

WESTERN AUSTRALIA.

**ADMINISTRATION ACT, 1903-1973.**

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## ADMINISTRATION.

No. 13 of 1903.

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

No. 29 of 1909, assented to 20/11/09;	No. 81 of 1956, <sup>4</sup> assented to 17/1/57;
No. 9 of 1918, <sup>1</sup> assented to 15/4/18;	No. 56 of 1959, assented to 25/11/59;
No. 13 of 1921, assented to 15/11/21;	No. 21 of 1960, <sup>5</sup> assented to 11/10/60;
No. 29 of 1922, assented to 7/12/22;	No. 57 of 1961, assented to 28/11/61;
No. 28 of 1934, <sup>2</sup> assented to 28/12/34;	No. 80 of 1962, <sup>6</sup> assented to 6/12/62;
No. 24 of 1939, assented to 22/11/39;	No. 66 of 1963, assented to 18/12/63;
No. 26 of 1941, <sup>3</sup> assented to 8/12/41;	No. 57 of 1964, assented to 30/11/64;
No. 52 of 1941, assented to 15/1/42;	No. 78 of 1965, assented to 7/12/65;
No. 55 of 1941, assented to 15/1/42;	No. 68 of 1966, assented to 12/12/66;
No. 21 of 1942, assented to 9/12/42;	No. 2 of 1969, assented to 21/4/69;
No. 39 of 1945, assented to 30/1/46;	No. 21 of 1970, <sup>7</sup> assented to 8/5/70;
No. 8 of 1949, assented to 14/9/49;	No. 107 of 1970, <sup>8</sup> assented to 8/12/70;
No. 55 of 1950, assented to 18/12/50;	No. 18 of 1971, <sup>9</sup> assented to 1/12/71;
No. 62 of 1953, assented to 9/1/54;	No. 40 of 1971, assented to 10/12/71;
No. 81 of 1953, assented to 18/1/54;	No. 46 of 1972, <sup>10</sup> assented to 18/9/72;
No. 30 of 1954, assented to 8/11/54;	No. 57 of 1972, <sup>11</sup> assented to 31/10/72;
No. 62 of 1955, assented to 19/12/55;	No. 94 of 1972, <sup>12</sup> (as amended by
	No. 19 of 1973);
	No. 80 of 1973, <sup>13</sup> assented to 21/12/73;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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.

[Assented to 31st December, 1903.]

BE it enacted—

### PART I.—PRELIMINARY.

1. This Act may be cited as the *Administration Act, 1903-1973*, and shall be construed as one with the Supreme Court Act, 1861,<sup>14</sup> and all amendments thereof, and shall come into force on the first

Short title, commencement, and divisions.  
Amended by No. 80 of 1973, s. 1.

- <sup>1</sup> Came into operation on 1/7/18; see *Gazette* 7/6/18, p. 813.  
<sup>2</sup> Came into operation on 1/1/35; see *Gazette* 28/12/34, p. 1983.  
<sup>3</sup> Came into operation on 1/7/42; see *Gazette* 26/6/42, p. 689.  
<sup>4</sup> Came into operation on 1/2/57; see *Gazette* 1/2/57, p. 161.  
<sup>5</sup> Came into operation on 25/11/60; see *Gazette* 25/11/60, p. 3779.  
<sup>6</sup> Came into operation 1/1/63; see section 2 of Act No. 80 of 1962.  
<sup>7</sup> Came into operation 1/7/70; see *Gazette* 26/6/70, p. 1831.  
<sup>8</sup> Section 3, 4 and 11 came into operation on 1/1/71; see section 2 of Act No. 107 of 1970 for application of new provisions. The remaining provisions apply from assent date.  
<sup>9</sup> Came into operation on 21/1/72, see *Gazette* 21/1/72, p. 71.  
<sup>10</sup> Came into operation on 1/11/72; see *Gazette* 13/10/72, p. 4069.  
<sup>11</sup> Came into operation 1/1/1973; see *Gazette* 17/11/72, p. 4379.  
<sup>12</sup> Metric Conversion Act, 1972-1973. The relevant amendments included in this reprint effective from 1/1/74; see *Gazette* 2/11/73, p. 4108.  
<sup>13</sup> Came into operation on 1/1/74; see *Gazette* 28/12/73, p. 4725.  
<sup>14</sup> See now Supreme Court Act, 1935.

NOTE.—In this reprint—

- (1) references in the marginal- and foot- notes to  
(i) the "1934 reprint" are references to the reprint of the Administration Act, 1903-1934 printed in accordance with the provisions of s. 77 of Act No. 28 of 1934;  
(ii) the "1943 reprint" are references to the reprint of the Administration Act, 1903-1941, contained in Vol. 2 of the Reprinted Acts of the Parliament of W.A. (1943);  
(2) the numbering of Parts, sections, etc., as contained in the 1943 reprint is retained.

day of January, one thousand nine hundred and four.

It is divided into Parts as follows:—

PART I.—PRELIMINARY, ss. 1-3.

PART II.—PROBATE AND ADMINISTRATION, ss. 4-60A.

PART III.—FOREIGN PROBATES AND ADMINISTRATION, ss. 61-62.

[Part IV as enacted by No. 13 of 1903 repealed by No. 9 of 1918.]

[Formerly  
Pt. V.]

PART IV.—CAVEATS, ss. 63-64.

[Formerly  
Pt. VI.]

PART V.—DUTIES ON DECEASED PERSONS' ESTATES AND SUCCESSION DUTIES, ss. 65-137.

[Formerly  
Pt. VII.]

PART VI.—MISCELLANEOUS, ss. 138-148.

Repeal.

2. The Acts mentioned in the First Schedule are, to the extent therein expressed, hereby repealed.

Interpreta-  
tion.  
Amended by  
No. 62 of  
1955, s. 2

3. 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.

"Master" includes Deputy Master.

"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 Act, 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.

"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, 1941-1953.<sup>1</sup>

"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.

"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 twenty-four, and to any other testamentary disposition.

## PART II.—PROBATE AND ADMINISTRATION.

4. 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.

Jurisdiction  
of Court as  
heretofore.

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<sup>1</sup> Now Public Trustee Act, 1941-1975.

Duties of  
Master.

5. The Master shall, subject to the rules, perform such duties as heretofore in reference to proceedings in the ecclesiastical jurisdiction of the Court, and such other duties, as may be prescribed by the rules.

Power to  
grant  
probate and  
administra-  
tion.

6. 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.

Probate may  
be granted  
to one or  
more  
executors.

7. 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.

Upon grant  
of probate  
or adminis-  
tration real  
and personal  
estate to  
vest

8. 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:—

in executor  
or

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

adminis-  
trator.

(b) on intestacy, in the administrator.

Real estate  
to vest  
subject  
to trusts.

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

Real and  
personal  
estate to  
be assets.  
Amended by  
No. 62 of  
1955, s. 3.

10. (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.

No 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.

Power to sell or lease real estate.

11. 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.

Subject as aforesaid real estate to vest according to will.

12. 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.

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

12A. (1) Where, after the coming into operation of the Administration Act Amendment Act, 1971, 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 father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships, whether lineal or collateral, shall be determined accordingly.

Entitlement to participation in distribution of intestate estates. Added by No. 18 of 1971, s. 3.

(2) In any proceedings where a person relies on a matter of fact made relevant by the provisions of subsection (1) of this section—

(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 father and mother are not, or have not been, married to each other, the relationship between a child and his father, and all other lineal or collateral relationships, shall be recognised only—

(i) if paternity is admitted by or established against the father in his lifetime; and

(ii) where the purpose for which the relationship is to be determined enures for the benefit of the father, if paternity has been so admitted or established in the lifetime of the child.

(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, 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.

Real and personal estate in case of intestacy. Amended pursuant to No. 28 of 1934, s. 77 (3)(b) and (4).

13. (1) Subject as aforesaid and to the provisions of the next five succeeding sections, the administrator on intestacy, or, in case of partial intestacy, the executor or administrator with the will annexed shall hold the real and personal estate vesting as aforesaid, and as to which any person dies intestate in trust for the persons who would be entitled thereto under the Statute of Distributions, and as to the real estate in trust for and as if the same had been devised to such persons as tenants in common.

No executor entitled as such to undisposed of residue

(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 intended so to take.

except where no person otherwise entitled.

(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.

14. (1) A husband or wife shall be entitled, on the death of the other, as to the property as to which he or she dies intestate, to the following shares only:—

Interests of  
husbands  
and wives  
in estates  
of the other  
of them.  
Amended by  
No. 8 of  
1949, s. 3;  
No. 62 of  
1953, s. 2;  
No. 78 of  
1965, s. 2;  
No. 113 of  
1965, s. 8.

- (a) where the net value of the property of the deceased does not exceed the specified sum referred to in subsection (4) of this section, to the whole of such property.
- (b) where the net value of such property exceeds the specified sum, to the specified sum absolutely, and also to one-half share of the residue where there is no issue surviving; and where such issue survives, the husband or wife shall be entitled to one-third share of the residue and such issue to the remaining two-thirds, the division among the issue being *per stirpes* and not *per capita*.

(1A) Notwithstanding anything contained in subsection (1) of this section, when after the coming into operation of the Administration Act Amendment Act, 1953, a person dies leaving—

- (a) a husband or wife, but no issue, parent, brother, sister, or issue of a brother or sister, the husband or wife shall be entitled to the whole of the property of the other, as to which he or she dies intestate;
- (b) a husband or wife and also one or more of the following, namely, a parent, a brother, a sister, or issue of a brother or sister, but leaves no issue, the husband or wife shall be entitled, as to the property of the other as to which he or she dies intestate—
  - (i) where the net value of the property of the deceased, if the death occurred

*Administration.*

before the coming into operation of the Administration Act Amendment Act, 1965, does not exceed the sum of ten thousand dollars, or if the death occurs after the coming into operation of that Act, does not exceed the sum of fifteen thousand dollars to the whole of such property;

- (ii) where the net value of such property, if the death occurred before the coming into operation of the Administration Act Amendment Act, 1965, exceeds the sum of ten thousand dollars, to the sum of ten thousand dollars, absolutely, and also to one-half of the residue;
- (iii) where the net value of such property, if the death occurs after the coming into operation of the Administration Act Amendment Act, 1965, exceeds the sum of fifteen thousand dollars, to the sum of fifteen thousand dollars absolutely, and also to one-half of the residue.

(1B) In addition to the share to which a husband or wife, on the death of the other after the coming into operation of the Administration Act Amendment Act, 1965, is entitled under subsection (1) or subsection (1A) of this section in the property as to which the deceased dies intestate, the surviving husband or wife shall be entitled to an amount equal to five per centum per annum on the specified sum, or as the case may require, the sum of fifteen thousand dollars, or that part of such sum as remains unpaid or unsatisfied, calculated from the date of the death 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, such amount to be payable out of the income of the estate of the deceased, or if there is no income or the income is insufficient for that purpose, out of the capital of the residue of the estate.

(2) Subject as aforesaid, the property of such deceased husband or wife shall be divisible amongst the next of kin.

(3) Any husband or wife so entitled to share in real property shall accept the value of such share in lieu of partition, if so desired by all the persons entitled jointly with him or her.

(4) In this section "the specified sum" means where the death of the deceased husband or wife occurs—

- (a) before the coming into operation of the Administration Act Amendment Act, 1949, the sum of one thousand dollars;
- (b) after the coming into operation of that Act but before the coming into operation of the Administration Act Amendment Act, 1953, the sum of two thousand dollars;
- (c) after the coming into operation of the Administration Act Amendment Act, 1953, but before the coming into operation of the Administration Act Amendment Act, 1965, the sum of five thousand dollars;
- (d) after the coming into operation of the Administration Act Amendment Act, 1965, the sum of ten thousand dollars.

15. Notwithstanding anything contained in this Act to the contrary, when after the seventh day of December, one thousand nine hundred and twenty-two, any person dies intestate leaving—

- (a) both a father and mother but no issue, then if the whole or any part of the estate of such intestate would now by law be distributable to the father the same shall be distributed—
  - (i) where the net value of the property of the deceased so distributable does not exceed the sum of two thousand dollars, equally to and between the father and mother;

Next of kin of intestate without issue to include mother.

Enacted by No. 29 of 1922, s. 2. Numbered as s. 15 pursuant to No. 23 of 1934, s. 77 (3) (b). Amended by No. 113 of 1965, s. 8.

- (ii) where the net value of such property exceeds the sum of two thousand dollars, as to the sum of two thousand dollars, equally to and between the father and mother, and also in like proportions as to the residue then left if there are no brothers or sisters or children of deceased brothers or sisters surviving; and where such brothers or sisters or deceased brothers' or sisters' children survive, one half of such residue equally to and between the father and mother, and the remaining half equally to and between the brothers and sisters and children of deceased brothers and sisters (such children taking *per stirpes* and not *per capita*); or
- (b) a father only or a mother only but no issue, then the whole or any part of the estate of such intestate to which the intestate's widower or widow (if any) is not entitled shall be distributed—
- (i) where the net value of such property does not exceed the sum of two thousand dollars, to the father or mother, as the case may be;
  - (ii) where the net value of such property exceeds the sum of two thousand dollars to the father or mother, as the case may be, if there are no brothers or sisters or children of deceased brothers or sisters surviving; and where such brothers or sisters or deceased brothers' or sisters' children do survive, as to two thousand dollars and one half of the residue then left to the father or mother, as the case may be, and the remaining half of such residue equally to and between the brothers and sisters and children of deceased brothers and sisters (such children taking *per stirpes* and not *per capita*).

15A. (1) For the purposes of sections fourteen and fifteen of this Act—

- (a) the net value of the property of a deceased person is the net value of that property at the date of the death of that person as finally assessed by the Commissioner of State Taxation for the purpose of Part V. of this Act;
- (b) subject to the provisions of subsection (1B) of section fourteen of this Act, any income derived from the property of a deceased person shall be distributed among the persons entitled in distribution to that property in the same respective proportions to which they are entitled to share in the distribution of that property.

Distribution of net income. Added by No. 62 of 1955, s. 4. Repealed and re-enacted by No. 57 of 1961, s. 2. Amended by No. 78 of 1965, s. 3; No. 21 of 1970, s. 61.

(2) Where prior to the coming into operation of the Administration Act Amendment Act, 1961, any property of a deceased person has been distributed in accordance with the provisions of this section as enacted prior to the coming into operation of that Act, such distribution shall be and be deemed to be a valid and effectual distribution of that property and to have been lawfully made, and the administrator or other the person making the distribution shall not be liable for anything done in good faith in respect thereof.

16. 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.

Courtesy and dower abolished. No. 13 of 1903, s. 15. Renumbered as s. 16 in 1934 reprint.

17. (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 ten thousand dollars the Court may, on the application of any such infant, or of any person on his behalf, authorise the executor or administrator to expend

Court may deal with interest of infants in certain cases. No. 13 of 1903, s. 16. Renumbered as s. 17 in 1934 reprint. Amended by No. 62 of 1955, s. 5; No. 80 of 1962, s. 3; No. 113 of 1965, s. 8.

the whole or any part of the share of such infant in his maintenance, advancement, or education.

(2) [*Deleted by No. 62 of 1955, s. 5*]

(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.

Power to  
appoint  
trustees of  
infant's  
property.  
Added by  
No. 80 of  
1962, s. 4.  
Cf. Vic.  
Adminis-  
tration and  
Probate  
Act, 1958,  
s. 47.

17A. (1) Subject to subsection (5) of this section, 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 two or more individuals not exceeding four (whether or not including the 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) of this section 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 in any of the securities or property authorised for the investment of trust funds.

(4) Where a personal representative has, before the first day of January, one thousand nine hundred and sixty-three, retained or sold any such devise, legacy, residue or share as is mentioned in subsection (1) of this section, and has invested it or the proceeds thereof (as the case may be) in any investments in which he was authorised 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.

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

19. (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 Master to effect such partition.

Court may direct partition of real estate.  
No. 13 of 1903, s. 18.  
Renumbered as s. 19 in 1934 reprint.

(2) The award of the arbitrators or order of the Master 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 issued to him 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 issue subject to such charge.

Personal  
representa-  
tive may  
relinquish  
trust.

No. 13 of  
1903, s. 19.  
Renumbered  
as s. 20 in  
1934 reprint.

20. (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.

Executor or  
adminis-  
trator to  
represent  
real estate.

No. 13 of  
1903, s. 20.  
Renumbered  
as s. 21 in  
1934 reprint.

21. 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.<sup>1</sup> [*Repealed by No. 26 of 1941, s. 3 (2).*]

All creditors  
to stand in  
equal degree.

No. 13 of  
1903, s. 22.  
Renumbered  
as s. 23 in  
1934 reprint.

23. (1) 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.

Except  
secured  
creditors.

(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.

<sup>1</sup> See s. 9 of Public Trustee Act, 1941.



(3) Nothing herein contained shall affect the provisions of any Act protecting life assurance or other policies against creditors.

And Acts dealing with life policies.

24. 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.

Adminis-  
tration in  
case of  
intestacy.  
No. 13 of  
1903, s. 23.  
Renumbered  
as s. 24 in  
1934 reprint.

25. 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 eighteen years, that is to say to—

Persons  
entitled to  
administra-  
tion.  
No. 13 of  
1903, s. 24.  
Renumbered  
as s. 25 in  
1934 reprint.  
Amended by  
No. 46 of  
1972, s. 6 and  
Schedule.

- (a) the husband or wife of the deceased or one or more of the next of kin; or
- (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.

26. (1) Except where the contrary is expressly enacted every person to whom administration is granted shall, previous to the issue of such administration, execute in the form prescribed by the Rules a bond, with one or two sureties conditioned for duly collecting, getting in, administering and distributing the real and personal estate of the deceased.

Bond to be  
executed.  
No. 13 of  
1903, s. 25.  
Renumbered  
as s. 26 in  
1934 reprint.  
Amended by  
No. 55 of  
1941, s. 21;  
No. 30 of  
1954, s. 3;  
No. 62 of  
1955, s. 7.

(2) No such bond shall be required from the Public Trustee or any person obtaining administration to the use or for the benefit of Her Majesty.

No bond  
required  
from Public  
Trustee.

(3) The Court may dispense with a bond where the applicant for administration is a duly incorporated company, formed for the purpose of

Incorporated  
company.

<sup>1</sup> Came into operation on 1st July, 1942; see No. 55 of 1941, s. 8.

(amongst other things) administering the estates of deceased persons.

Penalty of bond.  
No. 13 of 1903, s. 26.  
Renumbered as s. 27 in 1934 reprint.

27. Every bond shall be in a penalty equal to the gross amount under which the property of the deceased is sworn; but the Court may dispense with one or both sureties to any bond or reduce the amount of such penalty, or limit the liability of any surety to such amount as the Court thinks reasonable; or, in place of any such bond, the Court may accept the security of any incorporated company or guarantee society approved of by the Court.

Sureties to bond may be dispensed with in certain cases.  
Added as s. 27A by No. 55 of 1941, s. 3.  
Renumbered as s. 28 in 1943 reprint.  
Amended by No. 57 of 1964, s. 2; No. 113 of 1965, s. 8.

28. (1) Notwithstanding any other provision of this Act, in any case where a person dies leaving property not exceeding five thousand dollars in value and administration is granted to the husband or widow of the deceased, no surety or sureties shall be required to the administration bond.

(2) Notwithstanding any other provision of this Act, in any case where the claim of any creditor of the deceased or any portion of such claim is secured by a mortgage of real estate of the deceased, no surety or sureties shall be required to the administration bond in an amount exceeding a sum representing the difference between the amount of the gross value of the property of the deceased and the amount of the claim which such mortgage secures.

Court may revoke administration or order new or additional bond.  
No. 13 of 1903, s. 27; renumbered as s. 28 in 1934 reprint and as s. 29 in 1943 reprint.  
Amended by No. 55 of 1941, s. 4; No. 30 of 1954, s. 4; No. 107 of 1970, s. 3.

29.<sup>1</sup> 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) revoke the administration already granted; or
- (b) order the administrator to execute a further or additional bond in such sum, with or without sureties, as the Court may direct;

<sup>1</sup> Came into operation on 1st July, 1942; see No. 55 of 1941, s. 8.

and upon default 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;

- (c) order that the liability of any surety to any administration bond be reduced to such amount as the Court in the circumstances of the case thinks reasonable.

(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 Part V of this Act.

30. The Court may order the Master for and on behalf of Her Majesty to assign any bond to some person to be named in such order, and such person, his executors or administrators, shall be entitled to sue upon the bond in his own name, and be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the said bond.

If condition of bond broken, bond may be assigned.  
No. 13 of 1903, s. 28. Renumbered as s. 29 in 1934 reprint and as s. 30 in 1943 reprint.

31. If, upon the application of a surety to any bond, it appear to the Court that the estate is being or is in danger of being wasted, or that the surety is being or is in danger of being in any way prejudiced by the act or default of the person administering the estate, or that any surety desires to be relieved from further liability, the Court may grant such relief as it may think fit.

Court may grant relief if estate being wasted or in danger.  
No. 13 of 1903, s. 29. Renumbered as s. 30 in 1934 reprint and as s. 31 in 1943 reprint.

32. 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

In case of renunciation or failure to take probate, right of executor gone.  
No. 13 of 1903, s. 30. Renumbered as s. 31 in 1934 reprint and as s. 32 in 1943 reprint.

be committed in like manner as if such person had not been appointed executor.

Where infant is executor, etc. No. 13 of 1903, s. 31. Renumbered as s. 32 in 1934 reprint and as s. 33 in 1943 reprint. Amended by No. 46 of 1972, s. 6 and Schedule.

33. (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 eighteen 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.

Where person entitled to probate or administration is out of the jurisdiction. No. 13 of 1903, s. 32. Renumbered as s. 33 in 1934 reprint and as s. 34 in 1943 reprint. Amended by No. 21 of 1942, s. 2.

34. 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.

Court may appoint a manager and receiver pending litigation. No. 13 of 1903, s. 33. Renumbered as s. 34 in 1934 reprint and as s. 35 in 1943 reprint.

35. 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, and with or without a bond or sureties, as the Court may think fit.

Administration with the will annexed. No. 13 of 1903, s. 34. Renumbered as s. 35 in 1934 reprint and as s. 36 in 1943 reprint.

36. 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, upon his giving security as aforesaid, and such administration may be limited as the Court thinks fit.

37. Where an executor neglects to obtain or to renounce probate within two months from the death of the testator or from the time of such executor attaining the age of eighteen 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.

Probate or administration if executor, etc. absent or neglects to obtain probate, etc.  
No. 13 of 1903, s. 35.  
Renumbered as s. 36 in 1934 reprint and as s. 37 in 1943 reprint.  
Amended by No. 46 of 1972, s. 6 and Schedule.

38. (1) If, at the expiration of six 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.

Special letters of administration if executor or administrator not within jurisdiction.  
No. 13 of 1903, s. 36.  
Renumbered as s. 37 in 1934 reprint and as s. 38 in 1943 reprint.

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

On return of executor or administrator, special administration may be revoked.  
No. 13 of 1903, s. 37.  
Renumbered as s. 38 in 1934 reprint and as s. 39 in 1943 reprint.

(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.

Absent  
executor  
liable to  
account.  
No. 13 of  
1903, s. 38.  
Renumbered  
as s. 39 in  
1934 reprint  
and as s. 40  
in 1943  
reprint.

40. 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.

Revocation  
pending  
litigation  
not to abate  
proceedings.  
No. 13 of  
1903, s. 39.  
Renumbered  
as s. 40 in  
1934 reprint  
and as s. 41  
in 1943  
reprint.

41. 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.

Devisee or  
legatee may  
apply to  
Court in  
certain cases  
No. 13 of  
1903, s. 40.  
Renumbered  
as s. 41 in  
1934 reprint  
and as s. 42  
in 1943  
reprint.

42. 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 bequest, 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.

Inventory  
and  
accounts.  
No. 13 of  
1903, s. 41.  
Renumbered  
as s. 42 in  
1934 reprint  
and as s. 43  
in 1943  
reprint.

43. (1) Every person to whom probate or administration is granted shall 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.

(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 three 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.

44. (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 Master shall cause such executor or administrator to be notified of such neglect.

If accounts not filed Master to give notice, etc.  
No. 13 of 1903, s. 42. Renumbered as s. 43 in 1934 reprint and as s. 44 in 1943 reprint.

(2) In case of further neglect for the period of one month, the Master 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 the Court from ordering the assignment of any bond to any person with a view of enforcing the penalty thereof as hereinbefore mentioned.

45. (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.

Court may settle all questions arising in administration.  
No. 13 of 1903, s. 43. Renumbered as s. 44 in 1934 reprint and as s. 45 in 1943 reprint.  
Amended by No. 62 of 1955, s. 8.

(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.

Payments made before revocation to be valid. No. 13 of 1903, s. 44. Renumbered as s. 45 in 1934 reprint and as s. 46 in 1943 reprint.

46. (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.

Payments, etc., to be valid notwithstanding defect. No. 13 of 1903, s. 45. Renumbered as s. 46 in 1934 reprint and as s. 47 in 1943 reprint.

47. 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.

Protection of executors, administrators and trustees. Added by No. 18 of 1971, s. 4.

47A. (1) Notwithstanding—

- (a) the provisions of section twelve A of this Act; 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) of this section 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.

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

49. [Repealed by No. 80 of 1962, s. 5.]

50. [Repealed by No. 80 of 1962, s. 5.]

51. [Repealed by No. 80 of 1962, s. 5.]

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

53. (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.

Executor deemed to be resident in State. No. 13 of 1903, s. 51. Renumbered as s. 52 in 1934 reprint and as s. 53 in 1943 reprint.

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

Court may appoint district agents.  
No. 13 of 1903, s. 52.  
Renumbered as s. 53 in 1934 reprint and as s. 54 in 1943 reprint.  
Amended by No. 55 of 1941, s. 5;<sup>1</sup>  
No. 94 of 1972, s. 4 (as amended by No. 19 of 1973).

54. (1) For the purpose of receiving applications for probate or administration under this Act, the magistrate of every Local Court held at a town beyond eighty kilometres from Perth shall be and is hereby appointed to act as a district agent for the Master.

(2) All district agents may, for the purposes of this part of this Act, administer oaths, take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court.

Where estate does not exceed \$5,000 the Master or district agent may act.  
No. 13 of 1903, s. 53.  
Renumbered as s. 54 in 1934 reprint and as s. 55 in 1943 reprint.  
Substituted 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).

55. In all cases where a person dies leaving property not exceeding five thousand dollars in value, application for probate or administration may be made direct to the Master; or if the fixed abode of the deceased at the time of his death has been more than eighty kilometres from Perth, then to the district agent for the Master nearest to such place of abode.

Information to be furnished by Master or agent.  
No. 13 of 1903, s. 54.  
Renumbered as s. 55 in 1934 reprint and as s. 56 in 1943 reprint.

56. (1) The Master 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 Master or district agent shall receive payment of all proper fees fixed by the Rules of the Court in connection with the application.

<sup>1</sup> Came into operation on 1st July, 1942; see s. 8 of No. 55 of 1941.

57. (1) The district agent shall forthwith transmit to the Master 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.

Applications to be transmitted by agent to Master.  
No. 13 of 1903, s. 55, renumbered as s. 56 in 1934 reprint and as s. 57 in 1943 reprint.  
Amended by No. 55 of 1950, s. 4; No. 66 of 1963, s. 3; No. 113 of 1965, s. 8.

(2) The Master shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed five thousand dollars 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.

58. (1) In any case where the Master 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.

Master to refer matter back to agent if not satisfied.  
No. 13 of 1903, s. 56, renumbered as s. 57 in 1934 reprint and as s. 58 in 1943 reprint.

(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 Master in respect of such matters.

59. (1) If any person dies leaving property not exceeding six thousand dollars in value and the deceased at the time of his death had a fixed place of abode more than eighty kilometres from Perth, the person entitled to probate of the will or letters of administration of the estate of such deceased person may apply by his solicitor to the district agent nearest to such place of abode for a grant of such probate or such letters of administration.

Application for probate, etc., to district agent in certain cases.  
Added as s. 57A by No. 55 of 1941, s. 7, renumbered as s. 59 in 1943 reprint.  
Amended by No. 62 of 1955, s. 9; No. 113 of 1965, s. 8; No. 94 of 1972, s. 4 (as amended by No. 19 of 1973).

(2) The district agent shall receive payment of all proper fees fixed by the Rules of the Court in connection with the application, and shall forthwith transmit to the Master all fees, affidavits, documents, and things received by him; and, upon receipt of the probate or letters of administration,

<sup>1</sup> Came into operation on 1st July, 1942; see s. 8 of No. 55 of 1941.

shall deliver the same to the solicitor lodging such application, upon demand.

(3) The Master shall, upon being satisfied with the sufficiency of the evidence in support of the application and that the estate does not exceed six thousand dollars 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 shall forward the same to the district agent for delivery by him to the solicitor for the applicant.

(4) Such probate or administration shall be issued in the name and under the seal of the Court.

(5) In any case where the Master is not satisfied, he shall state the matters in respect of which he is not satisfied to the district agent transmitting the application, and such district agent shall then inform the solicitor for such applicant accordingly, and such solicitor may take such further steps as may be proper to satisfy the Master in respect of such matters.

Master may refer to Court.  
No. 13 of 1903, s. 57.  
Renumbered as s. 58 in 1934 reprint and as s. 60 in 1943 reprint.

60. In no case shall the Master 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.

Application of Inheritance (Family and Dependents Provision) Act, 1972.  
Added by No. 57 of 1972, s. 3.

60A. Nothing in this Part of this Act shall affect or derogate from the provisions of section 6 of the Inheritance (Family and Dependents Provision) Act, 1972.

#### PART III.—FOREIGN PROBATES AND ADMINISTRATION.

Foreign probates, etc., may be sealed.  
No. 13 of 1903, s. 58.  
Renumbered as s. 59 in 1934 reprint and as s. 61 in 1943 reprint.

61. (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 Master by any person being the executor or administrator therein named, or by any person duly authorised 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.

(3) The Court may require any such executor or administrator, or person authorised as aforesaid, to give security for the due administration of the estate in respect of matters or claims in Western Australia.

62. The seal of the Court shall not be affixed to any probate or administration granted in another part of Her Majesty's dominions until such bond has been entered into, by the executor or administrator therein named or his attorney, as would have been required if such probate or administration had been originally granted by the Court.

Issue of sealed probate or administration before payment of duty. Repealed and re-enacted by No. 107 of 1970, s. 4.<sup>1</sup>

[Part IV., *Curator of Intestate Estates*, as enacted by No. 13 of 1903, was repealed by the *Curator of Intestate Estates Act*, 1918, No. 9 of 1918.]

[Numbered as Pt. V. in 1934 reprint and renumbered as Pt. IV. in 1943 reprint.]

#### PART IV.—CAVEATS.

63. (1) Any person may lodge with the Master 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.

Caveat. No. 13 of 1903, s. 83. Renumbered as s. 61 in 1934 reprint and as s. 63 in 1943 reprint.

(2) Every such caveat shall set forth the name of the person lodging the same, and an address within the City of Perth at which notices may be served on him.

<sup>1</sup> Came into operation on 1st January, 1971; see Act No. 107 of 1970, s. 2.

Court may  
remove  
caveat.  
No. 13 of  
1903, s. 84.  
Renumbered  
as s. 62 in  
1934 reprint  
and as s.  
64 in 1943  
reprint.

64. (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.<sup>1</sup>

65. [*Repealed by No. 80 of 1973, s. 3.*]

65A. [*Added by No. 21 of 1960, s. 5. Repealed by No. 80 of 1973, s. 3.*]

65B. [*Added by No. 57 of 1964, s. 4. Repealed by No. 80 of 1973, s. 3.*]

<sup>1</sup> 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 (i.e. ss. 85-126 as enacted by No. 13 of 1903) as hereby repealed shall apply to any person dying before the commencement of this Act (1st January, 1935).

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

These provisions (except s. 71) were subsequently repealed by section 3 of the Death Duty Assessment Act, 1973 which reads as follows:—

3. (1) The following provisions of the Administration Act, 1903-1973, that is to say—

(a) the whole of Part V of that Act other than section 71;

(b) subsection (2) of section 139 and sections 145, 146, 147 and 148 of that Act; and

(c) the Second Schedule to that Act,

are hereby repealed.

(2) Where, immediately before the date of the coming into operation of this Act, any provision repealed by subsection (1) of this section 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) of this section, 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 of this Act.

(4) Notwithstanding subsection (3) of this section, paragraph (c) 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 of this Act.

(5) Nothing in this section affects the operation of the Interpretation Act, 1918.

65C. [Added by No. 21 of 1970, s. 64. Repealed by No. 80 of 1973, s. 3.]

66. [Repealed by No. 80 of 1973, s. 3.]

66A. [Added by No. 68 of 1966, s. 3. Repealed by No. 80 of 1973, s. 3.]

67. [Repealed by No. 80 of 1973, s. 3.]

68. [Repealed by No. 80 of 1973, s. 3.]

69. [Repealed by No. 80 of 1973, s. 3.]

69A. [Added by No. 81 of 1953, s. 3. Repealed by No. 80 of 1973, s. 3.]

69B. [Added by No. 62 of 1955, s. 10. Repealed by No. 80 of 1973, s. 3.]

69C. [Added by No. 68 of 1966, s. 5. Repealed by No. 80 of 1973, s. 3.]

69D. [Added by No. 107 of 1970, s. 8. Repealed by No. 80 of 1973, s. 3.]

69E. [Added by No. 107 of 1970, s. 9. Repealed by No. 80 of 1973, s. 3.]

69F. [Added by No. 107 of 1970, s. 10. Repealed by No. 80 of 1973, s. 3.]

70. [Repealed by No. 80 of 1973, s. 3.]

70A. [Added by No. 68 of 1966, s. 6. Repealed by No. 80 of 1973, s. 3.]

71. 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 of this Act, until probate or letters of administration in respect of the estate comprised therein shall have been issued or obtained.

No will to be registered or admissible in evidence until proved. No. 28 of 1934, s. 10, incorporated in 1934 reprint as s. 69 and in 1943 reprint as s. 71. Amended by No. 57 of 1964, s. 7; No. 107 of 1970, s. 11. [Cf. 1903, No. 13, s. 127.]

[Subsections (2), (3), (4), and (5) repealed by No. 107 of 1970, s. 11.]

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

73. [Repealed by No. 80 of 1973, s. 3.]

74. [Repealed by No. 80 of 1973, s. 3.]

74A. [Added by No. 56 of 1959, s. 3, numbered 74A by No. 80 of 1962, s. 9. Repealed by No. 80 of 1973, s. 3.]

75-100. [Repealed by No. 80 of 1973, s. 3.]

100A. [Added by No. 62 of 1955, s. 13. Repealed by No. 80 of 1973, s. 3.]

100B. [Added by No. 81 of 1956, s. 10. Repealed by No. 80 of 1973, s. 3.]

101-136. [Repealed by No. 80 of 1973, s. 3.]

136A. [Added by No. 68 of 1966, s. 17. Repealed by No. 80 of 1973, s. 3.]

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

[See foot-note<sup>1</sup> to heading of Pt. V. post.]

[Part VI. (ss. 85-126 as originally enacted by No. 13 of 1903 was repealed by No. 28 of 1934, s. 2.)]

#### PART VI<sup>1</sup>—MISCELLANEOUS.

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

Deposits not exceeding one thousand two hundred dollars in any bank may be paid to widow or next of kin without probate or administration.  
No. 13 of 1903, s. 129. Renumbered as s. 136 in 1934 reprint and as s. 139 in 1943 reprint.

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.

139. (1) On the death of any person leaving a sum of money not exceeding the amount of one thousand two hundred dollars, or such other amount as may for the time being be declared by proclamation, standing to his credit in any bank if no probate or administration is produced to that bank 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 bank within that period, the bank 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 bank to be the widower, widow, parent or child of the deceased person; or

(b) in payment to such other persons or for such other purposes as may be declared and authorised by proclamation from time to time,

<sup>1</sup> This Part was formerly Part VII.



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

(2) [*Repealed by No. 80 of 1973, s. 3.*<sup>1</sup>]

(3) For the purposes of this section "bank" means a person carrying on the business of banking and includes a building society.

140. (1) The Master 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.

Records of grants, etc.  
No. 13 of 1903, s. 130.  
Renumbered as s. 137 in 1934 reprint and as s. 140 in 1943 reprint.  
Amended by No. 57 of 1964, s. 12; No. 107 of 1970, s. 16.

(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) [*Repealed by No. 107 of 1970, s. 16.*]
- (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

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<sup>1</sup> See footnote to Part V.

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.

Court may appoint an attorney for an absent executor.

No. 13 of 1903, s. 131. Renumbered as s. 138 in 1934 reprint and as s. 141 in 1943 reprint.

Amended by No. 21 of 1942, s. 4; No. 80 of 1962, s. 8.

141. (1) [*Deleted by No. 80 of 1962 s. 8.*]

(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 next of kin 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.

Payment of balance of estate to Curator or Public Trustee of State or Colony where deceased was domiciled.

No. 13 of 1903, s. 132. Renumbered as s. 139 in 1934 reprint and as s. 142 in 1943 reprint.

Amended by No. 62 of 1955, s. 16.

142. (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.

Public Trustee may receive any part of estate from outside the State.

(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 Australia.<sup>1</sup>

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

<sup>1</sup> See section 16 of the Public Trustee Act, 1941.

143A. Interest payable on legacies shall be computed after the rate of five per centum 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.

Rate of interest payable on legacies. Added by No. 39 of 1945, s. 2. Amended by No. 113 of 1965, s. 8.

144. (1) The rules and forms in the Third Schedule to this Act until altered, added to or revoked by rules made under this Act, shall regulate the practice and procedure to which they relate.

Rules of Court. No. 13 of 1903, s. 134. Renumbered as s. 141 in 1934 reprint and as s. 144 in 1943 reprint.

(2) Except where otherwise provided, the practice and rules and scales of fees heretofore in force shall apply.

Amended by No. 30 of 1954, s. 5; No. 57 of 1964, s. 13.

(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;
- (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 the Master or other officer of the Court.

145-148. [Repealed by No. 80 of 1973, s. 3.<sup>1</sup>]

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<sup>1</sup> See footnote to Part V.

*Administration.*

## SCHEDULES.

## FIRST SCHEDULE.

## Sec. 2.

Date.	Title.	Extent of Repeal.
3 & 4 William IV., c. 104	An Act to render Freehold and Copyhold Estates assets for payment of simple contract debts	The whole.
14 Victoria, 12 ....	An ordinance for the disposal of Balances of Estates of Deceased Persons remaining unclaimed in the hands of the Public Administrator.	The whole.
24 Victoria, 15 ....	The Supreme Court Ordinance, 1861	Sections 6, 7, 8, 9.
34 Victoria, 12 ....	An Act to abolish the distinction as to priority of payment which now exists between the Specialty and simple Contract Debts of Deceased Persons	The whole.
43 Victoria, 5 ....	The Foreign Probate Act ..	The whole.
47 Victoria, 20 ....	The Deceased Persons Estate Act, 1883	The whole.
57 Victoria, 9 ....	The Real Estates Administration Act, 1893	The whole.
59 Victoria, No. 18	The Duties on Deceased Persons Estates Act	The whole

SECOND SCHEDULE.<sup>1</sup>

*[Repealed by No. 80 of 1973, s. 3.<sup>2</sup>]*

[Formerly  
Fourth  
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 the 11th September, 1967.]

<sup>1</sup> Formerly Third Schedule. The Second Schedule to the principal Act as amended by No. 29 of 1909 was repealed by Section 2 of the Act No. 28 of 1934, subject to Section 3 thereof. See footnote <sup>1</sup> to heading of Part V. ante.

<sup>2</sup> See footnote to Part V.

