

Western Australia

## **Married Women's Property Act 1892**

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## Married Women's Property Act 1892

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### CONTENTS

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|     |   |   |
|-----|---|---|
| 1.  | Married woman to be capable of holding property and of contracting as a <i>feme sole</i>                | 1 |
| 1A. | Disposition of trust estates by married women   | 2 |
| 2.  | Property of a woman married after the Act to be held by her as a <i>feme sole</i>                       | 2 |
| 4.  | Execution of general power  | 3 |
| 5.  | Property acquired after the Act by a woman married before the Act to be held by her as <i>feme sole</i> | 3 |
| 6.  | As to stock, etc., to which a married woman is entitled   | 3 |
| 7.  | As to stock, etc., to be transferred etc., to a married woman   | 4 |
| 8.  | Investment in joint names of married women and others   | 4 |
| 9.  | As to stock, etc., standing in the joint names of a married woman and others                            | 5 |
| 10. | Fraudulent investments with money of husband  | 5 |
| 11. | Moneys payable under policy of assurance not to form part of the estate of the insured                  | 6 |
| 12. | Remedies of married women for protection and security of separate property                              | 7 |
| 13. | Wife's antenuptial debts and liabilities  | 7 |
| 14. | Husband to be liable for his wife's debts contracted before marriage to a certain extent                | 8 |

|            |   |           |
|------------|---|-----------|
| <b>15.</b> | <b>Suits for antenuptial liabilities</b>  | <b>9</b>  |
| <b>17.</b> | <b>Questions between husband and wife as to property to be decided in a summary way</b> | <b>9</b>  |
| <b>18.</b> | <b>Married woman as an executrix or trustee</b>   | <b>10</b> |
| <b>19.</b> | <b>Saving of existing settlements, and the power to make future settlements</b>         | <b>11</b> |
| <b>20.</b> | <b>Married woman to be liable for the maintenance of her children</b>                   | <b>11</b> |
| <b>21.</b> | <b>Legal representative of married woman</b>  | <b>11</b> |
| <b>22.</b> | <b>Interpretation of terms</b>  | <b>12</b> |
| <b>23.</b> | <b>Short title</b>  | <b>12</b> |

**NOTES**

## Married Women's Property Act 1892

### An Act to amend the Law relating to the Property of Married Women.

[Assented to 18 March 1892]

#### Preamble

WHEREAS it is desirable to amend the law of Property and Contract with respect to Married Women: Be it enacted —

1. **Married woman to be capable of holding property and of contracting as a *feme sole***
  - (1) A married woman shall, in accordance with the provision of this Act, be capable of acquiring, holding, and disposing by will or otherwise of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee.
  - (2) A married woman shall be capable of entering into, and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

**s. 1A**

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*[(3) Repealed. <sup>2</sup>]*

*[(4) Repealed. <sup>2</sup>]*

- (5) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*.

**1A. Disposition of trust estates by married women**

- (1) A married woman is able, without the assistance, participation or concurrence of her husband, to dispose of, or to join in disposing of, real or personal property held by her solely or jointly with any other person as trustee or personal representative in like manner as if she were a *feme sole*.
- (2) This section operates to render valid and confirm all such dispositions as are mentioned in subsection (1) of this section and are made after the eighteenth day of March, one thousand eight hundred and ninety-two, and whether before or after the coming into operation of the *Married Women's Property Act Amendment Act, 1969*, but, where any title or right has been acquired through or with the concurrence of the husband, before the coming into operation of that Act, that title or right prevails over any title or right which would otherwise be rendered valid by this section.

**2. Property of a woman married after the Act to be held by her as a *feme sole***

Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wage, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

[3. *Repealed by No. 72 of 1984 s.9.]*

**4. Execution of general power**

The execution of a general power by will by a married woman shall have the effect of making the properly appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

**5. Property acquired after the Act by a woman married before the Act to be held by her as *feme sole***

Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

**6. As to stock, etc., to which a married woman is entitled**

All deposits in any post office or other savings bank, or in any other bank, all annuities granted by any person, which at the commencement of this are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, local government or public body, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorize and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to

**s. 7**

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indemnify the Postmaster General, and all directors, managers and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

*[Section 6 amended by No. 14 of 1996 s.4.]*

**7. As to stock, etc., to be transferred etc., to a married woman**

All such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any ability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not.

Provided always, that nothing in this Act shall require or authorize any corporation or joint stock company to authorize any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, local law, by-law, articles of association, or deed of settlement regulating such corporation or company.

*[Section 7 amended by No. 14 of 1996 s.4.]*

**8. Investment in joint names of married women and others**

All the provisions hereinbefore contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by any person, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of



a married woman, or which after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

**9. As to stock, etc., standing in the joint names of a married woman and others**

It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any share, stock, debenture, debenture stock, or any share, stock, debenture, debenture stock, or other benefit, right, claim or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

**10. Fraudulent investments with money of husband**

If any investment in any such deposit or annuity as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, local government or public body, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in

this Act contained shall give validity as against creditors of the husband, to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

*[Section 10 amended by No. 14 of 1996 s.4.]*

**11. Moneys payable under policy of assurance not to form part of the estate of the insured**

A married woman may by virtue of the power of making contract hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provisions for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy,

immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees, or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the *Trustee Act 1850*<sup>3</sup>, adopted in Western Australia by the Act 17 Vict.; 10, or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

**12. Remedies of married women for protection and security of separate property**

Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding.

*[Section 12 amended by 1 and 2 Edw. VII., No. 14 s.3 (2).]*

**13. Wife's antenuptial debts and liabilities**

A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued

**s. 14**

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for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use if this Act had not passed.

**14. Husband to be liable for his wife's debts contracted before marriage to a certain extent**

A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bona fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married

before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid.

**15. Suits for antenuptial liabilities**

A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or of any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

[16. *Repealed by 1 and 2 Edward VII., No. 14, Third Schedule*]

**17. Questions between husband and wife as to property to be decided in a summary way**

In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing may apply by summons or otherwise in a summary way to any judge of the Supreme Court of Western Australia, or

**s. 18**

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(at the option of the applicant irrespective of the value of the property in dispute) to the magistrate of the local court of the district, and such judge or magistrate (as the case may be) may make such order with respect to the property in dispute, and as to the costs of an consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of judge of the Supreme Court to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a local court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a local court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the Supreme Court, by writ of *certiorari* or otherwise as may be prescribed by any rule of such Supreme Court, but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such Supreme Court: Provided also that the judge of the Supreme Court or the magistrate of the local court, if either party so require, may hear any such application in his private room: Provided, also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

**18. Married woman as an executrix or trustee**

A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as

aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a *feme sole*.

**19. Saving of existing settlements, and the power to make future settlements**

Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman; but no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

*[Section 19 amended by No. 79 of 1962 s.3.]*

**20. Married woman to be liable for the maintenance of her children**

A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

**21. Legal representative of married woman**

For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

**22. Interpretation of terms**

The word “**contract**” in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless she has acted or intermeddled in the trust or administration. The word “**property**” in this Act includes a thing in action.

**23. Short title**

This Act may be cited as the *Married Women's Property Act 1892*.



**Notes**

- <sup>1.</sup> This is a compilation of the *Married Women's Property Act 1892* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

| <b>Short title</b>   | <b>Number and year</b> | <b>Assent</b> | <b>Commencement</b>        |
|--|------------------------|---------------|----------------------------|
| <i>Married Women's Property Act 1892</i>                               | 20 of 1892<br>55 Vic.  | 18 Mar 1892   | 18 Mar 1892                |
|  | 59 Vic. No.<br>22      | 2 Oct 1895    | 2 Oct 1895                 |
|  | 60 Vic. No.<br>8       | 23 Sep 1896   | 23 Sep 1896                |
|  | 79 of 1962             | 6 Dec 1962    | 6 Dec 1962                 |
|  | 72 of 1984             | 26 Nov 1984   | 24 Dec 1984                |
| <i>Local Government (Consequential Amendments) Act 1996, section 4</i> | 14 of 1996             | 28 Jun 1996   | 1 Jul 1996 (see section 2) |

- <sup>2.</sup> Subsections (3) and (4) of section one are repealed by the *Married Women's Property Act 1895*, which enacts as follows —

“

**1. Effect of contracts by married women 56 & 57 V., c. 63**

Every contract hereafter entered into by a married woman, otherwise than as agent —

- (a) Shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract;
- (b) Shall bind all separate property which she may at the time or thereafter be possessed of or entitled to; and
- (c) Shall also be enforceable by process of law against all property which she may thereafter, while discoverd, be possessed of or entitled to:

Provided that nothing in this section contained shall render available to satisfy any liability or obligations arising out of such contract any separate property which at the time or thereafter she is restrained from anticipating.

**2. Costs may be ordered to be paid out of property, subject to restraint on anticipation.**

In any action or proceeding now or hereafter instituted by a woman or by a next friend on her behalf, the Court before which such action or proceeding is pending shall have jurisdiction by judgment or order from time to time to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as may be just.

**3. Will of married woman**

Section 24 of the *Wills Act 1837*\*, shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or republished after the death of her husband.

**4. Repeal**

Subsections (3) and (4) of section one of the *Married Women's Property Act 1892*, are hereby repealed.

**5. Short title**

This Act may be cited as the *Married Women's Property Act 1895*.

- *Now see Wills Act 1970.*

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3 See *Trustees Act 1962*.