

Western Australia

Administration Act 1903

As at 01 Jan 2006

Version 10-e0-02

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Administration Act 1903

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Western Australia

Administration Act 1903

An Act to consolidate and amend the law relating to Probate and Administration and the Duties on the Estates of Deceased Persons and for other purposes.

Part I — Preliminary

1. Short title and construction

This Act may be cited as the *Administration Act, 1903*¹ and shall be construed as one with the *Supreme Court Act 1935*.

[Section 1 inserted by No. 57 of 1984 s.2.]

[2. Omitted under Reprints Act 1984 section 7(4)(f).]

3. Interpretation

In this Act, unless the contrary appears —

“**Administration**” includes letters of administration of the estate and effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes; and also exemplification of letters of administration with or without the will annexed and such other evidence of letters of administration purporting to be under the seal of a Court of competent jurisdiction as in the opinion of the Court is sufficient.

“**Administrator**” includes the Public Trustee and any other person to whom administration, as hereinafter defined, is granted.

“**Court**” means the Supreme Court or any Judge thereof.

“**Insolvent**”, in relation to the estate of a deceased person, means insufficient for the payment in full of the debts and liabilities of the estate of the deceased person.

“**Personal Estate**” extends to leasehold estates and other chattels real, and also to all other property whatsoever which, prior to the coming into operation of The Real Estates Administration Act², by law devolved upon the executor or administrator, and to any share or interest therein.

“**Prescribed**” means prescribed by this Act or the rules or regulations thereunder.

“Principal Registrar” means the person for the time being holding or acting in the office designated under the *Supreme Court Act 1935*, “Principal Registrar of the Supreme Court”.

“Probate” includes **“exemplification of probate”** and such other formal evidence of probate purporting to be under the seal of a Court of competent jurisdiction, as in the opinion of the Court is sufficient.

“Public Trustee” means the Public Trustee under the *Public Trustee Act 1941*.

“Real Estate” extends to messuages, lands, rents and hereditaments of freehold or any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein.

“Registrar” means a person for the time being holding or acting in an office designated under the *Supreme Court Act 1935*, “Registrar of the Supreme Court”, and a reference to a Registrar may include a reference to the Principal Registrar or a deputy Registrar.

“Will” extends to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power and also to a disposition by will and testament, or devise of the custody and tuition of any child by virtue of the Imperial Act Twelfth Charles the Second, Chapter 24, and to any other testamentary disposition.

[Section 3 amended by No. 62 of 1955 s.2; No. 67 of 1979 s.42; No. 72 of 1984 s.3.]

Part II — Probate and administration

4. Jurisdiction of Court as heretofore

The jurisdiction and authority heretofore vested in or exercised by the Court in respect of the estates of deceased persons shall continue to be so vested and exercised.

5. Duties of Principal Registrar

- (1) The Principal Registrar shall, subject to the rules, perform such duties as were immediately prior to the coming into operation of the *Acts Amendment (Master, Supreme Court) Act 1979*¹, performed by the Master of the Supreme Court in reference to proceedings in the ecclesiastical jurisdiction of the Court, and such other duties, as may be prescribed by the rules.
- (2) Subject to the rules the powers and authority conferred on the Principal Registrar by this Part may be exercised by a Registrar.
[Section 5 amended by No. 67 of 1979 s.43.]

6. Power to grant probate and administration

The Court shall have jurisdiction to grant probate of the will or administration of the estate of any deceased person leaving property, whether real or personal, in Western Australia.

7. Probate may be granted to one or more executors

The Court may grant probate to one or more of the executors named in any will, reserving leave to the other, who has not renounced, to come in and apply.

8. Upon grant of probate or administration real and personal estate to vest in executor or administrator

Upon the grant of probate or administration, all real and personal estate which a deceased person dies seised, possessed of, or entitled to in Western Australia shall, as from the death of such person, pass to and become vested in the executor to whom

probate has been granted, or administrator for all the estate and interest of the deceased therein in the manner following, that is to say —

- (a) on testacy or on partial intestacy, in the executor or administrator with the will annexed; and
- (b) on intestacy, in the administrator.

9. Real estate to vest subject to trusts

All real estate held by any person in trust shall vest as aforesaid, subject to the trusts and equities affecting the same.

10. Real and personal estate to be assets

- (1) The real as well as the personal estate of every deceased person shall be assets in the hands of the executor to whom probate has been granted or administrator, for the payment of all duties and fees and of the debts of the deceased in the ordinary course of administration.
- (2) No executor or administrator shall hereafter have or exercise any right of retainer.
- (3) An executor to whom probate has been granted or administrator may, for the purposes of administration, sell or lease such real estate, or mortgage the same, with or without a power of sale, and assure the same to a purchaser or mortgagee in as full and effectual a manner as the deceased could have done in his lifetime.
- (4) An executor or administrator of the estate of a person who dies on or after the day on which the *Acts Amendment (Insolvent Estates) Act 1984*¹ comes into operation shall not have or exercise any right to give preference as between creditors standing in equal degree.

s. 10A

- (5) Notwithstanding subsection (4), an executor or administrator who —
- (a) in good faith and at a time when he has no reason to believe that the estate of the deceased is insolvent, pays a debt, other than a debt payable to himself in his own right, of a person who is a creditor of the estate; or
 - (b) not being an administrator to whom letters of administration have been granted solely by reason of his being a creditor, in good faith and at a time when he has no reason to believe that the estate of the deceased is insolvent, pays a debt payable to himself in his own right as a creditor of the estate,

shall not, if it subsequently appears that the estate is insolvent, be liable to account to a creditor of the same degree as the paid creditor for the sum so paid.

[Section 10 amended by No. 62 of 1955 s.3; No. 72 of 1984 s.4.]

10A. Insolvent estates

- (1) Where the estate of a person dying on or after the day on which the *Acts Amendment (Insolvent Estates) Act 1984*¹ comes into operation is insolvent, his real and personal estate shall be administered in accordance with the rules set out in the Fifth Schedule.
- (2) This section binds the Crown.

[Section 10A inserted by No. 72 of 1984 s.5.]

11. Subject as aforesaid real estate to vest according to will

Subject as aforesaid, the real estate of every deceased person shall be held by the executor to whom probate has been granted or the administrator with the will annexed according to the trusts and dispositions of such will.

12. Executor to have same rights and duties as to real estate as heretofore as to personal estate

The executor to whom probate has been granted, or administrator, shall have the same rights and be subject to the same duties with respect to the real estate of the deceased that executors or administrators respectively heretofore have had or been subject to with reference to personal assets.

12A. Entitlement to participation in distribution of intestate estates

- (1) Where, after the coming into operation of the *Administration Act Amendment Act 1971*¹, any person dies intestate as respects all or any of his property, for the purpose of determining who is entitled to participate in the distribution of that part of his estate to which the intestacy applies the relationship between a child and his parents shall be determined irrespective of whether the parents are or have been married to each other, and all other relationships, whether lineal or collateral, shall be determined accordingly.
- (2) In any proceedings where a person relies on a matter of fact made relevant by the provisions of subsection (1) —
 - (a) that fact shall not be taken to be proved unless it is established to the reasonable satisfaction of the Court; and
 - (b) where the parents are not, or have not been, married to each other, the relationship between a child and his parent, and all other lineal or collateral relationships, shall be recognized only —
 - (i) if parentage is admitted by or established against the parent in his lifetime; and
 - (ii) where the purpose for which the relationship is to be determined enures for the benefit of the parent, if parentage has been so admitted or established in the lifetime of the child.

s. 12B

- (2a) Subsection (2)(b) does not apply to or in respect of a relationship established by the *Artificial Conception Act 1985*¹.
- (3) The estates of all persons who have died intestate as to the whole or any part thereof before the coming into operation of the *Administration Act Amendment Act 1971*¹, shall be distributed in accordance with the enactments and rules of law which would have applied to them if that Act had not been passed.
- (4) The estates of all persons who have died intestate as to the whole or any part thereof before the coming into operation of Part 2 of the *Acts Amendment (Lesbian and Gay Law Reform) Act 2002* shall be distributed in accordance with the enactments and rules of law which would have applied to them if that Act had not been passed.

[Section 12A inserted by No. 18 of 1971 s.3; amended by No. 14 of 1985 s.8; No. 3 of 2002 s.4.]

12B. Relationships of the whole and the half blood

Where a person dies intestate as respects all or any of his property, for the purpose of determining who is entitled to participate in the distribution of that part of his estate to which the intestacy applies it is immaterial whether a relationship is of the whole blood or of the half blood.

[Section 12B inserted by No. 57 of 1984 s.3.]

13. Real and personal estate in case of intestacy

- (1) Where, after the coming into operation of section 4 of the *Administration Act Amendment Act 1976*¹, any person dies intestate as to all or any of his property, the administrator, or in case of partial intestacy, the executor or administrator with the will annexed, shall, subject to sections 9, 10 and 10A, hold the real and personal estate to which the intestacy applies, and which vests in him under section 8, on trust for the persons who are entitled thereto under sections 14 and 15.

- (1a) When, pursuant to subsection (1), real estate is held on trust for 2 or more persons, it shall be held as if it had been devised to those persons as tenants in common.
- (1b) The estates of all persons who have died intestate as to all or any of their property before the coming into operation of section 4 of the *Administration Act Amendment Act 1976*¹ shall be held and distributed in accordance with the enactments and rules of law which would have applied to those estates if that Act had not been passed.
- (2) No executor, as such, shall be entitled to take beneficially any residue not expressly disposed of by the will of the testator, unless it appear by such will that he is intending so to take.
- (3) Nothing herein contained shall affect or prejudice any right to which an executor would have been entitled if this Act had not been passed, in cases where there is not any person who would be entitled to the testator's estate in respect of any residue not expressly disposed of.

*[Section 13 amended by No. 28 of 1934 s.77(3)(b) and (4);
No. 138 of 1976 s.3; No. 72 of 1984 s.6; No. 25 of 2002 s. 52.]*

14. Entitlements on intestacy

- (1) Subject to this section and section 15, where any person (in this section called "**the intestate**") dies intestate as to all or any of his property, the property as to which he dies intestate (in this section called "**the intestate property**") shall be distributed according to the entitlements set out in the following table (in this section called "the Table"): —

Table

If the intestate —

- | | |
|--|--|
| 1. dies leaving a husband or wife (whether or not other persons mentioned in item 2 or 3 also survive) | the surviving husband or wife shall be entitled, absolutely, to all household chattels included in the intestate property; |
|--|--|

s. 14

2. dies leaving a husband or wife and issue
- (a) where the net value of the intestate property (other than the household chattels) does not exceed the sum of \$50 000 — the surviving husband or wife shall be entitled to the whole of the intestate property;
- (b) where the net value of the intestate property (other than the household chattels) exceeds the sum of \$50 000 — the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of \$50 000, absolutely, together with interest on that sum in accordance with subsection (4) and, of the residue, the surviving husband or wife shall be entitled to one third and the issue shall be entitled in accordance with subsection (2b) to the other two-thirds;
- (Note provisions of subsection (3))
3. dies leaving a husband or wife and one or more of the following, namely, a parent, a brother or sister, or child of a brother or sister, but leaving no issue
- (a) where the net value of the intestate property (other than the household chattels) does not exceed the sum of \$75 000 — the surviving husband or wife shall be entitled to the whole of the intestate property;
- (b) where the net value of the intestate property (other than the household chattels) exceeds the sum of \$75 000 — the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of \$75 000, absolutely, together with interest on that sum in accordance with subsection (4), and, of the residue, the surviving husband or wife shall be entitled to one-half and, as to the other half —
- (i) where the intestate is survived by one parent or both parents —
- (A) if the value of that other half does not exceed the sum of

\$6 000 or if no brother, sister, or child of a brother or sister survives the intestate — the parent or parents shall be entitled (in equal shares where both survive the intestate) to that other half;

(B) in any other case — the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of \$6 000, absolutely, and of the remainder, the parent or parents shall be entitled (in equal shares where both survive the intestate) to one-half and the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half;

(ii) where neither parent survives the intestate — the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half;

4. dies leaving a husband or wife but no issue, parent, brother, sister or child of a brother or sister the surviving husband or wife shall be entitled to the whole of the intestate property;
5. dies leaving issue but no husband or wife the issue shall be entitled in accordance with subsection (2b) to the whole of the intestate property;
6. dies leaving a parent or parents and one or more of the following, namely, a brother or sister, or a child of a brother or sister, but (a) where the net value of the intestate property does not exceed the sum of \$6 000 — the parent or parents shall be entitled (in equal shares where both

s. 14

- | | |
|---|--|
| leaving no husband or wife and no issue | survive the intestate) to the whole of the intestate property; |
| | (b) where the net value of the intestate property exceeds the sum of \$6 000 — the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of \$6 000, absolutely, and of the residue, the parent or parents shall be entitled (in equal shares where both survive the intestate) to one half and the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half; |
| 7. dies leaving a parent or parents but leaving no husband or wife and no issue, brother, sister or child of a brother or sister | the parent or parents shall be entitled (in equal shares where both survive the intestate) to the whole of the intestate property; |
| 8. dies leaving one or more of the following, namely a brother or sister, or a child of a brother or sister, but leaving no husband or wife and no issue or parent | the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the whole of the intestate property; |
| 9. dies leaving no husband or wife and no issue, parent, brother, sister or child of a brother or sister but leaving a grandparent or grandparents | the grandparent or grandparents shall be entitled (in equal shares where more than one survive the intestate) to the whole of the intestate property; |
| 10. dies leaving no husband or wife and no issue, parent, brother, sister, child of a brother or sister, or grandparent but leaving an uncle or aunt or a child of an uncle or aunt | the uncles and aunts of the intestate and the children of deceased uncles and aunts of the intestate shall be entitled in accordance with subsection (3a) to the whole of the intestate property but in applying that subsection for the purposes of this item a reference in that subsection to a brother or sister, or a child of a brother or sister, of the intestate shall be construed as a reference to an uncle or aunt, or a child of an uncle or aunt, of the intestate, as the |

case may be;

- | | |
|--|--|
| 11. dies leaving no husband or wife and no issue, parent, brother, sister, child of a brother or sister, grandparent, uncle, aunt or child of an uncle or aunt | the whole of the intestate property passes to the Crown by way of escheat. |
|--|--|

(2) For the purposes of the Table —

- (a) **“household chattels”** means articles of personal or household use or adornment;
- (b) the net value of the intestate property is the net value of that property at the date of the death of the intestate.

(2a) In subsection (2b), a reference to the entitled issue of an intestate means issue of the intestate surviving the intestate and not also being issue of another person who survived, and was issue of, the intestate.

(2b) Where, under the Table, the issue of an intestate is or are entitled to a portion or the whole of the intestate property (which portion or whole, as the case may be, is referred to in this subsection as **“the relevant property”**) —

- (a) where a person is the only entitled issue of the intestate, then that person is entitled to all of the relevant property;
- (b) where there are 2 or more entitled issue of the intestate and any of them is a child of the intestate, then the relevant property shall be divided into as many equal parts as there are children of the intestate who —

- (i) survived the intestate; or
- (ii) left issue who survived the intestate,

and a child of the intestate who so survived shall be entitled to one of those parts;

- (c) where a person did not survive the intestate but left issue who so survived and that person would, if he had survived the intestate, have been entitled —
 - (i) under paragraph (a), to all of the relevant property, then the entitled issue of the intestate being also issue of that person shall be entitled to all of the relevant property;
 - (ii) under paragraph (b), to a part of the relevant property, then the entitled issue of the intestate being also issue of that person shall be entitled to that part of the relevant property,

and where there are 2 or more entitled issue of the intestate being also issue of that person their entitlement under subparagraph (i) or (ii) shall be divided between them under the provisions of this Act (including this paragraph) as if that person had died intestate at the time that the intestate in fact died, the entitlement to be divided were the intestate property of that person, and no person other than those issue were entitled to participate in the distribution thereof.

- (3) In applying the provisions of item 2 of the Table to a case where the intestate dies leaving —
 - (a) a husband or wife and one child; or
 - (b) a husband or wife and the issue of one child,

the words “one-third” and “two-thirds” in paragraph (b) of that item shall be read as if they were the words “one-half” and “half” respectively.

- (3a) Where, under the Table, the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate are entitled to a portion or the whole of the intestate property (which portion or whole, as the case may be, is referred to in this subsection as “**the relevant property**”) —
 - (a) where only one such person survives the intestate, then that person is entitled to all of the relevant property;

- (b) where 2 or more such persons survive the intestate and any of them is a brother or sister of the intestate, then the relevant property shall be divided into as many equal parts as there are brothers and sisters of the intestate who —
 - (i) survived the intestate; or
 - (ii) left children who survived the intestate, and a brother or sister of the intestate who so survived shall be entitled to one of those parts;
- (c) where any brother or sister did not survive the intestate but left a child or children who so survived, that child shall be entitled or, where there are children, those children, shall be entitled in equal shares —
 - (i) where that brother or sister would have been entitled under paragraph (a) to all of the relevant property had he or she survived the intestate, to all of the relevant property;
 - (ii) where that brother or sister would have been entitled under paragraph (b) to a part of the relevant property had he or she survived the intestate, to that part of the relevant property.
- (4) Where the intestate dies leaving a husband or wife who is entitled to —
 - (a) the sum of \$50 000 mentioned in paragraph (b) of item 2 of the Table; or
 - (b) the sum of \$75 000 mentioned in paragraph (b) of item 3 of the Table,

the surviving husband or wife shall be entitled to an amount equal to 5% per annum on the sum to which he or she is so entitled, or on that part of such sum as remains unpaid or unsatisfied, calculated from the date of death of the intestate to the date of the payment of that sum, or the date of the effectual appropriation of that sum in accordance with the provisions of the *Trustees Act 1962*, whichever is the earlier of those dates,

and the amount to which he or she is entitled under this subsection —

- (c) shall be in addition to any other sum, property or share in property, to which he or she is entitled under the Table; and
 - (d) shall be payable out of the income of the estate of the intestate, or if there is no income or the income is insufficient for that purpose, out of the capital of the residue of the estate.
- (5) Subject to subsection (4), the income derived from the intestate property shall be distributed among the persons who are, under the Table, entitled in distribution to that property in the same respective proportions to which they are, under the Table, entitled to share in the distribution of that property.
- (6) If —
- (a) a surviving husband or wife of the intestate is not entitled to the whole of the intestate property in accordance with this section and section 15; and
 - (b) there is an interest within the meaning of clause 1(1)(b) of the Fourth Schedule,
- then that Schedule applies with respect to that interest.
- (7) Subject to subsection (6), where the surviving husband or wife of the intestate is entitled under the Table to share in real property he or she shall accept the value of his or her share in lieu of partition, if so desired by all the persons entitled jointly with him or her.
- (8) Subject to subsections (9) and (10), this section shall apply to the estates of all persons who die on or after 1 March 1977.
- (9) The amendments effected by section 3 of the *Administration Amendment Act 1982* shall apply to the estates of all persons who die on or after the coming into operation of that section¹.

- (10) The estates of all persons who have died intestate as to the whole or any part thereof before the coming into operation of the *Administration Amendment Act 1984*¹ shall be distributed in accordance with the enactments and rules of law which would have applied to them if that Act had not been passed.

[Section 14 inserted by No. 138 of 1976 s.4; amended by No. 103 of 1979 s.3; No. 48 of 1982 s.3; No. 57 of 1984 s.4; No. 57 of 1997 s.16(1); No. 25 of 2002 s. 52.]

15. De facto partners and distribution on intestacy

- (1) If the intestate dies leaving a de facto partner but no husband or wife, then where the de facto partner and the intestate lived as de facto partners for a period of at least 2 years immediately before the death of the intestate, the de facto partner shall be entitled, in accordance with section 14, to the intestate property to which a husband or wife of the intestate would have been entitled, had the intestate died leaving a husband or wife.
- (2) If the intestate dies leaving a husband or wife and a de facto partner, then where —
- (a) the de facto partner and the intestate lived as de facto partners for a period of at least 2 years immediately before the death of the intestate; and
 - (b) the intestate did not, during the whole or any part of that period, live as the husband or wife of the person to whom he or she was married,

the de facto partner shall be entitled, to one-half of the intestate property to which the husband or wife would have been entitled in accordance with section 14 but for this subsection and the husband or wife shall be entitled to the other half of that property.

- (3) If the intestate dies leaving a husband or wife and a de facto partner, then where —

s. 16

- (a) the de facto partner and the intestate lived as de facto partners for a period of at least 5 years immediately before the death of the intestate; and
- (b) the intestate did not, during the whole or any part of that period, live as the husband or wife of the person to whom he or she was married,

the de facto partner shall be entitled, in accordance with section 14, to the intestate property to which the husband or wife would have been entitled but for this subsection.

- (4) Where under this section a de facto partner is entitled to intestate property and the intestate dies leaving more than one de facto partner so entitled, those de facto partners are entitled to that property in equal shares.
- (5) Where under this section a de facto partner is entitled to intestate property, then for the purposes of section 14 and the Fourth Schedule, the de facto partner is to be taken to be a husband or wife, as is applicable, and all references to a husband or wife in those provisions are to be construed accordingly.
- (6) In this section —
“the intestate” and **“the intestate property”** have the same respective meanings as they have in section 14.
- (7) The amendments made to this Act by the *Family Court Amendment Act 2002* do not apply to or in respect of the estate of a person who died intestate as to all or any of the person’s property before the commencement of that Act, and the estate of such a person is to be distributed as if that Act had not been passed.

[Section 15 inserted by No. 25 of 2002 s. 52.]

[15A. Repealed by No. 138 of 1976 s.4.]

16. Courtesy and dower abolished

No person shall become entitled to or take any estate by courtesy or right of dower, or any equivalent estate, after the coming into operation of this Act, out of real estate as to which any person dies intestate.

17. Court may deal with interest of infants in certain cases

- (1) Where a person dies leaving infant issue and the value of the share of the real and personal property of the deceased person to which an infant is entitled in distribution does not exceed \$10 000 the Court may, on the application of any such infant, or of any person on his behalf, authorize the executor or administrator to expend the whole or any part of the share of such infant in his maintenance, advancement, or education.

[(2) repealed.]

- (3) The power or authority that the Court may confer under this section on an executor or administrator is in addition to any other power or authority, statutory or otherwise, that the executor or administrator may have to pay or apply capital money or assets, or the income thereof, to or on behalf of an infant.

[Section 17 amended by No. 62 of 1955 s.5; No. 80 of 1962 s.3; No. 113 of 1965 s.8.]

17A. Power to appoint trustees of infant's property

- (1) Subject to subsection (5), where an infant is absolutely entitled under the will or on the intestacy of a person (in this section called "**the deceased**") to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and that devise, legacy, residue or share is not, under the will (if any) of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint a trustee corporation (including the Public Trustee) or 2 or more individuals not exceeding 4 (whether or not including the

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personal representatives or one or more of them) to be the trustee or trustees of that devise, legacy, residue or share for the infant, and may execute or do any assurance, act or thing requisite for vesting that devise, legacy, residue or share in the trustee or trustees so appointed.

- (2) On the vesting of the devise, legacy, residue or share mentioned in subsection (1) in the trustee or trustees appointed under this section, the personal representatives as such are discharged from all further liability in respect of that devise, legacy, residue or share.
- (3) Trustees appointed under this section may retain any property transferred to them pursuant to the provisions of this section in its existing condition or state of investment, or may convert it into money, and upon conversion shall invest the money as trust funds may be invested under Part III of the *Trustees Act 1962*.
- (4) Where a personal representative has, before 1 January 1963, retained or sold any such devise, legacy, residue or share as is mentioned in subsection (1), and has invested it or the proceeds thereof (as the case may be) in any investments in which he was authorized to invest money subject to the trust, then, subject to any order of the Court made before that date, he shall be deemed not to have incurred any liability on that account or by reason of not having paid or transferred the money or property into Court.
- (5) The power of appointing trustees conferred upon personal representatives by this section is subject to any direction or restriction contained in the will of the deceased.

[Section 17A inserted by No. 80 of 1962 s.4; amended by No. 1 of 1997 s.18.]

[18. Repealed by No. 80 of 1962 s.5.]

19. Court may direct partition of real estate

- (1) Where the Court is satisfied that a partition of the real estate of a deceased person, or any part thereof, would be advantageous to the parties interested, the Court may appoint one or more arbitrators, or Direct the Principal Registrar to effect such partition.
- (2) The award of the arbitrators or order of the Principal Registrar setting forth particulars of the land allotted to each party interested shall, when confirmed by the Court and registered in the office of the Registrar of Deeds or Registrar of Titles, as the case may be, without the necessity of any further conveyance or transfer, vest in each allottee the land so allotted to him.
- (3) In the case of land subject to the *Transfer of Land Act 1893*, each allottee shall be entitled to have created and registered in the allottee's name a certificate of title for the land so allotted.
- (4) If any allotment be made subject to the charge of any money payable to any other party interested, for equalising the partition, such charge shall take effect according to the terms and conditions in regard to time and mode of payment, and otherwise, which shall be expressed in such award or order, without the necessity of any further instrument being made or executed; and in case of land subject to the *Transfer of Land Act 1893*, the certificate of title shall be created and registered subject to such charge.

[Section 19 amended by No. 67 of 1979 s.44; No. 81 of 1996 s.153(1).]

20. Personal representative may relinquish trust

- (1) A personal representative may at any time, by leave of the Court, and on such conditions as the Court may impose, relinquish his trust to such person as the Court may appoint.
- (2) Notwithstanding any such order, such personal representative shall continue liable for all acts and neglects whilst he was acting as executor or administrator, but not otherwise or further.

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21. Executor or administrator to represent real estate

In all proceedings concerning the real estate of a deceased person, his executor, to whom probate has been granted, or administrator, so long as such estate remains vested in him, shall represent such real estate and the persons interested therein in the same manner and to the same extent as in proceedings concerning personal estate.

[22. Repealed by No. 26 of 1941 s.3.]

23. All creditors to stand in equal degree

- (1) Subject to section 10A, in the administration of the estate of every deceased person, all the creditors of such person shall be treated as standing in equal degree, and be paid accordingly out of the assets, whether legal or equitable.
- (2) Nothing herein contained shall prejudice or affect any mortgage, lien, charge, or security which any person may hold or be entitled to for payment of his debt.
- (3) Nothing herein contained shall affect the provisions of any Act protecting life assurance or other policies against creditors.

[Section 23 amended by No. 72 of 1984 s.7.]

24. Administration in case of intestacy

The practice hitherto in force with reference to granting administration of the estate of an intestate shall, save as hereby altered and subject to the rules, be applicable to administration granted hereunder; and administration of both real and personal estate may be granted in and by the same letters.

25. Persons entitled to administration

- (1) The Court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being of the full age of 18 years, that is to say to —
 - (a) one or more of the persons entitled in distribution to the estate of the intestate;

- (b) any other person, whether a creditor or not, if there be no such person entitled as aforesaid resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration.

[Section 25 amended by No. 46 of 1972 s.6(2); No. 57 of 1984 s.5; No. 21 of 1986 s. 4.]

26. Power to require administrator to produce sureties

- (1) As a condition of granting administration to any person the Court may, subject to the following provisions of this section and subject to and in accordance with the rules, require one or more sureties to guarantee that they will make good, within any limit imposed by the Court on the total liability of the surety or sureties, any loss that any person interested in the administration of the estate of the deceased may suffer in consequence of a breach by the administrator of his duties as an administrator.
- (2) Where a guarantee is given as required by subsection (1) the Court may, at any time, upon the application of any person interested in the estate or of its own motion on the report of the Principal Registrar —
 - (a) require the surety or sureties to give such further or additional guarantee as the Court may direct and, if that further or additional guarantee is not given by the surety or sureties and the administrator does not produce another surety or other sureties, as the case may require, to give that further or additional guarantee, the Court may remove the administrator and appoint another in his place with power to sue or be sued upon any contract made by the removed administrator;
 - (b) order that the liability of a surety under the guarantee be reduced to such amount as the Court in the circumstances of the case thinks reasonable.

- (3) For the purposes of this Act a further or additional guarantee given pursuant to subsection (2)(b) shall be deemed to be a guarantee given as required by subsection (1).
- (4) A guarantee given as required by subsection (1) shall enure for the benefit of every person interested in the administration of the estate of the deceased as if contained in a deed to which the surety or sureties and every such person are parties and, where there are 2 or more sureties, as if they had bound themselves jointly and severally.
- (5) Where a guarantee is given as required by subsection (1) an action on that guarantee —
 - (a) shall not be brought without the leave of either the Court or the Principal Registrar;
 - (b) may be brought only on such terms and conditions as the Court or the Principal Registrar thinks fit.
- (6) If, upon the application of a surety who has given a guarantee as required by subsection (1), it appears to the Court that —
 - (a) the 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 the act or default of the person administering the estate; or
 - (c) any surety desires to be relieved from further liability,the Court may grant such relief as it thinks fit.
- (7) Subject to subsection (6), this section applies whenever administration is granted under any provision of this Act.
- (8) This section does not apply where administration is granted to the Public Trustee or in such other cases as may be prescribed by the rules.

[Section 26 inserted by No. 138 of 1976 s.5; amended by No. 67 of 1979 s.44.]

[27-28. Repealed by No. 138 of 1976 s.6.]

29. Court may revoke grant; no grant before duty assessed

- (1) Where administration of the estate of a person has been granted the Court may, at any time, upon the application of any person interested in the estate or of its own motion on the report of the Principal Registrar, revoke the administration.

[(2) repealed]

[Section 29 inserted by No. 138 of 1976 s.7; amended by No. 67 of 1979 s.44; No. 103 of 1979 s.4; No. 57 of 1997 s.16(2).]

[30-31. Repealed by No. 138 of 1976 s.8.]

32. In case of renunciation or failure to take probate, right of executor gone

Where an executor renounces probate of the will, or dies without having taken probate, or where, being personally cited to take probate, he does not appear to such citation, the right of such executor in respect of the executorship shall wholly cease; and the representation to the testator and the administration of his estate shall go, devolve, and be committed in like manner as if such person had not been appointed executor.

33. Where infant is executor, etc.

- (1) Where an infant is sole executor, administration with the will annexed may be granted to the guardian of such infant, or to such other person as the Court thinks fit, until such infant has attained the age of 18 years, with full or limited powers to act in the premises until probate has been granted to the said executor.
- (2) The person to whom such administration is granted shall, unless otherwise ordered, have the same powers vested in him as any ordinary administrator with the will annexed.

[Section 33 amended by No. 46 of 1972 s.6(2).]

34. Where person entitled to probate or administration is out of the jurisdiction

When an executor or any person entitled to probate or administration is out of the jurisdiction or is a member of the naval, military, or air forces of Her Majesty the Queen (including a member of any medical corps nursing service attached to any of the forces aforesaid) who is within the jurisdiction, but has some person within the jurisdiction appointed under power of attorney to act for him, administration may be granted to such attorney, but on behalf of the person entitled thereto, and on such terms and conditions as the Court thinks fit.

[Section 34 amended by No. 21 of 1942 s.2.]

35. Court may appoint a manager and receiver pending litigation

The Court may, pending any proceedings touching the validity of any will, or for obtaining, recalling, or revoking any probate or administration, appoint an administrator of the personal estate and a receiver of the real estate of any deceased person, at such remuneration and with such full or limited powers as the Court may think fit.

[Section 35 amended by No. 138 of 1976 s.9.]

36. Administration with the will annexed

Where a person dies leaving a will but without having appointed an executor, or leaving a will and having appointed an executor who is not willing and competent to take probate or is resident out of Western Australia, the Court may appoint an administrator of the estate of the deceased, or of any part thereof, and such administration may be limited as the Court thinks fit.

[Section 36 amended by No. 138 of 1976 s.10.]

37. Probate or administration if executor, etc. absent or neglects to obtain probate, etc.

Where an executor neglects to obtain or to renounce probate within 2 months from the death of the testator or from the time of such executor attaining the age of 18 years, or where an executor is unknown or cannot be found, the Court may, upon the application of any person interested in the estate, or of any creditor of the testator, grant administration with the will annexed to the applicant, and such administration may be limited as the Court thinks fit.

[Section 37 amended by No. 46 of 1972 s.6(2).]

38. Special letters of administration if executor or administrator not within jurisdiction

- (1) If, at the expiration of 6 months from the death of any person, the executor to whom probate has been granted, or the administrator, is residing, out of the jurisdiction, the Court may upon the application of any creditor or person interested in the estate, grant to the applicant special letters of administration of the estate of such deceased person, with limited or unlimited powers.
- (2) The applicant shall satisfy the Court that the executor or administrator is resident out of the jurisdiction, and that the applicant is thereby delayed in recovering or obtaining payment of moneys, or the possession of goods and chattels, or real estate to which he is by law entitled, or that the estate is liable to loss or waste.

39. On return of executor or administrator, special administration may be revoked

- (1) On the return within the jurisdiction of the executor to whom probate has originally been granted, or the administrator, he may apply to the Court to rescind such special grant; and the Court may make such order upon such terms and conditions as to the Court may seem fit, and thereafter the original probate or

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administration shall be and remain as valid and effectual as if such special grant had never been made.

- (2) Upon any order being made for the rescission of any special grant, the special administrator shall be bound to account to the original executor or administrator, and to pay over all moneys received by him and then remaining in his hands.

40. Absent executor liable to account

Should an executor or administrator neglect to apply for an order for the rescission of any special grant as aforesaid, he shall, until such special grant is rescinded, be liable to make good all claims and demands against the estate of the deceased to the extent of the assets which have come to his hands, or which might have come to his hands but for his wilful neglect or default, including the neglect herein mentioned.

41. Revocation pending litigation not to abate proceedings

Where probate or administration is revoked or rescinded, pending any proceedings commenced by or against any executor or administrator lawfully acting as such, such proceedings shall be continued in the name of the executor or administrator appointed on such revocation or rescission as if the same had been originally commenced by or against such lastmentioned executor or administrator.

42. Devisee or legatee may apply to Court in certain cases

If an executor who has obtained probate, or an administrator with the will annexed, after request in writing neglects or refuses to —

- (a) execute a transfer or conveyance of land devised to a devisee; or
- (b) transfer, pay, or deliver to the person entitled any bequests, legacy, or residuary bequest,

such devisee or person may apply for an order upon such executor or administrator to comply with such request, and the Court may make such order as it thinks fit.

43. Inventory and accounts

- (1) Every person to whom probate or administration is granted shall be under a duty to —
 - (a) collect and get in the real and personal estate of the deceased and administer it according to law;
 - (b) file an inventory of the estate of the deceased, and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be prescribed by the rules or as the Court may order;
 - (c) when required to do so by the Court, deliver up the grant of probate or administration to the Court.
- (2) The order of the Court allowing any account shall be *prima facie* evidence of the correctness of the same, and shall, after the expiration of 3 years from the date of such order, operate as a release to the person filing the same, except so far as it is shown by some person interested therein that a wilful or fraudulent error, omission, or entry has been made in such account.

[Section 43 amended by No. 138 of 1976 s.11.]

44. If accounts not filed Principal Registrar to give notice, etc.

- (1) If an executor or administrator neglects to file an inventory or to pass accounts within one month after the expiration of the period fixed by the rules, the Principal Registrar shall cause such executor or administrator to be notified of such neglect.
- (2) In case of further neglect of the period of one month, the Principal Registrar shall apply for an order upon such executor or administrator to file such inventory or exhibit such account forthwith.
- (3) No proceedings under this section shall affect the liability of the executor or administrator to be proceeded against for an account

and administration, or prevent an action from being brought on any guarantee given as required by section 26(1) or section 62(1).

[Section 44 amended by No. 138 of 1976 s.12; No. 67 of 1979 s.44.]

45. Court may settle all questions arising in administration

- (1) The Court may make such order with reference to any question arising in respect of any will or administration, or with reference to the distribution or application of any real and personal estate which an executor or administrator or Public Trustee may have in hand, or as to the residue of the estate, as the circumstances of the case may require.
- (2) Such order shall bind all persons whether *sui juris* or not.
- (3) No final order for distribution shall be made except upon notice to all the parties interested, or as the Court may direct.

[Section 45 amended by No. 62 of 1955 s.8.]

46. Payments made before revocation to be valid

- (1) Where any probate or administration is revoked or rescinded, all payments *bona fide* made to the executor or administrator before the revocation or rescission shall be a legal discharge to the person making the same.
- (2) The executor or administrator who has acted under any revoked or rescinded probate or administration may retain and reimburse himself, or shall be entitled to be reimbursed, in respect of all payments made by him before revocation or rescission, in the same manner as if such revocation or rescission had not taken place.

47. Payments etc. to be valid notwithstanding defect

All persons making or permitting to be made any payment or transfer *bona fide* upon any probate or administration granted under the authority of this Act shall be indemnified and protected in so doing, notwithstanding any defect or

circumstance whatsoever affecting the validity of such probate or administration not then known to such person.

47A. Protection of executors, administrators and trustees

(1) Notwithstanding —

- (a) the provisions of section 12A; or
- (b) the provisions of Part IX of the *Wills Act 1970*,

for the purposes of the administration or distribution of any estate or any property no executor or administrator or trustee shall be under any obligation to inquire as to the existence of any person who could claim an interest in the estate or the property by virtue only of those provisions in so far as they confer any interest on illegitimate children or any person claiming through an illegitimate child.

(2) No executor or administrator or trustee shall be liable to any such person as is referred to in subsection (1) in relation to any claim arising by reason of an executor or administrator or trustee having made any distribution of the estate or property held on trust, or otherwise acted in the administration of the estate or property held on trust, disregarding the interest of that person, if at the time he made the distribution or so acted the executor or administrator or trustee had no notice of the relationship on which the claim is based.

(3) Nothing in this section shall prejudice the right of any person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

[Section 47A inserted by No. 18 of 1971 s.4.]

[48-52. Repealed by No. 80 of 1962 s.5.]

53. Executor deemed to be resident in State

(1) Every executor or administrator appointed under this Act, or named in any probate or letters of administration granted by any Court of competent jurisdiction in any portion of Her Majesty's

dominions, and making application under this Act for the sealing of such probate or administration, shall be deemed to be resident in Western Australia.

- (2) Where not actually so resident he shall, before the issue or sealing of any probate or administration, file in accordance with the rules a notice of an address at which notices and processes may be served upon him, and all services at such registered address shall be deemed personal service.

[Section 53 amended by No. 67 of 1979 s.44; No. 14 of 1980 s.3.]

54. Court may appoint district agents

- (1) For the purpose of receiving applications for probate or administration under this Act, a magistrate of the Magistrates Court at a place beyond 80 kilometres from Perth shall be and is hereby appointed to act as a district agent for the Principal Registrar.

- (2) All district agents may, for the purposes of this Part, administer oaths, take declarations and affirmations, and exercise any other powers which can be exercised by the Principal Registrar.

[Section 54 amended by No. 55 of 1941 s. 5; No. 94 of 1972 s. 4 (as amended by No. 19 of 1973); No. 67 of 1979 s. 44; No. 59 of 2004 s. 141; No. 24 of 2005 s. 63.]

55. Where estate does not exceed \$10 000 the Principal Registrar or district agent may act

In all cases where a person dies leaving property not exceeding \$10 000 in value, application for probate or administration may be made direct to the Principal Registrar or to a district agent of the Principal Registrar.

[Section 55 inserted by No. 66 of 1963 s.2; amended by No. 113 of 1965 s.8; No. 94 of 1972 s.4 (as amended by No. 19 of 1973); No. 37 of 1977 s.3; No. 67 of 1979 s.44; No. 14 of 1980 s.4.]

56. Information to be furnished by Principal Registrar or agent

- (1) The Principal Registrar or district agent shall, upon being satisfied as to the identity of the applicant, and his right to administer the estate of the deceased, and the value of such estate, furnish him, free of cost, with all necessary information for the purpose of enabling him to fill up the affidavits and documents necessary for obtaining probate or administration as the case may be.
- (2) The Principal Registrar or district agent shall receive payment of all proper fees fixed by the Rules of the Court in connection with the application.

[Section 56 amended by No. 67 of 1979 s.44.]

57. Applications to be transmitted by agent to Principal Registrar

- (1) The district agent shall forthwith transmit to the Principal Registrar all fees, affidavits, documents, and things received by him; and, upon receipt of the probate or letters of administration, shall deliver the same to the applicant upon demand.
- (2) The Principal Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed \$10 000 in value, and that no caveat has been entered against the application and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the district agent for delivery by him to the applicant.
- (3) Such probate or administration shall be issued in the name and under the seal of the Court.

[Section 57 amended by No. 55 of 1950 s.4; No. 66 of 1963 s.3; No. 113 of 1965 s.8; No. 37 of 1977 s.3; No. 67 of 1979, s.44.]

58. Principal Registrar to refer matter back to agent if not satisfied

- (1) In any case where the Principal Registrar is not satisfied, he shall state the matters in respect of which he is not satisfied, either to the applicant or to the district agent transmitting the application.
- (2) Such agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Principal Registrar in respect of such matters.

[Section 58 amended by No. 67 of 1979 s.44.]

[59. Repealed by No. 14 of 1980. s.5.]

60. Principal Registrar may refer to Court

In no case shall the Principal Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Court or to be placed in the hands of a solicitor.

[Section 60 amended by No. 67 of 1979 s.44.]

60A. Application of *Inheritance (Family and Dependants Provision) Act 1972*

Nothing in this Part shall effect or derogate from the provisions of section 6 of the *Inheritance (Family and Dependants Provision) Act 1972*.

[Section 60A inserted by No. 57 of 1972 s.3(2).]

Part III — Foreign probates and administration

61. Foreign probates, etc. may be sealed

- (1) When any probate or administration heretofore or hereafter granted by any Court of competent jurisdiction, in any portion of Her Majesty's dominions, is produced to and a copy thereof deposited with the Principal Registrar by any person being the executor or administrator therein named, or by any person duly authorized by power of attorney in that behalf, under the hand and seal of such executor or administrator, such probate or administration may be sealed with the seal of the Court.
- (2) When so sealed, such probate or administration shall have the like force, effect, and operation in Western Australia, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities as if such probate or administration had been originally granted by the Court.

[Section 61 amended by No. 138 of 1976 s.13; No. 67 of 1979 s.44.]

62. Power to require sureties to be provided before foreign administration sealed

- (1) As a condition of the affixing of the seal of the Court to any administration produced and deposited pursuant to section 61 the Court may, subject to and in accordance with the rules, require one or more sureties to guarantee that they will make good, within any limit imposed by the Court on the total liability of the surety or sureties, any loss that any person interested in the administration of the estate of the deceased in this State may suffer in consequence of a breach by the administrator of his duties in administering it in this State.
- (2) A guarantee given as required by subsection (1) shall enure for the benefit of every person interested in the administration of the estate in this State as if contained in a deed to which the surety or sureties and every such person are parties and, where

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there are 2 or more sureties, as if they had bound themselves jointly and severally.

- (3) The provisions of section 26(2), (3), (5) and (6) apply to and in relation to a guarantee given as required by subsection (1) as if those provisions were set out again in full in this section.

[Section 62 inserted by No. 138 of 1976 s.14.]

Part IV — Caveats³

63. Caveat

- (1) Any person may lodge with the Principal Registrar a caveat against any application for probate or administration, or for the sealing of any probate or letters of administration under this Act, at any time previous to such probate or administration being granted or sealed.
- (2) Every such caveat shall set forth the name of the person lodging the same, and an address in accordance with the rules at which notices may be served on him.

[Section 63 amended by No. 67 of 1979 s.44; No. 14 of 1980 s.6.]

64. Court may remove caveat

- (1) In every case in which a caveat is lodged the Court may, upon application by the person applying for probate or administration, or for the sealing of any probate or letters of administration, as the case may be remove the same.
- (2) Every such application shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat.
- (3) Such application may be heard and order made upon affidavit or oral evidence, or as the Court may direct.

Part V — Duties on deceased persons' estates and succession duties ⁴

[65-70A. Repealed by No. 80 of 1973 s.3.]

71. No will to be registered or admissible in evidence until proved

No will or codicil of any deceased person shall be registered or receivable or admissible in evidence, except in criminal proceedings, or upon application for probate or letters of administration, or in proceedings relating to the validity of any such will or codicil, or in proceedings under this Part, until probate or letters of administration in respect of the estate comprised therein shall have been issued or obtained.

[Section 71 amended by No. 57 of 1964 s.7; No. 107 of 1970 s.11.]

[72-137. Repealed by No. 80 of 1973 s.3.]

Part VI — Miscellaneous

[138. Repealed by No. 40 of 1971 s.2.]

139. Deposits not exceeding prescribed amount in any ADI may be paid to widow or next of kin without probate or administration

- (1) On the death of any person leaving a sum of money not exceeding the amount of \$1 200, or such other amount as may for the time being be declared by proclamation⁵, standing to his credit in any ADI if no probate or administration is produced to that ADI within one month of the death of the deceased person, and no notice in writing of any will and of intention to prove it or of an intention to apply for administration is given to the ADI within that period, the ADI may apply that sum of money —
- (a) in payment of the funeral expenses of the deceased person, or in reimbursing any person who has paid those expenses, and in payment of the balance, if any, to any person who appears to the satisfaction of the manager of the ADI to be the widower, widow, parent or child of the deceased person or a person who was living as a de facto partner of the deceased person immediately before the deceased person's death; or
 - (b) in payment to such other persons or for such other purposes as may be declared and authorized by proclamation from time to time,

and payment of that sum of money accordingly shall be a valid discharge to the ADI against the claims of any other person whomsoever.

- (2) In subsection (1) —
“**ADI**” means authorised deposit-taking institution as defined in section 5 of the *Banking Act 1959* of the Commonwealth.

[Section 139 amended by No. 62 of 1955 s.15; No. 57 of 1964 s.11; No. 78 of 1965 s.4; No. 113 of 1965 s.8; No. 80 of 1973 s.3; No. 26 of 1999 s.59; No. 25 of 2002 s. 52.]

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140. Records of grants, etc.

- (1) The Principal Registrar shall cause entries to be made in a book to be kept for that purpose of —
 - (a) all grants of probate and administration, and all orders to collect;
 - (b) the filing, passing, and allowance of the accounts of all executors and administrators; and of
 - (c) any special order extending the time for passing such accounts.

- (2) Such book shall set forth —
 - (a) the dates of such grants;
 - (b) the names of the testators or intestates;
 - (c) the place and time of death;
 - (d) the names and description of the executors or administrators;
 - [(e) deleted.]*
 - (f) the dates of the filing, passing, allowance of, and special orders with reference to the said accounts.

- (3) Where a grant of probate or administration is made or resealed by the Court, a copy of that grant may be obtained from the Court with or without the annexure thereto of a copy of the will (if any) to which it relates, and such copy may be issued under seal for all purposes as an office copy, and when so sealed and issued is sufficient evidence of that grant without further proof.

[Section 140 amended by No. 57 of 1964 s.12; No. 107 of 1970 s.16; No. 67 of 1979 s.44.]

141. Court may appoint an attorney for an absent executor

[(1) repealed.]

- (2) Where any such executor or administrator is a member of Her Majesty's naval, military, or air force (including a member of any medical corps nursing service attached to any of the forces aforesaid) and is a prisoner of war or posted as missing or

otherwise is unable or able only with great difficulty to appoint an attorney, the Court may on the application of a co-executor or a beneficiary or a creditor or any of the persons to whom the Table following section 14(1) would refer if there was an intestacy as to all or any of the property in the estate appoint such co-executor or some other person resident in this State to have and exercise all or such of the powers, duties, and discretions of such first-mentioned executor or administrator and for such period or periods as the Court shall deem proper.

[Section 141 amended by No. 21 of 1942 s.4; No. 80 of 1962 s.8; No. 57 of 1984 s.6.]

142. Payment of balance of estate to Curator or Public Trustee of State or Colony where deceased was domiciled. Public Trustee may receive any part of estate from outside the State

- (1) Where the Public Trustee of Western Australia is administering the estate of any person who at the time of his death was domiciled in any other part of the Commonwealth or in New Zealand, and whose estate is being administered by the Curator or Public Trustee of the State or Colony in which the deceased was domiciled, the balance of the estate, after payment of local creditors, commission fees, and expenses, may be paid over to such last named Curator or Public Trustee.
- (2) Where any part of the estate of a deceased person, whose estate is being administered by the Public Trustee of Western Australia, is situated outside the limits of Western Australia, such Public Trustee may receive any part of such estate so situated, and, when received, the same shall be dealt with according to the law of Western Australia⁶.

[Section 142 amended by No. 62 of 1955 s.16.]

[143. Repealed by No. 80 of 1962 s.8.]

143A. Rate of interest payable on legacies

Interest payable on legacies shall be computed after the rate of 5% per annum unless any other rate of interest is directed by the will or under a judgment or order of a Court directing an account of legacies in which event the rate of interest shall be computed according to such will or as directed under or pursuant to such judgment or order.

[Section 143A inserted by No. 39 of 1945 s.2; amended by No 113 of 1965 s.8.]

143B. Saving provision as to bonds

Any administration bond executed pursuant to the provisions of this Act as enacted at any time before the coming into operation of sections 5 and 14 of the *Administration Act Amendment Act 1976*¹ may be enforced and assigned as if that Act had not been passed.

[Section 143B inserted by No. 138 of 1976 s.15.]

144. Rules of Court

- (1) The rules and forms in the Third Schedule until altered, added to or revoked by rules made under this Act, shall regulate the practice and procedure to which they relate.
- (2) Except where otherwise provided, the practice and rules and scales of fees heretofore in force shall apply.
- (3) The Judges of the Supreme Court may make and prescribe all such rules, forms and fees as may be necessary or convenient to carry out the objects and purposes of this Act and in particular but without prejudice to the foregoing power may by rules —
 - (a) alter, add to or revoke any of the rules or forms contained in the Third Schedule or the Appendix to the Schedule or any fees prescribed and in force at the coming into operation of the *Administration Act Amendment Act 1954*¹;

- (b) prescribe what part of the business which may be transacted and of the jurisdiction which may be exercised by a Judge in Chambers, may be transacted or exercised by a Registrar or other officer of the Court.

[Section 144 amended by No. 30 of 1954 s.5; No. 57 of 1964 s.13; No. 67 1979 s.45.]

[145-148. Repealed by No. 80 of 1973 s.3.]

[First Schedule omitted under the Reprints Act 1984 s. 7(4)(f).]

[Second Schedule repealed by No. 80 of 1973 s. 3.]

Third Schedule

Third Schedule

[Sec. 144.]

Rules

[The Rules contained in this Schedule were revoked by Rules made under s.144 of the Act and published in the Gazette on 11 September 1967 pp. 2249-64.]

Fourth Schedule

[Sec. 14.]

Rights in respect of dwelling houses

1.

(1) Subject to the provisions of this Schedule where —

[(a) deleted]

(b) the whole or a part of the intestate property consists of an interest in a dwelling house that, at the date of the death of the deceased person, was ordinarily used by the surviving husband or wife as his or her ordinary place of residence (in this Schedule called “**the interest**”); and

(c) the surviving husband or wife is not entitled under sections 14 and 15 to the whole of the intestate property,

the surviving husband or wife may elect to have the interest appropriated under section 30(1)(k) of the *Trustees Act 1962* in or towards satisfaction of any entitlement or entitlements that the surviving husband or wife has under item 2 or 3 of the Table.

(2) The right conferred by this paragraph shall not be exercisable where the interest is —

(a) a tenancy that, at the date of the death of the intestate, was a tenancy that would determine within the period of 2 years from that date; or

(b) a tenancy that the landlord, by notice given after the date of the death of the intestate, could determine within the period of 2 years from that date of death.

(3) Where part of a building was, at the date of the death of the intestate, ordinarily occupied as a separate dwelling, that part of the building shall, for the purposes of this Schedule, be treated as a dwelling house.

(4) Except where the context otherwise requires, references in this Schedule to a dwelling house include references to any garden or portion of ground attached to and usually occupied with the dwelling house or otherwise required for the amenity or convenience of the dwelling house.

Fourth Schedule

2.

Where —

- (a) the dwelling house forms part of a building and an interest in the whole of the building is comprised in the intestate property;
- (b) the dwelling house is held with land used for agricultural purposes and an interest in that land is comprised in the intestate property;
- (c) the whole or a part of the dwelling house was, at the date of the death of the intestate, used as an hotel or lodging house; or
- (d) a part of the dwelling house was, at the date of the death of the intestate, used for purposes other than domestic purposes,

the right conferred by paragraph 1 shall not be exercisable unless the Court, on being satisfied that the exercise of that right is not likely to diminish the value of assets in the estate of the intestate (other than the interest) or make them more difficult to dispose of, so orders.

3.

- (1) The right conferred by paragraph 1 shall not be exercisable —
 - (a) after the expiration of 12 months from the first grant of administration of the estate of the intestate; or
 - (b) after the death of the surviving husband or wife.
- (2) The Court may, on the application of the surviving husband or wife, grant an extension of the period of 12 months mentioned in this paragraph.

4.

- (1) The right conferred by paragraph 1 shall be exercisable by furnishing a notification in writing —
 - (a) if the surviving husband or wife is not a personal representative of the intestate — to the personal representative or to each personal representative, as the case may be, of the intestate;

- (b) if the surviving husband or wife is one of the personal representatives of the intestate — to the other personal representative, or to each other personal representative, as the case may be, of the intestate; or
 - (c) if the surviving husband or wife is the sole personal representative of the intestate — to the Principal Registrar.
- (2) A notification under subparagraph (1) is not revocable except with the consent of the personal representative or of each personal representative, as the case may be, of the intestate.
- (3) Where the surviving husband or wife is not a personal representative of the intestate he or she may require the personal representative to have the interest valued and to inform him or her of the result of that valuation before he or she decides whether to exercise the right conferred by paragraph 1.

5.

Notwithstanding section 50 of the *Trustees Act 1962*, as respects an appropriation in pursuance of paragraph 1 the value of the interest is the amount determined by a qualified valuer engaged by the personal representative of the intestate to be the market value of the interest.

6.

- (1) In this paragraph “**the election period**” means the period of 12 months mentioned in paragraph 3 and includes any extension of that period granted under subparagraph (2) of that paragraph.
- (2) During the election period the personal representative of the intestate shall not, without the written consent of the surviving husband or wife, sell or otherwise dispose of the interest except in the course of administration owing to want of other assets or except with the approval of the Court.
- (3) An application to the Court under paragraph 2 may be made by the personal representative of the intestate as well as by the surviving husband or wife, and if, on an application under that paragraph, the Court does not order that the right conferred by paragraph 1 shall be exercisable by the surviving husband or wife, the Court may authorize the personal representative to dispose of the interest within the election period.

Fourth Schedule

- (4) This paragraph shall not apply where the surviving husband or wife is the sole personal representative, or one of 2 or more personal representatives, of the intestate.
- (5) Nothing in this paragraph shall confer any right on the surviving husband or wife as against a purchaser from the personal representative of the intestate.

7.

- (1) Where the surviving husband or wife is the sole personal representative, or one of 2 or more personal representatives of the intestate, he or she may, notwithstanding that he or she is a trustee, acquire the interest under an appropriation in pursuance of paragraph 1.
- (2) The power of appropriation under section 30(1)(k) of the *Trustees Act 1962* shall include power to appropriate the interest partly in satisfaction of the entitlement or entitlements of the surviving husband or wife under item 2 or 3 of the Table and partly in return for a payment of money by the surviving husband or wife to be applied in or towards satisfaction of the other entitlements under these items.

8.

- (1) Where the surviving husband or wife is not of full mental capacity a requirement or consent under this Schedule may be made or given on his or her behalf by the person, if any, having the care and management of his or her estate, or, where there is no such person, by the Court.
- (2) A requirement or consent made or given under this Schedule by a surviving husband or wife who is an infant shall be as valid and binding as it would be if he or she were of age; and, as respects an appropriation in pursuance of paragraph 1, the provisions of section 30(1)(k) of the *Trustees Act 1962* as to obtaining the consent of the infant's parent or guardian shall not apply.

9.

Unless the contrary intention appears, words and expressions used in this Schedule have the same respective meanings as they have in and for the purposes of section 14.

*[Fourth Schedule inserted by No. 138 of 1976 s.16; amended by
No. 67 of 1979 s.44; No. 25 of 2002 s. 52.]*

Fifth Schedule

[Sec. 10A.]

Rules as to payment of debts and liabilities of insolvent estates

1.

Funeral, testamentary and administration expenses have priority.

2.

A demand, in respect of which proceedings are maintainable against an estate, shall be provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

3.

Subject to these rules, the same rules shall prevail and be observed as to —

- (a) the respective rights of secured and unsecured creditors;
- (b) debts and liabilities provable;
- (c) the valuation of annuities and future and contingent liabilities;
and
- (d) the priorities of debts and liabilities,

as are, at the time of the death of the deceased person, in force under the Commonwealth law of bankruptcy with respect to the assets of persons adjudged bankrupt.

[Fifth Schedule inserted by No. 72 of 1984 s.8.]

Notes

¹ This is a compilation of the *Administration Act 1903* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Administration Act 1903</i>	13 of 1903	31 Dec 1903	1 Jan 1904 (see s. 1)
<i>Administration Act Amendment Act 1909</i>	29 of 1909	20 Nov 1909	20 Nov 1909
<i>Curator of Intestate Estates Act 1918</i> , section 2	9 of 1918	15 Apr 1918	1 Jul 1918 (see s. 1 and <i>Gazette</i> 7 Jun 1918 p. 813)
<i>Administration Act Amendment Act 1921</i>	13 of 1921	15 Nov 1921	15 Nov 1921
<i>Administration Act Amendment Act 1922</i>	29 of 1922	7 Dec 1922	7 Dec 1922
<i>Administration Act (Estate and Succession Duties) Amendment Act 1934 s. 2 and Part III</i> ⁴	28 of 1934	28 Dec 1934	1 Jan 1935 (see s. 1 and <i>Gazette</i> 28 Dec 1934 p. 1983)
<i>Administration Act Amendment Act 1939</i>	24 of 1939	22 Nov 1939	22 Nov 1939
<i>Public Trustee Act 1941</i> , section 3	26 of 1941	8 Dec 1941	1 Jul 1942 (see s. 1(2) and <i>Gazette</i> 26 Jun 1942 p. 689)
<i>Administration Act Amendment Act (No. 2) 1941</i>	52 of 1941	15 Jan 1942	15 Jan 1942
<i>Administration Act Amendment Act 1941</i>	55 of 1941	15 Jan 1942	15 Jan 1942
<i>Administration Act Amendment Act 1942</i>	21 of 1942	9 Dec 1942	9 Dec 1942
<i>Administration Act Amendment Act 1945</i>	39 of 1945	30 Jan 1946	30 Jan 1946
<i>Administration Act Amendment Act 1949</i>	8 of 1949	14 Sep 1949	14 Sep 1949
<i>Administration Act Amendment Act 1950</i>	55 of 1950	18 Dec 1950	18 Dec 1950

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Short title	Number and year	Assent	Commencement
<i>Administration Act Amendment Act 1953</i>	62 of 1953	9 Jan 1954	9 Jan 1954
<i>Administration Act Amendment Act (No 2) 1953</i>	81 of 1953	18 Jan 1954	18 Jan 1954
<i>Administration Act Amendment Act 1954</i>	30 of 1954	8 Nov 1954	8 Nov 1954
<i>Administration Act Amendment Act 1955</i>	62 of 1955	19 Dec 1955	19 Dec 1955
<i>Administration Act Amendment Act 1956</i>	81 of 1956	17 Jan 1957	1 Feb 1957 (see s. 2 and <i>Gazette</i> 1 Feb 1957 p. 161)
<i>Administration Act Amendment Act 1959</i>	56 of 1959	25 Nov 1959	25 Nov 1959
<i>Administration Act Amendment Act 1960</i>	21 of 1960	11 Oct 1960	25 Nov 1960 (see s. 2 and <i>Gazette</i> 25 Nov 1960 p. 3779)
<i>Administration Act Amendment Act 1961</i>	57 of 1961	28 Nov 1961	28 Nov 1961
<i>Administration Act Amendment Act 1962</i>	80 of 1962	6 Dec 1962	1 Jan 1963 (see s. 2)
<i>Administration Act Amendment Act 1963</i>	66 of 1963	18 Dec 1963	18 Dec 1963
<i>Administration Act Amendment Act 1964</i>	57 of 1964	30 Nov 1964	30 Nov 1964
<i>Administration Act Amendment Act 1965</i>	78 of 1965	7 Dec 1965	7 Dec 1965
<i>Decimal Currency Act 1965, sections 5-9</i>	113 of 1965	21 Dec 1965	14 Feb 1966 (see s. 2)
<i>Administration Act Amendment Act 1966</i>	68 of 1966	12 Dec 1966	12 Dec 1966
<i>Administration Act Amendment Act 1969</i>	2 of 1969	21 Apr 1969	21 Apr 1969
<i>Acts Amendment (Commissioner of State Taxation) Act 1970, Part XII</i>	21 of 1970	8 May 1970	1 Jul 1970 (see s. 2 and <i>Gazette</i> 26 Jun 1970 p. 1831)
<i>Administration Act Amendment Act 1970</i> ⁸	107 of 1970	8 Dec 1970	S. 3, 4 and 11: 1 Jan 1971; balance: 8 Dec 1970 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Administration Act Amendment Act 1971</i>	18 of 1971	1 Dec 1971	21 Jan 1972 (see s. 2 and <i>Gazette</i> 1 Jan 1972 p. 71)
<i>Administration Act Amendment Act (No. 2.) 1971</i>	40 of 1971	10 Dec 1971	10 Dec 1971
<i>Age of Majority Act 1972, section 6(2)</i>	46 of 1972	18 Sep 1972	1 Nov 1972 (see s. 2 and <i>Gazette</i> 13 Oct 1972 p. 4069)
<i>Inheritance (Family and Dependants Provision) Act 1972, section 3(2)</i>	57 of 1972	31 Oct 1972	1 Jan 1973 (see s. 2 and <i>Gazette</i> 17 Nov 1972 p. 4379)
<i>Metric Conversion Act 1972</i>	94 of 1972	4 Dec 1972	The relevant amendments as set out in Schedule 2 took effect on 11 Jan 1974 (see s. 2) and <i>Gazette</i> 11 Jan 1974 p. 52)
<i>Death Duty Assessment Act 1973, section 3⁷</i>	80 of 1973	21 Dec 1973	1 Jan 1974 (see s. 2 and <i>Gazette</i> 28 Dec 1973 p. 4725)
<i>Administration Act Amendment Act 1976</i>	138 of 1976	13 Dec 1976	S. 3, 4 and 16: 1 Mar 1977 (see s. 2(1) and <i>Gazette</i> 28 Jan 1977 p. 185-6); s. 5 to 15: 1 Dec 1977 (see s. 2(2) and <i>Gazette</i> 11 Nov 1977 p. 4193); balance: 1 Mar 1977
<i>Administration Act Amendment Act 1977</i>	37 of 1977	7 Nov 1977	1 Dec 1977 (see s. 2 and <i>Gazette</i> 25 Nov 1977 p. 4345)
<i>Acts Amendment (Master, Supreme Court) Act 1979, Part VIII</i>	67 of 1979	21 Nov 1979	11 Feb 1980 (see s. 2 and <i>Gazette</i> 8 Feb 1980 p. 383)
<i>Administration Act Amendment Act 1979</i>	103 of 1979	17 Dec 1979	24 Apr 1980 (see s. 2 and <i>Gazette</i> 24 Apr 1980 p. 1179)
<i>Administration Amendment Act 1980</i>	14 of 1980	15 Oct 1980	12 Nov 1980 (see s. 2)
<i>Administration Amendment Act 1982</i>	48 of 1982	6 Sep 1982	1 Mar 1983 (see s. 2 and <i>Gazette</i> 25 Feb 1983 p. 637)
<i>Administration Amendment Act 1984</i>	57 of 1984	24 Oct 1984	21 Nov 1984

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Insolvent Estates) Act 1984, Part II</i>	72 of 1984	26 Nov 1984	24 Dec 1984
<i>Artificial Conception Act 1985, section 8</i>	14 of 1985	12 Apr 1985	1 Jul 1985 (see s. 2 and <i>Gazette</i> 28 Jun 1985 p. 2291)
<i>Administration Amendment Act 1986</i>	21 of 1986	25 Jul 1986	7 Nov 1986 (see s. 2 and <i>Gazette</i> 7 Nov 1986 p. 4140)
<i>Transfer of Land Amendment Act 1996, section 153(1)</i>	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997, section 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 16</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999, section 59</i>	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2 and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 2</i>	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p.4693)
<i>Family Court Amendment Act 2002 s. 52</i>	25 of 2002	25 Sep 2002	1 Dec 2002 (see s. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 s. 63</i>	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6244)

N.B. In this compilation the numbering of Parts, sections, Divisions etc. effected in the 1934 reprint (not in a volume), the 1943 reprint (in Volume 2 of the Reprinted

Acts of the Parliament of Western Australia) and subsequent reprints has again been retained. References to the original numbering are contained in those reprints.

² Repealed by section 2 of this Act.

³ Part IV, Curator of Intestate Estates, as enacted by this Act (No. 13 of 1903), was repealed by the *Curator of Intestate Estates Act 1918* (No. 9 of 1918). Now see the *Public Trustee Act 1941* (No. 26 of 1941).

⁴ This Part was enacted as Part II of the *Administration Act (Estate and Succession Duties) Amendment Act 1934* (No. 28 of 1934). By section 3 of that Act it was enacted as follows —

“

3. This Act shall apply in the case of any person dying after its commencement, but the provisions of Part VI. of the principal Act as hereby repealed shall apply to any person dying before the commencement of this Act.

”.

[It was inserted as Part VI in the 1934 reprint and renumbered as Part V in the 1943 reprint: See also section 77(3)(c) of No. 28 of 1934.]

⁵ This amount is now declared to be \$6 000; see proclamation in *Gazette* 30 December 1983 p.5015.

⁶ See section 16 of the *Public Trustee Act 1941* (No. 26 of 1941).

⁷ Section 3(2), (3), (4) and (5) of the *Death Duty Assessment Act 1973* (No. 80 of 1973) reads as follows —

“

- (2) Where, immediately before the date of the coming into operation, any provision repealed by subsection (1) applied to and in relation to the death or estate of any person who died before that date, that provision shall continue to so apply on and after that date.
- (3) Subject to subsection (4), this Act shall apply to and in relation to the death and estate of any person dying on or after the date of the coming into operation.
- (4) Notwithstanding subsection (3), paragraph (o) of subsection (2) of section 10 does not apply to or in relation to the death or estate of any person dying within one year after the date of the coming into operation.
- (5) Nothing in this section affects the operation of the *Interpretation Act 1918*.

”.

⁸ Section 2(2) of the *Administration Act Amendment Act 1970* (No. 107 of 1970) reads as follows —

“

- (2) The provisions of the principal Act as in force immediately before the commencement of this Act shall apply in the same manner and to the same extent to and with respect to the estates of persons dying before the first day of July, nineteen hundred and seventy as those provisions applied immediately before the coming into operation of this Act.

”.