

**ACTS AMENDMENT  
(INSOLVENT ESTATES).**

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No. 72 of 1984.

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**AN ACT to amend the Administration Act 1903,  
the Married Women's Property Act 1892 and  
the Supreme Court Act 1935.**

*[Assented to 26 November 1984.]*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment* Short title.  
*(Insolvent Estates) Act 1984.*

PART II.—ADMINISTRATION ACT 1903.

Principal Act.  
Reprinted as  
approved  
23 December  
1980 and  
amended by  
Act No. 48  
of 1982.

2. In this Part the Administration Act 1903 is referred to as the principal Act.

Section 3  
amended.

3. Section 3 of the principal Act is amended by inserting after the definition of "Court" the following definition—

“ “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. ”.

Section 10  
amended.

4. Section 10 of the principal Act is amended by inserting after subsection (3) the following subsections—

“ (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 comes into operation shall not have or exercise any right to give preference as between creditors standing in equal degree.

(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. ”.

5. The principal Act is amended by inserting after section 10 the following section— Section 10A inserted.

“ 10A. (1) Where the estate of a person dying on or after the day on which the Acts Amendment (Insolvent Estates) Act 1984 comes into operation is insolvent, his real and personal estate shall be administered in accordance with the rules set out in the Fifth Schedule. Insolvent estates.

(2) This section binds the Crown. ”.

6. Section 13 of the principal Act is amended in subsection (1) by deleting “nine and ten” and substituting the following— Section 13 amended.

“ 9, 10 and 10A ”.

7. Section 23 of the principal Act is amended in subsection (1) by deleting “In” and substituting the following— Section 23 amended.

“ Subject to section 10A, in ”.

8. The principal Act is amended by adding after the Fourth Schedule the following Schedule— Fifth Schedule added.

“                      **FIFTH SCHEDULE.**                      Section 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. ”.

#### PART III.—MARRIED WOMEN'S PROPERTY ACT 1892.

9. Section 3 of the Married Women's Property Act 1892 is repealed.

Section 3  
repealed.  
Reprinted as  
approved 7  
March 1980.

#### PART IV.—SUPREME COURT ACT 1935.

10. Section 25 of the Supreme Court Act 1935 is amended by repealing paragraph (1).

Section 25  
amended.  
Reprinted as  
approved 12  
May 1980  
and  
amended by  
Acts Nos. 3, 7,  
10 and 47 of  
1982, 47 of  
1983 and 9 of  
1984.  
Transitional.

11. Notwithstanding the repeal of paragraph (1) of section 25 of the Supreme Court Act 1935 by section 10 of this Act, that paragraph shall continue to apply for the purpose of the administration by the Court of the assets of any person who has died before the coming into operation of the Acts Amendment (Insolvent Estates) Act 1984 and whose estate has proved or proves to be insufficient for the payment in full of his debts and liabilities.