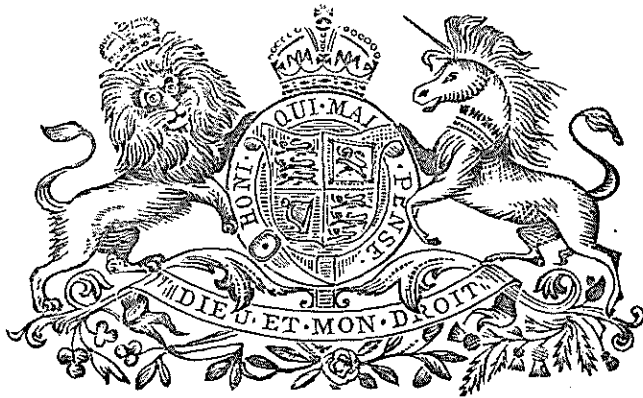


WESTERN AUSTRALIA.



ANNO OCTAVO

GEORGII QUINTI REGIS,

XXIII.

No. 9 of 1918.

AN ACT to repeal the existing provisions relating to the Curator of Intestate Estates and to substitute other provisions in lieu thereof, and for other relative purposes.

[Assented to 15th April, 1918.]

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

1. This Act may be cited as the *Curator of Intestate Estates Act, 1918*, and shall be construed with the Administration Act, 1903, hereinafter referred to as the principal Act, and shall come into operation on a day to be fixed by proclamation.

Short title and commencement.

2. Part IV. of the principal Act, and rules 59 to 66 (both inclusive), and rule 68, and the words "no fees shall be payable by the Curator where the value of an estate does not exceed two pounds" in rule 58, in the Fourth schedule to the principal Act, are hereby repealed.

Repeal.

Interpretation.

3. In this Act, subject to the context—

“Court” means the Supreme Court or any Judge thereof;

“Curator” means the Curator of Intestate Estates;

“Distribute” means to pay, deliver, or divide the estate or property referred to, to or amongst the person or persons entitled thereto under any intestacy or under any will;

“Letters of Administration” means letters of administration with or without the will annexed;

“Rules” means rules of court made under this Act and includes the rules in the schedule.

“Will” includes any codicil.

The Curator.

See 1903, No. 13,
ss. 60 and 61.

4. (1.) The Curator shall continue to be a corporation sole under the name of “The Curator of Intestate Estates,” with perpetual succession and a seal of office.

(2.) The Governor may from time to time appoint a fit and proper person to fill any vacancy in the office of Curator.

(3.) The Curator—

(a.) shall be an officer of the Supreme Court; and

(b.) shall exercise the powers and perform the duties hereby conferred or imposed, and such other duties ancillary thereto as may be prescribed by rules.

(4.) Subject to this Act the Curator shall be capable in law of suing and being sued, and of taking, purchasing, holding, alienating and disposing of real and personal property.

(5.) The Governor may appoint a person to act as deputy of the Curator during his illness, suspension, or absence from duty. Such deputy shall, while so acting, have the powers, duties and liabilities of, and be entitled to the same rights and indemnities as the Curator.

(6.) Every Court shall take judicial notice of the appointment of the Curator and his deputy, their signatures, and the seal of the Curator.

(7.) All contracts made by or with the Curator within the scope of his powers, verbally or in writing, with or without a seal, shall be as binding as the same would be if made between private persons.

Appointment of Agents.

1903, No. 13, s.
62.

5. (1.) The Curator may appoint any persons to act as his agents for the purpose of collecting or administering all or any estates in his hands.

(2.) Such agents shall in all respects act in the management, collection, and getting in of such property under the direction of the Curator, who shall not be answerable for any act or omission of any such agents not in conformity with any such direction, or which has not happened by the Curator’s own default or neglect.

6. (1.) Where any person has heretofore died or hereafter dies, or is reasonably supposed to have died testate or intestate in or out of Western Australia, leaving property in Western Australia, the Court may, on the application of the Curator, grant to the Curator an order to collect and administer the estate of such deceased person in any of the following cases:—

Order to collect and administer.
Cf. 1903, No. 13, ss. 64 to 66.

- (a.) Where such person leaves no executor, widow, husband, or next of kin resident within the jurisdiction, and willing and capable of acting in execution of his or her will, or administration of his or her estate;
- (b.) Where the executors named renounce probate of the will of the deceased, and all the persons primarily entitled to administration by writing filed with the Master decline to apply for administration;
- (c.) Where probate or administration is not applied for within three months after the death of such person;
- (d.) Where after the expiration of thirty days from such death there appears to the Court to be no reasonable probability of application being made within such period as aforesaid;
- (e.) Where the estate or any portion thereof is unprotected or liable to waste, and the executor or widow husband or next of kin is absent from the locality of the estate, or of such portion thereof, or is not known, or has not been found;
- (f.) Where the estate or any substantial portion thereof is of a perishable nature or is in danger of being lost or destroyed;

(2.) The Court may in any case require the Curator to give such notices or cite such persons or produce such evidence as it may think fit before granting the order applied for, or may make a temporary order for collection and protection only, or limited to a portion of the estate, or otherwise restricted or subject to conditions.

7. (1.) An order to collect and administer the estate of any deceased person shall, subject to this Act and to any restrictions which the Court may impose, give to the Curator the same powers, rights, and obligations in respect of such estate as he would have had if letters of administration of the estate of such person had been granted him.

Effect of order.
Cf. 1903, No. 13, s. 65.

(2.) Subject to the provisions of this Act, all laws now or hereafter in force in reference to the administration of estates of deceased persons shall apply to the administration of estates by the Curator, and the estate of the deceased shall vest in the Curator.

(3.) The powers of the Curator under such an order shall include a power to carry on with the consent of the Court any business connected with the estate.

(4.) The Curator shall be deemed the successor of the deceased for the purpose of the Licensing Act, 1911, and may, in a proper case, with the consent of the Court, enter by himself or his agent on and become the licensee of any licensed premises of which the deceased was licensee or the Curator is owner within the meaning of that Act.

Probate or
administration
may be granted
by Court.
Cf. 1903, No. 13,
s. 67.

8. (1.) Notwithstanding any order which has been made to collect and administer under this Act the Court may grant probate of the will or letters of administration of the estate to—

- (a) any executor of the deceased or the legal personal representative of any such executor; or
- (b) the husband or widow or any next of kin of the deceased;
or
- (c) any residuary or other legatee of the deceased; or
- (d) any creditor of the deceased; or
- (e) any attorney of any such person as aforesaid lawfully appointed for the purpose who might have obtained such probate or letters of administration if the order in favour of the Curator had not been made:

Provided that no grant shall be made hereunder in favour of any creditor or his attorney if the Court shall be of opinion that the estate does not exceed in value five hundred pounds.

(2.) No application for any such grant shall be made until seven days after notice in writing of the intention to apply for the same has been left at the office of the Curator.

On grant of
probate powers
of Curator to
cease.
1903, No. 13, s.
68.

9. (1.) Immediately on the grant of any such probate or letters of administration as last aforesaid all the interest, powers, rights, and duties of the Curator in regard to the estate affected by such grant, and all liabilities of the Curator under any contract or agreement entered into by him in relation to such estate, shall cease.

(2.) Such portion of the estate as is left unadministered by the Curator, and all rights and obligations of the Curator in respect thereof, shall vest in and be binding upon the executor or administrator obtaining such probate or letters of administration.

(3.) Nothing herein contained shall interfere with the allowance and payment of all commissions due to the Curator, and the necessary disbursements, costs, charges, and expenses in relation to such estate.

(4.) Nothing herein contained shall relieve the Curator from any liability in respect of his management of the estate up to the time of granting such probate or letters of administration.

10. The Curator shall, once every month, publish in the *Gazette* a statement, in the prescribed form, setting forth the particulars of all estates in connection with which an order to collect and administer has been made during the preceding month.

Notice to be published in the *Gazette* of all orders to administer.

1903, No. 13, s. 69.

11. (1.) The Curator shall cause advertisements to be published in the *Gazette* and in such newspapers as he deems expedient, calling upon the creditors of the persons whose estates he has been authorised to collect and administer to come in and prove their debts before him on or before a time to be fixed in such notice. Notices regarding two or more estates may be combined in one advertisement.

Curator to advertise for creditors, pay debts, and distribute residue. Cf. 1903, No. 13, s. 73.

(2.) The Curator shall as soon after the expiration of the time allowed for proof of debts as he conveniently can—

(a) Pay the debts proved, if the whole thereof can be paid, and, if not,

(b) Declare and pay a dividend thereon.

(3.) If he collects any further assets after making such payment, he shall pay any part of the proved debts remaining unpaid, and any debts subsequently proved before him, or a dividend thereon, as the case may be.

(4.) Such creditors as subsequently prove shall first be paid a dividend equal to the dividend paid to creditors having previously proved their debts.

(5.) The Curator may allow any claim which is made before him upon such evidence as he thinks fit.

(6.) After payment of the debts, fees, and expenses incident to the collection, management, and administration of such estate the Curator shall, subject to this Act, distribute the residue of the estate.

Provided that where an order to collect and administer has been made in the case of a person whose death is not proved, but who is reasonably supposed to have died, the Curator shall not distribute without an order of the Court specially authorising him to make such distribution.

See N.S.W. 1913, No. 19, s. 23.

12. The Colonial Treasurer may, at the request of the Curator, make advances out of the Curator's official account at the Treasury for the purposes of any estate in course of administration, or about to be administered.

Advances for administration purposes. N.S.W., 1913, No. 19, s. 33; Q., 1915, No. 14, s. 21.

(2.) Where an estate is under administration by the Curator and there is no money or not sufficient money available to make payments required to be made on account of such estate, the Colonial Treasurer may advance and pay for, or on account of such estate, any sum of money (not exceeding in the whole one-third the total value of the property) which the Curator is authorised or required to pay.

(3.) All sums so advanced shall be a first charge on all the property of the estate, and shall bear interest at the rate fixed by the Colonial Treasurer.

(4.) All interest received under this provision shall be paid into the consolidated revenue.

Curator may take opinion of Court upon any question arising in course of his duties.
Q., 1915, No. 14, s. 79.

13. The Curator may, *ex parte*, take the opinion or obtain the direction of the Court upon any question, whether of law or of fact, arising under this Act, or in the course of his duties.

Any such question shall be submitted to a Judge in such manner and at such time as he may direct, and shall be accompanied by such statement of facts, documents, and other information as he may require; and the Curator or any one authorised by him shall, if the Judge so desires, attend upon him at such time and place as the Judge may appoint.

The Judge may, before giving his opinion or direction, require the attendance of, or communication with, any person interested in the estate, but no such person shall have a right to be heard unless the Judge otherwise directs.

The Judge shall give his opinion or direction to the Curator, and the Curator shall act in accordance with such opinion or direction, and shall, upon the request in writing of any such interested person, communicate to him the effect of such opinion or direction.

Court may give directions.
N.S.W., No. 19 of 1913, s. 29.

14. In every case where an order to collect and administer is made under this Act, the Court may, on the application of any person interested in the estate, after notice to the Curator, make such orders touching the collection, sale, investment, disposal, and distribution of the estate as to the Court may seem fit.

Sale by Curator of goods of third person.
1903, No. 13. s. 79.

15. In case of any sale by the Curator or his agents of goods or chattels belonging to any third person, the amount realised by the sale thereof shall be paid over by him to the owner, upon proof of ownership, unless the same has been applied in the payment of the debts of the deceased, or has been distributed according to any will of the deceased, or in the ordinary course of administration, whilst the Curator, or any such agent was in ignorance and without actual notice of the claim of such person to the goods or chattels so sold.

If real estate has escheated.
1903, No. 13, s. 80.

16. (1.) If it appears on office found that any real estate vested in the Curator has escheated to His Majesty, the same shall be sold, and the net proceeds of sale of such estate shall be paid by the Curator to the Colonial Treasurer, and be by him carried to the credit of the consolidated revenue.

(2.) The Curator's conveyance or transfer of such real estate to the purchaser thereof shall operate to pass the right, title, and interest of the deceased intestate to such purchaser as in any other case.

Reciprocity where deceased domiciled in other States or

17. Where the Curator is administering the estate in Western Australia of any person, who at the time of his death, whether before or after the commencement of this Act, was domiciled in

one of the other States of the Commonwealth or the Dominion of New Zealand, and whose estate in such other State or Dominion is being administered by the public trustee or curator of such other State or Dominion, the Curator may pay over to the public trustee or curator of such other State or Dominion the balance of the proceeds of the estate in Western Australia of the said person, after payment of creditors and the charges provided for under this Act, without any obligation to see to the application of such balance, and without incurring any liability in regard to the payment of such balance, and shall certify to an account in favour of the public trustee or curator of such other State or Dominion accordingly.

18. (1.) Where the estate of any deceased person, who at the time of his death, whether before or after the commencement of this Act, was domiciled in Western Australia, is being administered by the Curator, and the public trustee or curator of any of the other States of the Commonwealth or of the Dominion of New Zealand has in such other State or Dominion obtained administration of the estate in such other State or Dominion, the Curator may receive from the public trustee or curator of such other State or Dominion the balance of the proceeds of the estate in such other State or Dominion.

(2.) Such balance shall, when so received, form part of the estate of the deceased person, and shall be dealt with according to the law of Western Australia.

19. (1.) Where any moneys or personal chattels are payable or deliverable by the Curator to the subject of any country out of His Majesty's jurisdiction, the Minister may authorise the Curator to pay or deliver the same to any specified official of that country or to the chief consular officer for that country in Western Australia on behalf of the person entitled, and the receipt of such official or consular officer shall be a sufficient discharge therefor to the Curator, who shall not be further concerned to see to the application thereof.

(2.) As regards money or personal chattels so payable or deliverable to any person in any Colony, Dominion, State, Island, or place of His Majesty in foreign parts, the Curator, if so authorised by the Minister, may pay or deliver the same to any specified official of such Colony, Dominion, State, Island, or place on behalf of the person entitled; and the receipt of such official shall be a sufficient discharge to the Curator, who shall not be further concerned to see to the application thereof.

20. The Curator shall take and retain a commission of two and a-half per centum on the total value of every estate in respect of which an order to collect and administer is made, and five per centum on all moneys actually collected or received by him or his agents.

New Zealand.
N.S.W., 1913, No. 19, s. 55.
Q., 1915, No. 14, s. 77 (3).

Where deceased domiciled in Western Australia administration granted in other States or New Zealand.
N.S.W., 1913, No. 19, s. 56.
Q., 1915, No. 14, s. 77 (4).

Money, etc., payable abroad.
Q., 1915, No. 14, s. 77 (1).
N.Z., 1913, No. 19, s. 28.

Q. 1915, No. 14, s. 77 (2).

Fees of Curator.
Cf. 1903, No. 13, s. 63.

(2.) The Curator shall pay such commission into the Treasury for public uses after deducting therefrom an allowance (to be determined by him) not exceeding three pounds per centum by way of commission to his agents in respect of all moneys collected by them.

No court fees payable in estates under £10.

21. No fees shall be payable to the Court by the Curator in respect of any proceeding taken under this Act in connection with any estate which does not exceed ten pounds in value.

Curator to keep accounts. 1903, No. 13, s. 75.

22. (1.) The Curator shall—

- (a) Make or cause to be made an inventory or list of all the estates of the persons which he has been ordered to collect and administer, and retain the same in his office; and
- (b) Keep proper books of account in which entries shall be made of all his receipts, payments, and dealings in every such estate which he has been ordered to collect and administer; and
- (c) Retain all letters received and copies of all letters written by him, and all deeds, papers, and writings of and relating to such estates; and
- (d) Permit all persons interested to inspect and take copies of the same, and of all proceedings relating thereto; or
- (e) Furnish office copies thereof on payment of the prescribed fees.

(2.) The Curator shall forthwith pay all moneys received by him to the Colonial Treasurer, to the credit of an official account to be operated on by him as such Curator subject to the directions of the Colonial Treasurer.

Inspection and audit of books of public curator. N.S.W., 1913, No. 19, s. 41. Q. 1915, No. 14, s. 22.

23. (1.) The Minister, and any officer of his department authorised by him, shall have at all times access to all the books, accounts, documents, and papers in the Curator's office, and the Curator shall at all times furnish to the Minister all such information as the Minister requires.

(2.) The accounts of the Curator shall be audited by the Department of the Auditor General once at least in every year, and the Curator and his agents shall be deemed to be public accountants within the meaning of the Audit Act, 1904.

Moneys unclaimed for six years to be paid to Treasury. See 1903, No. 13, s. 81. Cf. N.S.W., 1913, No. 19, s. 53.

24. (1.) The Curator shall, on or before the 31st day of March in each year, cause all sums of money which shall, on the first day of January next preceding, have been standing to the credit of any estate, the order to collect and administer in connection with which estate has been made six years prior to such date, and in respect whereof the Curator has no information or know-

ledge of the existence of any person entitled in distribution, or claiming so to be, to be paid to the Colonial Treasurer for the public service.

Provided that the Governor may direct the whole or part of the moneys so paid to the Colonial Treasurer to be invested, and the interest arising from such investment to be paid to a fund, and advanced and applied to defray liabilities incurred in respect of estates having for the time being no liquid assets to pay current expenses:

Provided also that the Curator may, with the approval of the Minister, retain at the credit of any estate such sum of money as he may consider likely to be required to answer payments to be made out of such estate.

25. The Curator shall not be required to give any security on being appointed to any office or authorised to exercise any powers or perform any duties.

No security required from Curator.

26. The receipt, in writing, of the Curator for any moneys payable to him under this Act shall be sufficient discharge to the persons paying the same, who shall not afterwards be liable for any misapplication thereof.

Curator's receipt a sufficient discharge.
1903, No. 13, s. 76.

27. No person shall be concerned to see or inquire whether any acts, dealings, or transactions by or with the Curator, or his deputy, officers, or agents, are or are not within his powers.

Persons dealing with Curator not required to inquire as to his powers.

28. Neither the Curator nor any of his agents shall be personally liable to any person—

Curator not personally liable.
1903, No. 13, s. 78.

(a) in respect of goods or chattels in the possession of any testator or intestate at the time of his death, which are sold by the Curator or any such agent as the goods of such testator or intestate, unless the Curator or agent knows or has actual notice before the sale that such goods or chattels are not in fact the property of such testator or intestate; or

(b) for any act done bona fide in the performance of their duties respectively, unless it is shown that such act was done with gross negligence.

29. All estates being dealt with by the Curator, or under any vesting order or order to administer made under the Deceased Persons Estate Act, 1883, or any order to collect or administer made or granted under Part IV. of the Administration Act, 1903, shall be dealt with hereafter as if such vesting order, order to collect, or order to administer were an order to collect and administer granted under this Act.

As to existing estates being dealt with by the Curator.

30. (1.) The Judges of the Supreme Court, or a majority of them, may make rules of court for carrying this Act into effect.

Rules of Court.

(2.) The power hereby conferred shall be in addition to any power to make rules conferred by any other Act.

Schedule.

(3.) The rules in the Schedule hereto shall have effect subject to this Act, and may be repealed or varied by any rule made by the Judges.

THE SCHEDULE.

Rules.

1. Every person other than a Government official appointed an agent of the Curator shall give security to the satisfaction of the Curator for the performance of his duties. Section 35.

2. An application by the Curator for an order to collect and administer the estate of any deceased person shall be in the Form No. 1 in the appendix hereto and shall be supported by an affidavit setting forth—

- (a) The death of such person and the date and place thereof ; or that such person is reasonably supposed to have died on a specified date and the grounds of such supposition.
- (b) That he died intestate or that he died leaving a will which is annexed to the affidavit.
- (c) The property within Western Australia left by the deceased, so far as known.
- (d) Whether the deceased left any widow, husband, or next of kin.
- (e) The place of residence of any executor named in the last will (if any) of the deceased.
- (f) Any other particulars which may be deemed necessary ; a form of affidavit is shown in the Appendix (No. 2).

3. An order to collect and administer may be as shown at the foot of Form No. 1 in the Appendix. When the deceased died testate a copy of the will shall, unless the Court otherwise orders, be annexed to the Order.

4. Where the executors named in the will of a deceased person renounce probate in favour of the Curator, such renunciation may be in Form No. 3 of the Appendix hereto.

5. Where the persons primarily entitled to administration decline so to apply with a view to the Curator applying therefor, they shall file in the office of the Curator a document in the Form No. 4 of the Appendix hereto.

6. The notice to the Curator to be given by an applicant for probate of the will or letters of administration of the estate of a deceased person of which the Curator has obtained an order to administer may be in the Form No. 5 in the Appendix.

7. Whenever it shall be necessary to take any steps in connection with any estate being administered by the Curator and whether the Curator shall be a party thereto or not, every petition, affidavit, summons, or other process shall be filed in the office of the Curator.

8. Every application under these rules or any other part of the Act may be heard in Chambers and except in so far as it is otherwise provided may be made *ex parte*, or on notice to such persons as the Court shall consider should be notified.

9. Every application on being filed shall be answered by the fiat of a Judge fixing the time for the hearing thereof.

10. The Curator may charge every estate administered by him a fee for postages, according to the following scale :—

Value of Estate.	£	s.	d.
Under £10	0	2	6
£10 and not exceeding £50	0	5	0
£50 and not exceeding £100	0	10	0
£100 and not exceeding £200	0	15	0
£200 and not exceeding £500	0	17	6
£500 and upwards	1	0	0

APPENDIX.

FORM No. 1.

The Curator of Intestate Estates Act, 1918.

APPLICATION OF CURATOR.

In the Supreme Court
of Western Australia.

In the matter of the Estate of
late of _____, deceased.

1. The above-named deceased died on the
day of _____ (or is reasonably supposed to have died on the
day of _____) intestate (or having duly
made and executed his last will dated the day of _____) leaving
estate within the State of Western Australia but leaving no widow or next of
kin (or executor) resident within the jurisdiction, as appears by the affidavit of
hereunto annexed (if the
application is made on any other grounds, set forth the grounds).

2. The Curator desires that he may be empowered by the order of this Court
to collect and administer the estate of the said deceased.

Dated the _____ day of _____, 19 _____,

Curator of Intestate Estates.

ORDER TO COLLECT AND ADMINISTER.

Upon reading this application and the affidavit therein referred to it is ordered
that the Curator of Intestate Estates be and he is hereby empowered to collect
and administer the estate of the deceased.

(A true copy of the last will, if any, of the deceased is hereunto annexed.)

Dated the _____ day of _____, 19 _____,

Judge.

FORM No. 2.

The Curator of Intestate Estates Act, 1918.

AFFIDAVIT IN SUPPORT OF APPLICATION OF CURATOR

In the Supreme Court
of Western Australia.

In the matter of the estate of
late of _____, deceased.

I, _____ of _____
make oath and say as follows:—

1. The said _____, deceased, died (or is
reasonably supposed to have died) at _____ on the
day of _____, 19 _____.

2. The grounds for supposing that the said is dead are as follows:—

(Here set out grounds.)

3. The said deceased died intestate (or having duly made and executed his last will in writing which is hereunto annexed and marked with the letter " A ").

4. The said deceased left no widow or next of kin (or executor) resident within the jurisdiction. Note.—If the deceased left an executor, widow, husband, or next of kin resident out of the jurisdiction or resident within the jurisdiction but not willing and capable of acting in the execution of his will or the administration of his estate, insert particulars of same.

Sworn, etc.

Before me—

No. 3.

The Curator of Intestate Estates Act, 1918.

RENUNCIATION OF EXECUTOR IN FAVOUR OF CURATOR.

In the Supreme Court of Western Australia.

In the matter of the Estate of

late of _____, deceased.

WHEREAS _____, late of _____, deceased, died on the _____ day of _____, at _____, and whereas he duly made and executed his last will and testament, bearing date the _____ day of _____, 19____, and thereof appointed _____ executor: Now I (or We), _____, the said _____ do hereby declare that _____ have not intermeddled in the real or personal estate of the said deceased, and will not hereafter intermeddle therein and do hereby expressly renounce all right and title to probate and execution to the said will and to the trusts, powers, and authorities whatsoever by the said will expressed to be made or given to _____ the said _____, and hereby request the Curator of Intestate Estates to apply for an order to collect and administer the estate of the said _____, deceased, with the will of the said annexed.

Dated the _____ day of _____, 19____.

Signed by the said _____ in the presence of _____

No. 4.

The Curator of Intestate Estates Act, 1918.

RENUNCIATION OF PERSONS ENTITLED TO ADMINISTRATION IN FAVOUR OR CURATOR.

In the Supreme Court
of Western Australia.In the matter of the Estate of
late of , deceased.

WHEREAS , late of
deceased, died on the day of , 19 ,
at , intestate, a widower, leaving
his only him
surviving.

Now I (or We) the said
do hereby renounce all right and title to letters of administration of the real and
personal estate of the said deceased, and request the Curator of Intestate Estates
to administer the said

Dated the day of , 19 .

Signed by the said
in the presence of

No. 5.

The Curator of Intestate Estates Act, 1918.

FORM OF NOTICE OF APPLICATION FOR PROBATE OR ADMINISTRATION TO BE GIVEN TO THE CURATOR.

To the Curator of Intestate Estates, Perth.

You are hereby requested to take notice that application will be made to
the Supreme Court, on the day of
19 , or so soon thereafter as the same can be heard, for probate of the will
(or letters of administration *as the case may be*) of the estate of A.B., late of
, deceased, who died on or about the
day of , 19 , at

Solicitor for C.D. a (brother) of said deceased.

Perth, the day of , 19 .

NOTE.—These forms may be altered to suit the circumstances of any particular case.