

ADMINISTRATION.

No. 138 of 1976.

AN ACT to amend the Administration Act,
1903-1973.

[Assented to 13th December, 1976.]

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:—

1. (1) This Act may be cited as the *Administration Act Amendment Act, 1976*.

Short title
and
citation.

(2) In this Act the Administration Act, 1903-1973 is referred to as the principal Act.

Reprinted
as approved
for reprint
17th
August,
1975.

(3) The principal Act as amended by this Act may be cited as the Administration Act, 1903-1976.

Commence-
ment.

2. (1) The provisions of sections 3, 4 and 16 of this Act shall come into operation on a date to be fixed by proclamation.

(2) The provisions of sections 5 to 15, both inclusive, of this Act shall come into operation on a date to be fixed by proclamation.

(3) The remainder of the provisions of this Act shall come into operation on the earlier of the dates fixed for the purposes of subsections (1) and (2) of this section or, if the same date is fixed for the purposes of each of those subsections, on that date.

Section 13
amended.

3. Section 13 of the principal Act is amended by repealing subsection (1) and substituting subsections as follows—

(1) Where, after the coming into operation of section four of the Administration Act Amendment Act, 1976, 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 nine and ten of this Act, hold the real and personal estate to which the intestacy applies, and which vests in him under section eight of this Act, on trust for the persons who are entitled thereto under section fourteen of this Act.

(1a) When, pursuant to subsection (1) of this section, real estate is held on trust for two 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 four of the Administration Act Amendment Act, 1976 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.

4. The principal Act is amended by repealing sections 14, 15 and 15A and re-enacting those sections as section 14 as follows—

Sections 14, 15 and 15A repealed and re-enacted as section 14.

14. (1) Where, after the coming into operation of section four of the Administration Act Amendment Act, 1976, 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"):

Entitlements on intestacy.

TABLE.

If the intestate—

- | | |
|---|---|
| <p>1. dies leaving a husband or wife (whether or not other persons mentioned in item 2 or 3 of this Table also survive)</p> | <p>the surviving husband or wife shall be entitled, absolutely, to all household chattels included in the intestate property;</p> |
| <p>2. dies leaving a husband or wife and issue</p> | <p>(a) where the net value of the intestate property (other than the household chattels) does not exceed the sum of thirty thousand dollars—the surviving husband or wife shall be entitled to the whole of the intestate property;</p> <p>(b) where the net value of the intestate property (other than the household chattels) exceeds the sum of thirty thousand dollars—the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of thirty thousand dollars, absolutely, together with interest on that sum in accordance with subsection (4) of this section, and, of the residue, the surviving husband or wife shall be entitled to one-third and the issue shall be entitled to the other two-thirds (the division among the issue being <i>per stirpes</i> and not <i>per capita</i>);</p> |
| <p>(Note provisions of subsection (3) of this section).</p> | |
| <p>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</p> | <p>(a) where the net value of the intestate property (other than the household chattels) does not exceed the sum of forty-five thousand dollars—the surviving husband or wife shall be entitled to the whole of the intestate property;</p> |

(b) where the net value of the intestate property (other than the household chattels) exceeds the sum of forty-five thousand dollars—the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of forty-five thousand dollars, absolutely, together with interest on that sum in accordance with subsection (4) of this section, 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 six thousand dollars 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 six thousand dollars, 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 equal shares to the other half (the division among those children being *per stirpes* and not *per capita*);

(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 equal shares to the other half (the division among those children being *per stirpes* and not *per capita*);
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 to the whole of the intestate property (the division among them to be *per stirpes* and not *per capita*);
 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 leaving no husband or wife and no issue
 - (a) where the net value of the intestate property does not exceed the sum of six thousand dollars—the parent or parents shall be entitled (in equal shares where both survive the intestate) to the whole of the intestate property;
 - (b) where the net value of the intestate property exceeds the sum of six thousand dollars—the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of six thousand dollars, 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 equal shares to the other half (the division among those children being *per stirpes* and not *per capita*);
 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 equal shares to the whole of the intestate property (the division among those children being *per stirpes* and not *per capita*);
 9. dies leaving no husband or wife and no issue, parent, brother, sister or child of a brother or sister the next of kin of the intestate shall be entitled to the whole of the intestate property.

(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 as finally assessed by the Commissioner of State Taxation under and for the purposes of the Death Duty Assessment Act, 1973.

(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.

(4) Where the intestate dies leaving a husband or wife who is entitled to—

- (a) the sum of thirty thousand dollars mentioned in paragraph (b) of item 2 of the Table; or
- (b) the sum of forty-five thousand dollars mentioned in paragraph (b) of item 3 of the Table,

the surviving husband or wife shall be entitled to an amount equal to five per centum 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) of this section, 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) In any case where paragraph (b) of item 2, or paragraph (b) of item 3 of the Table has application the Fourth Schedule to this Act shall have effect for enabling the surviving husband or wife of the intestate to acquire the matrimonial home.

(7) Subject to subsection (6) of this section, 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.

5. The principal Act is amended by repealing section 26 and re-enacting that section as follows—

Section 26
repealed
and
re-enacted.

26. (1) As a condition of granting administration to any person the Court may, subject to the following provisions of this section and

Power to
require
adminis-
trator to
produce
sureties.

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) of this section 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 Master—

- (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 paragraph (b) of subsection (2) of this section shall be deemed to be a guarantee given as required by subsection (1) of this section. .

(4) A guarantee given as required by subsection (1) of this section 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 two or more sureties, as if they had bound themselves jointly and severally.

(5) Where a guarantee is given as required by subsection (1) of this section an action on that guarantee—

- (a) shall not be brought without the leave of either the Court or the Master;
- (b) may be brought only on such terms and conditions as the Court or the Master thinks fit.

(6) If, upon the application of a surety who has given a guarantee as required by subsection (1) of this section, 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) of this section, 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.

6. The principal Act is amended by repealing sections 27 and 28.

Sections 27
and 28
repealed.

Section 29
repealed
and
re-enacted.

7. The principal Act is amended by repealing section 29 and re-enacting that section as follows—

Court may
revoke
grant;
no grant
before duty
assessed.

29. (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 Master, revoke the administration.

(2) Except where the Master otherwise directs, a grant of administration shall not be issued and the seal of the Court shall not be affixed to an administration granted in another part of Her Majesty's dominions until the estate to which the administration relates has been assessed for duty under the Death Duty Assessment Act, 1973. .

Sections 30
and 31
repealed.

8. The principal Act is amended by repealing sections 30 and 31.

Section 35
amended.

9. Section 35 of the principal Act is amended by deleting the passage “, and with or without a bond or sureties,” in the penultimate line.

Section 36
amended.

10. Section 36 of the principal Act is amended by deleting the passage “upon his giving security as aforesaid,” in lines seven and eight.

Section 43
amended.

11. Section 43 of the principal Act is amended by repealing subsection (1) and re-enacting that subsection as follows—

(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.

12. Subsection (3) of section 44 of the principal Act is amended by deleting the words commencing with the word "prevent" in line four and ending with the word "mentioned" in the last line, and substituting the passage "prevent an action from being brought on any guarantee given as required by subsection (1) of section twenty-six or subsection (1) of section sixty-two of this Act".

Section 44
amended.

13. Section 61 of the principal Act is amended by repealing subsection (3).

Section 61
amended.

14. The principal Act is amended by repealing section 62 and re-enacting that section as follows—

Section 62
repealed
and
re-enacted.

62. (1) As a condition of the affixing of the seal of the Court to any administration produced and deposited pursuant to section sixty-one of this Act 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.

Power to
require
sureties to
be provided
before
foreign
adminis-
tration
sealed.

(2) A guarantee given as required by subsection (1) of this section 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 there are two or more sureties, as if they had bound themselves jointly and severally.

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

Section
143B
added.

15. The principal Act is amended by adding after section 143A a section as follows—

Saving pro-
vision as
to bonds.

143B. Any administration bond executed pursuant to the provisions of this Act as enacted at any time before the coming into operation of sections five and fourteen of the Administration Act Amendment Act, 1976 may be enforced and assigned as if that Act had not been passed. .

Fourth
Schedule
added.

16. The principal Act is amended by adding a schedule as follows—

FOURTH SCHEDULE.

Sec. 14.

RIGHTS OF SURVIVING SPOUSE OF INTESTATE AS RESPECTS THE MATRIMONIAL HOME.

1. (1) Subject to the provisions of this Schedule where—
 - (a) the intestate dies leaving a husband or wife and one or more of the other persons mentioned in item 2 or 3 of the Table;
 - (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 the Table to the whole of the intestate property,

the surviving husband or wife may elect to have the interest appropriated under paragraph (k) of subsection (1) of section thirty 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 two 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 two 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.

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 of this Schedule 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 of this Schedule shall not be exercisable—

- (a) after the expiration of twelve 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 twelve months mentioned in this paragraph.

4. (1) The right conferred by paragraph 1 of this Schedule 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 Master.

(2) A notification under subparagraph (1) of this paragraph 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 of this Schedule.

5. Notwithstanding section fifty of the Trustees Act, 1962, as respects an appropriation in pursuance of paragraph 1 of this Schedule 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 twelve months mentioned in paragraph 3 of this Schedule 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 of this Schedule 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 of this Schedule shall be exercisable by the surviving husband or wife, the Court may authorise the personal representative to dispose of the interest within the election period.

(4) This paragraph shall not apply where the surviving husband or wife is the sole personal representative, or one of two 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 two 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 of this Schedule.

(2) The power of appropriation under paragraph (k) of subsection (1) of section thirty 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 of this Schedule, the provisions of paragraph (k) of subsection (1) of section thirty 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 fourteen of this Act. .
