased”) died at on the day of 19... intestate leaving you E.F. her lawful widower and one of the persons entitled to share in her estate.
- 2 He is the lawful son and one of the persons entitled to share in the estate of the deceased.

You are cited to accept or refuse letters of administration of the estate of the deceased. If you wish to comply with this citation, you must within 21 days after service on you of this citation, enter an appearance in the Probate Registry of this Court at 1 Gouger Street Adelaide either:

- (1) stating that you intend to apply to this Court for a grant to you of letters of administration of the estate of the deceased; or
- (2) showing cause why letters of administration of the estate should not be granted to C.D.

If you do not comply with this citation, the Court may grant letters of administration of the estate of the deceased to C.D. in your absence without further notice to you.

Dated at Adelaide the day of 19..

Registrar of Probates

Extracted by of
Solicitor for C.D. whose address for service is

[Form of affidavit to lead citation No .12]

FORM 25

Rule 54

**CITATION AGAINST EXECUTOR TO WHOM LEAVE HAS BEEN
RESERVED TO ACCEPT OR REFUSE DOUBLE PROBATE**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

To: G.H. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 Probate of the will of A.B. late of [address and occupation] deceased was on the day of 19.. granted by the Supreme Court of South Australia to E.F. one of the executors named in the will leave being reserved for you G.H. the other executor to apply for probate.
- 2 E.F. for some time administered the estate of the deceased and died on the day of 19.. leaving part of the estate unadministered.
- 3 On the day of 19.. probate of the will of E.F. deceased was granted by this Court to C.D. the sole executor thereof.

You are cited to accept or refuse probate of the will of A.B. deceased. If you wish to comply with this citation you must:

- (1) within 21 days after service on you of this citation enter an appearance in the Probate Registry of this Court at 1 Gouger Street Adelaide stating that you intend to apply to this Court for a grant to you of probate of the will; and
- (2) with reasonable promptness make application to this Court for a grant to you of probate of the will and prosecute such application with reasonable diligence.

If you do not comply with this citation, your rights in respect of the executorship shall wholly cease and the representation to A.B. deceased and the administration of the estate will devolve as if you had not been appointed executor.

Dated at Adelaide the day of 19..

Registrar of Probates

Extracted by
Solicitor for C.D. whose address for service is

[Form of affidavit to lead citation No .13]

FORM 26

Rule 54

CITATION CALLING ON AN EXECUTOR WHO HAS INTERMEDDLED IN AN ESTATE TO TAKE PROBATE

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

To: E.F. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 A.B. late of [address and occupation] deceased (“the deceased”) died at on the day of 19...
- 2 The deceased made and duly executed his [her] last will and testament dated the day of 19.. which now remains in the Probate Registry of this Court.
- 3 You are the sole executor named in the will and have intermeddled in the estate of the deceased.
- 4 He [she] is one of the residuary devisees and legatees named in the will.

You are cited to take probate of the will. If you wish to comply with this citation, you must within 21 days after service on you of this citation, enter an appearance in the Probate Registry of this Court at 1 Gouger Street Adelaide either:

- (1) stating that you intend to apply to this Court for a grant of probate of the will;
- or
- (2) showing cause why you should not be ordered to take probate of the will under pain of the law and contempt thereof.

Dated at Adelaide the day of 19..

Registrar of Probates

Extracted by
Solicitor for C.D. whose address for service is

[Form of affidavit to lead citation No .14]

FORM 27**Rule 55****CITATION TO PROPOUND A WILL**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

To: E.F. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 A.B. late of [address and occupation] deceased (“the deceased”) died at on the day of 19... leaving C.D. her lawful son and the only person entitled to her estate in the event that she died intestate [or having made and duly executed her last will and testament dated the 6th day of *June 1990* wherein she named C.D. the sole executor].
- 2 The deceased left a paper writing dated the 1st day of *April 1995* (now remaining in the Probate Registry of this Court) purporting to be a will whereby he appointed you E.F. sole executor and residuary devisee and legatee.

You are cited to propound the paper writing dated the 1st day of *April 1995* if you think it in your interest to do so. If you wish to comply with this citation, you must within 21 days after service on you of this citation, enter an appearance in the Probate Registry of this Court at 1 Gouger Street Adelaide either:

- (1) stating that you intend to propound the paper writing dated the 1st day of *April 1995*;
- or
- (2) showing cause why letters of administration of the estate of the deceased [or probate of the will dated the 6th day of *June 1990*] should not be granted to C.D.

If you do not comply with this citation, the Court may grant letters of administration of the estate of the deceased [or probate of the will dated the 6th day of *June 1990*] to C.D. in your absence without further notice to you.

Dated at Adelaide the day of 19..

Registrar of Probates

Extracted by
Solicitor for C.D. whose address for service is

[Form of affidavit to lead citation No .15]

FORM 28

Rule 56

CITATION TO BRING IN PROBATE
(another will set up)

South Australia
In the Supreme Court
Testamentary Causes Jurisdiction

In the Estate of A.B. deceased

To: E.F. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 Probate of the alleged last will and testament dated the day of 19... of A.B. late of [address and occupation] deceased (“the deceased”) who died at on the day of 19... was on the day of 19... granted to you by the Supreme Court of South Australia.
- 2 The deceased made and duly executed his [her] will and testament dated the day of 19... (now remaining in the Probate Registry of this Court) and appointed him [her] sole executor.
- 3 The probate of the alleged will granted to you ought to be called in revoked and declared null and void in law.

You are commanded within 21 days after service on you of this citation to bring into and leave in the Probate Registry of this Court at 1 Gouger Street Adelaide the probate granted to you in order that C.D. may proceed in due course of law for the revocation of the same.

Dated at Adelaide the day of 19..

Registrar of Probates

[Memorandum to be endorsed pursuant to S.C.R. 84.04(3A) -
If you neglect to obey this order by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey it.]

Extracted by
Solicitor for C.D. whose address for service is

[Form of affidavit to lead citation No .16]

FORM 29

Rule 56

CITATION TO BRING IN PROBATE
(intestacy alleged)

South Australia
In the Supreme Court
Testamentary Causes Jurisdiction

In the Estate of A.B. deceased

To: E.F. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 Probate of the alleged last will and testament dated the day of 19... of A.B. late of [address and occupation] deceased (“the deceased”) who died at on the day of 19... was on the day of 19... granted to you by the Supreme Court of South Australia.
- 2 The deceased died intestate a bachelor [spinster] without issue.
- 3 There is no person adjudged under the Family Relationships Act, 1975 to have been a domestic partner of the deceased at the date of his [her] death.
- 4 He [She] is the lawful father [mother] of the deceased and the only person entitled to the estate [or as the case may be].
- 5 The probate of the alleged will granted to you ought to be called in revoked and declared null and void in law.

You are commanded within 21 days after service on you of this citation to bring into and leave in the Probate Registry of this Court at 1 Gouger Street Adelaide the probate granted to you in order that C.D. may proceed in due course of law for the revocation of the same.

Dated at Adelaide the day of 19..

Registrar of Probates

[Memorandum to be endorsed pursuant to S.C.R. 84.04 (3A) -
If you neglect to obey this order by the time therein limited you will be liable to process of execution for the purpose of compelling you to obey it.]

Extracted by
Solicitor for C.D. whose address for service is

FORM 30

Rule 56

CITATION TO BRING IN LETTERS OF ADMINISTRATION
(will set up)

South Australia
In the Supreme Court
Testamentary Causes Jurisdiction

In the Estate of A.B. deceased

To: E.F. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 Letters of administration of the estate of A.B. late of [address and occupation] deceased (“the deceased”) who died at on the day of 19... were on the day of 19... granted to you by the Supreme Court of South Australia.
- 2 The deceased made and duly executed his [her] last will and testament dated the day of 19... (now remaining in the Probate Registry of this Court) in which he [she] appointed C.D. sole executor.
- 3 That the letters of administration granted to you ought to be called in revoked and declared null and void in law.

You are commanded within 21 days after service on you of this citation to bring into and leave in the Probate Registry of this Court at 1 Gouger Street Adelaide the letters of administration granted to you in order that C.D. may proceed in due course of law for the revocation of the same.

Dated at Adelaide the day of 19..

Registrar of Probates

[Memorandum to be endorsed pursuant to S.C.R. 84.04(3A) -
If you neglect to obey this order by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey it.]

Extracted by
Solicitor for C.D. whose address for service is

[Form of affidavit to lead citation No .16 to be adapted]

FORM 31

Rule 56

CITATION TO BRING IN ADMINISTRATION
(administrator alleged not to be entitled)

South Australia
In the Supreme Court
Testamentary Causes Jurisdiction

In the Estate of A.B. deceased

To: E.F. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 Letters of administration of the estate of A.B. late of [address and occupation] deceased (“the deceased”) who died at on the day of 19... were on the day of 19... granted to you by the Supreme Court of South Australia as the lawful father [mother] and one of the persons entitled to share in the estate of the deceased.
- 2 You are not one of the persons entitled to share in the estate.
- 3 The deceased died intestate a widower [widow].
- 4 There is no person adjudged under the Family Relationships Act, 1975 to have been a domestic partner of the deceased at the date of his [her] death.
- 5 He [She] is the lawful son [daughter] and only person entitled to the estate of the deceased.
- 6 The letters of administration granted to you ought to be called in, revoked and declared null and void in law.

You are commanded within 21 days after service on you of this citation to bring into and leave in the Probate Registry of this Court at 1 Gouger Street Adelaide the letters of administration granted to you in order that C.D. may proceed in due course of law for the revocation of the same.

Dated at Adelaide the day of 19..

Registrar of Probates

[Memorandum to be endorsed pursuant to S.C.R. 84.04(3A) -

If you neglect to obey this order within the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey it.]

Extracted by

Solicitor for C.D. whose address for service is

[Form of affidavit to lead citation No .16 to be modified]

FORM 32**Rule 57****CITATION TO SEE PROCEEDINGS**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

To: G.H. of [address]

Take notice that C.D. of [address and occupation] has stated in an affidavit sworn on the day of19.. that:

- 1 He [She] is the plaintiff in a probate action commenced in the Supreme Court of South Australia entitled "South Australia In the Supreme Court No ... of 19.. In the Estate of A.B. deceased Between C.D. plaintiff and E.F. defendant".
- 2 He [She] is proceeding in the said action to prove in solemn form of law the last will and testament dated the day of 19.. of A.B. late of [address and occupation] deceased ("the deceased") who died on the day of 19.. [and also for revocation of the probate of an alleged will of the deceased dated the day of 19.. which was granted by the said Court to E.F. on the day of 19.. and to have the alleged will pronounced against].
- 3 You have an interest adverse to the plaintiff in the proceedings in that you are the lawful of the deceased and one of the persons entitled to share in the estate of the deceased in the event of an intestacy [or are one of the residuary devisees and legatees under the alleged will of the deceased dated the day of 19..].

You may answer this citation, if you think it is in your interest to do so, by entering an appearance in the abovementioned action, either personally or by your solicitor, at any time before the proceedings are heard and determined. In default of your so doing, the Court may hear and determine the proceedings in your absence and without further notice to you with such consequences as may ensue according to law.

Dated at Adelaide the day of 19..

Registrar of Probates

Extracted by
Solicitor for C.D. whose address for service is

[Form of affidavit to lead citation No .17]

FORM 33

Rule 80

SUMMONS

(1) Summons without Notice

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction
[No ... of 19...] [Insert number of matter if applicable]**

In the Estate of A.B. deceased

C.D. Applicant

Let all parties attend before the Supreme Court of South Australia [*or* the Registrar of Probates at the Probate Registry of the Supreme Court of South Australia, 1 Gouger Street Adelaide] on a day and a time to be appointed on the hearing of this summons, which is issued at the request of C.D. of [*address and occupation*] seeking the following order or orders:

[*Here set out the general nature of the orders sought*]

Dated the day of 19..

[*Where the applicant seeks to invoke or rely upon any Statute or Rule for the relief sought*] This summons is brought pursuant to section of the [*short title of the Statute*] and/or Rule of the [*name of the Rules*].

This summons is not intended to be served on any person.

[*Signed by the applicant or his solicitor*]

THIS SUMMONS is taken out by.....
Solicitors for the applicant, whose address for
service is
Phone:

[*Where a practitioner is acting as agent for a principal practitioner, the name, address and telephone number of that principal practitioner and the L Code and P Code issued by the Law Society of South Australia to such practitioner must be endorsed on the summons - see Rule 59.02(b)*]

(2) Inter Partes Summons

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction
No of 19..**

In the Estate of A.B. deceased

BETWEEN:

**C.D. Plaintiff
and
E.F. Defendant**

Let all parties attend before the Supreme Court of South Australia [*or* the Registrar of Probates at the Probate Registry of the Supreme Court of South Australia, 1 Gouger Street Adelaide] on a day and a time to be appointed on the hearing of this summons, which is issued at the request of C.D. of [*address and occupation*] seeking the following order or orders:

[*Here set out the general nature of the orders sought*]

Dated the day of 19..

[*Where the plaintiff seeks to invoke or rely upon any Statute or Rule for the relief sought*] This summons is brought pursuant to section of the [*short title of the Statute*] and/or Rule of the [*name of the Rules*].

Take notice that the time limited for an appearance by you to this summons is days from the date of service of the summons upon you. An appearance may be entered by you at the Probate Registry of this Court at 1 Gouger Street Adelaide either in person or by your solicitor. If you do not enter an appearance within the time limited the application may be heard and determined in your absence without further notice to you.

[*Signed by the plaintiff or his solicitor*]

THIS SUMMONS is taken out by
Solicitors for the plaintiff, whose address for service is
Phone:

[*Where a practitioner is acting as agent for a principal practitioner, the name, address and telephone number of that principal practitioner and the L Code and P Code issued by the Law Society of South Australia to such practitioner must be endorsed on the summons - see Rule 59.02(b)*].

Rule 98.03

(3) Modification of Form

Summons brought pursuant to section 7 of the Wills Act, 1936 and Rule 98 for an order authorising the making of a will for a person lacking testamentary capacity.

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction
No of 19.....**

**In the Matter of A.B.
and
In the Matter of the Wills Act, 1936**

**BETWEEN:
C.D. Plaintiff
and
A.B. Defendant**

Let all parties attend before the Supreme Court of South Australia on a day and at a time to be appointed on the bearing of this summons which is issued at the request of C.D. of [*address and occupation*] seeking the following orders:

- 1 That the plaintiff have permission to make application for an order in the terms set forth in paragraph 2 of this summons.
- 2 That subject to permission being granted the Court approve and authorise the making of a will on behalf of the defendant in the terms of the draft will [being the exhibit “CD3” to the affidavit of C.D. sworn on the day of19 *or* filed in this matter (*or as the case may be*)] or in such other terms as the Court may deem fit.
- 3 That the costs of and incidental to this application be paid out of the estate of the said A.B.
- 4 Such further or other orders as the Court may think fit.

Dated the day of 19...

This summons is brought pursuant to section 7 of the Wills Act, 1936 and Rule 98 of the Probate Rules 1997.

Take notice etc. [*complete as in Form 33(2)*]

FORM 34

Rule 98.10(f)

CONSENT OF PROPOSED EXECUTOR TO ACT

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction
No of 19.....**

**In the Matter of A.B.
and
In the Matter of the Wills Act, 1936**

**BETWEEN:
C.D. Plaintiff
and
A.B. Defendant**

I E.F. of [*address and occupation*] consent to act as an executor (and trustee) of the abovenamed A.B.

Signed

Dated 19...

I G.H. of [*address and occupation*] certify that the signature written above is the signature of the person giving the above consent.

Signed

Dated 19...

FORM 35

Rule 64

**ORDER UNDER SECTION 12(2) OF THE WILLS ACT, 1936
FOR GRANT OF PROBATE OF AN INFORMAL WILL**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

**In the Estate of A.B. deceased
C.D. Applicant**

Before the Registrar of Probates in Chambers
.....day the day of 19...

Upon the application by summons dated the day of 19... of C.D. of [*address and occupation*] the sole executor named in a document dated the day of19... (“the document”) purporting to express the testamentary intentions of A.B. late of [*address and occupation*] deceased (“the deceased”) who died at on the day of 19... on hearing of counsel for the applicant and on reading the affidavits filed in this matter on the day of 19... and the exhibits to which they refer and the Registrar being satisfied that the document expresses the testamentary intentions of the deceased, it is ordered that:

- 1 The document (being the exhibit marked “A” referred to in the affidavit of C.D. sworn on the day of 19...) be admitted to probate as the last will of the deceased and that probate of the same be granted to C.D. the sole executor named in the will.
- 2 The costs of and incidental to this application and order be paid out of the estate of the deceased.

Registrar of Probates

FORM 36

Rule 65

ORDER FOR RECTIFICATION OF WILL

South Australia
In the Supreme Court
Testamentary Causes Jurisdiction
No of19...

In the Estate of A.B. deceased
C.D. Applicant

Before the Registrar of Probates in Chambers
.....day the day of 19...

Upon the application by summons dated the day of 19... of C.D. of [*address and occupation*] the sole executor of the last will and testament dated the day of 19.. (“the will”) of A.B. late of [*address and occupation*] deceased (“the deceased”) who died on the day of 19.. on hearing of counsel for the applicant and on reading the affidavits filed in this matter on the day of 19... and the Registrar being satisfied that the will does not accurately reflect the testamentary intentions of the deceased and for the purpose of giving proper expression to those intentions, it is ordered that:

- 1 The will be and the same is hereby rectified by [e.g. the deletion of the words before the word in clause 3 of the will and by the interpolation of the words immediately after the word where that word first appears in clause 3 thereof] [*or as the case may be*].
- 2 Probate of the will as rectified by this order be granted to C.D. the sole executor named in the will.
- 3 The costs of and incidental to this application and order be paid out of the estate of the deceased.

Registrar of Probates

FORM 37

Rule 67

ORDER FOR PERMISSION TO SWEAR TO THE DEATH OF A PERSON

(1) Will

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction
No of19...**

**In the Estate of A.B. presumed deceased
C.D. Applicant**

Before the Registrar of Probates in Chambers
.....day the day of 19...

Upon the application by summons dated the day of 19... of C.D. of [*address and occupation*] the sole executor of the last will and testament (“the will”) of A.B. late of [*address and occupation*] presumed deceased (“the presumed deceased”) on hearing of counsel for the applicant and on reading the affidavits filed in this matter on the day of 19... and the exhibits to which they refer, it is ordered that:

- 1 Upon an application for probate of the will, the death of the presumed deceased may be sworn to have occurred on or since the day of 19..
- 2 The costs of and incidental to this application and order be paid out of the estate of the presumed deceased.

Registrar of Probates

(2) Intestacy

[Heading as in (1) above]

Upon the application by summons dated the day of 19.. of C.D. of [*address and occupation*] the lawful father [mother] of A.B. late of [*address and occupation*] presumed deceased (“the presumed deceased”) on hearing of counsel for the applicant and on reading the affidavits filed in this matter on the day of 19.. and the exhibits to which they refer, it is ordered that:

- 1 Upon an application for letters of administration of the estate of the presumed deceased, the death of the presumed deceased may be sworn to have occurred on or since the day of 19..
- 2 The costs of and incidental to this application and order be paid out of the estate of the presumed deceased.

Registrar of Probates

FORM 38

Rule 68

ORDER FOR GRANT OF PROBATE OF COPY WILL

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Before the Registrar of Probates in Chambers
.....day the day of 19...

On reading the affidavits filed in this matter on the day of 19.. and the exhibits to which they refer, it is ordered that probate of the last will and testament dated the day of 19.. as contained in the copy [*or reconstruction*] (being the exhibit marked “A” referred to in the affidavit of E.F. sworn on the day of 19..) of A.B. late of [*address and occupation*] deceased who died on the day of 19.. be granted to C.D. of [*address and occupation*] the sole executor named in the will limited until the original will or a more authentic copy of it be brought into and left in the Probate Registry of this Court.

Registrar of Probates

FORM 39**PROBATE****South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

Be it known that on the day of 19... the last Will and Testament [and codicil *or* codicils] (a copy of which is annexed) of A.B. late of [address] deceased who died at on the day of 19... was [or were] proved and registered in the Supreme Court of South Australia and that administration of the estate of the deceased was granted by the Court to C.D. of [address and relationship as in Rules 13.04 and 13.05 if applicable] [and E.F. of [address and relationship as above] the sole executor [the executors] [one of the executors] [the surviving executor(s)] therein named [or as the case may be - see Rule 13.01] G.H. of [address and relationship as above] the other executor having by renunciation filed in the Court on the day of 19... renounced probate [or G.H. (relationship as above) the other executor having died during the lifetime of the testator] [or having died since the death of the testator without having taken probate of the will (and codicil *or* codicils)] [or leave being reserved for G.H. of (address and relationship as above) the other executor to apply for probate].

Given at Adelaide under the seal of the Supreme Court of South Australia.

Registrar of Probates

Note

- 1 The date of filing of a renunciation shall be left blank.
- 2 If an executor also renounces letters of administration with the will annexed then the Oath and grant should recite the same.

FORM 40

Rule 11

EXECUTOR'S OATH

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. [*or We C.D. and E.F.*] of [*address and occupation*] make oath and say that:

1 I [We] believe the paper writing [*or if more than one testamentary document, paper writings*] now produced to and marked by me [us] to contain the last will and testament [and codicil *or* two codicils *or as the case may be (see Rule 11.04)*] of A.B. [formerly of..... - (*see Rule 12.05*) but] late of [*address and occupation*] deceased (“the deceased”).

2 I am [We are] the son(s) [*or other relationship to the deceased (see Rules 13.04 and 13.05)*] of the deceased and the sole executor [the executors] [two of the executors] [the surviving executors] [*or as the case may be - refer to Rule 13.01*] therein named.

3 [G.H. wife of the deceased the other executor died during the lifetime of the deceased] [*or G.H. of (address and occupation and relationship, if any) the other executor has renounced probate (or as the case may be)*].

4 I [We] will:

- (a) collect, get in and administer according to law the estate of the deceased;
- (b) when required to do so by the Court, produce to the Court a full statement and account of my [our] administration of the estate;
- (c) when required to do so by the Court, deliver up to the Court the grant of probate.

5 The deceased died at on theday of 19... aged ...years.

Where the deceased died before 1st July 1987, the following clause is to be used:

6 The deceased died possessed of property in the State of South Australia justifying the issue of a grant of representation, namely:

[Here set forth at least one item of property over which the grant is to operate, e.g. -

An estate in fee simple in the whole of the land comprised in Certificate of Title Register Book Volume Folio

or

Cash at X Savings Bank, Account No (*or as the case may be*)].

Where the deceased died on or after the 1st July 1987, the following clause should be used:

6 The deceased died possessed of assets in the State of South Australia.

Sworn atby the said C.D.)
 [and E.F.] on theday of)
19) C.D.
 Before me: [E.F.]

Notes

(i) Where leave is to be reserved for non-proving executor(s), the following clause must be inserted beneath the jurat(s) at the foot of the last page of the Oath:

Leave to be reserved for I.J. of [address and occupation and relationship if applicable] and K.L. of..... etc.] the other executor(s) to apply for probate.

(ii) Where the application is made by a personal applicant for a grant of probate in respect of the estate of a deceased person who died before the 1st July 1987, for paragraph 6 above, substitute:

6 To the best of my knowledge information and belief the deceased died possessed of property in the State of South Australia consisting of real estate not exceeding in value the sum of *\$..... and personal estate not exceeding in value the sum of *\$.....[or real estate only not exceeding in value the sum of *\$.....] [or personal estate only not exceeding in value the sum of *\$.....] as set out in the inventory annexed hereto and marked “A”.

**The gross amount of real and/or personal estate in South Australia must be sworn to*

(iii) Where the testator died on or after the 5th August 1996 and the provisions of section 20A of the Wills Act, 1936 apply so as to revoke the appointment of the testator’s former spouse as one of the executors of the will or if the applicant’s title to the grant is dependent upon the revocation of the executorship of the former spouse or upon the operation of the section being excluded then refer to the modifications of the form of oath below.

Modifications to Form

(a) **Oath of executor where the appointment of one of the executors has been revoked by section 20A(1) of the Wills Act 1936.**

(Heading)

I C.D. [or We C.D. and E.F.] of [address and occupation] make oath and say that:

1 I [We] believe (etc. complete as in Form 40)

2 I am [We are] the daughter[s] [or as the case may be] and one [or two] of the executors therein named.

3 The appointment of G.H. the former spouse of the deceased the other executor named in the will has been revoked pursuant to section 20A(1)(b) of the Wills Act, 1936.

4 I [We] will: *(etc. complete as in Form 40)*

(b) Oath of executor where the applicant's title to the grant is dependent upon the application of section 20A(1) of the Wills Act, 1936 (eg. the testator's former spouse having been appointed the sole instituted executor of the will).

(Heading)

I C.D. [*or* We C.D. and E.F.] of [*address and occupation*] make oath and say that:

1 I [We] believe *(etc. complete as in Form 40)*

2 I am [We are] the son[s] [*or other relationship to the deceased if applicable*] and the sole substituted executor [*or the substituted executors*] therein named.

3 The appointment of G.H. the former spouse of the deceased the sole instituted executor named in the will has been revoked pursuant to section 20A(1)(b) of the Wills Act, 1936 the marriage between the testator and G.H. having been dissolved by the *decree nisi* made in the Family Court of Australia at Adelaide [*or as the case may be*] on the day of 19... having become absolute on the day of 19.. A copy of the *decree nisi* under the seal of the Family Court of Australia containing a memorandum that the *decree nisi* has become absolute as aforesaid is annexed and marked "B".

4 I [We] will: *(etc. complete as in Form 40)*

(c) Oath of executor where the marriage of the testator has been terminated and the former spouse has been appointed one of the executors of the will, or sole instituted executor, or is an executor according to the tenor, or is authorised by the terms of the will to nominate an executor and the applicant's title to the grant is dependent upon such appointment or authorisation not having been revoked pursuant to section 20A(1) of the Wills Act, 1936.

(Heading)

I G.H. of [*address and occupation*] make oath and say that:

1 I believe *(etc. complete as in Form 40)*

2 I am the former spouse of the deceased and the sole executor [*or the sole instituted executor*] [*or as the case may be*] therein named.

3 The marriage between the deceased and myself was dissolved by the *decree nisi* made in the Family Court of Australia at Adelaide [*or as the case may be*] on the day of 19.. having become absolute on the day of 19.. but the deceased by codicil dated the day of 19.. affirmed the will showing no intention of revoking the appointment of myself as the sole executor [*or the sole instituted executor*] [*or as the case may be*]*.

4 I will: *(etc. complete as in Form 40)*

(d) Oath after citation to propound a later will

(Heading)

I C.D. [or We C.D. and E.F.] of [address and occupation] make oath and say that:

- 1 In default of appearance of the person(s) cited to propound the document dated the ...day of.....20.. purporting to be the last will and testament of A.B. late of [address and occupation] deceased (“the deceased”) the Registrar of Probates of the Supreme Court of South Australia on the....day of 20.. ordered that probate of the last will and testament dated the....day of20.. of the deceased be granted to me the sole executor [or us the executors (*or as the case may be*)] therein named.
- 2 I [We] believe the paper writing now produced to and marked by me [us] to contain the last will and testament of the deceased.
- 3 I am [We are] the (*etc. complete as in Form 40*).

(e) Oath on proving a lost will as contained in a copy or draft, etc.

(Heading)

I C.D. [or We C.D. and E.F.] of [address and occupation] make oath and say that:

- 1 On the ... day of20.. the Registrar of Probates of the Supreme Court of South Australia ordered that probate of the last will and testament as contained in the copy [or a completed copy *or reconstruction (or as the case may be)*] (being the exhibit marked “A” referred to in the affidavit of X.Y. sworn on the ... day of 20..) of A.B. late of [address and occupation] deceased (“the deceased”) be granted to me the sole executor [or us the executors (*or as the case may be*)] therein named limited until the original will or a more authentic copy of it be brought into and left in the Probate Registry of this Court.
- 2 I [We] believe the paper writing now produced to and marked by me [us] to contain the last will and testament [as contained in the said copy (*or as the case may be*)] of the deceased.
- 3 I am [We are] the son(s) of the deceased (*as the case may be*) and the sole executor [or the executors (*or as the case may be*)] therein named.
- 4 I [We] will:
 - (a) collect, get in and administer according to law the estate of the deceased limited as aforesaid.
 - (b) when required to do so (*etc. complete as in Form 40*).

(f) Oath after order has been made under section 12(2) of the Wills Act 1936 admitting an informal will to probate.

(Heading)

I C.D. [or We C.D. and E.F.] of [address and occupation] make oath and say that:

- 1 On the ... day of 20... the Registrar of Probates of the Supreme Court of South Australia ordered that a document (being the exhibit marked “A” referred to in the affidavit of X.Y. sworn on the.....day of20..) be admitted to probate as the last will of A.B. late of [address and occupation] deceased (“the deceased”) and that probate of the same be granted to me the sole executor therein named [*or us the executors (or as the case may be)*] therein named.
- 2 I [We] believe the said document now produced to and marked by me [us] to contain the last will and testament of the deceased.
- 3 I am [We are] the (etc. complete as in Form 40).

(g) *Oath after order has been made under section 25AA of the Wills Act 1936 rectifying will.*

(Heading)

I C.D. [*or We C.D. and E.F.*] of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased (“the deceased”) made and duly executed his last will and testament bearing date the...day of20.. (“the will”) and appointed me the sole executor [*or us the executors (or as the case may be)*] therein named.
- 2 On the ... day of20.. the Registrar of Probates of the Supreme Court of South Australia ordered that the will be rectified (a copy of the said order is annexed hereto and marked ‘A’)
- 3 I [We] believe the paper writing now produced to and marked by me [us] to contain a true copy of the will of the deceased (the same being contained in a type written copy of the will as rectified by the aforesaid order).
- 4 I am [We are] the [*etc. complete as in Form 40*].

***N.B.** *The oath must disclose such facts as are necessary to exclude the operation of the section.*

FORM 41**DOUBLE PROBATE****South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

Be it known that on the day of 19... the last Will and Testament [and codicil *or* codicils] (a copy of which is annexed) of A.B. late of [address] deceased who died at on the day of 19... was [*or were*] proved and registered in the Supreme Court of South Australia and that administration of the estate of the deceased was granted by the Court to E.F. of [address and relationship as in Rules 13.04 and 13.05 if applicable] one of the executors therein named the said will [and codicil *or* codicils] having been previously proved in the Court on the day of 19... by C.D. of [address and relationship if applicable] the other executor therein named leave being then reserved for E.F. to apply for probate.

Given at Adelaide under the seal of the Supreme Court of South Australia.

Registrar of Probates

FORM 42**Rule 11****EXECUTOR'S OATH FOR DOUBLE PROBATE**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I E.F. of [*address and occupation*] make oath and say that:

- 1 I believe the paper writing [*or if more than one testamentary document, paper writings*] now produced to and marked by me to contain a true and correct copy of the last will and testament [and codicil *or as the case may be*] ("the will") of A.B. late of [*address and occupation*] deceased ("the deceased") the same being contained in the probate [*or exemplification of the probate*] [*or office copy of the probate (see section 30 of the Act)*], thereof who died at on the day of 19... aged years.
- 2 Probate of the will was granted by the Supreme Court of South Australia on the day of 19... to C.D. of [*address and occupation*] son of the deceased [*or other relationship to the deceased*] and one of the executors named in the will leave being reserved for me [and G.H.] the other executor[s] to apply for probate.
- 3 I am a son of the deceased [*or as the case may be*] and the other executor [*or one of the other executors*] named in the will.
- 4 I will:
 - (a) collect, get in and administer according to law the estate of the deceased;
 - (b) when required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
 - (c) when required to do so by the Court, deliver up to the Court the grant of double probate.

Where the deceased died before the 1st July 1987, the following clause should be used:

- 5 The estate of the said testator now unadministered in the State of South Australia justifying the issue of a further grant of representation includes the following property -

[*Here set forth at least one item of property over which the grant is to operate*].

Where the deceased died on or after the 1st July 1987, the following clause should be used:

- 5 The deceased died possessed of assets in the State of South Australia now remaining unadministered.

Sworn at by E.F.)
on the day of)
..... 19) E.F.

Before me:
.....

Note

Where the deceased has died on or after the 1st July 1987, the applicant(s) for the grant of double probate must lodge with the application an affidavit in the Form 68 disclosing all the unadministered assets and liabilities known to the applicant(s) at the time of making the application (see Rule 8.01).

FORM 43**PROBATE IN SOLEMN FORM****South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

Be it known that on the day of 19.. the last Will and Testament [and codicil *or* codicils] (a copy of which is annexed) of A.B. late of [address] deceased who died at on the day of 19.. was [*or* were] proved in the Supreme Court of South Australia in solemn form of law as appears by the decree dated the day of 19... in action No in this Court in which E.F. was plaintiff and G.H. was defendant and be it further known that on the day of 19.. the said will [and codicil *or* codicils] was [*or* were] registered in the Court and that administration of the estate of the deceased was granted by the Court to C.D. of [address] son of the said deceased [*or other relationship*] the sole executor therein named.

Given at Adelaide under the seal of the Supreme Court of South Australia.

Registrar of Probates

FORM 44**Rule 11****EXECUTOR'S OATH AFTER JUDGMENT PRONOUNCING
FOR A WILL IN SOLEMN FORM**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased ("the deceased") died at on the day of 19.. aged years.
- 2 The deceased made and duly executed her last will and testament dated the day of 19.. [*or as the case may be*] ("the will") and thereof appointed me sole executor.
- 3 On the day of 19.. the Honourable one of the Justices of the Supreme Court of South Australia in an action entitled "South Australia In the Supreme Court No of 19.... In the Estate of A.B. deceased Between E.F. Plaintiff and G.H. Defendant" pronounced for the force and validity of the will a sealed copy of the decree being annexed hereto and marked "A".
- 4 I believe the paper writing [*or if there is more than one testamentary document paper writings*] now produced to and marked by me to contain the will of the deceased.
- 5 I am the son [*or other relationship*] of the deceased and the sole executor named in the will.
- 6 I will: (etc. *continue as in Form 40*)

Note

Where an application for a grant of letters of administration is made following a judgment in a probate action pronouncing against the force and validity of a document purporting to be the last will of the deceased, the details of the judgment must be recited in the Oath (as in the Form No. 44) and a sealed copy of the decree must be annexed to the Oath. The order of the Court must also be recited in the grant.

FORM 45

**CERTIFICATE OF EXECUTION TO ACCOMPANY WILL TO BE
DEPOSITED UNDER SECTION 13 OF THE ACT**

I C.D. certify that the within [*or the above*] will [*or codicil*] was on the day of
19... duly executed by A.B. of [*address and occupation*] as his [her] last will [*or as a codicil to his*
[her] last will] in the presence of E.F. of [*address and occupation*] and of myself and that the said
E.F. and myself were both present at the same time when the said A.B. executed the same and that
we at the request of the said A.B. in his [her] presence and in the presence of each other thereupon
subscribed our names as witnesses.

Dated thisday of19.....

.....
(Signed) C.D.

FORM 46**Section 16 of the Act****EXECUTOR'S DECLARATION TO OBTAIN PROBATE WHERE WILL DEPOSITED
UNDER SECTION 13 OF THE ACT**

South Australia
In the Supreme Court
Testamentary Causes Jurisdiction

In the Estate of A.B. deceased

I, C.D. [*or* We C.D. and E.F.] of [*address and occupation*] declare that:

- 1 I[We] believe the paper writing [*or if more than one testamentary document, paper writings*] now produced to and marked by me [us] to contain the last will and testament [and codicil *or* two codicils *or as the case may be (see Rule 11.04)*] ("the will") of A.B. [formerly of(*see Rule 12.05*) but] late of [*address and occupation*] deceased ("the deceased").
- 2 I am [We are] the son[s] [*or other relationship to the deceased (see Rules 13.04 and 13.05)*] of the deceased and the sole executor [the executors] [two of the executors] [the surviving executors] [*or as the case may - refer to Rule 13.01*] named in the will.
- 3 [G.H. wife of the deceased the other executor died during the lifetime of the deceased] [*or* G.H. of (*address and occupation and relationship, if any*) the other executor has renounced probate (*or as the case may be*)].
- 4 I [We] will:
 - (a) collect, get in and administer according to law the estate of the deceased;
 - (b) when required to do so by the Court, produce to the Court a full statement and account of my [our] administration of the estate;
 - (c) when required to do so by the Court, deliver up to the Court the grant of probate.
- 5 The deceased died at on theday of19... agedyears.

Where the deceased died before the 1st July 1987, then the following clause is to be used:

- 6 The deceased died possessed of property in the State of South Australia justifying the issue of a grant of representation, namely:

[Here set forth at least one item of property over which the grant is to operate, e.g. -

An estate in fee simple in the whole of the land comprised in Certificate of Title Register
 Book Volume Folio

or

Cash at X Savings Bank, Account No (or as the case may be)].

Where the deceased died on or after the 1st July 1987, then the following clause should be used:

6 The deceased died possessed of assets in the State of South Australia.

And I [We] make this declaration in pursuance of the Administration and Probate Act, 1919.

Declared at)	
by C.D [and E.F.] this)	C.D.
day of)19 ...)	[E.F.]

Before me:
.....

Notes

(i) Where leave is to be reserved for non-proving executor(s), the following clause must be inserted beneath the jurat(s) at the foot of the last page of the declaration:

Leave to be reserved for I.J. of [address and occupation and relationship, if applicable] [and K.L. ofetc] the other executor(s) to apply for probate.

(ii) Where the application is made by a personal applicant (see Rule 7) for a grant of probate in respect of the estate of a deceased person who died before the 1st July 1987, for paragraph 6 above substitute:

6 To the best of my knowledge, information and belief the deceased died possessed of property in the State of South Australia consisting of real estate not exceeding in value the sum of *\$..... and personal estate not exceeding in value the sum of *\$..... [or real estate only not exceeding in value the sum of *\$.....] [or personal estate only not exceeding in value the sum of *\$.....] as set out in the inventory annexed hereto and marked "A".

*The gross amount of real and/or personal estate in South Australia must be sworn to.

(iii) Where the testator died on or after the 5th August 1996 and the provisions of section 20A of the Wills Act, 1936 apply so as to revoke the appointment of the testator's former spouse as one of the executors of the will or if the applicant's title to the grant is dependent upon the revocation of the executorship of the former spouse or upon the operation of the section being excluded, then refer to the modifications in Form 40.

FORM 47

LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

Be it known that on theday of19... Letters of Administration with the will [and codicil *or* two codicils *or as the case may be*] (a copy of which is annexed) of the estate of A.B. late of [address] deceased who died aton the day of19... were granted by the Supreme Court of South Australia to C.D. of [address and relationship as in Rule 14.02] the residuary devisee and legatee named in the will E.F. [relationship as in Rule 13.05 (if applicable)] the sole executor therein named having died during the lifetime of the testator [or having died since the decease of the testator without having taken probate of the will] [or there being no executor therein named] [or as the case may be setting out the capacity in which the grant is taken exactly as in the oath and clearing off the prior entitlement to the grant, if any].

Given at Adelaide under the seal of the Supreme Court of South Australia.

Registrar of Probates

FORM 48

Rule 11

OATH OF ADMINISTRATOR WITH THE WILL ANNEXED

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I C.D. [*or We C.D. and X.Y.*] of [*address and occupation*] make oath and say that:

- 1 I [We] believe the paper writing [*or if more than one testamentary document, paper writings*] now produced to and marked by me [us] to contain the last will and testament [and codicil *or* two codicils *or as the case may be (see Rule 11.04)*] (“the will”) of A.B. [formerly of (see Rule 12.05) but] late of [*address and occupation*] deceased (“the deceased”).
- 2 E.F. [*relationship to the deceased (if applicable)*] the sole executor named in the will survived the deceased and is since dead without having taken probate of the will [*or The deceased did not in the will appoint an executor*] [*or as the case may be*].
- 3 I am [We are] the [*insert the relationship (if any) to the deceased as in Rule 14.02*] and the residuary devisee(s) and legatee(s) named in the will [*or as the case may be*].
- 4 I [We] will:
 - (a) collect, get in and administer according to law the estate of the deceased;
 - (b) when required to do so by the Court, produce to the Court a full statement and account of my [our] administration of the estate;
 - (c) when required to do so by the Court, deliver up to the Court the grant of administration;
 - (d) deliver at the office of Public Trustee of the State of South Australia within 6 calendar months from the date of administration being granted to me [us] a statement and account verified by my [our] declaration of all the estate of the deceased and of my [our] administration of the estate.
- 5 The deceased died at on the day of 19... aged years.
- 6 To the best of my [our] knowledge, information and belief, the deceased died possessed of property in the State of South Australia consisting of real estate not exceeding in value the sum of *\$..... and personal estate not exceeding in value the sum of *\$..... [*or real estate only not exceeding in value the sum of *\$.....*] [*or personal estate only not exceeding in value the sum of *\$.....*].

Sworn at by C.D. [and E.F.]) C.D.
 on the day of 19.....) [E.F.]

Before me:

.....

Notes

- * (i) *The amount of the estate to be sworn in the oath is the gross value of the estate in South Australia.*
- (ii) *Where the deceased died before the 1st July 1987 the following words must be added to paragraph 6 in the oath:*
 “as set out in the inventory annexed and marked ‘A’”
and the inventory to be annexed and marked “A” must be in the Form 67.
- (iii) *Where the testator died on or after the 5th August 1996 and the applicant’s title to the grant is dependent upon the revocation pursuant to section 20A of the Wills Act 1936 of the executorship and/or beneficial interest of the testator’s former spouse or upon the operation of the section being excluded, then refer to the modifications of the form of oath below.*

Modifications to Form

- (a) ***Oath of administrator where the applicant’s title to the grant as one of the residuary devisees and legatees substituted in the will is dependent upon the application of section 20A(1) of the Wills Act, 1936 (e.g. the testator’s former spouse having been named the sole executor and instituted residuary devisee and legatee under the will).***

(Heading)

I C.D. of [address and occupation] make oath and say that:

- 1 I believe the paper writing (*etc. complete as in Form 48*)
- 2 The appointment of E.F. the former spouse of the deceased as the sole executor and the instituted residuary devisee and legatee named in the will has been revoked pursuant to section 20A(1) of the Wills Act, 1936 the marriage between the testator and E.F. having been dissolved by the *decree nisi* made in the Family Court of Australia at Adelaide [*or as the case may be*] on the day of 19.. having become absolute on the day of 19.. A copy of the *decree nisi* under the seal of the Family Court of Australia containing a memorandum that the *decree nisi* has become absolute as aforesaid is annexed and marked “B”.
- 3 I am one of the residuary devisees and legatees substituted in the will.
- 4 I will: (*etc. complete as in Form 48*).

- (b) ***Oath of administrator where the marriage of the testator has been terminated and the former spouse has been named residuary devisee and legatee and the applicant's title to the grant is dependent upon his or her beneficial entitlement not having been revoked pursuant to section 20A(1) of the Wills Act, 1936.***

(Heading)

I C.D.. of [*address and occupation*] make oath and say that:

- 1 I believe the paper writing [*etc. complete as in Form 48*].
- 2 E.F. [*relationship to the deceased (if applicable)*] the sole executor named in the will died in the lifetime of the deceased [*or as the case may be*].
- 3 I am the former spouse of the deceased and the residuary devisee and legatee named in the will.
- 4 The marriage between the deceased and myself was dissolved by the *decree nisi* made in the Family Court of Australia at Adelaide [*or as the case may be*] on the day of 19.. having become absolute on the day of 19.. but the deceased by codicil dated the day of 19.. affirmed the will showing no intention of revoking my beneficial entitlement under the will.*
- 5 I will: [*etc. complete as in Form 48*].

***N.B.** *The oath must disclose such facts as are necessary to exclude the operation of the section.*

FORM 49

**LETTERS OF ADMINISTRATION WITH THE WILL
ANNEXED *DE BONIS NON***

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

Be it known that on theday of19... Letters of Administration with the will (a copy of which is annexed) of the estate of A.B. late of [*address*] deceased who died aton the day of19... left unadministered by C.D. son of the deceased the sole executor named in the will to whom probate of the will was granted by the Supreme Court of South Australia on the day of 19.. and who has since died intestate were granted by the aforesaid Court to E.F. of [*address*] son of the deceased and one of the residuary devisees and legatees [*or as the case may be*] named in the will.

Given at Adelaide under the seal of the Supreme Court of South Australia.

Registrar of Probates

FORM 50**OATH OF ADMINISTRATOR WITH THE WILL
ANNEXED *DE BONIS NON***

South Australia
In the Supreme Court
Testamentary Causes Jurisdiction

In the Estate of A.B. deceased

I E.F. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased (“the deceased”) died on theday of 19... ataged years having made and duly executed his [her] last will and testament [and codicil *or* two codicils *or as the case may be (see Rule 11.04)*] (“the will”).
- 2 On the day of19... probate of the will was granted to C.D. son of the deceased the sole executor named in the will (*or as the case may be*) who died on the day of 19... intestate [*or as the case may be, showing how the chain of executorship is broken*] leaving part of the estate of the deceased unadministered.
- 3 I believe the paper writing now produced to and marked by me to contain a true and correct copy of the last will of the deceased the same being contained in the probate [*or an exemplification of the probate*] [*or an office copy of the probate (see section 30 of the Act)*] thereof.
- 4 I am the son of the deceased [*or as the case may be*] and one of the residuary devisees and legatees [*or as the case may be*] named in the will.
- 5 I will:
 - (a) collect, get in and administer according to law the unadministered estate of the deceased;
 - (b) when required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
 - (c) when required to do so by the Court, deliver up to the Court the grant of administration;
 - (d) deliver at the office of Public Trustee of the State of South Australia within 6 calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of the deceased left unadministered and of my administration of such estate.
- 6 To the best of my knowledge information and belief the whole of the estate so left unadministered consists of real estate not exceeding in value the sum of *\$..... and personal estate not exceeding in value the sum of *\$..... [*or real estate only not exceeding in value the sum of *\$.....*] [*or personal estate only not exceeding in value the sum of *\$.....*].

Sworn at by E.F.)
 on the day of)
 19) E.F.

Before me:

.....

Notes

- **(i) The amount of the estate to be sworn in the oath is the current gross value of the unadministered estate in South Australia.*
- (ii) Where the deceased died before 1st July 1987 the following words must be added to paragraph 6 in the oath:*
 “as set out in the inventory annexed and marked ‘A’”
 and the inventory to be annexed and marked “A” must be in the Form No 67.
- (iii) Where the deceased died on or after the 1st July 1987 the applicant for the grant must lodge with the application an affidavit in the Form No 68 disclosing all the unadministered assets and liabilities wherever situated known to the applicant at the time of making the application.*

FORM 51

LETTERS OF ADMINISTRATION

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

Be it known that on theday of19... Letters of Administration of the estate of A.B. late of [address] deceased who died aton the day of19... intestate were granted by the Supreme Court of South Australia to C.D. of [address and relationship, in the manner described in Rule 14.01, e.g. the lawful son] of the said deceased.

Given at Adelaide under the seal of the Supreme Court of South Australia.

Registrar of Probates

FORM 52

Rule 11

OATH OF ADMINISTRATOR

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of AB deceased

I C.D. of [address and occupation] make oath and say that:

- 1 A.B. late of [address and occupation] deceased died intestate [clear off all persons having a prior entitlement to the grant using the appropriate wording contained in the Table to Rule 11.08].
- 2 I am the [here describe the applicant as in Rule 14.01] of the said deceased.
- 3 I will:
 - (a) collect, get in and administer according to law the estate of the deceased;
 - (b) when required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
 - (c) when required to do so by the Court, deliver up to the Court the grant of administration;
 - (d) deliver at the office of Public Trustee of the State of South Australia within 6 calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of the deceased and of my administration of such estate.
- 4 The deceased died at on the day of 19.. aged years.
- 5 To the best of my knowledge information and belief the whole of the estate in the State of South Australia consists of real estate not exceeding in value the sum of *\$..... and personal estate not exceeding in value the sum of *\$..... [or real estate only not exceeding in value the sum of *\$.....] [or personal estate only not exceeding in value the sum of *\$.....].

Sworn at by C.D.)
 on the day) C.D.
 of 19 ...)
 Before me:

Notes

- ***(i)** *The amount of the estate to be sworn in the oath is the gross value of the estate in South Australia.*
- (ii)** *Where the deceased died before the 1st July 1987 the following words must be added to paragraph 5 in the oath:*
 “as set out in the inventory annexed and marked ‘A’”
and the inventory to be annexed and marked “A” must be in the Form 67.

Modifications of Form

- (a)** *Oath for administration to surviving spouse where there are other persons entitled to share in the estate by virtue of section 72g(b)(i)(B) and/or section 72h(2) of the Act*

(Heading)

I, C.D. of [address and occupation] make oath and say that:

- 1 A.B.. late of [address and occupation] deceased died intestate.
- 2 I am the lawful [widow] [widower] and one of the persons entitled to share in the estate of the deceased.
- 3 I will: *(etc. complete as in Form 52).*

- (b)** *Oath for administration to surviving spouse where the value of the intestate estate does not exceed \$10,000 and there is no domestic partner entitled to share in the estate by virtue of section 72h(2) of the Act but there are issue who may become entitled to share in the estate under section 72g(b) of the Act in the event of an accretion to the estate resulting in the value of the intestate estate exceeding \$10,000*

(Heading)

I, C.D. of [address and occupation] make oath and say that:

- 1 A.B. late of [address and occupation] deceased died intestate.
- 2 I am the lawful [widow] [widower] and the only person now entitled to the estate of the deceased.
- 3 I will: *(etc. complete as in Form 52).*

- (c)** *Oath for administration to surviving spouse who under section 72g(a) of the Act is entitled to the whole of the estate - there being no domestic partner entitled to share in the estate under section 72h(2) of the Act*

(Heading)

I, C.D. of [address and occupation] make oath and say that:

- 1 A.B. late of [address and occupation] deceased died intestate.

2 I am the lawful [widow] [widower] and only person entitled to the estate of the deceased.

3 I will: *(etc. complete as in Form 52)*.

(d) *Oath for administration to domestic partner where the deceased is survived by a spouse and/or issue*

(Heading)

I, C.D. of [address and occupation] make oath and say that:

1 A.B. late of [address and occupation] deceased died intestate.

2 By an order dated the day of 19.. made by the Court at under the Family Relationships Act, 1975, I was declared the domestic partner of the deceased as at the date of his [her] death (a copy of the said order under the seal of the Court is annexed hereto and marked "B").

3 I am the domestic partner and one of the persons entitled to share in the estate of the deceased.

4 I will: *(etc. complete as in Form 52)*.

(e) *Oath for administration where the value of the intestate estate does not exceed \$10,000 - son or daughter applies on renunciation of surviving spouse*

(Heading)

I, E.F.. of [address and occupation] make oath and say that:

1 A.B. late of [address and occupation] deceased died intestate leaving C.D. his [her] lawful widow [widower] and the only person now entitled to the estate who has renounced letters of administration of the estate of the deceased.

2 I am the lawful son [daughter] of the deceased and a person who may become entitled to share in the estate of the deceased in the event of an accretion thereto.

3 I will: *(etc. complete as in Form 52)*.

(f) *Oath for administration where the value of the intestate estate exceeds \$10,000 - son or daughter applies on renunciation of surviving spouse*

(Heading)

I, E.F. of [address and occupation] make oath and say that:

1 A.B. late of [address and occupation] deceased died intestate leaving C.D. his [her] lawful widow [widower] and one of the persons entitled to share in the estate who has renounced letters of administration of the estate of the deceased.

2 There is no person adjudged under the Family Relationships Act, 1975, to have been a domestic partner of the deceased as at the date of his [her] death*.

- 3 I am the lawful son [daughter] and one of the persons entitled to share in the estate of the deceased.
- 4 I will: *(etc. complete as in Form 52)*.

Note

- * *This deposition is required in order to clear off the prior entitlement of a domestic partner to the administration of the estate.*

(g) Oath for administration to child or other issue having beneficial interest

(Heading)

I, C.D. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased died intestate a [widow] [widower] without any other person entitled in priority to share in her [his] estate by virtue of any enactment.
- 2 I am the lawful [natural*] son [daughter] and only person entitled to the estate [*or one of the persons entitled to share in the estate*] of the deceased.
- or*
- 2 I am the lawful grandson [granddaughter] (being the lawful son [daughter] of E.F., the lawful [natural*] son [daughter] of the intestate who died in the lifetime of the intestate) and only person entitled to the estate [*or one of the persons entitled to share in the estate*] of A.B. deceased.
- 3 I will: *(etc. complete as in Form 52)*.

***Note**

Where the applicant's title to the administration depends upon establishing paternity the application should be supported by evidence of the claim to the relationship. Refer to section 7 of the Family Relationships Act, 1975.

(h) Oath for administration to adopted child

(Heading)

I, C.D. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased died intestate a widower without any other person entitled in priority to share in his estate by virtue of any enactment.
- 2 By an order dated the day of 19.. made by the Court at under the Adoption of Children Act, 1966, [*or as the case may be*] I was duly adopted by the deceased and E.F. his wife and that the said order is still

subsisting, a certified extract under the hand and seal of the Principal Registrar of Births, Deaths and Marriages relating to the adoption [*or as the case may be*] is annexed and marked “B”.

3 I am the lawful adopted son [*or daughter*] and only person entitled to the estate [*or one of the persons entitled to share in the estate*] of the deceased.

4 I will: [*etc. complete as in Form 52*].

(i) Oath for administration to child where the deceased has died divorced

(Heading)

I, C.D. of [*address and occupation*] make oath and say that:

1 A.B. late of [*address and occupation*] deceased died intestate a single man [a single woman] without any other person entitled in priority to share in his [her] estate by virtue of any enactment.

2 The marriage between the said A.B. deceased and X.Y. was dissolved by the *decree nisi* made in the Family Court of Australia at Adelaide in the said State [*or as the case may be*] on the day of 19.. having become absolute on the day of 19.; a copy of the said *decree nisi* under the seal of the said Family Court of Australia containing a memorandum that the *decree nisi* has become absolute is annexed and marked “B”.

3 The deceased did not subsequently remarry.

4 I am the lawful son [*or daughter*] and only person entitled to the estate [*or one of the persons entitled to share in the estate*] of the deceased.

5 I will: [*etc. complete as in Form 52*].

(j) Oath for administration to father or mother

(Heading)

I, C.D. of [*address and occupation*] make oath and say that:

1 A.B. late of [*address and occupation*] deceased died intestate a widower [widow] [bachelor] [spinster] [**single man*] [**single woman*] without issue or any other person entitled in priority to share in his [or her] estate by virtue of any enactment.

2 I am the lawful [natural]** father [mother] and only person entitled to the estate [*or, where both parents of the deceased are living, one of the persons entitled to share in the estate*] of the deceased.

3 I will: (*etc. complete as in Form 52*).

Notes

***(i)** *If the deceased died intestate divorced see paragraphs 2 and 3 in modification (i) above for the additional wording required in the oath.*

******(ii) *Where the applicant's title to the administration depends upon establishing paternity, see note to modification (g) above.*

(k) Oath for administration to brother or sister

(Heading)

I, C.D. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased died intestate a widower [widow] [bachelor] [spinster] [single man*] [single woman*] without issue or a parent or any other person entitled in priority to share in his [*or her*] estate by virtue of any enactment.
- 2 I am the lawful brother [sister] and only person entitled to the estate [*or as the case may be*] of the deceased.
- 3 I will: (*etc. complete as in Form 52*).

Note

*If the deceased died intestate divorced see paragraphs 2 and 3 in modification (i) above for the additional wording required in the oath.

FORM 53

LETTERS OF ADMINISTRATION *DE BONIS NON*

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

Be it known that on theday of19... Letters of Administration of the estate of A.B. late of [*address*] deceased who died at on the day of 19.. intestate left unadministered by C.D. the lawful widow of the deceased to whom Letters of Administration of the estate were granted by the Supreme Court of South Australia on the day of 19.. and who has since died were granted by the Court to E.F. of [*address*] the lawful son [daughter] of A.B. deceased.

Given at Adelaide under the seal of the Supreme Court of South Australia.

Registrar of Probates

FORM 54

Rule 11

OATH OF ADMINISTRATOR *DE BONIS NON*

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I E.F. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] deceased died at on the day of 19.. intestate.
- 2 On the day of 19.. letters of administration of the estate of the deceased were granted by the Supreme Court of South Australia to C.D. the lawful widow of the deceased and one of the persons entitled to share in the estate of the deceased.
- 3 C.D. died on the day of 19.. leaving part of the estate unadministered.
- 4 I am the lawful son [daughter] and one of the persons entitled to share in the estate of A.B. deceased.
- 5 There is no person declared under the Family Relationships Act, 1975, to have been a domestic partner of A.B. deceased as at the date of his death.
- 6 I will:
 - (a) collect, get in and administer according to law the unadministered estate of the deceased;
 - (b) when required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
 - (c) when required to do so by the Court deliver up to the Court the grant of administration;
 - (d) deliver at the office of the Public Trustee of the State of South Australia within 6 calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of A.B. deceased left unadministered and of my administration of such estate.
- 7 To the best of my knowledge information and belief the whole of the estate in the State of South Australia so left unadministered consists of real estate not exceeding in value the sum of *\$..... and personal estate not exceeding in value the sum of *\$..... [*or real estate only not exceeding in value the sum of *\$.....*] [*or personal estate only not exceeding in value the sum of *\$.....*]

Sworn at by the said)
E.F. on the day of 19..) E.F.

Before me:
.....

Notes

- *(i) The amount of the estate to be sworn in the oath is the current gross value of the unadministered estate in South Australia.*
- (ii) Where the deceased has died before the 1st July 1987, the following words must be added to paragraph 7 in the Oath:
“as set out in the inventory annexed and marked ‘A’”
and the inventory to be annexed and marked “A” must be in the Form 67*
- (iii) Where the deceased died on or after the 1st July 1987 the applicant for the grant must lodge with the application an affidavit in the Form 68 disclosing all the unadministered assets and liabilities known to the applicant at the time of making the application.*

FORM 55**Rule 49****SURETY'S GUARANTEE (FOR LETTERS OF ADMINISTRATION WITH OR WITHOUT WILL)****South Australia
In the Supreme Court
Testamentary Causes Jurisdiction****In the Estate of A.B. deceased**

Whereas A.B. late of [*address and occupation*] deceased ("the deceased") died aton the day of20.. and C.D. of [*address and occupation*] ("the administrator") is the intended administrator of the deceased's estate.

Now therefore:

- 1 I E.F. of [*address and occupation*] or [We E.F. of (address and occupation) and G.H. of (address and occupation)] hereby [jointly and severally] guarantee that I/we will, when lawfully required to do so, make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator of his [her] duty to –
 - (a) collect, get in, and administer according to the law the estate of the deceased *[left unadministered by.....];
 - (b) deliver at the office of the Public Trustee of the State of South Australia within 6 calendar months from the date of administration a statement and account verified by his [her] declaration of all the estate of the deceased and of his [her] administration of the estate;
 - (c) deliver to the Public Trustee, when required to do so by the Supreme Court of South Australia ("the Court"), an account of his [her] administration of the estate verified by his [her] declaration;
 - (d) perform all acts and things required by the Administration and Probate Act, 1919, to be performed by administrators;
 - (e) deliver up the grant of administration to the Court when required to do so by the Court or the Registrar.
- 2 The giving of time to the administrator or any other forbearance or indulgence shall not in any way affect my [our] liability under this guarantee.
- 3 The liability under this guarantee shall subject to **section 31(8) of the Administration and Probate Act, 1919 be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but my [our aggregate] total liability shall not in any event exceed the sum of (ii)\$.....

Signed at..... by the within named) E.F.
 E.F. [and G.H.] on the...day of [G.H.]
 20.. in the presence of :

.....

Notes

- *(i) This wording is to be used where the application is for a de bonis non grant.*
- (ii) Insert gross value of the estate situate in the State of South Australia, unless the Registrar otherwise orders.*
- (iii) Each separate sheet of the guarantee must be signed by each surety and by the person attesting the guarantee – Rule 49.05.*
- (iv) Where a person who is resident out of South Australia is accepted as surety the following additional clause must be inserted in the guarantee:*

“And I the said E.F. hereby submit to the jurisdiction of the Supreme Court of South Australia to determine any liability under this guarantee according to the law of South Australia.”

*** (v) Section 31(8) of the Act provides –*

- “31(8) If on the application of a surety, it appears to the Court that –
- (a) the South Australian estate is being wasted, or is in danger of being wasted;
 - (b) the surety is being in any way prejudiced, or is in danger of being prejudiced, by act or default of the administrator; or
 - (c) a surety desires to be relieved from further liability, the Court may grant such relief as it thinks fit.”

FORM 56

LETTERS OF ADMINISTRATION *PENDENTE LITE*

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

Be it known that on the day of 19.. Letters of Administration of the estate of A.B. late of [address] deceased who died at.....on the ...day...of....20..were pursuant to the order dated the day of 19.. of (e.g. Judge XY a Master of the Supreme Court of South Australia) granted by the Court to C.D. of [address] pending Action No. of 19... in this Court in which E.F. is Plaintiff and G.H. is Defendant touching the validity of the will dated the day of 19.. of the deceased.

Given at Adelaide under the seal of the Supreme Court of South Australia.

Registrar of Probates

FORM 57**OATH OF ADMINISTRATOR *PENDENTE LITE***

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of [*address and occupation*] make oath and say that:

- 1 A.B. late of [*address and occupation*] died at in the said State on the day of 19.. aged years.
- 2 There is now pending in the Supreme Court of South Australia a probate action (“the action”) entitled “South Australia In the Supreme Court No of 19.... In the Estate of A.B. deceased Between E.F. Plaintiff and G.H. Defendant” concerning the validity of the will of the deceased dated the day of 19.. [*or the estate of the deceased*].
- 3 By order of Judge XY a Master of this Court dated the day of 19.. it was ordered that letters of administration of the estate of the deceased be granted to me pending the action. A sealed copy of the order is annexed and marked “A”.
- 4 Pending the action I will:
 - (a) under the control and direction of this Court collect, get in and administer according to law the estate of the deceased and will not distribute the residue of the estate;
 - (b) when required to do so by the Court, produce to the Court a full statement and account of my administration of the estate;
 - (c) when required to do so by the Court, deliver up to the Court the grant of administration;
 - (d) deliver at the office of Public Trustee of the State of South Australia within 6 calendar months from the date of administration being granted to me a statement and account verified by my declaration of all the estate of the deceased and of my administration of such estate pending the said action.
- 5 To the best of my knowledge information and belief the deceased died possessed of property in the State of South Australia consisting of real estate not exceeding in value the sum of *\$..... and personal estate not exceeding in value the sum of *\$..... [*or real estate only not exceeding in value the sum of *\$.....*] [*or personal estate only not exceeding in value the sum of *\$.....*].

Sworn at by C.D.)
 on the day of)
 19) C.D.

Before me:

Notes

- (i) *Application for an order appointing an administrator pendente lite is made in the probate action (S.C.R. 104.13).*
- (ii) *If the order obtained contains any limitations then the form of oath must be varied accordingly.*
- (iii) *The grant of administration ceases on the determination of the probate action and not upon the issue of a grant in substitution.*
- *(iv) *The amount of the estate to be sworn in the oath is the gross value of the estate in South Australia.*

FORM 58**Rule 49****SURETY'S GUARANTEE FOR LETTERS OF ADMINISTRATION *PENDENTE LITE*****South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Whereas:

- 1 A.B. late of [address and occupation] deceased ("the deceased") died aton the ... day of20...
- 2 There is now pending in the Supreme Court of South Australia ("the Court") a probate action ("the action") entitled "In the Supreme Court of South Australia No.....In the Estate of A.B. deceased Between E.F. Plaintiff and G.H. Defendant touching and concerning the validity of the will dated the....day of.....20..."
- 3 On theday of.....20 .. Judge XY a Master (*or as the case may be*) ordered that C.D. be appointed the administrator of the estate pending the action [limited to.... (set out the limitations in the order, if any)]

Now therefore:

- 1 I/we E.F. of [*address and occupation*] or [We E.F. of (*address and occupation*) and G.H. of (*address and occupation*)] hereby [jointly and severally] guarantee that I/we will, when lawfully required to do so, make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator of his [her] duty to –
 - (a) under the control and direction of the Court collect, get in and administer according to law the estate of the deceased, save distributing the residue of the estate;
 - (b) produce to the Court a full statement and account of his [her] administration of the estate when required to do so by the Court;
 - (c) deliver up the grant of letters of administration to the Court when required to do so by the Court or the Registrar;
 - (d) deliver at the office of the Public Trustee within 6 calendar months from the date of administration a statement and account verified by his [her] declaration of all the estate of the deceased and of his [her] administration of the estate pending the said action;
- 2 The giving of time to the administrator or any other forbearance or indulgence shall not in any way affect my [our] liability under this guarantee.
- 3 The liability under this guarantee shall subject to *section 31(8) of the Administration and Probate Act, 1919 be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but [my] [our aggregate] total liability shall not in any event exceed the sum of (i)\$.....

Signed at.....by the within named) E.F.

E.F. [and] G.H. on the ...day of) [G.H.]
20.. in the presence of:

.....

Notes

- (i) *Insert gross value of the estate situate in South Australia unless the Registrar otherwise orders.*
- (ii) *Each separate sheet of the guarantee must be signed by each surety and by the person attesting the guarantee – Rule 49.05.*
- (iii) *Where a person who is resident out of South Australia is accepted as surety the following additional clause must be inserted in the guarantee:*
 “And I the said E.F. hereby submit to the jurisdiction of the Supreme Court of South Australia to determine any liability under this guarantee according to the law of South Australia.”

*(iv) *Section 31(8) of the Act provides –*

- “31(8) If on the application of a surety, it appears to the Court that –
- (a) the South Australian estate is being wasted, or is in danger of being wasted;
 - (b) the surety is being in any way prejudiced, or is in danger of being prejudiced, by act or default of the administrator; or
 - (c) a surety desires to be relieved from further liability,
- the Court may grant such relief as it thinks fit.”

FORM 59

Rule 48

RENUNCIATION OF PROBATE

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Whereas A.B. late of [*address and occupation*] deceased died on the day of 19.. at having made and duly executed his [her] last will and testament dated the day of 19.... in which he [she] appointed the undersigned C.D. the sole executor [and the residuary devisee and legatee in trust (*or as the case may be*)]*.

Now I, the said C.D. of [*address, occupation and relationship as in Rule 13*] do hereby declare that I have not intermeddled in the estate of the said deceased and will not hereafter intermeddle in the estate with intent to defraud creditors and I do hereby renounce all my right and title to probate and execution of the will [and to letters of administration (with the will annexed) of the estate of the deceased].*

Signed by C.D. this day)
of 19...) C.D.

in the presence of:
.....

(*Witness's name, address and occupation*)

Notes

(i) Where an executor to whom leave has been reserved renounces probate subsequently to the issue of the grant, the renunciation is in the above form and need not refer to the fact of probate having been granted.

*(ii) These words must be included in the renunciation where the executor is also entitled in another capacity under Rule 31 and has to be cleared off in that capacity.

FORM 60

**RENUNCIATION OF PROBATE BY A TRUSTEE COMPANY
BEING A COMPANY LISTED UNDER SCHEDULE 1 TO THE
TRUSTEE COMPANIES ACT, 1988**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Whereas A.B. late of [address and occupation] died on the day of 19.. at having made and duly executed his [her] last will and testament dated the day of 19.. in which he [she] appointed XY Limited of [address] (“the Company”) the sole executor [and the residuary devisee and legatee in trust (*or as the case may be*)]: Now the Company hereby renounces all its right and title to probate and execution of the will [and to letters of administration with the will annexed of the estate of the deceased]*.

The Common Seal of XY Limited)
was hereunto affixed by authority)
of the Directors this day of)
..... 19..) L.S.

in the presence of:
.....
.....

I C.D. Manager of XY Limited declare that the Company has not intermeddled in the estate of A.B. deceased and will not hereafter intermeddle in the estate with intent to defraud creditors.

Declared at)
by C.D. this day of)
..... 19 ...) C.D.

Before me:
.....

*See notes to Form 59

FORM 61

Rule 48

**RENUNCIATION OF LETTERS OF ADMINISTRATION
WITH THE WILL ANNEXED**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Whereas A.B. late of [*address and occupation*] died on the day of 19.. at having made and duly executed his [her] last will and testament dated the day of 19.. in which he [she] did not appoint an executor but named me the undersigned C.D. residuary devisee and legatee (*or as the case may be*):

Now I the said C.D. of [*address, occupation and relationship as in Rule 14.02*] do hereby renounce all my right and title to letters of administration with the will annexed of the estate of the deceased.

Signed by C.D. this)
day of 19..) C.D.

in the presence of:
.....
(*Witness's name and address and occupation*)

FORM 63

Rule 48

RENUNCIATION OF LETTERS OF ADMINISTRATION

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Whereas A.B. late of [*address and occupation*] deceased died on the day of 19.,
intestate [*clear off all persons having a prior entitlement to the grant in the manner described in the
Table to Rule 11.08*] leaving C.D. his [her] lawful son [*or daughter*] and the only person entitled to
his [her] estate [*or as the case may be*]:

Now I the said C.D. of [*address and occupation and relationship as in Rule 14.01*] do hereby
renounce all my right and title to letters of administration of the estate of the deceased.

Signed by C.D. this..... day of)
..... 19..) C.D.

in the presence of:
.....

(*Witness's name, address and occupation*)

FORM 64

**Section 17 of the Act
Rule 50**

OATH TO LEAD RE-SEAL OF GRANT

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. of *[address and occupation]* make oath and say that:

- 1 A grant of [probate of the will (and codicil or codicils)] [letters of administration with the will annexed of the estate] [letters of administration of the estate] *[or as the case may be]* of A.B. late of *[as in grant]* deceased who died aton the day of 20.. aged years was granted to me by the Supreme Court of the State of at on the day of 20...
- 2 The deceased was at the time of his [her] death domiciled in within the jurisdiction of the said Court *[the last seven words to be struck out if inapplicable]*.

If the deceased died before the 1st July 1987, then the following clause should be used:

- 3 To the best of my knowledge information and belief the deceased died possessed of property in the State of South Australia consisting of real estate not exceeding in value the sum of *\$..... and personal estate not exceeding in value the sum of *\$..... *[or real estate only not exceeding in value the sum of *\$][or personal estate only not exceeding in value the sum of *\$.....]* as set out in the inventory annexed hereto and marked "A".

If the deceased died on or after the 1st July 1987, then the following clause should be used:

- 3 To the best of my knowledge information and belief the deceased died possessed of property in the State of South Australia consisting of real estate not exceeding in value the sum of *\$..... and personal estate not exceeding in value the sum of *\$..... *[or real estate only not exceeding in value the sum of *\$.....][or personal estate only not exceeding in value the sum of *\$.....]*.

Sworn at by C.D.)
 on the day of)
 19) C.D.

Before me:
.....

Note

The gross amount of the estate in South Australia must be sworn to.

Modifications of the Above Form

(a) *Oath by attorney of executor or administrator authorised to apply for the sealing of the grant.*

(Heading)

I, E.F. of [*address and occupation*] make oath and say that:

- 1 A grant of probate of the will [*or as the case may be*] of A.B. late of [*as in grant*] deceased who died at on the day of 20.. aged years was granted to C.D. by the Supreme Court of the State of at on the day of 20..
- 2 The deceased was at the time of his [her] death domiciled in within the jurisdiction of the said Court [*the last seven words to be struck out if inapplicable*].
- 3 I am the attorney lawfully appointed by C.D. (which appointment has not to the best of my knowledge information and belief been revoked) and am duly authorised to apply to this Court for the sealing of the grant.
- 4 To the best of my knowledge (*etc. complete as in Form 64*).

(b) *Oath by a practitioner authorised in writing to apply on behalf of the executor or administrator.*

(Heading)

I, E.F. of [*address and occupation*] make oath and say that:

- 1 A grant of probate of the will [*or as the case may be*] of A.B. late of [*as in grant*] deceased who died at on the day of 20.. aged years was granted to C.D. by the Supreme Court of the State of at on the day of 20..
- 2 The deceased was at the time of his death domiciled in within the jurisdiction of the said Court [*the last seven words to be struck out if inapplicable*].
- 3 I am the person authorised in writing by C.D. to apply on his [her] behalf for the sealing of the grant. The authority is annexed and marked "A". I believe that the signature to the authority is of the proper handwriting of C.D. and that such authority has not been revoked.
- 4 To the best of my knowledge (*etc. complete as in Form 64*).

(c) *If leave has been reserved in the grant to another executor to apply for probate the following words must be inserted at the end of paragraph 1:*

“Leave being reserved for G.H. the other executor to apply for probate”,

and the following additional deposition must be made in the oath:

“2 That no grant of double probate has been made by the Supreme Court of to the aforesaid executor to whom leave was reserved to apply for probate.”

- (d) *If an executor predeceased the testator or died since the death of the testator without having taken a grant of probate it must be so sworn in the oath.*
- (e) *If the grant was made to two or more executors one of whom has since died the death of the deceased executor must be sworn to in the oath.*
- (f) *If it is sought to re-seal a grant where the deceased held no property in South Australia except as trustee then the capacity in which the property is so held must be disclosed in the oath.*
- (g) *An application to re-seal a grant of probate made after the death of the executor to whom it has been granted by his executor will be accepted provided that probate of the will of the deceased executor has been granted or re-sealed in South Australia. The oath in this instance must fully disclose all the events that have happened so that the title of the executor of the deceased executor to re-seal his testator’s grant is thereby established.*

FORM 65

Rule 50.03

ADVERTISEMENT FOR THE RE-SEALING OF GRANT

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Take notice that after the expiration of eight days application will be made in the Registry of the Supreme Court of South Australia in its Testamentary Causes Jurisdiction for the sealing of [probate of the will] [letters of administration with the will annexed of the estate] *or* [letters of administration of the estate] of A.B. [*as in the grant*] deceased granted by the Supreme Court of the State of at on the day of 19..

Solicitor for

(To be advertised only if the Registrar so requires and in such manner as the Registrar may direct.)

FORM 66

Rule 50.04

SURETY’S GUARANTEE ON APPLICATION FOR THE RESEALING OF A GRANT UNDER SECTION 17 OF THE ACT

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Whereas A.B. late of [address and occupation] deceased (“the deceased”) died aton the day of20.... and letters of administration [with the will annexed] of his/her estate were on the.....day of.....20..... granted by the Supreme Court of the State of.....at.....to C.D. of [address and occupation] [“the administrator(s)”] and are about to be re-sealed in the State of South Australia under section 17 of the Administration and Probate Act, 1919.

Now Therefore:

- 1 I E.F. of [address and occupation] or [We E.F. of (address and occupation) and G.H. of (address and occupation)] hereby [jointly and severally] guarantee that I/we will, when lawfully required to do so, make good any loss which any person interested in the administration of the estate of the deceased in South Australia may suffer in consequence of the breach by the administrator(s) of his [her] duty to –
 - (a) collect, get in, administer and distribute according to the law the estate of the deceased in the State of South Australia;
 - (b) deliver at the office of the Public Trustee of the State of South Australia within 6 calendar months from the date of administration a statement and account verified by his [her] declaration of all the estate of the deceased in the State of South Australia and of his [her] administration of such estate;
 - (c) deliver to the Public Trustee, when required to do so by the Supreme Court of South Australia (“the Court”), an account of his [her] administration of the estate verified by his [her] declaration;
 - (d) perform all acts and things required by the Administration and Probate Act, 1919, to be performed by administrators;

- 2 The giving of time to the administrator or any other forbearance or indulgence shall not in any way affect my [our] liability under this guarantee.

- 3 The liability under this guarantee shall subject to *section 18(8) of the Administration and Probate Act, 1919 be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but [my] [our aggregate] total liability shall not in any event exceed the sum of (i)\$.....

Signed at..... .by the within named) E.F.
 E.F. [and G.H.] on the...day of) [G.H.]
 20.. in the presence of :

.....

Notes

- (i) *Insert the gross value of the estate in South Australia unless the Registrar otherwise orders.*
- (ii) *Each separate sheet of the guarantee must be signed by each surety and by the person attesting the guarantee – Rule 49.05.*
- (iii) *Where a person who is resident out of South Australia is accepted as surety the following additional clause must be inserted in the guarantee:*
 “And I the said E.F. hereby submit to the jurisdiction of the Supreme Court of South Australia to determine any liability under this guarantee according to the law of South Australia.”
- *(v) *Section 18(8) of the Act provides –*
 “18(8) If on the application of a surety, it appears to the Court that –
- (a) the South Australian estate is being wasted, or is in danger of being wasted;
 - (b) the surety is being in any way prejudiced, or is in danger of being prejudiced, by act or default of the administrator; or
 - (c) a surety desires to be relieved from further liability, the Court may grant such relief as it thinks fit.”

Modification

Surety’s guarantee (with or without will) on application by attorney or practitioner authorised in writing for resealing grant.

(Heading)

Whereas A.B. late of [*address and occupation*] deceased (“the deceased”) died aton the....day of.....20.. and letters of administration [*with the will annexed*] of his/her estate were on the.....day of.....20.. granted by the Supreme Court of the State of.....at.....to C.D. of [*address and occupation*] “(the administrator)” and are about to be re-sealed in the State of South Australia under section 17 of the Administration and Probate Act, 1919 by I.J. the duly authorised attorney of the administrator acting under a power of attorney dated the.... day of.....20....[or a practitioner duly authorised in writing by the administrator]

Now Therefore:

- 1 E.F. of [*address and occupation*] or [We E.F. of (address and occupation) and G.H. of (address and occupation)] hereby [jointly and severally] guarantee.....(etc. *complete as in Form 66*).

FORM 67

**INVENTORY OF REAL AND PERSONAL PROPERTY
IN THE STATE OF SOUTH AUSTRALIA**

In the Estate of A.B. deceased

	Value	
	\$	¢
Real Estate		
<i>[Here set out the parcels of the land as per Land Grant Certificate of Title, etc with a description of the improvements thereon]</i>		
Personal Estate		
Cash in the house		
Cash at bankers		
Cash at Building Societies etc.		
Furniture, plate, linen, china, books, pictures, wearing apparel, jewels, and ornaments		
Wine and other liquors		
Motor vehicles, farming stock and implements of husbandry		
Stock-in-trade		
Goodwill, etc., of trade or business		
Leasehold estates		
Life assurance policies and bonuses		
Rents due at the death of deceased		
Mortgages and interest due at the death of deceased		
Bonds, bills, notes, and interest due at the death of deceased		
Book and other debts		
Treasury Bills		
Government Debentures		
Stock or shares		
Wages due, long service leave entitlement etc.		
Property not comprised within the above description, viz.		

FORM 68

Rule 8.01

AFFIDAVIT OF ASSETS AND LIABILITIES

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. [*or we C.D. and E.F.*] of [*address and occupation*] make oath and say that:

- 1 I am [*we are*] the applicant(s) for a grant of probate [*administration*] in the estate of A.B. late of [*address and occupation*] deceased.
- 2 To the best of my [*our*] knowledge information and belief the Statement annexed hereto and marked "A" is a true statement of the assets and liabilities of the deceased wherever situated known to me [*us*] at the time of making this application.

Sworn at	by C.D. [<i>and E.F.</i>])	
on the	day of)	C.D.
.....	19...)	[E.F.]

Before me:
.....

Notes

- 1 *Assets*
- A *Assets of the deceased situated in South Australia must be shown in the Statement under the heading "Assets within South Australia". If there are assets situated outside South Australia then these assets must be shown separately under the heading "Assets outside South Australia", and the location of such assets must be given. It is sufficient for the purposes of satisfying this requirement that the location of the asset be identified by the State or Territory (if situated within the Commonwealth of Australia) or the name of the country (if situated outside the Commonwealth of Australia).*
- A1 *Where the deceased was not at the date of death domiciled in Australia disclosure is only required in respect of assets situated in Australia and liabilities that are a charge on those assets or which arose in Australia – Refer to section 121A(2a) and 7(a) of the Act*
- B *The known or estimated market value of each asset must be given in the Statement. If the asset has not been valued by a licensed valuer or is not otherwise fixed (e.g. cash in a bank account) then the source of the estimated value must be disclosed, e.g.:*

(furniture) "executor's estimated value..... \$8,000.00"
 (shares) "value as per (name of newspaper and date)"

or

"value as per information
 supplied by company secretary \$ 447.68"

If the asset has been valued by a licensed valuer that value together with the name of the valuer must be disclosed, e.g.:

(real estate) "Valuer-General's valuation..... \$85,000.00"
 (antiques) "(name of licensed valuer)
 valuation \$15,000.00"

It is not necessary to furnish evidence of values unless the Court or the Registrar under Rule 74 so directs.

C *The assets disclosed should be listed and identified in the Statement under the headings and sub-headings below and in the order in which they are given **but the Statement should not show a heading or a sub-heading if the deceased did not have property of that description.** The headings and sub-headings are:*

- a Real Estate
(state title reference and address with short description of improvements)
- b Personal Estate
 - (1) Leasehold property
(supply particulars of property and name of lessor, expiry date, etc.)
 - (2) Property held on Crown Licence
(supply details, e.g. licence no., expiry date, etc.)
 - (3) Rents due or accrued
(indicate property and state rental period for which due or accrued)
 - (4) Furniture, household effects, watches, jewellery
(supply known or estimated total value of the above and indicate where situated)
 - (5) Motor vehicles and boats
(supply details, e.g. make, registration no., etc.)
 - (6) Money in hand, home or other premises
(give particulars and amounts)
 - (7) Money in Bank, *Building Society, Credit Union or Financial Institution, fixed and other deposits, loans secured and unsecured
(give name and location of bank, account no., and balance and interest as at date of death)

[***Note:** *money in a share account in a Building Society may be treated as a deposit for the purpose of disclosure*]

- (8) Life assurance policies and bonuses
(state name of company, policy no., and amount due or surrender value)
- (9) Shares (listed and unlisted), options or convertible notes in Companies
(state name of company, number and class of shares, etc.)
- (10) Inscribed stock, bonds and debentures, unsecured notes, units in unit trusts, and futures and other similar contracts
(supply details)
- (11) Mortgages (plus accrued interest)
(state name of mortgagor, registered number (if registered), property over which secured and amount due)
- (12) Debts due to the deceased, claims for damages, worker's compensation and similar entitlements
(supply details of debt, claim, etc.)
- (13) Property held in trust for the deceased, property and investment trusts, money in off-shore accounts, off-shore trusts and off-shore investments
(supply details)
- (14) Interest in deceased estate
(state name and date of death of deceased person and name of trustee(s) and nature of interest)
- (15) Rural assets:
[**Note:** *under this heading use general descriptions where possible*]
 - (a) Crops, growing or harvested
(supply details and known or estimated value)
 - (b) Wool
(supply details, e.g. number of bales of wool on hand and/or amount due from sale thereof, also entitlement to wool market support refunds [if any])
 - (c) Grain in pools
(supply details, e.g. identify pool, the quantity of grain held in pool and known or estimated value)
 - (d) Grain on hand, seed, fertilizers and sundries
(supply details)
 - (e) Fruit on hand or in store
(supply details)
 - (f) Bulk handling tolls
(supply details of tolls standing to the credit of the deceased)

- (g) Livestock
(supply details, e.g. number and description)
- (h) Farming implements, plant and equipment
(supply a brief but not detailed summary of items)
- (16) Interest in a farming partnership or as a share farmer *(advise the deceased's interest at date of death in partnership or as share farmer)*
- (17) Interest in a partnership or joint venture
(supply details)
- (18) Plant, machinery, tools and equipment
(supply a brief but not detailed summary of items)
- (19) Trade, business or profession
(advise nature of trade etc., and provide known or estimated values of business assets)
- (20) Salary, wages, commissions, director's fees and payments in lieu of leave or other benefits
(supply name of employer or company, give details of benefits)
- (21) Taxation credits
(supply details, e.g. Provisional Tax, group certificates, etc.)
- (22) Entitlement under a medical benefits or hospital fund (including refund of contributions)
(supply details)
- (23) Superannuation *(if payable to the estate)*
(supply details)
- (24) Property over which the deceased had a general power of appointment exercised by his will
(supply details)
- (25) Other property not included above e.g. library, paintings, coins and stamps, antiques and other collectables, gold and silver in specie, etc.
(supply full details of all other personal chattels and effects)

2 Liabilities

- A *Liabilities must be listed in the Statement under the headings "secured" or "unsecured".*
- B *The amount of each liability must be stated (with a brief description) or, if the amount is not known, an estimate of the amount must be stated. It is not necessary to furnish evidence of values unless the Court or the Registrar under Rule 74 so directs.*
- C *Funeral expenses should be disclosed even though such expenses are not a liability of the deceased.*

3 *Balance of the estate*

State the balance at the end of the Statement as follows:

Summary of Assets and Liabilities

Assets \$ _____

Liabilities..... \$ _____

Net Estate disclosed..... \$ _____

4 *Property held by the deceased as joint tenant should not be included in the Statement.*

5 *Accretions to the estate arising out of an asset existing at date of death should not be disclosed (see section 121a(7)(b) of the Act).*

6 *Property held by the deceased as trustee for which evidence of disclosure is required may be included in the Statement under the heading “Property held in trust by the deceased” but the value of such property must not be included in the value of the estate assets.*

7 *The following is an example of the form in which the statement is to be prepared:*

“A”
STATEMENT OF ASSETS AND LIABILITIES
of the estate of A.B. late of [address] deceased

	Estimated or known value (see Note 1B above)
A <i>Assets within South Australia</i>	\$
1 Real Estate	
An estate in fee simple in the whole of the land comprised in Certificate of Title Register Book Volume Folio situate at [address of property]	
Improvements - dwelling house and garage	
Valuer-General’s valuation	120,000.00
2 Personal Estate	
(1) Furniture and household effects contained in the dwelling house at[address]	
Executor’s estimated value	8,000.00
(2) Motor Vehicles	
..... Sedan (Registration No)	
Executor’s estimated value	7,000.00
(3) Money in hand	200.00
(4) Money in Bank, Building Society, etc.	
(a) Current account (name of bank) at (e.g. Glenelg) Branch, A/c No	1,800.00
(b) Savings Account (name of bank) at (e.g. Glenelg) Branch, A/c No	
- Principal	\$5,222.09

	Estimated or known value (see Note 1B above)
- Accrued Interest	\$ 398.02
(c) Building Society (<i>name of building society</i>) at (e.g. Adelaide) Branch, A/c No	5,620.11
- Principal	\$8,000.00
- Accrued Interest	\$ 721.00
(5) Life assurance policy and bonuses (<i>name of company</i>) Policy No. Amount due	8,721.00 16,000.00
(6) Shares in Companies 300 ordinary .50c shares in (<i>name of company</i>)	\$210.00
198 ordinary \$2.00 shares in (<i>name of company</i>)	\$237.68
Market value as per (<i>name of newspaper and date</i>)	447.68
(7) Taxation Credits Provisional Tax in respect of financial year ending 30 th June	200.00
(8) Medical Benefits Medibank Private - Refund of contributions	20.00
(9) Other property not included above	
(a) contents of Safe Deposit Box No (<i>name of Bank, Trustee Co. etc.</i>) at (<i>address</i>)	
2 Gold ingots	\$1,000.00
3 Austrian Ducats	200.00
6 Gold sovereigns	300.00
10 Elizabethan sovereigns	200.00
1 Silver ingot	300.00
	\$2,000.00
(b) 2 oil paintings by (<i>name</i>) on loan to (<i>name of gallery</i>)	\$2,000.00
(c) Stamp collection in the possession of (<i>name and address</i>) (<i>name of licensed valuer</i>) Valuation	\$1,000.00
	5,000.00
B Assets outside South Australia	
Personal Estate in Victoria	
Shares in companies 1,000 ordinary \$1.00 shares in (<i>name of company</i>) Market value as per (<i>name of newspaper and date</i>)	1,400.00
Total value of assets	<u>\$174,408.79</u>
C Liabilities	
<i>1 Secured</i>	
Memorandum of Mortgage No registered over Certificate of Title Volume Folio Mortgagee (<i>name</i>)	
- Principal	\$35,000.00
- Accrued Interest	3,000.00
	38,000.00

		Estimated or known value <i>(see Note 1B above)</i>
<i>2 Unsecured</i>		
(1)	(clothes)	\$ 100.00
(2)	(motor vehicle repairs)	300.00
(3)	(bankcard)	700.00
(4)	(personal loan)	2,200.00
(5)	[name of funeral director]	<u>5,100.00</u>
 (funeral expenses)	1,800.00
	Total value of liabilities	<u>\$43,100.00</u>
D Summary of Assets and Liabilities		
	Assets	\$174,408.79
	Liabilities	<u>43,100.00</u>
	Net Estate disclosed	<u>\$131,308.79</u>

FORM 69

Rule 8.02

AFFIDAVIT OF ADDITIONAL ASSETS AND LIABILITIES

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, C.D. [*or we C.D. and E.F.*] of [*address and occupation*] make oath and say that:

- 1 On the day of 19.. [probate of the will] [letters of administration with the will of the estate] *or* [letters of administration of the estate] of A.B. deceased were [was] granted by the Supreme Court of South Australia to me, the sole executor therein named [*or as the case may be*].
- 2 To the best of my [our] knowledge information and belief the Statement annexed hereto and marked "B" is a true statement of the assets and liabilities of the deceased not disclosed to the Court before the date of swearing this affidavit.

Sworn at by C.D.)	
[and E.F.] on the day)	C.D.
of 19...)	[E.F.]

Before me:
.....

Notes

- 1 *In the Statement of additional assets and liabilities, list the assets and liabilities under the headings and sub-headings and in the order in which they appear in the Statement annexed to the affidavit of assets and liabilities (Form 68).*
- 2 *The following is an example of the form in which the Statement is to be prepared:*

“B”
STATEMENT OF ADDITIONAL ASSETS AND LIABILITIES
of the estate of A.B. late of [address and occupation] deceased

	Estimated or known value (see Note 1B above)
A <i>Assets within South Australia</i>	\$
1 Personal Estate	
(a) Debts due to the deceased	
J Smith - purchase of TV set	\$ 60.00
B Brown - personal loan	100.00
(b) Interest in deceased estate	
Estate of XY deceased died .../.../...	
Trustees: [names]	
Interest: A vested one-half share etc.	
As per Trustees' Certificate	10,000.00
B <i>Assets outside South Australia</i>	
1 Real Estate in New South Wales	
An estate in fee simple in the whole of the land comprised in Certificate of Title Volume Folio situate at Improvements: Nil (Name of licensed valuer) valuation	5,000.00
2 Personal Estate in New Zealand	
(a) Life assurance policy and bonuses (name of company)	
Policy No	
Surrender value	600.00
(b) Debentures	
(name of company)	
\$1,000 @ 17% due	\$1,037.50
(name of company)	
\$1,000 @ 12.5% due	1,018.75
Executor's estimated value	<u>2,056.25</u>
Total additional assets	<u>\$17,816.25</u>
C <i>Liabilities</i>	
Unsecured	
Telecom - (calls due at death)	\$ 26.70
Dr(dental surgery)	450.00
Total additional liabilities	<u>\$476.70</u>
D <i>Summary of Assets and Liabilities</i>	
Additional assets	\$17,816.25
Additional liabilities	<u>476.70</u>
	<u>17,339.55</u>
add net estate previously disclosed	<u>131,308.79</u>
Total net estate disclosed	<u>\$148,648.34</u>

FORM 70

Rule 9

CERTIFICATE OF DISCLOSURE

[Note - Certificates should be lodged with the Affidavit of Assets and Liabilities]

REGISTRAR'S CERTIFICATE

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I certify that the asset(s) described hereunder in the name of the above deceased has [have] been disclosed to the Supreme Court of South Australia in compliance with section 121a of the Administration and Probate Act 1919.

Particulars of Asset(s):

[Identify the asset(s) in the manner disclosed in the Statement of Assets and Liabilities, e.g.:

An estate in fee simple in the whole of the land comprised in Certificate of Title Register Book
Volume Folio

Valuer-General's valuation \$120,000.00]

Registrar of Probates

FORM 71

Section 30 of the Act

OFFICIAL CERTIFICATE OF GRANT

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

I, Registrar of Probates of the Supreme Court of South Australia hereby certify that on the day of 19.. [probate of the last will (and codicil *or* codicils)] [letters of administration with the will of the estate] *or* [letters of administration of the estate] of A.B. late of [*address and occupation*] deceased who died at in the said State on the day of 19.., [intestate] was [were] granted by the Supreme Court of the State of South Australia to C.D. [*as in the record of the grant*].

Dated this day of 19..

Registrar of Probates

FORM 72

Rule 52.02

CAVEAT

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Let no grant be sealed in the estate of A.B. late of *[address and occupation]* deceased who died on [or about] the day of 19.. at without notice to C.D. *[name and address of party by whom or on whose behalf the caveat is entered]*.

Dated this day of 19..

[Signed] C.D.

[To be signed by the caveator’s solicitor or by the caveator if acting in person] whose address for service is:

Solicitors for the said C.D. *[If the caveator is acting in person substitute “in person”]*.....

Note

Except where otherwise specifically provided in these Rules the address for service must be at a place within 50 kilometres of the General Post Office at Adelaide. Refer to Rule 59.03.

FORM 73

Rule 52.06

WARNING TO CAVEAT

[Note - The Form of Warning will be supplied in the Registry]

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

To

You are hereby warned within 21 days after service hereof upon you, inclusive of the day of such service:

- (1) to enter an appearance either in person or by your solicitor at the Probate Registry of the Supreme Court of South Australia to the caveat entered by you in the estate of late of deceased who died at on [or about] the day of 19..., setting forth what interest you have in the estate of the deceased contrary to that of the party at whose instance this warning is issued; or
- (2) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for directions returnable before the Registrar in Chambers.

AND TAKE NOTICE that in default of your so doing the Court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

Dated the day of 19...

Registrar of Probates

Issued at the instance of [*Here set out the name and interest (including the date of the will, if any, under which the interest arises) of the party warning, the name of his or her solicitor and the address for service. If the party warning is acting in person, this must be stated.*]

Note

Except where otherwise specifically provided in these Rules the address for service must be at a place within 50 kilometres of the General Post Office at Adelaide. Refer to Rule 59.03.

FORM 74

APPEARANCE

Rules 52.08 and 53.06

(1) Appearance to Warning or Citation

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Caveat dated the day of 19.. [*or Citation dated the day of 19..*]

Full name and address of deceased:-

Full name and address of person warning [*or citor*]:-

[Here set out the interest of the person warning, or citor, as shown in warning or citation.]

Full name and address of caveator [*or person cited*]:-

[Here set out the interest of the caveator or person cited stating date of the will (if any) under which such interest arises.]

Enter an appearance for the abovenamed caveator [*or person cited*] in this matter.

Dated the day of 19..

[Signed] [*Solicitor or "in person"*]

whose address for service is:

Note

Except where otherwise specifically provided in these Rules the address for service must be at a place within 50 kilometres of the General Post Office at Adelaide. Refer to Rule 59.03.

Rule 90

(2) Appearance to Summons

[Heading as in Form 33]

In the Estate of A.B. deceased

ENTER AN APPEARANCE in this matter for *[name of person appearing]* whose residential address is *[set out the residential address whether within or outside of the State]*.

[If the party appearing intends to oppose the application (see Rule 90.02), continue:-

and who opposes the application on the following grounds:

1. *(set out grounds)*]

Dated the day of 19..

[Signed]

[Solicitor or “in person”]

whose address for service is:

Note

Except where otherwise specifically provided in these Rules the address for service must be at a place within 50 kilometres of the General Post Office at Adelaide. Refer to Rule 59.03.

FORM 75**Rule 52.11****ORDER FOR DISCONTINUANCE OF PROCEEDINGS
AND FOR ISSUE OF GRANT**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

**In the Estate of A.B. deceased
C.D. Applicant**

Before the Registrar of Probates in Chambers
.....day the day of..... 19...

Upon the Application by summons dated the day of 19... of C.D. of [*address and occupation*] a party having entered a caveat in this matter on the day of 19... Upon Hearing the solicitor for the applicant and Upon Reading the consent of the solicitor for E.F. the party warning the caveat It is Ordered that the contentious proceedings in this matter arising from the caveat be discontinued and that probate of the will dated the day of 19... [*or letters of administration (with the will dated the day of 19...)*] of the estate] of A.B. late of (*address and occupation*) the deceased herein be granted to C.D. the sole executor named in the will (*or as the case may be*) if entitled thereto.

Registrar of Probates

Note

Where a probate action has commenced by the issue of a summons (under S.C.R. 104) the order for the discontinuance of those proceedings must be obtained in the action and the order should refer to the contentious proceedings arising from both the caveat and from the issue of the summons, e.g.

It is ordered that the contentious proceedings in this action arising from the caveat entered on the..... day of 19... and also from the summons issued on the day of 19... be discontinued and that [probate of the will dated the day of 19...] *or* [letters of administration (*with the will dated the day of 19...*) of the estate] of A.B. late of (*address and occupation*) the deceased herein be granted to C.D. the sole executor named in the will (*or as the case may*) the plaintiff [or defendant] in this action, if entitled thereto.

FORM 76

Rule 92.13

CAVEAT AGAINST ALLOWANCE OF COMMISSION

South Australia
In the Supreme Court
No. of 19

In the Matter of the Estate of A.B. late of [*address and occupation*] deceased [*or as the case may be*].

Take notice that I C.D. [*name in full*] of [*address and occupation*] claiming interest [*state relationship or particulars of interest*] in the estate of [*or under the will of or as the case may be - set out full description*] do object to the allowance of commission or other remuneration on the ground(s) that [*here set forth with sufficient particularity the grounds of the objection*] and hereby require notice of any application for commission by the administrator [*or executor or trustee, as the case may be*] to be served upon me.

Dated this day of 19..

(Signed)

(*Solicitor for the caveator or "in person"*)

whose address for service is:

FORM 77

Rule 76.02

**NOTICE OF APPEAL FROM DECISION OF THE
REGISTRAR OF PROBATES**

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Take notice that C.D. [*the appellant's interest in the above estate to be given e.g. - the sole executor named in the will of the abovenamed deceased or the lawful son and one of the persons entitled to share in the estate of the abovenamed deceased or as the case may be*] hereby appeals to a Judge in Chambers against the [judgment, determination, order, direction, decision or requirement *as the case may be*] of the Registrar of Probates given on the day of 19.. by which the Registrar of Probates ordered [or refused to order]:

[*Here set forth a brief statement of the decision appealed from*]

AND complains of [the whole of that order][*or paragraphs 1 and 2 only of that order but not of paragraph 3*][*or as the case may be*].

The grounds of the appeal are: -

[*Here set forth the details required by S.C.R. 97.03(1)(b)*]

The appellant seeks the following orders on the appeal: -

[*Here set them out*]

Dated this day of 19..
(Signed)

(*Solicitor for the Appellant or Appellant "in person"*)

FORM 78

ESTATE AND ADMINISTRATION ACCOUNTS UNDER SECTION 56 OF THE ACT

Statement delivered by the administrator of the estate of late of deceased who died on the day of 19.. acting under grant of administration dated the day of 19..

Statement of Moneys Received and Paid

Received				Paid			
Date	Received from -	What for -	Amount	Date	Paid to -	What for -	Amount

Statement of the Nature and Value of Real and Personal Estate in South Australia Not Converted into Money at the Date of this Account

Description of Property	Value at Date of Death
(Inventories and proper valuations must be produced)	

Statement of the Nature and Value of Real and Personal Estate Not in South Australia

Description of Property	Value at Date of Death

Statement of Debts and Liabilities Still Unpaid		Names, Addresses, and Occupation or other Description of all Persons Entitled to any of the Property under Administration				
Name of Creditor	Amount	Name	Address	Occupation or other Description	Date of Birth	Relationship to the Deceased

I, do solemnly and sincerely declare that the above is a true and correct statement and account to the best of my knowledge and belief and I make this declaration in pursuance of the Administration and Probate Act, 1919.

Declared by the said (and)
at this day of 19.....

Before me:

Note: If any of the above spaces are found insufficient to contain full particulars the information must be supplied on a separate sheet and duly signed and annexed to this account.

FORM 79

Rule 98

WILL AUTHORISED UNDER SECTION 7 OF THE WILLS ACT, 1936

(This precedent merely illustrates the manner in which a will authorised by the Court under section 7 of the Wills Act, 1936 is to be made and executed)

This is the last will and testament of A.B. of [address and occupation] authorised by an order dated the day of 19.. made under section 7 of the Wills Act, 1936.

I revoke all former testamentary acts:

- 1 I appoint C.D. of [address] and E.F. [address] to be my executors and trustees (“my trustees”) which includes my trustees for the time being.
- 2 I give devise and bequeath etc

Dated the day of 19..

L.S.

Registrar of Probates

FORM 80

NOTICE OF CHANGE OF PRACTITIONER

South Australia
In the Supreme Court
Testamentary Causes Jurisdiction

In the Estate of A.B. deceased

Take notice that [*name practitioner and all details required by Rule 6.02*] is now acting in the above estate in place of [*name of original practitioner*]

Dated this....day of20..

.....

FORM 81

NOTICE OF INTENTION OF EXECUTOR OR ADMINISTRATOR TO ACT IN PERSON

**South Australia
In the Supreme Court
Testamentary Causes Jurisdiction**

In the Estate of A.B. deceased

Take notice that I C.D. the sole executor (*or* the administrator) of the above estate intend to act in person and my address for service is [*address within the jurisdiction*] and my contact telephone number during business hours is.....

Dated this...day of20..
C.D.

SECOND SCHEDULE**Rules Revoked**

Description of Rules	Date and page of publication of Government Gazette	Extent of Repeal
Rules of the Supreme Court (Administration and Probate Act) 1984 and the forms therein referred to as amended by Rules of Court made on the 4 th day of June 1987	4 th October 1984, page 1043 4 th June 1987, page 1445	The whole

GIVEN under our hands and the Seal of the Supreme Court of South Australia

this 1st day of April 1998.