

WESTERN AUSTRALIA.

ADMINISTRATION ACT 1903-1980.

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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. 9 of 1918,¹ assented to 15/4/18;
No. 13 of 1921, assented to 15/11/21;
No. 29 of 1922, assented to 7/12/22;
No. 28 of 1934,² assented to 28/12/34;
No. 24 of 1939, assented to 22/11/39;
No. 26 of 1941,³ assented to 8/12/41;
No. 52 of 1941, assented to 15/1/42;
No. 55 of 1941, assented to 15/1/42;
No. 21 of 1942, assented to 9/12/42;
No. 39 of 1945, assented to 30/1/46;
No. 8 of 1949, assented to 14/9/49;
No. 55 of 1950, assented to 18/12/50;
No. 62 of 1953, assented to 9/1/54;
No. 81 of 1953, assented to 18/1/54;
No. 30 of 1954, assented to 8/11/54;
No. 62 of 1955, assented to 19/12/55;
No. 81 of 1956,⁴ assented to 17/1/57;
No. 56 of 1959, assented to 25/11/59;
No. 21 of 1960,⁵ assented to 11/10/60;
No. 57 of 1961, assented to 28/11/61;

No. 80 of 1962,⁶ assented to 6/12/62;
No. 66 of 1963, assented to 18/12/63;
No. 57 of 1964, assented to 30/11/64;
No. 78 of 1965, assented to 7/12/65;
No. 68 of 1966, assented to 12/12/66;
No. 2 of 1969, assented to 21/4/69;
No. 21 of 1970,⁷ assented to 8/5/70;
No. 107 of 1970,⁸ assented to 8/12/70;
No. 18 of 1971,⁹ assented to 1/12/71;
No. 40 of 1971, assented to 10/12/71;
No. 46 of 1972,¹⁰ assented to 18/9/72;
No. 57 of 1972,¹¹ assented to 31/10/72;
No. 94 of 1972,¹² (as amended by
No. 19 of 1973);
No. 80 of 1973,¹³ assented to 21/12/73;
No. 138 of 1976,¹⁴ assented to
13/12/76;
No. 37 of 1977,¹⁵ assented to 7/11/77;
No. 67 of 1979,¹⁶ assented to 21/11/79;
No. 103 of 1979,¹⁷ assented to
17/12/79;
No. 14 of 1980,¹⁸ assented to 15/10/80,

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.]

¹ Came into operation on 1/7/18; see *Gazette* 7/6/18, p. 813.

² Came into operation on 1/1/35; see *Gazette* 28/12/34, p. 1983.

³ Came into operation on 1/7/42; see *Gazette* 26/6/42, p. 689.

⁴ Came into operation on 1/2/57; see *Gazette* 1/2/57, p. 161.

⁵ Came into operation on 25/11/60; see *Gazette* 25/11/60, p. 3779.

⁶ Came into operation 1/1/63; see section 2 of Act No. 80 of 1962.

⁷ Came into operation 1/7/70; see *Gazette* 26/6/70, p. 1831.

⁸ 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.

⁹ Came into operation on 21/1/72, see *Gazette* 21/1/72, p. 71.

¹⁰ Came into operation on 1/11/72; see *Gazette* 13/10/72, p. 4069.

¹¹ Came into operation 1/1/73; see *Gazette* 17/11/72, p. 4379.

¹² Metric Conversion Act 1972-1973. The relevant amendments included in this reprint effective from 1/1/74; see *Gazette* 2/11/73, p. 4108.

¹³ Came into operation on 1/1/74; see *Gazette* 28/12/73, p. 4725.

¹⁴ Sections 3, 4 and 16 proclaimed 1/3/77; see *Gazette* 28/1/77, pp. 185-6.

¹⁵ Sections 5-15 proclaimed 1/12/77; see *Gazette* 11/11/77, p. 4193. Balance 1/3/77.

¹⁶ Came into operation 1/12/77; see *Gazette* 28/11/77, p. 4345.

¹⁷ Came into operation on 11/2/80; see *Gazette* 8/2/80, p. 383.

¹⁸ Came into operation on 24/4/80; see *Gazette* 24/4/80 p. 1179.

¹⁹ Came into operation 28 days after assent, i.e. 12/11/80.

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.

BE it enacted—

PART I.—PRELIMINARY.

Short title,
commence-
ment, and
divisions.
Amended by
No. 80 of
1973, s. 1.

1. This Act may be cited as the *Administration Act 1903-1980* and shall be construed as one with the Supreme Court Act 1861,¹⁴ and all amendments thereof, and shall come into force on the first 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;
No. 67 of
1979, s. 42.

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.

¹⁴ See now Supreme Court Act 1935.

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

“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.

“Principal Registrar” means the person for the time being holding or acting in the office designated under the Supreme Court Act 1935, “Principal Registrar of the Supreme Court”.

“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 1941-1953.¹

“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.

“Registrar” means a person for the time being holding or acting in an office designated under the Supreme Court Act 1935, “Registrar of the Supreme Court”, and a reference to a Registrar may include a reference to the Principal Registrar or a deputy Registrar.

¹ Now Public Trustee Act, 1941-1979.

“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.

Jurisdiction
of Court as
heretofore.

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.

Duties of
Principal
Registrar.
Amended by
No. 67 of
1979, s. 43.

5. (1) The Principal Registrar shall, subject to the rules, perform such duties as were immediately prior to the coming into operation of the Acts Amendment (Master, Supreme Court) Act 1979, performed by the Master of the Supreme Court in reference to proceedings in the ecclesiastical jurisdiction of the Court, and such other duties, as may be prescribed by the rules.

(2) Subject to the rules the powers and authority conferred on the Principal Registrar by this Part of this Act may be exercised by a Registrar.

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.

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:—

Upon grant of probate or administration real and personal estate to vest

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

in executor or

(b) on intestacy, in the administrator.

adminis-
trator.

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

Real estate to vest subject to trusts.

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.

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

(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.

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

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.

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

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.

(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.

13. (1) Where, after the coming into operation of section four of the Administration Act Amendment Act 1976, any person dies intestate as to all or any of his property, the administrator, or in case of partial intestacy, the executor or administrator with the will annexed, shall, subject to sections nine and ten of this Act, hold the real and personal estate to which the intestacy applies, and which vests in him under section eight of this Act, on trust for the persons who are entitled thereto under section fourteen of this Act.

Real and personal estate in case of intestacy. Amended pursuant to No. 28 of 1934, s. 77 (3)(b) and (4); No. 138 of 1976, s. 3.

(1a) When, pursuant to subsection (1) of this section, real estate is held on trust for two or more persons, it shall be held as if it had been devised to those persons as tenants in common.

(1b) The estates of all persons who have died intestate as to all or any of their property before the coming into operation of section four of the Administration Act Amendment Act 1976 shall be held and distributed in accordance with the enactments and rules of law which would have applied to those estates if that Act had not been passed.

(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.

No executor entitled as such to undisposed of residue

(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.

except where no person otherwise entitled.

Entitlements on intestacy. Repealed and re-enacted by No. 138 of 1976, s. 4. Amended by No. 103 of 1979, s. 3.

14. (1) Where, after the coming into operation of section four of the Administration Act Amendment Act 1976, any person (in this section called "the intestate") dies intestate as to all or any of his property, the property as to which he dies intestate (in this section called "the intestate property") shall be distributed according to the entitlements set out in the following table (in this section called "the Table"):

TABLE.

If the intestate—

1. dies leaving a husband or wife (whether or not other persons mentioned in item 2 or 3 of this Table also survive)

the surviving husband or wife shall be entitled, absolutely, to all household chattels included in the intestate property;

2. dies leaving a husband or wife and issue

(a) where the net value of the intestate property (other than the household chattels) does not exceed the sum of thirty thousand dollars—the surviving husband or wife shall be entitled to the whole of the intestate property;

(b) where the net value of the intestate property (other than the household chattels) exceeds the sum of thirty thousand dollars—the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of thirty thousand dollars, absolutely, together with interest on that sum in accordance with subsection (4) of this section, and, of the residue, the surviving husband or wife shall be entitled to one-third and the issue shall be entitled to the other two-thirds (the division among the issue being *per stirpes* and not *per capita*);

(Note provisions of subsection (3) of this section).

3. dies leaving a husband or wife and one or more of the following, namely, a parent, a brother or sister, or child of a brother or sister, but leaving no issue

(a) where the net value of the intestate property (other than the household chattels) does not exceed the sum of forty-five thousand dollars—the surviving husband or wife shall be entitled to the whole of the intestate property;

(b) where the net value of the intestate property (other than the household chattels) exceeds the sum of forty-five thousand dollars—the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of forty-five thousand dollars, absolutely, together with interest on that sum in accordance with subsection (4) of this section, and, of

the residue, the surviving husband or wife shall be entitled to one-half and, as to the other half,—

- (i) where the intestate is survived by one parent or both parents—

- (A) if the value of that other half does not exceed the sum of six thousand dollars or if no brother, sister, or child of a brother or sister survives the intestate—the parent or parents shall be entitled (in equal shares where both survive the intestate) to that other half;

- (B) in any other case—the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of six thousand dollars, absolutely, and, of the remainder, the parent or parents shall be entitled (in equal shares where both survive the intestate) to one-half and the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in equal shares to the other half (the division among those children being *per stirpes* and not *per capita*);

- (ii) where neither parent survives the intestate—the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in equal shares to the other half (the division among those children being *per stirpes* and not *per capita*);

4. dies leaving a husband or wife but no issue, parent, brother, sister or child of a brother or sister the surviving husband or wife shall be entitled to the whole of the intestate property;
5. dies leaving issue but no husband or wife the issue shall be entitled to the whole of the intestate property (the division among them to be *per stirpes* and not *per capita*);

6. dies leaving a parent or parents and one or more of the following, namely, a brother or sister, or a child of a brother or sister, but leaving no husband or wife and no issue
 - (a) where the net value of the intestate property does not exceed the sum of six thousand dollars—the parent or parents shall be entitled (in equal shares where both survive the intestate) to the whole of the intestate property;
 - (b) where the net value of the intestate property exceeds the sum of six thousand dollars—the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of six thousand dollars, absolutely, and of the residue, the parent or parents shall be entitled (in equal shares where both survive the intestate) to one-half and the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in equal shares to the other half (the division among those children being *per stirpes* and not *per capita*);
7. dies leaving a parent or parents but leaving no husband or wife and no issue, brother, sister or child of a brother or sister

the parent or parents shall be entitled (in equal shares where both survive the intestate) to the whole of the intestate property;
8. dies leaving one or more of the following, namely a brother or sister, or a child of a brother or sister, but leaving no husband or wife and no issue or parent

the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in equal shares to the whole of the intestate property (the division among those children being *per stirpes* and not *per capita*);
9. dies leaving no husband or wife and no issue, parent, brother, sister or child of a brother or sister

the next of kin of the intestate shall be entitled to the whole of the intestate property.

(2) For the purposes of the Table—

- (a) “household chattels” means articles of personal or household use or adornment;
- (b) the net value of the intestate property is the net value of that property at the date of the death of the intestate, which shall where the estate of the deceased person is an estate to which the provisions of the Death Duty Assessment Act 1973, apply be the net value finally assessed by the Commissioner of State Taxation under and for the purposes of that Act.

(3) In applying the provisions of item 2 of the Table to a case where the intestate dies leaving—

- (a) a husband or wife and one child; or
- (b) a husband or wife and the issue of one child,

the words “one-third” and “two-thirds” in paragraph (b) of that item shall be read as if they were the words “one-half” and “half” respectively.

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

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

the surviving husband or wife shall be entitled to an amount equal to five per centum per annum on the sum to which he or she is so entitled, or on that part of such sum as remains unpaid or unsatisfied, calculated from the date of death of the intestate to the date of the payment of that sum, or the date of the effectual appropriation of that sum in accordance with the provisions of the Trustees Act 1962, whichever is the earlier of those dates, and the amount to which he or she is entitled under this subsection—

- (c) shall be in addition to any other sum, property or share in property, to which he or she is entitled under the Table; and
- (d) shall be payable out of the income of the estate of the intestate, or if there is no income or the income is insufficient for that purpose, out of the capital of the residue of the estate.

(5) Subject to subsection (4) of this section, the income derived from the intestate property shall be distributed among the persons who are, under the

Table, entitled in distribution to that property in the same respective proportions to which they are, under the Table, entitled to share in the distribution of that property.

(6) In any case where paragraph (b) of item 2, or paragraph (b) of item 3 of the Table has application the Fourth Schedule to this Act shall have effect for enabling the surviving husband or wife of the intestate to acquire the matrimonial home.

(7) Subject to subsection (6) of this section, where the surviving husband or wife of the intestate is entitled under the Table to share in real property he or she shall accept the value of his or her share in lieu of partition, if so desired by all the persons entitled jointly with him or her.

15. [*Repealed and re-enacted as Section 14 by No. 138 of 1976, s. 4.*]

15A. [*Repealed and re-enacted as Section 14 by No. 138 of 1976, s. 4.*]

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

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.

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.

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, authorize the executor or administrator to expend 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.

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.

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.

(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 authorized 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 authorized 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.*]

Court may
direct parti-
tion of real
estate.

No. 13 of
1903, s. 18.

Renumbered
as s. 19 in
1934 reprint.

Amended by
No. 67 of
1979, s. 44.

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 Principal Registrar to effect such partition.

(2) The award of the arbitrators or order of the Principal Registrar 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.

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.

Personal representative may relinquish trust.
No. 13 of 1903, s. 19.
Renumbered as s. 20 in 1934 reprint.

(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.

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.

Executor or administrator to represent real estate.
No. 13 of 1903, s. 20.
Renumbered as s. 21 in 1934 reprint.

22.¹ [*Repealed by No. 26 of 1941, s. 3 (2).*]

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.

All creditors to stand in equal degree
No. 13 of 1903, s. 22.
Renumbered as s. 23 in 1934 reprint.

(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.

except secured creditors.

¹ See s. 9 of Public Trustee Act 1941.

And Acts
dealing with
life policies.

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

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

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.

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.

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—

- (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.

Power to
require
adminis-
trator to
produce
sureties.
Repealed and
re-enacted
by No. 138
of 1976, s. 5.
Amended by
No. 67 of
1979, s. 44.

26. (1) As a condition of granting administration to any person the Court may, subject to the following provisions of this section and subject to and in accordance with the rules, require one or more sureties to guarantee that they will make good, within any limit imposed by the Court on the total liability of the surety or sureties, any loss that any person interested in the administration of the estate of the deceased may suffer in consequence of a breach by the administrator of his duties as an administrator.

(2) Where a guarantee is given as required by subsection (1) of this section the Court may, at any time, upon the application of any person interested in the estate or of its own motion on the report of the Principal Registrar—

- (a) require the surety or sureties to give such further or additional guarantee as the Court may direct and, if that further or additional guarantee is not given by the surety or sureties and the administrator does not produce another surety or other sureties, as the case may require, to give that further or additional guarantee, the Court may remove the administrator and appoint another in his place with power to sue or be sued upon any contract made by the removed administrator;
- (b) order that the liability of a surety under the guarantee be reduced to such amount as the Court in the circumstances of the case thinks reasonable.

(3) For the purposes of this Act a further or additional guarantee given pursuant to paragraph (b) of subsection (2) of this section shall be deemed to be a guarantee given as required by subsection (1) of this section.

(4) A guarantee given as required by subsection (1) of this section shall enure for the benefit of every person interested in the administration of the estate of the deceased as if contained in a deed to which the surety or sureties and every such person are parties and, where there are two or more sureties, as if they had bound themselves jointly and severally.

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

- (a) shall not be brought without the leave of either the Court or the Principal Registrar;

- (b) may be brought only on such terms and conditions as the Court or the Principal Registrar thinks fit.

(6) If, upon the application of a surety who has given a guarantee as required by subsection (1) of this section, it appears to the Court that—

- (a) the estate is being wasted, or is in danger of being wasted;
- (b) the surety is being in any way prejudiced, or is in danger of being prejudiced, by the act or default of the person administering the estate; or
- (c) any surety desires to be relieved from further liability,

the Court may grant such relief as it thinks fit.

(7) Subject to subsection (6) of this section, this section applies whenever administration is granted under any provision of this Act.

(8) This section does not apply where administration is granted to the Public Trustee or in such other cases as may be prescribed by the rules.

27. [*Repealed by No. 138 of 1976, s. 6.*]

28. [*Repealed by No. 138 of 1976, s. 6.*]

Court may
revoke
grant;
no grant
before duty
assessed.
Repealed and
re-enacted
by No. 138 of
1976, s. 7.
Amended by
No. 67 of
1979, s. 44;
No. 103 of
1979, s. 4.

29. (1) Where administration of the estate of a person has been granted the Court may, at any time, upon the application of any person interested in the estate or of its own motion on the report of the Principal Registrar, revoke the administration.

(2) Except where the Principal Registrar otherwise directs, a grant of administration shall not be issued and the seal of the Court shall not be affixed to an administration granted in another part of Her

Majesty's dominions until the estate to which the administration relates has been assessed for duty under the Death Duty Assessment Act 1973 where that estate is an estate to which the provisions of that Act apply.

30. [*Repealed by No. 138 of 1976, s. 8.*]

31. [*Repealed by No. 138 of 1976, s. 8.*]

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

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.

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.

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.

(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.

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,

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.

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.
Amended by No. 138 of 1976, s. 9.

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 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.
Amended by No. 138 of 1976, s. 10.

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, 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.

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.

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.

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.

(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.

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.

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.

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.

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.

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 bequests, 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. Amended by No. 138 of 1976, s. 11.

43. (1) Every person to whom probate or administration is granted shall be under a duty to—

- (a) collect and get in the real and personal estate of the deceased and administer it according to law;
- (b) file an inventory of the estate of the deceased, and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be prescribed by the rules or as the Court may order;
- (c) when required to do so by the Court, deliver up the grant of probate or administration to the Court.

(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.

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.
Amended by No. 67 of 1979, s. 44; No. 14 of 1980, s. 3.

(2) Where not actually so resident he shall, before the issue or sealing of any probate or administration, file in accordance with the rules a notice of an address 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;¹
No. 94 of 1972, s. 4 (as amended by No. 19 of 1973); No. 67 of 1979, s. 44.

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 Principal Registrar.

(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 \$10 000 the Principal Registrar 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).
No. 37 of 1977, s. 3;
No. 67 of 1979, s. 44;
No. 14 of 1980, s. 4.

55. In all cases where a person dies leaving property not exceeding ten thousand dollars in value, application for probate or administration may be made direct to the Principal Registrar or to a district agent of the Principal Registrar.

Information to be furnished by Principal Registrar or agent.
No. 13 of 1903, s. 54.
Renumbered as s. 55 in 1934 reprint and as s. 56 in 1943 reprint.
Amended by No. 67 of 1979, s. 44.

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

¹ 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 Principal Registrar 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 Principal Registrar. No. 13 of 1903, s. 55, renumbered as s. 56 in 1934 reprint and as s. 57 in 1943 reprint.

(2) The Principal Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed ten 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.

Amended by No. 55 of 1950, s. 4; No. 66 of 1963, s. 3; No. 113 of 1965, s. 8; No. 37 of 1977, s. 3; No. 67 of 1979, s. 44.

(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 Principal Registrar 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.

Principal Registrar 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. Amended by No. 67 of 1979, s. 44.

(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 Principal Registrar in respect of such matters.

59. [Repealed by No. 14 of 1980, s. 5.]

60. In no case shall the Principal Registrar 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.

Principal Registrar may refer to Court. No. 13 of 1903, s. 57. Renumbered as s. 58 in 1934 reprint and as s. 60 in 1943 reprint. Amended by No. 67 of 1979, s. 44.

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.
Amended by No. 138 of 1976, s. 13; No. 67 of 1979, s. 44.

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 Principal Registrar by any person being the executor or administrator therein named, or by any person duly authorized 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) [*Deleted by No. 138 of 1976, s. 13.*]

Power to require sureties to be provided before foreign administration sealed.
Repealed and re-enacted by No. 138 of 1976, s. 14.

62. (1) As a condition of the affixing of the seal of the Court to any administration produced and deposited pursuant to section sixty-one of this Act the Court may, subject to and in accordance with the rules, require one or more sureties to guarantee that they will make good, within any limit imposed by the Court on the total liability of the surety or sureties, any loss that any person interested in the administration of the estate of the deceased in this State may suffer in consequence of a breach by the administrator of his duties in administering it in this State.

(2) A guarantee given as required by subsection (1) of this section shall enure for the benefit of every person interested in the administration of the estate in this State as if contained in a deed to which the surety or sureties and every such person are parties and, where there are two or more sureties, as if they had bound themselves jointly and severally.

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

[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 Principal Registrar 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.
Amended by No. 67 of 1979, s. 44; No. 14 of 1980, s. 6.

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

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.

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

(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.¹

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.*]

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.*]

¹ 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.

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-
note¹ 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 VI¹—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

¹ This Part was formerly Part VII.

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 authorized by proclamation from time to time,

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.*¹]

(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 Principal Registrar 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.

(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;

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; No. 67 of 1979, s. 44.

¹ See footnote to Part V.

(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 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.

(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.¹

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

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

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.

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

Saving provision as to bonds. Added by No. 138 of 1976, s. 15.

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; No. 67 of 1979, s. 45.

(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

¹ See section 16 of the Public Trustee Act 1941.

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 a Registrar or other officer of the Court.

145-148. [*Repealed by No. 80 of 1973, s. 3.¹*]

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 Estate Act.	The whole.

¹ See footnote to Part V.

SECOND SCHEDULE.¹

[*Repealed by No. 80 of 1973, s. 3.²*]

THIRD SCHEDULE.

[Formerly
Fourth
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 11 September 1967.]

FOURTH SCHEDULE.

Added by
No. 138 of
1976, s. 16;
No. 67 of
1979, s. 44.

Sec. 14.

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

1. (1) Subject to the provisions of this Schedule where—
 - (a) the intestate dies leaving a husband or wife and one or more of the other persons mentioned in item 2 or 3 of the Table;
 - (b) the whole or a part of the intestate property consists of an interest in a dwelling house that, at the date of the death of the deceased person, was ordinarily used by the surviving husband or wife as his or her ordinary place of residence (in this Schedule called “the interest”); and
 - (c) the surviving husband or wife is not entitled under the Table to the whole of the intestate property,

the surviving husband or wife may elect to have the interest appropriated under paragraph (k) of subsection (1) of section thirty of the Trustees Act 1962 in or towards satisfaction of any entitlement or entitlements that the surviving husband or wife has under item 2 or 3 of the Table.

¹ 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 ¹ to heading of Part V. ante.

² See footnote to Part V.

(2) The right conferred by this paragraph shall not be exercisable where the interest is—

- (4) a tenancy that, at the date of the death of the intestate, was a tenancy that would determine within the period of two years from that date; or
- (b) a tenancy that the landlord, by notice given after the date of the death of the intestate, could determine within the period of two years from that date of death.

(3) Where part of a building was, at the date of the death of the intestate, ordinarily occupied as a separate dwelling, that part of the building shall, for the purposes of this Schedule, be treated as a dwelling house.

(4) Except where the context otherwise requires, references in this Schedule to a dwelling house include references to any garden or portion of ground attached to and usually occupied with the dwelling house or otherwise required for the amenity or convenience of the dwelling house.

2. Where—

- (a) the dwelling house forms part of a building and an interest in the whole of the building is comprised in the intestate property;
- (b) the dwelling house is held with land used for agricultural purposes and an interest in that land is comprised in the intestate property;
- (c) the whole or a part of the dwelling house was, at the date of the death of the intestate, used as an hotel or lodging house; or
- (d) a part of the dwelling house was, at the date of the death of the intestate, used for purposes other than domestic purposes,

the right conferred by paragraph 1 of this Schedule shall not be exercisable unless the Court, on being satisfied that the exercise of that right is not likely to diminish the value of assets in the estate of the intestate (other than the interest) or make them more difficult to dispose of, so orders.

3. (1) The right conferred by paragraph 1 of this Schedule shall not be exercisable—

- (a) after the expiration of twelve months from the first grant of administration of the estate of the intestate; or

- (b) after the death of the surviving husband or wife.

(2) The Court may, on the application of the surviving husband or wife, grant an extension of the period of twelve months mentioned in this paragraph.

4. (1) The right conferred by paragraph 1 of this Schedule shall be exercisable by furnishing a notification in writing—

- (a) if the surviving husband or wife is not a personal representative of the intestate—to the personal representative or to each personal representative, as the case may be, of the intestate;
- (b) if the surviving husband or wife is one of the personal representatives of the intestate—to the other personal representative, or to each other personal representative, as the case may be, of the intestate; or
- (c) if the surviving husband or wife is the sole personal representative of the intestate—to the Principal Registrar.

(2) A notification under subparagraph (1) of this paragraph is not revocable except with the consent of the personal representative or of each personal representative, as the case may be, of the intestate.

(3) Where the surviving husband or wife is not a personal representative of the intestate he or she may require the personal representative to have the interest valued and to inform him or her of the result of that valuation before he or she decides whether to exercise the right conferred by paragraph 1 of this Schedule.

5. Notwithstanding section fifty of the Trustee Act 1962, as respects an appropriation in pursuance of paragraph 1 of this Schedule the value of the interest is the amount determined by a qualified valuer engaged by the personal representative of the intestate to be the market value of the interest.

6. (1) In this paragraph “the election period” means the period of twelve months mentioned in paragraph 3 of this Schedule and includes any extension of that period granted under subparagraph (2) of that paragraph.

(2) During the election period the personal representative of the intestate shall not, without the written consent of the surviving husband or wife, sell or otherwise dispose of the interest except in the course of administration owing to want of other assets or except with the approval of the Court.

(3) An application to the Court under paragraph 2 of this Schedule may be made by the personal representative of the intestate as well as by the surviving husband or wife, and if, on an application under that paragraph, the Court does not order that the right conferred by paragraph 1 of this Schedule shall be exercisable by the surviving husband or wife, the Court may authorize the personal representative to dispose of the interest within the election period.

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

(5) Nothing in this paragraph shall confer any right on the surviving husband or wife as against a purchaser from the personal representative of the intestate.

7. (1) Where the surviving husband or wife is the sole personal representative, or one of two or more personal representatives of the intestate, he or she may, notwithstanding that he or she is a trustee, acquire the interest under an appropriation in pursuance of paragraph 1 of this Schedule.

(2) The power of appropriation under paragraph (k) of subsection (1) of section thirty of the Trustees Act 1962 shall include power to appropriate the interest partly in satisfaction of the entitlement or entitlements of the surviving husband or wife under item 2 or 3 of the Table and partly in return for a payment of money by the surviving husband or wife to be applied in or towards satisfaction of the other entitlements under these items.

8. (1) Where the surviving husband or wife is not of full mental capacity a requirement or consent under this Schedule may be made or given on his or her behalf by the person, if any, having the care and management of his or her estate, or, where there is no such person, by the Court.

(2) A requirement or consent made or given under this Schedule by a surviving husband or wife who is an infant shall be as valid and binding as it would be if he or she

were of age; and, as respects an appropriation in pursuance of paragraph 1 of this Schedule, the provisions of paragraph (k) of subsection (1) of section thirty of the Trustees Act 1962 as to obtaining the consent of the infant's parent or guardian shall not apply.

9. Unless the contrary intention appears, words and expressions used in this Schedule have the same respective meanings as they have in and for the purposes of section fourteen of this Act.
