# SUPREME COURT OF NEW SOUTH WALES

# PROBATE LIST GUIDELINES

**(Version 1 – 24 December 2019)**

## I. INTRODUCTION

1 These Guidelines to the conduct of the Probate List will apply to all contentious proceedings commenced (by the filing of a summons or a statement of claim) on or after 1 January 2020 and, so far as they may be adapted, to all other proceedings listed for directions on or after that date.

2 If and when these Guidelines are revised, an updated version of the Guidelines will be posted on the Probate Section of the website of the Supreme Court of NSW.

3 The Guidelines do not deal exhaustively with the business of the Probate List. They are intended to provide guidance in the preparation of probate proceedings for the Court's determination. Each case will, in any event, be determined on its merits.

4 The Probate List is administered on the basis that:

(a) the governing purpose of the law of succession is the due and proper administration of a particular estate, having regard to any duly expressed testamentary intention of the deceased and the respective interests of parties beneficially entitled to the estate: *In the Goods of Loveday* [1900] P154 at 156; *Bates v Messner* (1967) 67 SR (NSW) 187 at 189 and 191-192. The task of the Court is to carry out a testator's duly expressed testamentary intentions, and to see that beneficiaries get what is due to them.

(b) probate litigation is "interest litigation" in the sense that, to commence or to be a party to proceedings relating to a particular estate, a person must be able to show that his or her rights will, or may, be affected by the outcome of the proceedings: *Gertsch v Roberts* (1993)35 NSWLR 631 at 634B-C; *Nobarani v Mariconte* [2018] HCA 36; (2018) 92 ALJR 806 at [49].

(c) in the interests of a proper and final determination of probate proceedings, and in the interests of settled rights to property upon succession, all persons who have, or may have, an interest in a contested estate should, so far as may be practicable, be given notice of the proceedings and an opportunity to intervene so as to be bound by the outcome of the proceedings; a person interested in

the outcome of probate proceedings may be bound by the outcome even though not a party to the proceedings if on notice of the proceedings and possessed of a reasonable opportunity to intervene in them: *Osborne v Smith* (1960) 105 CLR 153 at 158-159.

(d) all participants in probate proceedings have a duty (reinforced by the *Civil Procedure Act* 2005 NSW, section 56) to assist the Court in a timely disclosure of:

(i) all known testamentary instruments (including wills, codicils and "informal wills") of a deceased person, whether or not valid.

(ii) the circumstances in which a contested testamentary instrument was prepared and executed.

(iii) information about the deceased's medical condition and treatment so far as may be material to any dispute about the validity of a testamentary instrument of the deceased.

(e) no person interested in a deceased estate who participates in probate litigation has an unqualified entitlement to costs of that participation.

## II. THE CONDUCT OF A DIRECTIONS HEARING BEFORE THE PROBATE JUDGE

5 When appearing before the Probate Judge on a directions hearing, each party will be expected to hand up to the Court draft "Short Minutes of Order" setting forth the orders, and any formal notations, sought by that party.

6 Where the orders or notations sought from the Court are lengthy, the Probate Judge will expect that an electronic (WORD) version of the draft Short Minutes will have been sent to the Judge's Chambers (Chambers.LindsayJ@courts.nsw.gov.au), in real time, to enable the Judge to adapt the Short Minutes in orders and notations made.

7 On any contested application (or on an application for the Court's approval of a settlement) the Probate Judge will expect the parties to provide to the Court, at the time of the directions hearing:

(a) a short written outline of the orders and notations sought, submissions in support of those orders and notations, and evidence relied upon; and

(b) a bundle of any affidavits and documents relied upon in support of, or in opposition to, the application.

8 In the interests of case management, the Court might defer until after the conduct of a mediation (or a settlement conference in lieu of a mediation) any interlocutory application which appears to the Court to be unnecessary to decide before mediation. Parties are encouraged to keep interlocutory applications to a minimum.

9 In the ordinary course, orders and notations for the disposition of proceedings will be made in open court or following a referral to chambers made in open court.

## III. PROCEEDINGS IN WHICH THE VALIDITY OF A TESTAMENTARY INSTRUMENT IS IN DISPUTE (on an application for a grant, or for revocation of a grant, of probate or administration)

### (A) Grounds of Challenge to the Validity of a Testamentary Instrument

10 Where the validity of a will or codicil is in dispute, the central question for the Court’s determination is whether it is satisfied that the instrument propounded is the last will of a free and capable testator: *Tobin v Ezekiel* (2012) 83 NSWLR 757 at [44].

11 The grounds upon which the validity of a will or codicil may be challenged are generally limited to:

(a) an allegation that the instrument propounded as the last will of the deceased was **not duly executed** in the manner and form required by law.

(b) an allegation that, at the time the propounded instrument was made, the deceased **lacked testamentary capacity**.

(c) an allegation that, at the time of execution of the propounded instrument, **the deceased did not know and approve** of the contents of the instrument.

(d) an allegation that the instrument propounded was obtained by **undue influence (in the sense of coercion).**

(e) an allegation that execution of the instrument propounded was obtained by **fraud**.

(f) an allegation that the instrument was **revoked** by the deceased.

12 If and to the extent that some other ground of challenge (including a claim for family provision relief under Chapter 3 of the *Succession Act* 2006 NSW) is advanced, the party advancing that challenge is required to identify, specifically and distinctly, each additional ground of challenge so that the Court can consider whether any (and, if so, what) special case management orders are required.

13 Probate proceedings in which a claim for family provision relief is made may be transferred by the Court, on its own motion, from the Probate List to the Family Provision List.

14 An allegation that a testamentary instrument was executed in "**suspicious circumstances**" is not, of itself, a ground upon which the validity of a testamentary instrument can be challenged; but such an allegation may be made in order to identify particular factors which counsel caution on the part of the Court in approaching a finding that a testamentary instrument is the last will of a free and capable testator. An allegation of suspicious circumstances, if made, must be made, and particularised, distinctly.

15 If and to the extent that a party to probate proceedings asserts a case unrelated to an application for a grant, or re-grant, of probate or administration (eg, a derivative claim for recovery of property on behalf of an estate; a claim for an order that accounts be taken; a claim that estate assets are held on a trust other than that for which a testamentary instrument provides; or a family provision claim), the Court may, on the application of a party to the proceedings or on its own motion, make an order (under the *Uniform Civil Procedure Rules* 2005 NSW, rule 28.2) that probate questions (particularly, questions directed to identification of the person or persons entitled to administer an estate) be heard and determined separately and before any other question in the proceedings.

## (B) The Course of Proceedings involving a challenge to the validity of a Testamentary Instrument

16 Contested proceedings in which the essential validity of a testamentary instrument is in dispute will ordinarily be referred to a mediation before directions are given for substantive preparation for a final hearing. Accordingly, contested proceedings will ordinarily proceed to a final hearing (if necessary) in two distinct stages, separated by a mediation.

17 Where all parties are represented by a solicitor the Court may (but will not necessarily) dispense with a mediation if all solicitors provide to the Court a written statement, certified by them, that: (a) the parties have conducted a settlement conference; or (b) as the only parties interested in the estate the subject of the proceedings, they agree to dispense with a mediation.

18 Subject to such, if any, requirement that there be for approval of a settlement (for example, if a grant of probate in solemn form is sought or the interests of a minor are involved), it is open to the parties to settle proceedings at any time.

19 In the ordinary course, the prerequisites for an order by the Court that proceedings be referred for mediation (or that the post-mediation phase of case preparation be engaged) are:

(a) the disclosure of all known testamentary instruments (including wills, codicils and "informal wills") of the deceased; and

(b) proof of service of notice of the proceedings on all persons interested in the outcome of the proceedings insofar as they can reasonably be identified and served.

20 If those conditions are satisfied, an order for mediation can be made at the outset of contested proceedings or soon thereafter.

21 In the ordinary course, absent arrangements for fast tracking the proceedings to a mediation, *the Court expects that there should be no more than three (and preferably fewer than three) directions hearings before a mediation is held*.

22 The object of the Court's directions preliminary to a mediation will ordinarily be to expose questions in dispute, and evidence bearing on those questions, in sufficient detail to facilitate the conduct of a meaningful mediation without undue costs. Save in exceptional circumstances, leave to adduce expert evidence (or to issue subpoenas for the production of documents, or to serve notices to produce, generally) will not be granted in advance of a mediation.

23 The following elaboration of "three steps" in case preparation leading to the allocation of a mediation date provides an indicative template for how case preparation may proceed. Parties may move more quickly to a mediation (or a final hearing) through co-operation.

24 **STEP ONE: Arrangements for Preliminary Disclosure of Estate Information**
In the ordinary course, at a first directions hearing:

(a) In all cases, if disclosure statements have not already been filed and served, an order will be made that each party file and serve a **disclosure statement** (to the effect of the form attached to these Guidelines as **Annexure "A"**). A disclosure statement is expected to disclose, *inter alia*, all known testamentary instruments and all known assets and liabilities of the deceased.

(b) The Court will give consideration to whether it is necessary or desirable for provision to be made for the return of subpoenas for the production of documents, or notices for the production of documents to the Court, *limited to bringing within the control of the Court* (with or without liberty to apply for access to any documents produced to the Court):

(i) all known testamentary instruments of the deceased.

(ii) the file of any solicitor or other person known to have prepared, or supervised the execution of, a testamentary instrument of the deceased.

(iii) clinical records of a treating doctor of the deceased (*not* medical, hospital or nursing home records generally).

(iv) any orders, and supporting reasons for decision, of NCAT relating to the welfare of the deceased (*not* the whole NCAT file).

(c) The Court will also give consideration to whether orders should be made for provision to the Court, and service on all parties, of an affidavit, or affidavits, deposing to the circumstances in which a testamentary instrument was prepared or executed.

(d) Access to documents produced to the Court will not ordinarily be granted unless and until a party seeking access has demonstrated a proper forensic purpose for access (not mere "fishing" for a case).

25 **STEP TWO: Articulation of Competing Cases, by pleadings and preliminary affidavits.** In the ordinary course, at a second directions hearing:

(a) Orders will be made for production to the Court of all original testamentary instruments not earlier produced to the Court.

(b) The Court will entertain an application for access to documents produced to the Court, if access to those documents has not earlier been granted.

(c) If the proceedings were commenced by summons, the Court will, as may be appropriate, make an order that the proceedings proceed by way of pleadings.

(d) If the proceedings are to proceed by way of pleadings, the Court will give directions for the filing and service of pleadings, including (as may be necessary) a statement of claim, cross claims and defences.

(e) The Court may give directions directed towards:

(i) the service of notice of the proceedings on interested persons.

(ii) the filing and service by each party to the proceedings of a preliminary affidavit (if necessary, on information and belief, provided the source of any hearsay evidence is made explicit) verifying the party's disclosure statement and setting out in narrative form the nature of the case sought to be made by the party at a final hearing.

(iii) the filing and serve of a statement, or statements, identifying the real questions in dispute in the proceedings.

26 **STEP THREE: Referral to Mediation.** In the ordinary course, at a third directions hearing:

(a) The Court will consider whether the proceedings are ready for the conduct of a mediation, either a private mediation or a court-annexed mediation as the Court may order.

(b) In consideration whether the proceedings are ready for a referral to mediation, the Court will consider whether there has been:

(i) a sufficient identification of the deceased's testamentary instruments;

(ii) a sufficient service of notice of the proceedings on interested persons; and

(iii) a sufficient identification of real questions in dispute.

(c) If satisfied that the proceedings are ready for referral for mediation, the Court will make an order for mediation under section 26 of the *Civil Procedure Act* 2005 NSW and give directions for the conduct of the mediation, including a direction that each party file and serve a written estimate of costs.

27 **Proof of service of notice of proceedings** should generally be in the form of an **affidavit sworn in the Court's approved form**, UCPR Form 151. This affidavit confirms that service has been effected, and how it has been effected. It provides a summary of primary service evidence. It is not a substitute for evidence proving service.

28 If proceedings do not settle at, or in consequence of, a mediation, the proceedings will be listed for directions with a view to preparation of the proceedings for a contested hearing.

29 In preparation of proceedings for a contested hearing following an unsuccessful mediation, the Court will ordinarily allow the parties an opportunity to address the following topics:

(a) Whether any application is made for an amendment of pleadings.

(b) Whether any (and, if so, what) substantive affidavits are required.

(c) Whether any (and, if so, what) leave should be granted for forensic expert evidence (eg, medical, handwriting or I.P. evidence) to be adduced by a joint or several experts.

(d) Whether any (and, if so, what) leave should be given for the issue of subpoenas for the production of documents or the service of notices to produce.

(e) Whether any (and, if so, what) orders should be made for discovery.

## IV. SUBPOENAS AND NOTICES TO PRODUCE

30 No subpoena for the production of documents is to be issued, and no notice to produce documents to the Court is to be served, in probate proceedings without the leave of a judge.

31 Upon proper cause being shown, leave may be granted for the issue of subpoenas for the production of documents or for the service of notices for the production of documents to the Court (notwithstanding that pleadings have not closed or all evidence has not been served) directed to bringing within the control of the Court:

(a) all known testamentary instruments of the deceased (*Cf, Probate and Administration Act* 1898 NSW, section 150; *Succession Act* 2006 NSW, section 54).

(b) documents evidencing the circumstances in which a testamentary instrument was prepared or executed;

(c) contemporaneous medical records relating to the medical condition or treatment of the deceased; or

(d) the record of proceedings relating to the deceased in the NSW Civil and Administrative Tribunal (NCAT).

32 In deciding whether to make a general grant of leave for the issue of subpoenas for the production of documents or for the service of notices for the production of documents to the Court, and upon a determination of any application made for a

subpoena or notice to produce to be set aside, the Court will ordinarily attach importance to:

(a) whether there is clarity in *identification of the real questions in dispute* in the proceedings.

(b) whether *a proper forensic purpose* has been identified justifying a deployment of the Court's processes for the compulsory production of documents at the time of decision.

(c) whether the deployment of those processes involves an element of *oppression*.

(d) whether *considerations of reasonableness*, in the application of case management principles to the particular case, should govern deployment of the Court's processes.

(e) whether the Court's processes for the compulsory production of documents might be displaced, or supplemented, by *an order for the provision of an affidavit or affidavits* directed to identified topics.

33 Access to documents produced to the Court on subpoena, or in response to a notice to produce, will not ordinarily be granted to any party unless and until that party has demonstrated a proper forensic purpose for inspection of the records. Establishment of a proper forensic purpose will ordinarily require that a party has, to the best of his or her knowledge, information and belief, pleaded a case and supported that case by affidavit evidence or, at least, articulated a case that satisfies the Court that the applicant for access is not simply "fishing" for a case.

34 In accordance with case management principles, the Court may, on the application of an interested party or on its own motion, order that a solicitor (or other person) who prepared, or arranged for or supervised execution of, a will explain the circumstances in which the will was prepared and executed (*Re Estates Brooker-Pain and Soulos* [2019] NSWSC 671 at [98]-[102]):

(a) Such an order might require that the person to whom it is addressed attend before the Court for examination; however, in most instances, it is likely to be made, at least in the first instance, in the form of an order for the provision of an affidavit or affidavits.

(b) If such an order is made on the application of a party to proceedings, the Court may condition the making of an order upon an undertaking, or order, if necessary supported by an order for the provision of security for costs, that ensures that that party will, in the first instance, pay the reasonable costs of compliance with the Court's order, such costs to be assessed by the Court if not agreed.

(c) In making such orders, the Court may require that any affidavit directed towards provision of an explanation of the circumstances in which a will was prepared, or executed, be filed in the Court, without service on any party, so as to ensure that the Court controls deployment of the affidavit, emphasising that it is in the nature of a report to the Court.

(d) If an order (for the provision of an affidavit explaining the circumstances in which a testamentary instrument was prepared or executed) is made against a person who is not a party to the proceedings before the Court, or a solicitor for such a party, the Court will ordinarily reserve to the person to whom the order is addressed liberty to apply to the Court for an order that the order be discharged or varied. On such an application, a party who supports the order for disclosure may bear a forensic onus of persuading the Court that the order for disclosure should be maintained.

## V. CLAIMS OF LEGAL PROFESSIONAL PRIVILEGE IN RESPONSE TO A SUBPOENA FOR THE PRODUCTION OF DOCUMENTS OR A NOTICE TO PRODUCE

35 In the ordinary course, a claim for legal professional privilege (and opposition to such a claim) must be supported by a short written outline of submissions and, where necessary, affidavit evidence.

36 The Court may deal with such a claim on the papers or after oral argument depending upon what course is best calculated to assist an early determination.

37 Where a claim of privilege relates to a question whether a will was or was not duly executed:

(a) Parties should take into account “the rule in *Re Fuld*” (attributed to *Re Estate of Fuld, deceased* [1965] P 405 at 409F-411B), discussed in *Re Estate Pierobon, deceased* [2014] NSWSC 387 at [44]-[74] and *Boyce v Bunce* [2015] NSWSC 1924 at [145]-[148]. In case management of probate proceedings the Court is able to make orders designed to ensure that the evidence of an attesting witness is preserved, and made available to interested parties, in an orderly way, in the service of the proper administration of justice.

(b) The Court may supplement any determination of questions of privilege, by an order that a solicitor or other person who prepared, or arranged for or supervised the execution of, a will explain the circumstances in which the will was prepared and executed (*Re Estates Brooker-Pain and Soulos* [2019] NSWSC 671 at [98]-[102]).

## VI. CAVEATS

38 In probate practice, a caveat is a notice to the Court not to allow proceedings to be taken with respect to a particular deceased estate without notice to the caveator: *Estate Kouvakis; Lucas v Konakis* [2014] NSWSC 786 at [242]. A person who lodges a caveat without proper cause may be liable to a costs order.

39 Where a caveat is lodged in respect of a deceased estate, proceedings for a grant of probate or administration generally depend upon:

> (a) the caveat lapsing (after the expiry of its six months duration) without lodgement of a further caveat;
>
> (b) an order being made by the Court for the caveat to cease being in force; or
>
> (c) the filing of a statement of claim for a grant naming the caveator as a defendant.

40 An application for an order that a caveat case to be in force may provide an occasion for: (a) testing whether the caveator has a sufficient interest in the deceased estate to require that any application for a grant of probate or administration be made by way of proceedings commenced by a statement of claim; (b) ascertaining the strength of any challenge made by the caveator to the validity of a will or other testamentary instrument of the deceased; (c) weighing that challenge against competing cases for a grant of administration of an estate; and (d) applying case management principles to advance administration of the deceased's estate.

41 Upon an application for an order that a caveat cease to be in force:

> (a) The applicant *and* the respondent caveator may *both* be ordered to file and serve an affidavit, or affidavits, identifying the nature of the relief to be sought on an application for a grant and the grounds upon which such relief is to be sought; and
>
> (b) if the respondent caveator identifies a reasonably arguable interest in the deceased's estate, an order that the caveat cease to be in force will not ordinarily be made, leaving the proceedings to proceed in the ordinary course as a contested application for a grant of probate or administration.

## VII. PROOF OF SERVICE OF NOTICE OF PROCEEDINGS

42 The due service of notice of proceedings on all persons interested in the outcome of a contested application for a grant of probate or administration is foundational to the admission of a will to probate "in solemn form" (*Estate*

*Kouvakas* [2014] NSWSC 786 at [249]), having regard to the principle enunciated in *Osborne v Smith* (1960) 105 CLR 153 at 158-159 noted in paragraph 1(c) of these Guidelines. The fact that a probate suit is contested does not, of itself, justify the making of a grant in solemn form.

43 A grant expressed to have been made "in solemn form" may, notwithstanding its designation as a solemn form grant, be as amenable as a common form grant to an order for revocation if the prerequisites for a solemn form grant have not been satisfied. They include, importantly, due service of notice of proceedings on all persons interested in the outcome of proceedings for a grant.

44 The interests of justice, affecting both a will-maker and his or her true beneficiaries, require that a contested probate suit will not ordinarily be listed for hearing without evidence capable of supporting a solemn form grant.

45 A party's responsibility to ensure that due notice of probate proceedings is given to all interested parties cannot be discharged simply by posting a letter or sending an email without proof of receipt by the intended addressee. Strictly, personal service is required, or an alternative form of proof (eg, by an acknowledgement of service or evidence capable of supporting an application for substituted service) that all interested parties have been given due notice of the proceedings.

46 A failure to effect due service of notice of proceedings in a timely manner might be attended by costs orders.

## VIII. APPLICATIONS FOR APPROVAL OF SETTLEMENT AGREEMENTS : Passing over a Will

47 Where settlement of a probate suit invites the Court to make a grant of probate or administration passing over a will, it is generally necessary for the Court to consider whether to make a grant of probate of an earlier will in solemn form or to grant a declaration that the will passed over was not validly made.

48 An application for such an order should be supported by:

(a) A short written outline of the orders and notations sought, submissions in support of those orders and notations, and evidence relied upon; and

(b) A bundle of any affidavits and documents relied upon in support of the application.

49 An effective admission of a will to probate in solemn form cannot be granted unless and until the Court is provided with proof that all persons with an

interest in the outcome of proceedings in which a grant in solemn form is sought have been duly served with notice of the proceedings and allowed a reasonable opportunity to intervene.

## IX. APPLICATIONS FOR A SPECIAL GRANT OF ADMINISTRATION

50 A grant of administration may be "general" or "special". A "general" grant of administration is most commonly made when a person dies intestate. "Special" grants of administration are classified according to whether they are special: (a) by reason of the nature of the estate which is to be administered; and (b) by reason of the limited nature of the grant.

51 The most common form of grant which is special by reason of the nature of the estate to be administered is a grant of administration "with the will annexed", made when the deceased has made a will but has appointed no executor who is able or willing to act.

52 Grants which are "special" by reason of the limited nature of the grant may be classified on whether they are limited in respect of: (a) the time for which they endure; (b) the property to which they extend; or (c) of the purpose for which they are granted.

53 In practice, when an application is made for a "special grant of administration" what is generally sought is a limited, interim grant (made to protect an estate in some way prior to a full grant) in the character of:

(a) a grant *pendente lite* (ordinarily pursuant to section 73 of the *Probate and Administration Act* 1898 NSW, limited to protection of an estate during contested probate proceedings which go to the validity of a will or a grant of probate.

(b) a grant of *ad litem* (commonly pursuant to section 74 of the *Probate and Administration Act* 1898), limited to the commencement and conduct of proceedings other than probate proceedings, and ancillary business.

(c) a grant *ad colligenda* (commonly pursuant to section 74 of the *Probate and Administration Act*) limited to the collection and preservation of estate assets (including the conduct of a business) pending anticipated delays in obtaining a full grant.

54 These "special grants" are analogous to an order for the appointment of a receiver and manager of property upon an exercise of general equity jurisdiction or under legislation such as section 67 of the *Supreme Court Act* 1970 NSW. The powers of a "special administrator" must be specifically defined by an order of the Court. The nature and extent of powers conferred

on a special administrator will depend upon the circumstances of the particular case.

55 An applicant for a special grant should ordinarily provide to the Court a draft form of orders, in an electronic (WORD) format and a hard copy, setting out the terms upon which a grant is sought, together with evidence justifying such a grant.

56 Use of a Latin tag to describe the type of special grant sought, or made, is no substitute for an express elaboration of the powers of a special administrator.

57 In an appropriate case, an alternative form of procedure may be to invite the Court to order that a will be admitted to probate (expressly in common form) upon an undertaking that the executor or administrator to whom a grant is made will not dispose of any assets of the deceased otherwise than in the ordinary course of business, or distribute any estate property, without the prior leave of the Court.

58 Although the Court might authorise an administrator to make an interim distribution of estate assets in exceptional circumstances, a grant of such authority cannot lightly be made in case persons who may be found to have an entitlement against, or in respect of, an estate in the course of its due administration might be prejudiced. An order for special administration is unlikely, therefore, to extend to authorisation of any form of “final” distribution.

59 Procedurally, a distinction between a grant of probate or letters of administration with the will annexed (on the one hand) and (on the other hand) a special grant of administration is that, whereas a judge who authorises the former does so by orders which provide for a reference to the Probate Registrar “to complete the grant”, a judge who appoints a special administrator simply makes the order effecting the grant of special administration without referring proceedings to the Probate Registrar.

## X. ALLOCATION OF DATES FOR A HEARING

60 When proceedings are ready for the allocation of a date for hearing:

(a) if the duration of the hearing is estimated to be less than five days, the proceedings will be referred to the Equity Registrar for the appointment of a hearing date.

(b) if the duration of the hearing is estimated to be five days or more, the proceedings will be referred to the Chief Judge in Equity for the appointment of a hearing date.

61 The Probate Judge will endeavour to deal with short hearings (if necessary, summarily, with written submissions) within the context of a list day or

between 9.00am – 10.00am or after 4.00pm on such other days as may be available to the Court. Convenience of counsel may be consulted, but cannot be guaranteed, in the determination of short matters.

## X1. COSTS IN PROBATE PROCEEDINGS

62 No party to probate proceedings has an unqualified entitlement to costs out of the deceased's estate or is immune from exposure to an order for costs.

63 A party who fails to comply in a timely manner with the Court's orders may be visited with a costs order, including (as the nature of the case might require) a lump sum costs order enforceable at an interlocutory state of the proceedings.

Date: 24 December 2019

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