

NORTHERN TERRITORY OF AUSTRALIA
AMENDMENTS OF SUPREME COURT RULES

Regulations 2002, No. 8

TABLE OF PROVISIONS

Rule

1. Principal Rules
2. Validation of will
3. Interpretation
4. Powers of Registrar
5. New Part
 - Part 2A – Applications under Part 3 of Wills Act*
 - 88.05A Application by minor for authorisation to make etc. will
 - 88.05B Application for leave to apply for order regarding will of person without testamentary capacity
 - 88.05C Application for order to rectify will
 - 88.05D Application under section 18, 20 or 27 of *Wills Act* to be heard by Judge
6. Evidence and documents in applications for probate
7. Evidence and documents in applications for administration
8. Evidence and documents in applications for resealing
9. Form 88F
10. Form 88I



NORTHERN TERRITORY OF AUSTRALIA

Regulations 2002, No. 8*

Rules of Court under the *Supreme Court Act*

WE, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, in pursuance of section 86 of the *Supreme Court Act*, make the following Rules of Court.

Dated 14 March 2002.

B. F. MARTIN CJ

D. MILDREN J

D. N. ANGEL J

S. R. BAILEY J

T. J. RILEY J

Judges of the Supreme Court
of the Northern Territory of Australia

* Notified in the *Northern Territory Government Gazette* on 24 April 2002.

AMENDMENTS OF SUPREME COURT RULES

1. Principal Rules

The Supreme Court Rules are in these Rules referred to as the Principal Rules.

2. Validation of will

Rule 88.01.1 of the Principal Rules is amended –

- (a) by omitting from subrule (1) "*Wills Act*" and substituting "repealed *Wills Act*"; and
- (b) by adding at the end the following:

"(3) An application for the admission to probate of a document referred to in section 10(2) of the *Wills Act* is –

- (a) to be made by originating motion in accordance with Form 5B or Form 5C; and
- (b) to be supported by an affidavit setting out the grounds of the application.

"(4) An application referred to in subrule (3) is, together with the affidavit in support of it, to be served on all persons who may be prejudiced by the admission of the document to proof."

3. Interpretation

Rule 88.02 of the Principal Rules is amended by inserting after the definition of "Probate Act" the following:

" 'repealed *Wills Act*' means the *Wills Act* in force before 1 March 2001;".

4. Powers of Registrar

Rule 88.05 of the Principal Rules is amended –

- (a) by omitting from subrule (1)(pa) "*Wills Act*" and substituting "repealed *Wills Act* or section 10(1) of the *Wills Act*"; and
- (b) by omitting from subrule (1)(pa) "\$15,000" and substituting "\$20 000".

5. New Part

Chapter 3 of the Principal Rules is amended by inserting after Part 2 the following:

"Part 2A – Applications under Part 3 of Wills Act

"88.05A Application by minor for authorisation to make etc. will

"(1) An application under section 18 of the *Wills Act* for an order authorising a minor to make or alter a will, or to revoke the whole or a part of the minor's will, is to be made by originating motion in accordance with Form 5D.

"(2) An application referred to in subrule (1) –

- (a) may be made by the person who is the legal guardian or the persons who are the legal guardians of the minor; and
- (b) is to be supported by affidavits by the minor, and by the other persons (if any) on whom the applicant relies or applicants rely, that between them specify (which includes specified in documents annexed to one or more of the affidavits) the matters referred to in section 20(2)(a), (b) and (d) to (m) (inclusive) of the *Wills Act* that are relevant to the application.

"(3) An initial draft of the proposed will, alteration or revocation to be authorised by the order is to be annexed to the minor's affidavit.

"88.05B Application for leave to apply for order regarding will of person without testamentary capacity

"(1) An application under section 20 of the *Wills Act* for leave to apply for an order authorising the making or altering of a will, or the revoking of the whole or a part of a will, for and on behalf of a person who lacks testamentary capacity is to be made by originating motion in accordance with Form 5D.

"(2) An application referred to in subrule (1) is to be supported by an affidavit by the applicant that specifies the information, and has annexed to it the documents, required by the Court under section 20(2) of the *Wills Act*.

"(3) When the application for leave first comes before the Court, the Court must –

- (a) consider who are the persons who have reason to expect a gift or benefit from the estate of the proposed testator or who otherwise have a legitimate interest in the making of the application; and
- (b) give the directions the Court considers appropriate to ensure that adequate steps are taken to allow those persons representation at the hearing of application.

"(4) If the Court grants the application for leave, the application is to be taken to be, and is to proceed as if it were, an application for the order for which the Court granted the leave.

Supreme Court Rules

"88.05C Application for order to rectify will

"(1) An application under section 27 of the *Wills Act* for an order to rectify a will is to be made by originating motion in accordance with Form 5B or Form 5C.

"(2) An application referred to in subrule (1) is to be served on each beneficiary under the will who is likely to be affected by the relief sought.

"88.05D Application under section 18, 20 or 27 of *Wills Act* to be heard by Judge

"An application under section 18, 20 or 27 of the *Wills Act* is to be heard by the Court constituted by a Judge."

6. Evidence and documents in applications for probate

Rule 88.23 of the Principal Rules is amended by omitting from subrule (1)(c)(ii) "section 88A of the *Public Trustee Act*" and substituting "Part 6 of the *Wills Act*".

7. Evidence and documents in applications for administration

Rule 88.24 of the Principal Rules is amended by omitting from subrule (1)(c)(ii) "section 88A of the *Public Trustee Act*" and substituting "Part 6 of the *Wills Act*".

8. Evidence and documents in applications for resealing

Rule 88.26 of the Principal Rules is amended by omitting from subrule (1)(b)(ii) "section 88A of the *Public Trustee Act*" and substituting "Part 6 of the *Wills Act*".

9. Form 88F

Form 88F of the Principal Rules is amended –

- (a) by omitting from clause 1 "each other." and substituting "each other.*"; and
- (b) by adding at the end the following:

* Delete 'and in the presence of each other' if the document is a will that is made on or after 1 March 2001".

10. Form 88I

Form 88I of the Principal Rules is amended by omitting clause 4 and substituting the following:

Supreme Court Rules

"4. I have searched the index of wills kept by each prescribed person within the meaning of section 3 of the *Wills Act* and have found (*set out the results of the search*) .".
