

South Australia

# Administration and Probate Act 1919

An Act to consolidate certain Acts relating to the administration of the estates of deceased persons, and other matters.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Repeal and transitional provisions
- 4 Interpretation

### Part 2—Granting, revoking etc of probate and administration

#### Division 1—Jurisdiction of Supreme Court

- 5 Probate jurisdiction of Supreme Court

#### Division 2—Registrar of Probates

- 6 Registrar of Probates
- 7 Registrar's powers
- 7A Exercise by Registrar of jurisdiction, powers or authorities of Court
- 8 Registrar to obtain direction of Judge in doubtful case

#### Division 3—District registries

- 9 Certain Local Courts may be appointed district registries
- 10 Judge may order proceedings in district registry to be removed to Supreme Court
- 11 District registrar may in certain cases apply through Registrar for directions of a Judge
- 12 District Registrar may in certain cases obtain directions of Registrar

#### Division 4—Deposit of wills

- 13 Wills may be deposited
- 14 Deposit of codicil
- 15 Withdrawal
- 16 Proceedings for probate on death of testator where will has been deposited

#### Division 5—Sealing of grants made outside this State

- 17 Probate and administration granted in other States or the United Kingdom or by foreign Court to be of like force as if granted in South Australia, on being re-sealed
- 18 Administration guarantees may be required before administration sealed
- 19 As to foreign probate or administration
- 20 Definitions

## Division 6—General provisions relating to granting and revoking probate and administration

- 21 Practice of the Court
- 22 Provisions for evidence in case of foreign will
- 23 Power to appoint joint administrators
- 24 Power to examine witnesses
- 25 Order to produce any instrument purporting to be testamentary
- 26 Caveats
- 27 Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the persons interested in the real estate to be cited
- 28 Persons interested in certain cases not to be cited, and when not cited not to be affected by probate
- 29 Safe custody of wills etc
- 30 Office copy of whole or part of will, or of probate or administration, may be obtained
- 31 Administration guarantees
- 34 Administration may be granted to duly authorised attorney
- 35 After grant of administration no person to have power to sue as executor
- 36 Rights of executor renouncing, not acting, or not appearing when cited, to cease as if he had not been named in will
- 37 If executor or administrator out of jurisdiction, special administrator may be appointed
- 38 Special administrator to make certain affidavits
- 39 On return of original executor or administrator, special administration to be rescinded
- 40 On order being made for rescission, special administrator to account and pay over money
- 41 Original executor or administrator liable, although special administration not rescinded
- 42 Revocation of grants not to prejudice actions
- 43 Protection to persons acting in reliance on probate or administration
- 44 Obligation of person dealing with asset to ensure that it has been properly disclosed

## Part 3—Vesting and administration of estates

### Division 1—Vesting of intestate estates until administration

- 45 Vesting of intestate estates until administration

### Division 2—Provisions relating to land

- 46 Land to vest in executor or administrator of owner
- 47 Court may make special orders as to management of undivided lands
- 48 Court may order partition
- 49 Interpretation
- 50 Construction of word "heirs"
- 51 Executor or administrator to have power of sale of real estate for payment of debts
- 52 Devisee of real estate not to claim payment of mortgage out of personal assets

### Division 3—General provisions relating to administration of estates

- 56 Statement and account to be delivered
- 56A Court may order delivery of statement and account
- 58 Proceedings to compel account
- 59 All specialty and simple contract debts of deceased persons to stand in equal degree
- 60 Filing of declaration that estate insufficient to pay debts
- 61 Rules in insolvency administration to prevail in certain cases
- 62 Estate how administered
- 63 Court may order sale of infant's property

- 
- 64 Court may give permission to postpone realisation or carry on business
  - 65 Administrator to pay over money and deliver property to Public Trustee
  - 66 Effect of delivery etc to Public Trustee
  - 67 Judge may dispense wholly or partially with compliance with section 65
  - 69 Public Trustee and other persons may obtain judicial advice or direction
  - 70 Commission may be allowed to executors, administrators or trustees

#### Division 4—Payment of certain money in deceased estates without grants

- 71 Payment without production of probate or letters of administration
- 72 Payment by ADI of sums not exceeding \$2 000

#### Part 3A—Distribution on intestacy

- 72A Transitional provisions
- 72B Interpretation
- 72C Administrator to hold property on trust
- 72E Presumption of survivorship not to apply
- 72F Value of intestate estate
- 72G Distribution of intestate estate
- 72H Division of estate when deceased is survived by spouse and/or domestic partner
- 72I Distribution amongst issue
- 72J Distribution amongst relatives
- 72K Gifts to be brought into hotchpot
- 72L Election by spouse or domestic partner to take dwellinghouse
- 72M Limitation on right of personal representative to sell interest in dwellinghouse
- 72N This Part not to affect operation of Inheritance (Family Provision) Act
- 72O Certain Imperial Acts not to apply in this State

#### Part 5—Miscellaneous

- 119 Probate to be evidence of wills concerning real estate
- 120 No will to be registered or admissible in evidence until proved
- 120A Interest upon pecuniary legacies
- 121 Inspection of documents in Lands Titles or General Registry Office
- 121A Statement of assets and liabilities to be provided with application for probate or administration
- 122 Court rules
- 123 Affidavits
- 124 Person making false oath guilty of perjury
- 127 Restraint upon exercise of rights of retainer and preference
- 128 Power of Public Trustee to move for attachment of an administrator
- 129 Governor may stay or compound any proceedings
- 130 Regulations

#### Schedule 1—Acts consolidated and repealed

#### Legislative history

---

## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Administration and Probate Act 1919*.

#### 3—Repeal and transitional provisions

- (1) This Act is a consolidation of the Acts and parts of Acts mentioned in Schedule 1, and the said Acts and parts are hereby repealed to the extent mentioned in such Schedule.
- (2) Such repeal shall not—
  - (a) affect the operation prior to the passing of this Act of any of the repealed Acts or parts of Acts:
  - (b) alter the past or future effect of the doing, suffering, or omission of anything prior to the passing of this Act:
  - (c) affect any probate, administration, proclamation, notice, rule, regulation, order, matter or thing granted, made, given, published, or done under or in pursuance of any of the repealed Acts or parts of Acts:
  - (d) affect any estate, right, title, interest, privilege, power, status, duty, obligation, liability, or penalty acquired, accrued, exercisable, incurred, or imposed by or under or liable to be imposed under any of the repealed Acts or parts of Acts:
  - (e) affect any investigation, inquiry, legal or other proceeding in respect of any of the matters or things in this section before mentioned.
- (3) All matters and things mentioned in subsection (2) are, to the extent that they were respectively in force or in existence immediately before the passing of this Act, hereby preserved and continued and declared to be of the same force and effect as if this Act had been in force when respectively they were done, suffered, omitted, created, granted, acquired, incurred, held, imposed, or made, or had accrued, or become exercisable, or liable to be imposed, and they respectively had been done, suffered, omitted, created, granted, acquired, incurred, held, imposed or made, or had accrued, or had become exercisable or liable to be imposed under this Act.
- (4) All matters and proceedings commenced under any Act or part of an Act hereby repealed, and pending or in progress on the passing of this Act, may be continued, completed, and enforced under this Act.
- (5) All offences committed, and all liabilities, forfeitures, and penalties incurred or imposed, or liable to be imposed, before the passing of this Act, may be tried, punished, inquired into, and enforced under this Act.

#### 4—Interpretation

In this Act, except where the subject matter or context or other provision requires a different construction—

**administration** means all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes;

***administrator*** means any person to whom administration has been granted;

***common form business*** means the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the Court in matters of testacy and intestacy not being proceedings in any action, and also the business of lodging caveats against the grant of probate or administration;

***Court, the Court, and the said Court*** mean the Supreme Court of this State and any Judge thereof;

***Court of Probate Act 1858*** means an Act of the Imperial Parliament made and passed in the twenty-first and twenty-second years of the reign of Queen Victoria, intituled "An Act to amend the Act of the twentieth and twenty-first Victoria, chapter seventy-seven";

***deliver*** includes *pay*;

***domestic partner***, in relation to a deceased person, means a person declared under the *Family Relationships Act 1975* to have been the domestic partner of the deceased as at the date of his or her death;

***estate*** comprises both realty and personalty, and includes any money or other property subject to any trust and received by the Public Trustee under order of the Court;

***Judge*** means a Judge of the Supreme Court;

***matters and causes testamentary*** means all matters and causes relating to the grant and revocation of probate of wills or of administration;

***Public Trustee*** has the same meaning as in the *Public Trustee Act 1995*;

***Registrar*** means the Registrar of Probates, and any acting or deputy Registrar of Probates;

***rules*** means the rules under this Act;

***spouse***, in relation to a deceased person, means a person who was legally married to the deceased as at the date of his or her death;

***will*** comprehends *testament* and *codicil* and all other testamentary instruments of which probate can be granted.

## **Part 2—Granting, revoking etc of probate and administration**

### **Division 1—Jurisdiction of Supreme Court**

#### **5—Probate jurisdiction of Supreme Court**

- (1) The like voluntary and contentious jurisdiction and authority as immediately before the coming into operation of this Act belonged to or were vested in the Supreme Court, in relation to granting or revoking probate of wills and letters of administration of the effects of deceased persons, shall be vested in and exercised by the said Court in relation to granting or revoking probate of wills and letters of administration of the estate, as well real as personal, of deceased persons within the said State; and the Court shall have the same power of granting probate or administration, where the only estate within the State consists of realty, as if such estate comprised both realty and personalty.
- (2) The said Court shall also have and exercise the like powers, and its grants and orders shall have the like effect within the said State, in relation to the real and personal estate therein of deceased persons, as immediately before the coming into operation of this Act the said Court and its grants and orders respectively had within the said State, in relation to those matters and causes testamentary, and those effects of deceased persons, which were within the jurisdiction of the said Court.
- (3) All duties which by statute or otherwise were, immediately before the coming into operation of this Act, imposed on or to be performed by the said Supreme Court in respect to probates, or administrations, or matters or causes testamentary within its jurisdiction shall continue to be performed by such Court within the said State.

### **Division 2—Registrar of Probates**

#### **6—Registrar of Probates**

- (1) There will be a Registrar of Probates and such deputy or acting Registrars of Probates and other officers as may be necessary for the proper administration of this Act.
- (2) A person is not eligible for appointment as the Registrar unless he or she is a practitioner of the Supreme Court of at least three years standing (but it is not necessary for a deputy or acting Registrar to be a practitioner).
- (3) A person may not be appointed as the Registrar or as a deputy or acting Registrar except on the recommendation of the Chief Justice.
- (4) The Registrar or a deputy Registrar must not be dismissed or reduced in status except on the recommendation or with the concurrence of the Chief Justice.

#### **7—Registrar's powers**

The Registrar shall have and exercise, with reference to proceedings in the Supreme Court, the like powers and authorities as he had and exercised immediately before the coming into operation of this Act.

### **7A—Exercise by Registrar of jurisdiction, powers or authorities of Court**

- (1) The Registrar may exercise the jurisdiction, powers and authorities of the Court whether arising under this Act or otherwise to the extent authorised by the rules.
- (2) Subject to the rules, an appeal shall lie to a Judge against a judgment, determination, order, direction or decision given or made by the Registrar in the exercise of a jurisdiction, power or authority of the Court.

### **8—Registrar to obtain direction of Judge in doubtful case**

In any case where it appears to the Registrar doubtful whether probate or administration should be granted, or whether he should exercise any power or discretion appertaining to his office, he shall obtain the direction of a Judge, and act accordingly, and the Registrar shall be subject in all cases to the control and orders of the Court.

## **Division 3—District registries**

### **9—Certain Local Courts may be appointed district registries**

- (1) The Governor may, by proclamation, appoint the Local Courts of Moonta, Gladstone, Mount Gambier, and Port Augusta, or any of them, to be district registries or a district registry of the Court.
- (2) The Governor may appoint a special magistrate to be district registrar of any district registry.
- (3) Probate of a will or administration may, where the value of the estate does not exceed two thousand dollars, be granted in common form by a district registrar in the name of the Supreme Court and under the seal prescribed to be used in the district registry.
- (4) The Governor may, by proclamation, define the districts for which the local courts mentioned in subsection (1) hereof shall respectively be the district registries.
- (5) No probate or administration shall be granted by a district registrar unless it appears by the affidavit of one or more of the applicants therefor that the testator or intestate had at the time of his death a fixed place of abode, to be mentioned in the affidavit, within the district for which such district registrar is district registrar.
- (6) Any district registrar shall refuse to grant probate or administration in any case in which it appears to him that the same ought not to be granted in common form.
- (7) Probate or administration granted by a district registrar under this Act shall have the same effect as probate or administration granted by the Supreme Court, and shall equally therewith be subject to revocation by the Supreme Court.

### **10—Judge may order proceedings in district registry to be removed to Supreme Court**

- (1) Any Judge may, on the application of any person interested, order that any proceedings in a district registry be removed into the Supreme Court.
- (2) Upon such order being made and notified to the district registrar the whole of such proceedings shall be forthwith transmitted to the Supreme Court, and shall become records thereof.

## **11—District registrar may in certain cases apply through Registrar for directions of a Judge**

- (1) Where—
  - (a) it appears to a district registrar doubtful whether a probate or administration applied for should be granted; or
  - (b) any question arises in relation to the grant or application for the grant of any probate or administration upon which the district registrar desires the directions of a Judge,

the district registrar shall transmit a statement of the matter in question to the Registrar.
- (2) The Registrar shall obtain the directions of a Judge in relation to such matter.
- (3) The Judge may direct the district registrar to proceed with the matter according to such instructions as to the Judge seem advisable, or may forbid any further proceeding by the district registrar in relation to such matter, leaving the party applying for the grant to make application to the Supreme Court.

## **12—District Registrar may in certain cases obtain directions of Registrar**

- (1) In any case where any question arises in relation to the duty upon any property comprised in any estate affected by the grant of any district registrar, upon which the district registrar concerned desires the directions of the Registrar, the district registrar shall transmit a statement of the matter in question to the Registrar, who shall give such directions to the district registrar in reference to the matter as he thinks fit, and the district registrar shall comply with such directions.
- (2) In this section—

*duty* means duty under the *Succession Duties Act 1929*.

## **Division 4—Deposit of wills**

### **13—Wills may be deposited**

- (1) Any will, duly executed as provided by subsection (3) of this section, and whereof an executor or executors is or are appointed, may at any time previous to the death of the testator be deposited for safe custody with the Registrar by the testator, or on his behalf by any district registrar, solicitor, notary public, or commissioner for taking affidavits in the Supreme Court.
- (2) The Registrar shall—
  - (a) enclose such will in a packet and seal the same; and
  - (b) endorse on such packet the names of the testator and executor or executors, the date of the will, the time of its being deposited, and the number of the deposit; and
  - (c) deliver to the depositor a certificate of such deposit.
- (3) Every will deposited under this section shall be executed by the testator as required by law, and one of the attesting witnesses shall be the Registrar, a district registrar, notary public, solicitor, or a commissioner for taking affidavits in the Supreme Court.



- (4) Such attesting witness, unless he is the Registrar or a district registrar, shall verify the testator's execution of the will by a certificate in the prescribed form, which shall accompany the will.

#### **14—Deposit of codicil**

On depositing any codicil to a will already deposited, and not withdrawn, a reference to the numbers of the will and codicil and any previously deposited codicil shall be made on the packets containing the will and codicil or codicils and in the index to be kept by the Registrar.

#### **15—Withdrawal**

- (1) A deposited will may be withdrawn by the testator, or some one authorised by him.
- (2) On such withdrawal the Registrar shall take a receipt for the will and enter a memorandum of the withdrawal and the time thereof in his index, and also on the will, before delivery.
- (3) Any other will deposited by the testator shall not receive the number of the former will so withdrawn.
- (4) On the withdrawal of a will, the certificate of deposit given by the Registrar shall be delivered up and cancelled, unless the Registrar sees fit to dispense with such delivery.

#### **16—Proceedings for probate on death of testator where will has been deposited**

- (1) On the death of a testator, whose will is at the time of his death deposited with the Registrar, any executor of the will may in person apply for probate of such will.
- (2) The Registrar shall thereupon supply the executor so applying with a printed form of declaration in the prescribed form, and upon the executor making such declaration the Registrar, if he thinks the case a proper one for the exercise of the power by this section given to him, may, on payment of all duties due, grant probate to the executor.
- (3) Such probate shall be made out by the Registrar, or a clerk in his office, and the Registrar shall make the prescribed charges for the form of declaration and for making out the probate.

### **Division 5—Sealing of grants made outside this State**

#### **17—Probate and administration granted in other States or the United Kingdom or by foreign Court to be of like force as if granted in South Australia, on being re-sealed**

When any probate or administration granted by any Court of competent jurisdiction in any of the Australasian States or in the United Kingdom, or any probate or administration granted by a foreign court, is produced to and a copy thereof deposited with the Registrar, such probate or administration may be sealed with the seal of the Supreme Court, and thereupon shall have the like force and effect and the same operation in this State, and every executor and administrator thereunder shall, subject to subsection (4) of section 65 of this Act, have the same rights and powers, perform the same duties, and be subject to the same liabilities, as if such probate or administration had been originally granted by the Supreme Court.

## **18—Administration guarantees may be required before administration sealed**

- (1) A surety must be provided in accordance with this section before the sealing of administration under section 17 if a surety would be required under section 31 on the granting of such administration.
- (2) The surety must guarantee to make good, subject to this section, any loss that a person interested in the administration of the South Australian estate of the deceased may suffer in consequence of a breach by the administrator of his or her duties in administering the South Australian estate.
- (3) The maximum liability of a surety under a guarantee given for the purposes of this section is—
  - (a) the amount under which the South Australian estate of the deceased is sworn; or
  - (b) if the Court, on application, orders a lesser amount, the lesser amount.
- (4) If a guarantee is given for the purposes of this section, the Court may, at any time, on the application of a person interested in the administration of the South Australian estate—
  - (a) require that there be a further or additional guarantee; or
  - (b) order that the maximum liability of a surety under the guarantee is reduced to an amount that the Court thinks reasonable.
- (5) If a further or additional guarantee is not given as required under subsection (4)(a), the Court may cancel the seal of the administration.
- (6) A guarantee required under this section operates for the benefit of every person interested in the administration of the South Australian estate as if the guarantee were contained in a deed to which the surety and every such person are parties (and, where there are two or more sureties, as if they had bound themselves jointly and severally).
- (7) A proceeding may only be brought on a guarantee with the permission of the Court and on such terms and conditions as the Court thinks fit.
- (8) If, on the application of a surety, it appears to the Court that—
  - (a) the South Australian estate is being wasted, or is in danger of being wasted; or
  - (b) the surety is being in any way prejudiced, or is in danger of being prejudiced, by the act or default of the administrator; or
  - (c) a surety desires to be relieved from further liability,the Court may grant such relief as it thinks fit.
- (9) This section does not apply to—
  - (a) the Public Trustee; or
  - (b) any other agency or instrumentality of the Crown; or
  - (c) a trustee company under the *Trustee Companies Act 1988*.
- (10) The Court may, if satisfied that it is beneficial or expedient to do so, dispense with the requirement to provide a surety.

- (11) An order under subsection (10) may be obtained without notice to any other interested person on the application of the person who would be the administrator on the sealing of the administration.
- (12) If a surety dies or ceases to be *sui juris*, the administrator must, as soon as reasonably practicable, apply to the Court for directions.  
Maximum penalty: \$2 000.
- (13) In this section—  
*South Australian estate*, in relation to the estate of a deceased person, means the property of the person's estate situated in South Australia at the date of the person's death.

## 19—As to foreign probate or administration

- (1) In section 17—  
*probate or administration granted by a foreign Court* means any document as to which the Registrar is satisfied that it was issued out of a court of competent jurisdiction in a foreign country other than an Australasian State, or the United Kingdom, and that in such country it corresponds to a probate of a will or to an administration in this State.
- (2) In order to satisfy himself, as mentioned in subsection (1) of this section, the Registrar may accept a certificate from a consul or consular agent in this State of the foreign country, or such other evidence as appears to him sufficient.

## 20—Definitions

In this Division—

*administration* includes *exemplification of letters of administration*, or such other formal evidence of letters of administration purporting to be under the seal of a court of competent jurisdiction as, in the opinion of the Registrar, is sufficient;

*Australasian States* means all the States of the Commonwealth of Australia other than the State of South Australia, and includes the Dominion of New Zealand and the colony of Fiji, and any other British colonies or possessions in Australasia now existing or hereafter to be created, which the Governor may from time to time by proclamation declare to be Australasian States within the meaning of section 17;

*probate* includes *exemplification of probate*, or any other formal document purporting to be under the seal of a court of competent jurisdiction, which, in the opinion of the Registrar, is sufficient;

*United Kingdom* means Great Britain and Ireland and includes the Channel Islands.

## Division 6—General provisions relating to granting and revoking probate and administration

### 21—Practice of the Court

The practice of the Court in its testamentary causes jurisdiction shall, except where otherwise provided by the rules, be according to the practice of the Supreme Court immediately before the coming into operation of this Act.

## **22—Provisions for evidence in case of foreign will**

- (1) On any non-contentious application for probate or administration, with the will annexed, relating to a will made in a foreign country other than any of the British dominions, the Court may—
  - (a) grant probate or administration on the consul or consular agent in this State for the foreign country, or any other person acquainted with the law of such country, testifying, to the satisfaction of the Court, that the will is valid according to such law; or
  - (b) issue a commission to take evidence in the foreign country in support of the will and in proof of the law affecting the validity thereof.
- (2) The provisions of the law for the time being in force with regard to commissions issued from the Court in actions depending therein shall, so far as applicable, apply to commissions issued under this section.

## **23—Power to appoint joint administrators**

The Court has the power to grant administration to more than one person.

## **24—Power to examine witnesses**

- (1) The Court may—
  - (a) require the attendance of any person whom it thinks fit to examine, or cause to be examined, in any action or other proceeding in respect of matters or causes testamentary, whether an action is depending or not; and
  - (b) examine or cause to be examined, upon oath or affirmation, as the case may require, parties and witnesses by word of mouth; and
  - (c) either before or after, or with or without such examination, cause them, or any of them, to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be.
- (2) The Court may, by writ, require such attendance, and order to be produced before itself, or otherwise, any deeds, evidences, or writings, in the same form, as nearly as may be, as that in which a writ of *subpoena ad testificandum*, or of *subpoena duces tecum*, is now issued by the Court.
- (3) Every person disobeying any such writ shall be considered as in contempt of the Court, and also be liable to forfeit a sum not exceeding one thousand dollars.

## **25—Order to produce any instrument purporting to be testamentary**

- (1) The Court may, whether any action or other proceeding is or is not pending in the Court with respect to any probate or administration, order any person to produce and bring into the office of the Court, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary which is shown to be in the possession or under the control of such person.
- (2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open Court, or before a Judge in Chambers, or upon interrogatories, respecting the same.

- (3) Such person shall answer such questions or interrogatories, and, if so ordered, shall produce and bring in such paper or writing, and shall be subject to the like processes of contempt in case of default in attending, or in answering such questions or interrogatories, or bringing in such paper or writing, as he would have been subject to in case he had been a party to an action in the Court and had made such default.
- (4) The costs of any such proceeding shall be in the discretion of the Court.

## **26—Caveats**

- (1) Caveats against the grant of probates or administrations may be lodged in the Probate Registry of the Court.
- (2) Except where otherwise provided by this Act or by the rules, the practice and procedure with regard to such caveats in the Court shall correspond with the practice and procedure with regard to caveats in use in the Court immediately before the first day of February, 1892.

## **27—Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the persons interested in the real estate to be cited**

- (1) Where proceedings are taken under this Act for proving a will in solemn form, or for revoking the probate of a will on the ground of the invalidity thereof, or where in any contentious cause or matter under this Act the validity of a will is disputed, except where the will affects only personal estate, the devisees, and other persons having or pretending interest in the real estate affected by the will, shall, unless the Court otherwise directs, be cited to see proceedings or otherwise summoned, and, subject to the rules under this Act or under the *Supreme Court Act 1935*, may be permitted to become parties or intervene for their respective interests in such real estate, in like manner as the next of kin, or others having or pretending interest in the personal estate affected by a will are cited or summoned.

## **28—Persons interested in certain cases not to be cited, and when not cited not to be affected by probate**

- (1) Nothing herein contained shall make it necessary to cite any person having or pretending interest in the real estate of a deceased person—
  - (a) in any case where the Court is not satisfied that the deceased was at the time of his decease seized of, or entitled to, or had power to appoint by will some real estate beneficially; or
  - (b) in any case where the will propounded or of which the validity is in question would not in the opinion of the Court, though established as to personalty, affect real estate.
- (2) In any of the cases mentioned in subsection (1), and in any other case in which the Court, with reference to the circumstances of the property of the deceased or otherwise, thinks fit, the Court may proceed without citing the persons interested in real estate: Provided that the probate, decree, or order of the Court shall not in any case affect any person in respect of his interest in real estate, unless such person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

## **29—Safe custody of wills etc**

- (1) The Governor may, with the concurrence of the Chief Justice, by notice in the Gazette, appoint places for the safe custody, under the control of the Court, of—
  - (a) wills deposited with the Registrar under this Act; and
  - (b) wills brought into the Court for any purpose; and
  - (c) wills of which probate has been granted, or in relation to which administration (with the will annexed) has been granted; and
  - (d) such other documents as the Court may direct.
- (2) Such original wills and documents may be inspected under the control of the Court, and subject to the rules.

## **30—Office copy of whole or part of will, or of probate or administration, may be obtained**

- (1) An office copy of the whole or any part of a will, or an official certificate of the grant of or an office copy of any probate or administration, may be obtained from the Registrar on the payment of such fees as are fixed by rules.
- (2) Any such office copy of a probate or administration under the seal of the Court shall be equivalent as evidence to the original probate or administration.

## **31—Administration guarantees**

- (1) A person to whom administration is granted must provide a surety in accordance with this section if—
  - (a) the person is not resident in this State; or
  - (b) the person has any legal or equitable claim against, or interest in, the estate of the deceased arising from a liability incurred by the deceased before his or her death; or
  - (c) any person who is not *sui juris* is entitled to participate in the distribution of the estate; or
  - (d) the Court is of the opinion that in the circumstances of the case a surety is required.
- (2) The surety must guarantee to make good, subject to this section, any loss that a person interested in the administration of the South Australian estate of the deceased may suffer in consequence of a breach by the administrator of his or her duties in administering the South Australian estate.
- (3) The maximum liability of a surety under a guarantee given for the purposes of this section is—
  - (a) the amount under which the South Australian estate of the deceased is sworn; or
  - (b) if the Court, on application, orders a lesser amount, the lesser amount.

- (4) If a guarantee is given for the purposes of this section, the Court may, at any time, on the application of a person interested in the administration of the South Australian estate—
- (a) require that there be a further or additional guarantee; or
  - (b) order that the maximum liability of a surety under the guarantee is reduced to an amount that the Court thinks reasonable.
- (5) If a further or additional guarantee is not given as required under subsection (4)(a), the Court may revoke the administration.
- (6) A guarantee required under this section operates for the benefit of every person interested in the administration of the South Australian estate as if the guarantee were contained in a deed to which the surety and every such person are parties (and, where there are two or more sureties, as if they had bound themselves jointly and severally).
- (7) A proceeding may only be brought on a guarantee with the permission of the Court and on such terms and conditions as the Court thinks fit.
- (8) If, on the application of a surety, it appears to the Court that—
- (a) the South Australian estate is being wasted, or is in danger of being wasted; or
  - (b) the surety is being in any way prejudiced, or is in danger of being prejudiced, by the act or default of the administrator; or
  - (c) a surety desires to be relieved from further liability,
- the Court may grant such relief as it thinks fit.
- (9) This section does not apply to—
- (a) the Public Trustee; or
  - (b) any other agency or instrumentality of the Crown; or
  - (c) a trustee company under the *Trustee Companies Act 1988*.
- (10) The Court may, if satisfied that it is beneficial or expedient to do so, dispense with the requirement to provide a surety.
- (11) An order under subsection (10) may be obtained without notice to any other interested person on the application of the person entitled to obtain administration.
- (12) Without limiting the effect of subsection (10), the Court may, if administration is granted to two or more persons and the Court is satisfied that it is beneficial or expedient to do so, dispense with the requirement to provide a surety.
- (13) If—
- (a) a surety dies or ceases to be *sui juris*; or
  - (b) after the grant of administration to two or more persons, an administrator dies or ceases to be *sui juris* or refuses or fails to carry out the duties of an administrator,

the administrator, or the other administrator, as the case may be, must, as soon as reasonably practicable, apply to the Court for directions.

Maximum penalty: \$2 000.

(14) In this section—

*South Australian estate*, in relation to the estate of a deceased person, means the property of the person's estate situated in South Australia at the date of the person's death.

### **34—Administration may be granted to duly authorised attorney**

Any person entitled to probate or administration and being out of the jurisdiction, may, by power of attorney, appoint the Public Trustee or any person within the jurisdiction to act for him, and administration may be granted to the Public Trustee or to such last-mentioned person on behalf of the person appointing him, and upon such terms and conditions as the Court thinks fit.

### **35—After grant of administration no person to have power to sue as executor**

Subject to the provisions of this Act, after any grant of administration no person shall have power to sue or prosecute any action, or otherwise act as executor of the deceased, as to the estate comprised in or affected by such grant, until such administration has been recalled or revoked.

### **36—Rights of executor renouncing, not acting, or not appearing when cited, to cease as if he had not been named in will**

Whenever—

- (a) any person renounces probate of the will of which he is appointed executor or one of the executors, or
- (b) an executor appointed in a will survives the testator, but dies without having taken probate, or
- (c) an executor named in a will is cited to take probate, and does not appear to such citation,

the right of such person or executor in respect of the executorship shall wholly cease, and the representation of the testator and the administration of his estate shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.

### **37—If executor or administrator out of jurisdiction, special administrator may be appointed**

If at the expiration of twelve months from the death of any person the executor to whom probate of the will, or the administrator to whom administration of the personal estate or of the estate of such deceased person has been granted, is residing out of this State, the Court may, upon the application of a spouse or domestic partner, or of any creditor or next of kin, or of any person interested under the will, or of the Public Trustee, grant to the applicant special administration, limited to the collection, management, and distribution of the estate of such deceased person, and to cease upon the return of the executor or administrator to this State, and an order being made for the rescission thereof as hereinafter mentioned.



### **38—Special administrator to make certain affidavits**

The person applying for any such special grant shall, in addition to the oath usually taken by administrators, make oath that the executor or administrator of such deceased person is resident out of the State, and if the applicant is not the Public Trustee, that he is thereby delayed in recovering or obtaining payment of moneys or the possession of estate to which he is by law entitled.

### **39—On return of original executor or administrator, special administration to be rescinded**

- (1) On the return to this State of the executor or administrator to whom probate or administration has originally been granted, such executor or administrator may apply to the Court to rescind the special grant of administration.
- (2) The Court, on being satisfied that such executor or administrator *bona fide* intends to remain within this State until the estate of the deceased has been duly administered, may make an order to rescind the special grant, upon such terms and conditions as to security, costs, or otherwise as to the Court seems reasonable.

### **40—On order being made for rescission, special administrator to account and pay over money**

Upon any order being made by the Court for the rescission of any grant of special administration, the special administrator shall duly account to the original executor or administrator, and pay over and deliver all goods and moneys received by him, and transfer all lands vested in him, as such special administrator, and then remaining undisposed of.

### **41—Original executor or administrator liable, although special administration not rescinded**

If such executor or administrator neglects to apply for an order for the rescission of such special administration, he shall, notwithstanding such special administration remains unrescinded, be liable to answer and 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.

### **42—Revocation of grants not to prejudice actions**

- (1) Where, before the revocation of any probate or administration, or the rescission of any special administration, proceedings have been commenced by or against the executor or administrator who obtained such probate or administration, the Court in which such proceedings are pending may order the revocation or rescission of such probate or administration, and the grant of any probate or administration which has been made consequent thereon, to be notified upon the record.
- (2) Upon an order being made under subsection (1) hereof the proceedings shall be continued in the name of or against the new or original executor or administrator in like manner as if the proceedings had been originally commenced by or against such new or original executor, or administrator, but subject to such conditions and variations, if any, as the Court directs.

### **43—Protection to persons acting in reliance on probate or administration**

- (1) The revocation or rescission of probate or administration granted under this Act does not render the executor or administrator liable for any prior act done by him in good faith and in reliance on the probate or administration.
- (2) Subject to this Act, where a person, acting in good faith and in reliance on probate or administration granted under this Act, deals with an asset of the estate of a deceased person, he incurs no personal liability by so doing notwithstanding that the probate or administration may subsequently prove to be invalid or be revoked or rescinded.
- (3) This section does not affect the rights that may lie against any person to whom property has been invalidly transferred, or to whom a payment has been invalidly made, by an executor or administrator.
- (4) In this section—

*administration* includes an order under section 9 of the *Public Trustee Act 1995* authorising the Public Trustee to administer the estate of a deceased person.

### **44—Obligation of person dealing with asset to ensure that it has been properly disclosed**

- (1) A person who deals with an asset of the estate of a deceased person that is required to be disclosed under section 121A must satisfy himself by examination of the Registrar's certificate, or on the basis of some other reliable evidence, that the asset has in fact been so disclosed.
- (2) A person who fails to comply with subsection (1) shall be guilty of a summary offence and liable to a penalty not exceeding two thousand dollars.
- (3) This section does not apply to an asset of the estate of a deceased person who died before the day on which section 121A came into operation.

## **Part 3—Vesting and administration of estates**

### **Division 1—Vesting of intestate estates until administration**

#### **45—Vesting of intestate estates until administration**

From the decease of any person dying wholly or partially intestate, and until administration is granted in respect of his estate, or until an order has been obtained to administer the same, the estate of such deceased person within this State, in so far as not affected by his will, shall be vested in the Public Trustee, in like manner and to the like effect as, immediately after the coming into operation of the Court of Probate Act 1858, the personal estate and effects of persons dying intestate in England vested in the Judge of the said Court of Probate.

## **Division 2—Provisions relating to land**

### **46—Land to vest in executor or administrator of owner**

- (1) Land will, after the death of the owner, and subject to any mortgage, trust or equity affecting it—
  - (a) if there is only one executor or administrator, pass to the executor or administrator and become vested in the executor or administrator as if it were a chattel real; or
  - (b) if there is more than one executor or administrator, pass to the executors or administrators and become vested jointly in the executors or administrators as if it were a chattel real.
- (2) Such executor or administrator shall hold and deal with such land, and the same and the proceeds thereof, if sold, shall for all purposes be assets in his hands, and disposable and distributable for the payment of the debts and liabilities of the owner and under his will or intestacy as if such land had been a chattel real.
- (3) No widow shall be entitled to her dower, nor husband to his curtesy, out of any lands passing under the provisions of this section.
- (4) This section shall not affect the order in which, as between persons claiming under the owner, the assets of his estate are liable for the payment of debts or legacies, nor shall this section be deemed to impose any charge on land for the payment of legacies.

### **47—Court may make special orders as to management of undevised lands**

The Court may from time to time, on the application of the executor or administrator, or any person beneficially interested, and after such previous notice as is prescribed by the rules and upon such inquiry as it thinks fit, direct the course of proceedings which shall be taken in regard to—

- (a) the time and mode of sale of any lands passing under section 46 and devolving under an intestacy:
- (b) the letting and management thereof until sale:
- (c) the application for maintenance or advancement or otherwise of shares or interests of infants:
- (d) the expediency and mode of effecting a partition if applied for; and generally in regard to the administration of the property for the greatest advantage of all persons interested.

### **48—Court may order partition**

- (1) In any case wherein upon such inquiry the Court is satisfied that a partition of the land would be advantageous to the parties interested, the Court may appoint one or more arbitrators to effect such partition, and to exercise in regard thereto under its direction and control powers similar to those of commissioners acting under a decree for partition.
- (2) Upon the report and final award of the arbitrators setting forth the particulars of the land allotted to each party interested, the executor or administrator shall convey or transfer the land accordingly.

## 49—Interpretation

For the purposes of section 46—

**land** means and includes messuages, lands, tenements, rents, and hereditaments, whether corporeal or incorporeal and any share, estate, and interest in them, or any of them, whether the same is a freehold or chattel interest; and any possibility, right, or title of entry or action, whether the same is in possession, reversion, remainder, or contingency;

**owner** means and includes—

- (a) any person (including a married woman) seised, or possessed of, or entitled to any estate or interest in land as before defined, whether legal or equitable (and as to a married woman, whether for her separate use or otherwise) which he or she had, or would were he or she of full age and not under coverture have had power to dispose of by will, and which but for this Act or the *Intestate Real Estates Distribution Act 1867*, would go to his or her heir-at-law, or executor, or administrator, or to the heir-at-law of the person who was within the meaning of the interpretation clause of the Statute 3 and 4, William IV., c. 106, entitled 'An Act for the Amendment of the Law of Inheritance', the purchaser of such estate or interest in land;
- (b) any person (including a married woman) seised, or possessed of, or entitled to any estate or interest in land as before defined (and as to a married woman, whether for her separate use or as her separate property, or otherwise) upon trust, or by way of security for money.

## 50—Construction of word "heirs"

- (1) In all Acts, deeds, and documents in force on or after the twenty-fourth day of October, 1868, being the day on which the *Intestate Real Estates Distribution Act 1867* came into operation, the word **heirs** shall, in relation to the deceased owners of land passing under section 1 of such Act, and so far as regards such land, mean and include the executor or administrator of the deceased owner.
- (2) In all Acts, deeds and documents in force on or after the first day of February, 1892, being the day on which the *Administration and Probate Act 1891* came into operation, the word **heirs** shall, in relation to the deceased owner of land passing under section 64 of the said Act, or under section 46 of this Act, and so far as regards such land, mean and include the executor or administrator of the deceased owner.

## 51—Executor or administrator to have power of sale of real estate for payment of debts

- (1) Every executor or administrator shall, whether there is a charge of debts, or a trust for payment of debts, or not, have the same power of sale of real estate for payment of debts as an executor now has with regard to personal estate.
- (2) No person purchasing real estate of a deceased person from his executor or administrator shall be bound or concerned to inquire as to the existence of debts, the necessity for sale, or the application of the purchase-money.

**52—Devisee of real estate not to claim payment of mortgage out of personal assets**

- (1) When any person has died on or after the first day of February, 1892, seised of or entitled to any estate or interest in any land or other hereditaments in this State which are, at the time of his death, charged with the payment of money, by way of mortgage or other legal or equitable charge, including any lien for unpaid purchase-money, and such person has not, by his will, or deed, or other document, signified any contrary or other intention, the person becoming beneficially entitled to such land or hereditaments through or under the deceased person shall not be entitled to have the money satisfied out of the personal estate, or any other real estate, of the deceased; but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all money with which the same is or are charged, every part thereof, according to its value, bearing a proportionate part of the money charged on the whole.
- (2) The contrary or other intention mentioned in subsection (1) shall not be deemed to be signified by a direction for payment of debts out of, or a charge of debts upon, personal estate, or residuary real and personal estate, or residuary real estate, but such intention must be signified expressly and by distinct reference to the money charged.
- (3) Nothing in this section contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying or otherwise, nor affect the rights of any person claiming under or by virtue of any will, deed, or document made before the first day of February, 1892.

**Division 3—General provisions relating to administration of estates****56—Statement and account to be delivered**

- (1) Every administrator shall, within six months from the date of the administration, or within such extended time as the Public Trustee upon application by the administrator shall allow, deliver at the office of the Public Trustee a statement and account, verified by his declaration, of all the estate of the deceased and of his administration thereof.
- (2) This section shall not apply in any case where the administrator is a limited company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth and is acting as administrator in pursuance of any powers granted to it by any Act.

**56A—Court may order delivery of statement and account**

The Court may at any time, upon the application of the Public Trustee or any person interested in the estate of a deceased person, or on its own initiative, order an administrator to deliver at the office of the Public Trustee a statement and account, verified by the administrator's declaration, of all the estate of the deceased, and of his administration thereof.

**58—Proceedings to compel account**

- (1) If at any time any administrator—
  - (a) makes default in compliance with section 56; or

- (b) being ordered to deliver an account of his administration as mentioned in section 56A, neglects to deliver the same verified as aforesaid for one month after the date appointed for that purpose,

the Public Trustee or any person interested may cause the administrator to be summoned before a Judge to show cause why he should not deliver such account forthwith.

- (2) In case the administrator, being duly served with such summons, does not attend before the Judge at the time and place mentioned therein, or does not show any reasonable cause to the contrary, the Judge may from time to time order the administrator to deliver the statement and account, or the account, verified as aforesaid, either forthwith or within such further time as the Judge thinks fit to allow.
- (3) On default in compliance with any order under subsection (2), a Judge may order the administrator in default to pay to the Public Trustee or person so applying any sum not exceeding one thousand dollars for every such default.
- (4) The fact that proceedings have been or are being taken under this section does not prevent an action from being brought on a guarantee given under section 18 or 31.
- (5) All costs and expenses of and incidental to the summoning of any administrator pursuant to this section shall either be chargeable to or paid out of the estate in respect of which such administrator is summoned, or shall be paid by such administrator, as the Judge orders.

### **59—All specialty and simple contract debts of deceased persons to stand in equal degree**

- (1) In the administration of the estate of every person who has died on or after the first day of January, 1880, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a specialty debt; but all the creditors of such person, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable, any statute or other law to the contrary notwithstanding.
- (2) This section shall not prejudice or affect any bond, deed, or other instrument under seal given or executed before the coming into operation of Act No. 140 of 1879; but all such bonds, deeds, or other instruments shall be entitled to priority or preference, according to the law in force before the passing of such Act.
- (3) This section shall not prejudice or affect any lien, charge, or other security which any creditor holds or is entitled to for the payment of his debt.

### **60—Filing of declaration that estate insufficient to pay debts**

- (1) Any executor, administrator, or creditor of a person dying on or after the first day of February, 1892, may file with the Registrar a declaration that he believes the estate of the deceased to be insufficient for the payment of its liabilities.
- (2) On such a declaration being filed by a creditor, he shall, if probate or administration has been granted, serve a copy of the declaration with a memorandum of the date of filing on the executor or administrator.

- (3) If probate or administration is granted after the filing of the declaration by a creditor, the Registrar shall, on issuing the probate or administration, issue therewith to the executor or administrator a copy of the declaration with a memorandum of the date of filing.
- (4) After the service on or issue to the executor or administrator of the copy and memorandum where the declaration has been filed by a creditor, or after the filing of the declaration by an executor or administrator, the executor or administrator shall administer the estate so far as concerns the payment of liabilities in the same manner so far as practicable as it would have been administered for the benefit of creditors under a decree of the Supreme Court.
- (5) The Court may, on the application, with or without notice, of the executor or administrator or of a creditor, order that any action against the executor or administrator shall not proceed beyond judgment without the permission of the Court.
- (6) Any person entitled to make a claim against the estate under section 61 shall be deemed a creditor for the purposes of this section.

#### **61—Rules in insolvency administration to prevail in certain cases**

- (1) In any administration by the Public Trustee under section 9 of the *Public Trustee Act 1995* where the estate proves insufficient for the payment in full of the debts and liabilities of the deceased, and in any administration by an executor or administrator under section 60 and in any administration by the Court of the assets of any deceased person whose estate is insufficient for the payment in full of the debts and liabilities of the deceased, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future or contingent liabilities respectively, as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt.
- (2) All persons who in any such case would be entitled to prove for and receive dividends out of the estate of the deceased person, may come in under the administration of such estate, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

#### **62—Estate how administered**

In an administration by the Supreme Court, or under section 9 of the *Public Trustee Act 1995*, by the Public Trustee, of the estate of a person dying on or after the first day of February, 1892, and in the administration of any such estate by the executor or administrator under section 60, the following provisions shall have effect:

- (a) the executor or administrator shall have no right of retainer;
- (b) a creditor who has at any time obtained judgment against the executor or administrator shall not, by reason of the judgment, have any priority over other creditors;
- (c) legal assets shall, subject to this Act, be administered in the same manner as equitable assets.

### **63—Court may order sale of infant's property**

The Court may, on the application of any executor, administrator, or trustee in whom any real or personal property, whether specifically devised or bequeathed or not, belonging to any infant is vested, or on the like application of the guardian of the estate or the next friend of any infant beneficially entitled to any real or personal property, whether specifically devised, or bequeathed or not, order that such property, or any part thereof, be sold in any case in which the Court considers it for the benefit of the infant that such sale should be effected.

### **64—Court may give permission to postpone realisation or carry on business**

- (1) The Court may, where it thinks it beneficial so to do, give permission to an executor, administrator, or trustee of a deceased person, or to the Public Trustee—
  - (a) to postpone for such period as the Court thinks expedient the realisation of the estate or trust property:
  - (b) to carry on, for such period or periods as the Court from time to time thinks expedient, the business or affairs of the testator or intestate, and for that purpose to use his estate, or such portion thereof as the Court directs.
- (2) An executor, administrator, or trustee acting in accordance with permission given under this section shall not be answerable for consequent loss, except in case of breach of trust, negligence, or wilful default.
- (3) An order under this section may be made either without notice or on such notice as the Court in any case thinks proper, and may be varied from time to time as the Court thinks fit.

### **65—Administrator to pay over money and deliver property to Public Trustee**

- (1) Every administrator who is possessed of or entitled to any property within this State, whether personal or real, belonging to any person who—
  - (a) is not *sui juris*, or
  - (b) is not resident in this State, and has no duly authorised agent or attorney therein:

shall deliver, convey, or transfer such property to the Public Trustee immediately after the expiration of one year from the date of the death of the intestate or testator, or within six months after such sooner time as the same or such portion thereof as is available for that purpose, has been sold, realised, collected, or got in.

- (2) The Public Trustee shall then administer such property according to law, and in accordance with any will affecting such property.
- (2a) The Public Trustee may, in his discretion, (but subject to the provisions of any will or instrument of trust) realise, or postpone the realisation of, any real or personal property delivered, conveyed or transferred to him under subsection (1) of this section.
- (3) This section shall not apply in any case where the administrator is a limited company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth, and is acting as administrator in pursuance of any powers granted to it by any Act.



- (4) This section shall not apply to an administrator acting under any probate or administration not granted by the Supreme Court but sealed with the seal of the Supreme Court in pursuance of the provisions of section 17 of this Act.
- (5) Subject to the provisions of any will or instrument of trust, the Public Trustee may, if he is satisfied that it will be advantageous to the beneficiaries, authorise the sale of any trust property, not exceeding four thousand dollars in value, to the administrator, or to the administrator conjointly with any other person, notwithstanding that the property has not been offered for sale by public auction or otherwise.

#### **66—Effect of delivery etc to Public Trustee**

The delivery, conveyance or transfer of property to the Public Trustee under section 65 has the effect of discharging the administrator and any surety from further responsibility in respect of the property.

#### **67—Judge may dispense wholly or partially with compliance with section 65**

- (1) A Judge may, on being satisfied by affidavit that it is beneficial or expedient so to do, order—
  - (a) that any administrator, or proposed administrator, shall not be bound by section 65; or
  - (b) that any administrator, or proposed administrator, shall not be bound by the said section 65 until after a certain time to be mentioned in the order.
- (2) The time mentioned in any order made under subdivision (b) of subsection (1) may be extended by a subsequent order.
- (3) Any order under subsection (1) or (2) may be obtained without notice to any interested party on the application of the administrator or proposed administrator.
- (4) An order under subdivision (a) of subsection (1) may be granted notwithstanding that an order has already been made under subdivision (b) of subsection (1).
- (5) If the Court so directs, an order under this section has the effect of discharging the administrator and any surety from further responsibility in respect of the property to which the order relates.
- (6) The Public Trustee, or any person interested, may issue a summons requiring the administrator, or proposed administrator, to appear before a Judge to show cause why any order made under this section should not be set aside, and the Judge may set aside such order, or vary the same, or make such other order as seems to him best.

#### **69—Public Trustee and other persons may obtain judicial advice or direction**

- (1) The Public Trustee shall, and any trustee, executor, or administrator may, when in difficulty or doubt, apply to a Judge for advice or direction as to matters connected with the administration of any estate, or the construction of any will, deed, or document.
- (2) Such application may be made either without notice to or upon summons served upon any of the parties interested.

- (3) Any person interested in any estate, who is dissatisfied with the conduct of the Public Trustee in any matter connected with the management or administration thereof, may apply to a Judge by summons to be served upon the Public Trustee to review such conduct.
- (4) A Judge may, upon the hearing of an application under this section, make any order, declaratory or otherwise, that he sees fit as to the administration of the estate, or the construction of the will, deed, or document, which is the subject of the application, and also as to the costs of the application.
- (5) Any such order made in the absence of an interested party shall have the same effect, or be of the same force or validity, so far as regards protection to the Public Trustee, or other trustee, or the executor, or administrator, as if the same had been a decree or order made in an action where all parties concerned were represented.
- (6) The Judge may refer any question of law arising on an application under this section for the opinion of the Supreme Court, or may direct an issue to be tried by, or an action to be instituted in, the Supreme Court.

#### **70—Commission may be allowed to executors, administrators or trustees**

- (1) The Court may allow to any executor, administrator, or trustee, whether of the estate of a deceased person or otherwise, such commission or other remuneration out of the estate or trust property, and either periodically or otherwise, as is just and reasonable.
- (2) No allowance shall be made to any administrator who neglects—
  - (a) to deliver the statement and account required by section 56, as by such section required, or within such reasonable time as is allowed by the Court; or
  - (b) to dispose of any estate with which he is chargeable according to the due course of administration.
- (3) Every administrator so neglecting to dispose of any estate with which he is chargeable shall be charged with interest at the rate of seven dollars per centum per annum for such sum and sums of money as from time to time have been in his hands, whether he has or has not made interest thereof.

### **Division 4—Payment of certain money in deceased estates without grants**

#### **71—Payment without production of probate or letters of administration**

- (1) Where a Government employee dies and immediately before his death a sum not exceeding two thousand dollars was owing to him by the Government or by a person or authority representing the Government the Treasurer may in his discretion direct that such sum shall be paid to the surviving spouse or domestic partner of the deceased or to any other person to whom the Treasurer deems it just to pay it, or that such sum shall be divided among any of such persons.
- (1a) Where a patient in a Government hospital dies and immediately before his death money or other property (not exceeding in amount or value two thousand dollars) was held on his behalf by the hospital, the Treasurer may, in his discretion, direct that the money or property be paid or delivered to the surviving spouse or domestic partner of the deceased, or to any other person who is, in the opinion of the Treasurer, entitled to it, or that the money or property be divided among any such persons.

- (2) The Treasurer may refuse to give a direction under this section unless such indemnities or undertakings as he thinks necessary are given.
- (3) A person shall not have a claim against the Crown, the Treasurer, or any other person representing the Crown in respect of the payment of money or the delivery of property pursuant to this section; but nothing in this section shall relieve a person receiving money paid or property delivered under this section from any liability to account for or apply that money or property in accordance with law.
- (4) In this section—

**Government employee** means a person employed in the service of the Crown whose remuneration is paid out of money under the control of the Treasurer;

**Government hospital** means an institution declared by the Treasurer by notice in the Gazette to be a Government hospital for the purposes of this section.

### **72—Payment by ADI of sums not exceeding \$2 000**

- (1) Whenever on the death of an ordinary customer or depositor the moneys standing to his credit on the books of any ADI do not exceed two thousand dollars, and probate of his will or letters of administration of his estate is or are not produced to the manager of the ADI within three months after the death of the customer or depositor, the manager of such ADI may pay such money to the spouse or domestic partner of such customer or depositor without any proof other than the death of such customer or depositor and the identity of the spouse or domestic partner as the case may be.
- (2) Every payment so made shall be valid, and be an effectual release to the ADI against all claims and demands on account thereof.
- (3) The next of kin, legatees, executors, or administrators of the deceased customer or depositor shall have all such remedies against the persons to whom such moneys were paid as they would have had against the ADI if such payment had not been made by the ADI as aforesaid.

## **Part 3A—Distribution on intestacy**

### **72A—Transitional provisions**

- (1) This Part applies only in respect of the estate of a person who dies wholly or partially intestate after the commencement of the *Administration and Probate Act Amendment Act (No. 2) 1975*.
- (2) The estate of any person who died wholly or partially intestate before the commencement of the *Administration and Probate Act Amendment Act (No. 2) 1975*, shall (in so far as it is to devolve according to the law of intestacy) be distributed according to the law of this State as in force before the commencement of the *Administration and Probate Act Amendment Act (No. 2) 1975*.

### **72B—Interpretation**

- (1) In this Part, unless the contrary intention appears—
 

**dwellinghouse** includes—

  - (a) a part of a building occupied as a separate dwelling; or
  - (b) the curtilage of a dwellinghouse;

*intestate* means a person who—

- (a) does not leave a will; or
- (b) leaves a will but does not dispose effectively by the will of the whole or part of his estate;

*intestate estate* in relation to an intestate means—

- (a) in the case of an intestate who leaves a will—that part of his estate that is not effectively disposed of by the will; or
- (b) in any other case the whole of his estate;

*personal chattels* in relation to an intestate means—

- (a) any articles of household or personal use or ornament that form part of his intestate estate; and
- (b) any motor vehicles that form part of his intestate estate,

but does not include any chattels used for business purposes;

*relative* means a relative of the first, second, third or fourth degree;

*relative of the first degree* in relation to an intestate means a parent of the intestate;

*relative of the second degree* in relation to an intestate means a brother or sister of the intestate;

*relative of the third degree* in relation to an intestate means a grandparent of the intestate;

*relative of the fourth degree* in relation to an intestate means a brother or sister of a parent of the intestate;

*value* in relation to an intestate estate, or property forming part of an intestate estate, means the value of the estate or property as at the date of death of the intestate.

- (2) For the purposes of this Part it is immaterial whether a relationship is of the whole blood or the half blood.

### **72C—Administrator to hold property on trust**

- (1) The administrator of an intestate estate holds the estate on trust for the persons entitled to share in the estate in accordance with this Part.
- (2) Subject to this Part, the administrator may sell, or convert into money, the whole, or any part, of an intestate estate.

### **72E—Presumption of survivorship not to apply**

Where an intestate and the intestate's spouse or domestic partner die within twenty-eight days of each other this Part applies as if the spouse or domestic partner had not survived the intestate.

### **72F—Value of intestate estate**

For the purposes of this Part, the value of an intestate estate shall be ascertained by deducting from the gross value of the estate an amount equal to—

- (a) the—

- (i) debts and liabilities of the intestate; and
  - (ii) funeral expenses; and
  - (iii) testamentary expenses; and
  - (iv) costs of administering the estate,  
payable out of the intestate estate; and
- (b) where the intestate is survived by a spouse or domestic partner, the value of the personal chattels of the intestate.

### **72G—Distribution of intestate estate**

Subject to this Part, an intestate estate shall be distributed according to the following rules:

- (a) where the intestate is survived by a spouse or domestic partner and by no issue—the spouse or domestic partner is entitled to the whole of the intestate estate;
- (b) where the intestate is survived by a spouse or domestic partner and by issue—
  - (i) the spouse or domestic partner is entitled—
    - (A) if the value of the intestate estate does not exceed \$10 000, to the whole of the intestate estate; or
    - (B) if the value of the intestate estate exceeds \$10 000, to the sum of \$10 000 and to one-half of the balance of the intestate estate; and
  - (ii) the issue of the intestate is entitled to the balance (if any) of the intestate estate;
- (c) if the intestate is not survived by a spouse or domestic partner, but is survived by issue—the issue is entitled to the whole of the intestate estate;
- (d) if the intestate is not survived by a spouse or domestic partner or by issue but is survived by a relative, relatives, or issue of a relative or relatives—the relative, relatives or issue of a relative or relatives are entitled to the whole of the intestate estate;
- (e) if the intestate is not survived by a person entitled to the intestate estate under the foregoing provisions of this section—the intestate estate shall vest in the Crown.

### **72H—Division of estate when deceased is survived by spouse and/or domestic partner**

- (1) If an intestate is survived by a spouse or domestic partner, the spouse or domestic partner (as the case may be) is entitled to any personal chattels of the intestate.
- (2) If an intestate is survived by a spouse and a domestic partner, each is entitled to an equal share of the property (including personal chattels of the intestate) that would have devolved on the spouse or domestic partner if the intestate had been survived only by a single spouse or domestic partner.

- (3) If a dispute arises between a surviving spouse and a domestic partner as to the division between them of personal chattels of an intestate, the administrator may sell the personal chattels and divide the proceeds of the sale equally between them.

### **72I—Distribution amongst issue**

The following rules govern distribution of an intestate estate, or part of an intestate estate, amongst issue of the intestate:

- (a) if the intestate is survived by a child and by no other issue (apart from issue of that child) that child is entitled to the whole, or that part (as the case may be) of the intestate estate; and
- (b) if the intestate is survived by children and by no other issue (apart from issue of those children) those children are entitled to the whole, or that part (as the case may be) of the intestate estate, in equal shares; and
- (c) if the intestate is survived by a grandchild and by no other issue (apart from issue of that grandchild) that grandchild is entitled to the whole, or that part (as the case may be) of the intestate estate; and
- (d) if the intestate is survived by grandchildren and by no other issue (apart from issue of those grandchildren) those grandchildren are entitled to the whole or that part (as the case may be) of the intestate estate in equal shares; and
- (e) in any other case, the whole or that part of the intestate estate shall be divided into portions equal in number to the number of children of the intestate who either survived the intestate or left issue who survived him and—
  - (i) a child (if any) of the intestate who survived the intestate is entitled to one of the portions;
  - (ii) where a child of the intestate died before the intestate leaving issue that survived the intestate, that issue is entitled *per stirpem* (through all degrees) to one of those portions (and if the issue comprises two or more persons, they share equally).

### **72J—Distribution amongst relatives**

The following rules govern distribution of an intestate estate amongst relatives, or issue of relatives, of the intestate:

- (a) where the intestate is survived by a single relative of the first degree, that relative is entitled to the whole of the intestate estate, and where the intestate is survived by two relatives of the first degree, those relatives are entitled to the whole of the intestate estate in equal shares;
- (b) where the intestate is not survived by a relative of the first degree but is survived by a relative of the second degree or issue of any such relative, then—
  - (i) if the intestate is survived by one relative of the second degree, and by no issue of any such relative who predeceased him, the surviving relative is entitled to the whole of the intestate estate;
  - (ii) if the intestate is survived by relatives of the second degree, and by no issue of any such relative who predeceased him, those relatives are entitled to the whole of the intestate estate in equal shares;

- 
- (iii) if the intestate is survived by a relative of the second degree, and by issue of any such relative who predeceased him, the intestate estate shall be divided into portions equal in number to the number of relatives of the second degree of the intestate who either survived the intestate or left issue who survived him and—
- (A) any relative of the second degree who survived the intestate is entitled to one of those portions; and
  - (B) where a relative of the second degree died before the intestate leaving issue that survived the intestate, the issue is entitled *per stirpem* (through all degrees) to one of those portions (and if the issue comprises two or more persons, they share equally);
- (iv) if the intestate is not survived by a relative of the second degree, but is survived by issue of such a relative, the intestate estate shall devolve upon that issue as if the issue were issue of the intestate;
- (c) where the intestate is not survived by any relative of the first or second degree, or by issue of a relative of the second degree, but is survived by a relative or relatives of the third degree, then—
- (i) if the intestate is survived by only one such relative, that relative is entitled to the whole of the intestate estate; or
  - (ii) if the intestate is survived by more than one such relative, those relatives are entitled to the whole of the intestate estate in equal shares;
- (d) where the intestate is not survived by a relative of the first, second or third degree, or by issue of a relative of the second degree, but is survived by a relative of the fourth degree, or by issue of such a relative, then—
- (i) if the intestate is survived by one relative of the fourth degree, and by no issue of any such relative who predeceased him, the surviving relative is entitled to the whole of the intestate estate;
  - (ii) if the intestate is survived by relatives of the fourth degree, and by no issue of any such relative who predeceased him, those relatives are entitled to the whole of the intestate estate in equal shares;
  - (iii) if the intestate is survived by a relative of the fourth degree, and by issue of any such relative who predeceased him, the intestate estate shall be divided in the portions equal in number to the number of relatives of the fourth degree of the intestate who either survived the intestate or left issue who survived him and—
    - (A) any relative of the fourth degree who survived the intestate is entitled to one of those portions; and
    - (B) where a relative of the fourth degree died before the intestate leaving issue that survived the intestate, the issue is entitled *per stirpem* (through all degrees) to one of those portions (and if the issue comprises two or more persons, they share equally);

- (iv) where the intestate is not survived by a relative of the fourth degree, but is survived by issue of such a relative, the intestate estate shall devolve upon that issue, as if the issue were issue of the intestate.

### **72K—Gifts to be brought into hotchpot**

- (1) Where—
  - (a) an intestate has within the period of five years immediately before his death made any gift to, or settlement for the benefit of, a person (other than a spouse or domestic partner of the intestate) who is, or would if he were to survive the intestate become, entitled to a part of the intestate estate; or
  - (b) a person who dies partially intestate leaves a will containing a gift in favour of a person (including a spouse or domestic partner of the intestate) who is entitled to part of the intestate estate,

the property given or settled shall be taken to have been given or settled in or towards satisfaction of the share to which that person is entitled in the intestate estate, or to which he would become entitled if he were to survive the intestate (as the case may be) unless—

- (c) the contrary intention was expressed, or appears from the circumstances of the case; or
  - (d) the value of the property given or settled does not exceed one thousand dollars.
- (2) For the purposes of subsection (1) of this section, the value of property given or settled by an intestate in his lifetime shall be determined as at the date of the gift or settlement.

### **72L—Election by spouse or domestic partner to take dwellinghouse**

- (1) Subject to this Part, where the intestate estate of an intestate who is survived by a spouse or domestic partner includes an interest in a dwellinghouse in which the spouse or domestic partner of the intestate was residing at the date of the intestate's death, the spouse or domestic partner may elect to acquire that interest at its value as at the date of the death of the intestate.
- (2) An election under this section must be made—
  - (a) where the spouse or domestic partner is an administrator of the intestate estate—within three months after the date on which administration of the intestate estate was granted by the Court; or
  - (b) where the spouse or domestic partner is not an administrator of the intestate estate—within three months after the administrator serves a notice personally or by post upon him requiring him to make an election under this section,or within such extended period as the Court may allow.
- (3) An election by a spouse or domestic partner shall be furnished in writing—
  - (a) if the spouse or domestic partner is not an administrator of the intestate estate—to the administrator; or
  - (b) if the spouse or domestic partner is an administrator of the intestate estate—to the Public Trustee.



- 
- (4) Where a spouse or domestic partner elects, pursuant to the provisions of this section, to acquire an interest in a dwellinghouse—
- (a) the amount to which he is entitled out of the intestate estate shall be reduced by the value of that interest; and
  - (b) if the value of that interest exceeds the amount to which the spouse or domestic partner is entitled out of the intestate estate, the spouse or domestic partner shall, upon making the election, pay into the intestate estate the difference between that value and the value of his interest in the intestate estate.
- (5) Where the spouse or domestic partner of an intestate is an administrator of the intestate estate, he may, notwithstanding that he is a trustee, acquire in pursuance of this section an interest in a dwellinghouse that forms part of the intestate estate.

#### **72M—Limitation on right of personal representative to sell interest in dwellinghouse**

- (1) Where a spouse or domestic partner of an intestate was, at the date of death of the intestate residing in a dwellinghouse, and an interest in that dwellinghouse forms part of the intestate estate—
- (a) the spouse or domestic partner shall be entitled to continue to reside in the dwellinghouse—
    - (i) until the expiration of the period within which he is entitled under this Act to elect to acquire the dwellinghouse; or
    - (ii) where a person has by virtue of a mortgage or charge the right to enter into possession of the dwellinghouse or to dispose of the interest, until that right is exercised,
 whichever first occurs; and
  - (b) the administrator of the intestate estate shall not dispose of the interest unless—
    - (i) the dwellinghouse has ceased to be the ordinary place of residence of the spouse or domestic partner; or
    - (ii) the period within which the spouse or domestic partner is entitled under this Act to elect to acquire the dwellinghouse has elapsed.

#### **72N—This Part not to affect operation of Inheritance (Family Provision) Act**

Nothing in this Part affects the operation of the *Inheritance (Family Provision) Act 1972* in respect of an intestate estate.

#### **72O—Certain Imperial Acts not to apply in this State**

The following Acts of the Imperial Parliament shall have no further force or effect in this State:

- 22 & 23 Charles II c. 10 s. 5
- 1 James II c. 17 s. 7
- 9 Henry III c. 1 s. 7

25 Edward I c. 7.

## Part 5—Miscellaneous

### 119—Probate to be evidence of wills concerning real estate

- (1) The probate of any will or letters of administration with the will annexed shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate.
- (2) The copy attached or annexed to such probate or letters of administration, purporting to be a copy of such will, shall be evidence of the contents of such will.
- (3) The probate of any will or letters of administration shall be evidence of the death, and the date of the death of the testator or intestate.

### 120—No will to be registered or admissible in evidence until proved

- (1) No will of any person dying on or after the twenty-sixth day of October, 1893, shall be registered, or be admissible or receivable in evidence, except in criminal proceedings or upon application for probate or letters of administration, until administration in respect of the estate comprised therein has been issued or obtained.

- (2) In this section—

*administration* means any probate or letters of administration with or without a will annexed and any rule or order of any Court or Judge, and any deed or document of any kind whatsoever whereby any person becomes entitled at law to administer, take charge of, or become receiver of any property of deceased persons.

### 120A—Interest upon pecuniary legacies

- (1) Subject to any testamentary direction or provision to the contrary, where a will provides for the payment of a pecuniary legacy of a specified amount and the legacy is not paid in full on or before the relevant date, then, as from the relevant date and until the date of payment, interest accrues on the legacy, or so much of the legacy as remains unpaid, at the rate from time to time fixed by regulation for the purposes of this section.
- (2) A right to interest under this section does not exist independently of a right to payment of the legacy itself, and where a legacy abates, the extent of the abatement shall be taken into account in calculating interest for the purposes of this section.
- (3) This section applies to legacies whether they become or became payable before or after the commencement of the *Administration and Probate Act Amendment Act 1981*, but it does not affect interest that may have accrued upon a legacy before the commencement of that amending Act.

- (4) In this section—

*the relevant date* means—

- (a) a date fixed by the will as the date on or before which the legacy is to be paid or, if no such date is fixed by the will, the date of the first anniversary of the testator's death; or
- (b) the date of commencement of the *Administration and Probate Act Amendment Act 1981*,

whichever is the later.

### **121—Inspection of documents in Lands Titles or General Registry Office**

Where the inspection of any deeds or other documents in the Lands Titles or General Registry Office is required by the Registrar for the purposes of this Act, the Registrar-General shall produce such deeds or documents to the Registrar, or any person appointed by him in writing to make such inspection.

### **121A—Statement of assets and liabilities to be provided with application for probate or administration**

- (1) A person who applies—
  - (a) for probate or administration; or
  - (b) for the sealing of any probate or administration granted by a foreign court,in respect of the estate of a deceased person shall, in accordance with the rules, disclose to the Court the assets and liabilities of the deceased person known to him at the time of making the application.
- (2) An executor, administrator or trustee of the estate of a deceased person (being an estate in respect of which probate or administration has been granted or sealed by the Court) shall, in accordance with the rules, disclose to the Court any assets or liabilities of the deceased person (not being assets or liabilities previously disclosed under this section) which come to his knowledge while acting in that capacity.
- (2a) Where the deceased person was not, at the time of death, domiciled in Australia, the disclosure under subsection (1) or (2) is only required in respect of—
  - (a) assets situated in Australia; and
  - (b) liabilities that are a charge on those assets or arose in Australia.
- (3) An executor, administrator or trustee of an estate shall not dispose of an asset of the estate in respect of which disclosure has not been made to the Court pursuant to this section.
- (4) Nothing in subsection (3) affects the interests of a person who acquires an asset of an estate in good faith for valuable consideration and without knowing that the asset has not been disclosed to the Court pursuant to this section.
- (5) An executor, administrator or trustee who contravenes or fails to comply with a provision of this section is guilty of a summary offence and liable to a penalty not exceeding two thousand dollars.
- (6) This section does not apply in respect of an estate of a deceased person who died before the commencement of this section.
- (7) A reference in this section to the assets and liabilities of a deceased person is a reference to—
  - (a) assets and liabilities of the deceased at the date of his death; and
  - (b) assets falling into the estate after the death of the deceased not being an accretion to the estate arising out of an asset existing at the date of his death,but does not include a reference to any asset or liability prescribed by the rules.

- (7a) For the purposes of subsection (2a), if—
- (a) it is uncertain whether an asset is situated, or a liability arose, in Australia or elsewhere; or
  - (b) an asset is situated, or a liability arose, in part in Australia and in part elsewhere,
- the asset will be taken to be situated, or the liability will be taken to have arisen in Australia.
- (8) In this section—
- administration* includes an order under section 9 of the *Public Trustee Act 1995* authorising the Public Trustee to administer the estate of a deceased person.

## 122—Court rules

- (1) The Court, or any one or more Judges thereof, shall have power from time to time to make such rules as to the said Court, Judge, or Judges appear expedient—
- (a) for regulating the procedure and practice of the Court in its testamentary causes jurisdiction; and
  - (b) for the guidance of executors and administrators in relation to lands passing under section 46; and
  - (c) for defining the duties of the Registrar and other officers thereof; and
  - (ca) for authorising and regulating the exercise by the Registrar of any specified jurisdiction, power or authority of the Court whether arising under this Act or otherwise; and
  - (d) for determining what shall be deemed contentious and what non-contentious business; and
  - (e) for regulating the procedure and practice under Part 3 and Division 3 of Part 4; and
  - (f) for prescribing forms; and
  - (g) generally for carrying the provisions of this Act into effect.
- (2) The Court, or any one or more Judge or Judges thereof, shall also have power, by rules made for that purpose, to revoke, amend, add to, or alter any such rules, or any rules in existence at the commencement of this Act.
- (3) All such rules shall be approved by the Governor, and shall thereafter be published in the Gazette, and shall take effect from a time to be therein specified; and shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, or if Parliament is not then sitting, within fourteen days after the commencement of the then next session of Parliament.
- (4) If either House of Parliament, by resolution passed within thirty-six days next after any such rules are laid before it, resolve that the whole or any part thereof ought not to continue in force, the whole of such rules, or such parts thereof as may be specified in the resolution (as the case may be), shall, from the passing of such resolution, cease to be binding.

- (5) The powers hereby given for making rules shall not affect any powers in that behalf contained in the *Supreme Court Act 1935*.

### **123—Affidavits**

All affidavits or declarations made under this Act or the rules shall be sworn or made before the Registrar, or any district registrar, notary public, or commissioner for taking affidavits in the Supreme Court, and any such declaration shall be sufficient if the declarant states therein that he makes the same in pursuance of this Act.

### **124—Person making false oath guilty of perjury**

Any person who knowingly and wilfully makes a false oath or declaration under this Act, or the rules, shall be guilty of perjury.

### **127—Restraint upon exercise of rights of retainer and preference**

- (1) No right of retainer or preference shall be exercised by the executor or administrator of the estate of a deceased person unless the executor or administrator has reasonable cause to believe, and does believe, that the assets or the estate are sufficient to satisfy its liabilities.
- (2) Where a right of retainer or preference has been exercised in contravention of this section, the Court may—
  - (a) set aside any payment of money or disposition of property that has been made in contravention of this section; and
  - (b) make any other order that may be just in the circumstances.
- (3) This section does not prevent an executor or administrator from exercising a right to retain assets from the estate of a deceased person where the extent to which he exercises that right is not such as to confer upon him a preference over other creditors of the estate.

### **128—Power of Public Trustee to move for attachment of an administrator**

Where, in the opinion of the Public Trustee—

- (a) grounds exist for the attachment of an administrator; and
  - (b) it is necessary or desirable for the purpose of protecting the interests of any person that proceedings for the attachment of the administrator be instituted,
- the Public Trustee may institute proceedings for the attachment of the administrator.

### **129—Governor may stay or compound any proceedings**

The Governor may stay or compound proceedings for any penalty, and may reward any person who informs of any offence against this Act, or assists in the recovery of any penalty.

### **130—Regulations**

The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

## **Schedule 1—Acts consolidated and repealed**

<b>Reference to Act</b>	<b>Title of Act</b>	<b>Extent of repeal</b>
No. 537 of 1891	<i>The Administration and Probate Act 1891</i>	The whole Act, except sections 106, 107, 109, 110, and 111
No. 567 of 1893	<i>The Succession Duties Act 1893</i>	Section 38
No. 586 of 1893	<i>The Trustee Act 1893</i>	Section 70
No. 816 of 1903	<i>The Administration and Probate Amendment Act 1903</i>	The whole
No. 854 of 1904	<i>The Administration and Probate Amendment Act 1904</i>	The whole
No. 1174 of 1914	<i>The Administration and Probate Amendment Act 1914</i>	The whole
No. 1354 of 1918	<i>The Administration and Probate Amendment Act 1918</i>	The whole

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1919	1367	<i>Administration and Probate Act 1919</i>	16.10.1919	16.10.1919
1922	1515	<i>Administration and Probate Act Amendment Act 1922</i>	22.11.1922	22.11.1922
1932	2093	<i>Administration and Probate Act Amendment Act 1932</i>	30.11.1932	30.11.1932
1934	2168	<i>Statute Law Revision Act 1934</i>	15.11.1934	15.11.1934
1936	2293	<i>Statute Law Revision Act 1936</i>	8.10.1936	8.10.1936
1936	2311	<i>Administration and Probate Act Amendment Act 1936</i>	19.11.1936	19.11.1936
1937	2368	<i>Administration and Probate Act Amendment Act 1937</i>	8.12.1937	8.12.1937
1956	19	<i>Administration and Probate Act Amendment Act 1956</i>	8.11.1956	7.12.1956 ( <i>Gazette 6.12.1956 p1278</i> )
1960	24	<i>Administration and Probate Act Amendment Act 1960</i>	13.10.1960	13.10.1960
1970	4	<i>Administration and Probate Act Amendment Act 1970</i>	20.8.1970	20.8.1970
1971	15	<i>Age of Majority (Reduction) Act 1970-1971</i>	8.4.1971	15.4.1971 ( <i>Gazette 15.4.1971 p1598</i> )
1972	5	<i>Administration and Probate Act Amendment Act 1972</i>	23.3.1972	18.5.1972 ( <i>Gazette 18.5.1972 p1926</i> )
1973	53	<i>Administration and Probate Act Amendment Act 1973</i>	22.11.1973	22.11.1973
1975	26	<i>Administration and Probate Act Amendment Act 1975</i>	27.3.1975	10.4.1975 ( <i>Gazette 10.4.1975 p1442</i> )
1975	99	<i>Administration and Probate Act Amendment Act (No. 2) 1975</i>	20.11.1975	29.1.1976 ( <i>Gazette 29.1.1976 p356</i> )
1978	80	<i>Administration and Probate Act Amendment Act 1978</i>	16.11.1978	6.9.1979 ( <i>Gazette 6.9.1979 p572</i> ) except s 17—1.10.1979 ( <i>Gazette 13.9.1979 p645</i> ) and except s 9—31.7.1980 ( <i>Gazette 31.7.1980 p372</i> )

**Administration and Probate Act 1919—1.6.2007 to 25.2.2009**

## Legislative history

---

1980	15	<i>Administration and Probate Act Amendment Act 1980</i>	17.4.1980	31.7.1980 ( <i>Gazette 31.7.1980 p372</i> )
1981	86	<i>Administration and Probate Act Amendment Act 1981</i>	10.12.1981	17.6.1982 ( <i>Gazette 17.6.1982 p1970</i> )
1983	73	<i>Supreme Court Act Amendment Act (No. 2) 1983</i>	3.11.1983	3.11.1983
1984	57	<i>Administration and Probate Act Amendment Act 1984</i>	24.5.1984	24.5.1984
1984	76	<i>Administration and Probate Act Amendment Act (No. 2) 1984</i>	15.11.1984	1.1.1985 ( <i>Gazette 13.12.1984 p1809</i> ) except ss 3 & 14—1.7.1987 ( <i>Gazette 4.6.1987 p1430</i> )
1986	70	<i>Administration and Probate Act Amendment Act 1986</i>	27.11.1986	1.1.1987 ( <i>Gazette 18.12.1986 p1877</i> )
1990	61	<i>Administration and Probate Act Amendment Act 1990</i>	29.11.1990	29.11.1990
1991	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1991</i>	24.4.1991	6.6.1991 ( <i>Gazette 6.6.1991 p1776</i> )
1993	59	<i>Mental Health Act 1993</i>	27.5.1993	6.3.1995 ( <i>Gazette 2.3.1995 p734</i> )
1995	50	<i>Public Trustee Act 1995</i>	20.7.1995	3.8.1995 ( <i>Gazette 3.8.1995 p346</i> )
1997	30	<i>Statutes Amendment (References to Banks) Act 1997</i>	12.6.1997	Pt 3 (s 5)—3.7.1997 ( <i>Gazette 3.7.1997 p4</i> )
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 4)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
1999	42	<i>Statutes Amendment and Repeal (Justice Portfolio) Act 1999</i>	5.8.1999	Pt 2 (s 4)—3.10.1999 ( <i>Gazette 23.9.1999 p1208</i> )
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 2 (ss 4 & 5)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette No. S 285, 13.7.2001 (Gazette 21.6.2001 p2270)</i>
2002	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2002</i>	28.11.2002	Pt 3 (s 5)—3.3.2003 ( <i>Gazette 27.2.2003 p807</i> )
2003	40	<i>Administration and Probate (Administration Guarantees) Amendment Act 2003</i>	23.10.2003	1.3.2005 ( <i>Gazette 16.12.2004 p4591</i> )
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )
2005	56	<i>Justices of the Peace Act 2005</i>	17.11.2005	Sch 2 (cl 4)—1.7.2006 ( <i>Gazette 22.6.2006 p2012</i> )
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 5 (ss 20—30)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )
<b>2006</b>	<b>43</b>	<b><i>Statutes Amendment (Domestic Partners) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 4 (ss 9—20)—1.6.2007 (<i>Gazette 26.4.2007 p1352</i>)</b>

---



## Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 1 of The Public General Acts of South Australia 1837-1975 at page 121.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>deleted by 50/1995 Sch 2 cl (a)</i>	3.8.1995
s 4		
<i>the common fund</i>	<i>deleted by 70/1986 s 3</i>	1.1.1987
<i>common fund</i>	<i>inserted by 70/1986 s 3</i>	1.1.1987
	<i>deleted by 50/1995 Sch 2 cl (b)</i>	3.8.1995
<i>the Common Fund Interest Account</i>	<i>deleted by 70/1986 s 3</i>	1.1.1987
<i>the Common Fund Reserve Account</i>	<i>deleted by 50/1995 Sch 2 cl (b)</i>	3.8.1995
<b>domestic partner</b>	<b>inserted by 43/2006 s 9(1)</b>	<b>1.6.2007</b>
<i>the Income Adjustment Account</i>	<i>deleted by 50/1995 Sch 2 cl (b)</i>	3.8.1995
<i>lawful spouse</i>	<i>deleted by 43/2006 s 9(2)</i>	<b>1.6.2007</b>
<i>the Public Trustee</i>	<i>inserted by 80/1978 s 3</i>	6.9.1979
	<i>substituted by 15/1980 s 3</i>	31.7.1980
	<i>deleted by 50/1995 Sch 2 cl (c)</i>	3.8.1995
Public Trustee	inserted by 50/1995 Sch 2 cl (c)	3.8.1995
<i>putative spouse</i>	<i>deleted by 43/2006 s 9(3)</i>	<b>1.6.2007</b>
<b>spouse</b>	<b>substituted by 43/2006 s 9(4)</b>	<b>1.6.2007</b>
Pt 2		
Pt 2 Div 1	heading preceding s 5 deleted and Div 1 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 2 Div 2	heading preceding s 6 deleted and Div 2 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 6	substituted by 33/1991 s 4	6.6.1991
s 7A	inserted by 57/1984 s 2	24.5.1984
Pt 2 Div 3	heading preceding s 9 deleted and Div 3 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 12		
s 12(1)	first sentence designated as s 12(1) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 12(2)	second sentence amended and designated as s 12(2) by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 2 Div 4	heading preceding s 13 deleted and Div 4 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 2 Div 5	heading preceding s 17 deleted and Div 5 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003

## Administration and Probate Act 1919—1.6.2007 to 25.2.2009

### Legislative history

---

<i>s 18 before substitution by 40/2003</i>		
<i>s 18(1)</i>	<i>substituted by 80/1978 s 4</i>	6.9.1979
s 18	substituted by 40/2003 s 4	1.3.2005
s 18(7)	amended by 17/2006 s 20(1)	4.9.2006
s 18(11)	amended by 17/2006 s 20(2)	4.9.2006
s 20	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 2 Div 6	heading preceding s 21 deleted and Div 6 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 23	inserted by 40/2003 s 5	1.3.2005
s 25		
s 25(1)	amended by 17/2006 s 21(1)	4.9.2006
s 25(4)	amended by 17/2006 s 21(2)	4.9.2006
s 29		
s 29(1)	substituted by 33/1991 s 5(a)	6.6.1991
s 29(3)	<i>deleted by 33/1991 s 5(b)</i>	6.6.1991
s 31		
	substituted by 80/1978 s 5	6.9.1979
	substituted by 40/2003 s 6	1.3.2005
s 31(7)	amended by 17/2006 s 22(1)	4.9.2006
s 31(11)	amended by 17/2006 s 22(2)	4.9.2006
<i>ss 32 and 33</i>	<i>deleted by 40/2003 s 6</i>	1.3.2005
<b>s 37</b>	<b>amended by 43/2006 s 10</b>	<b>1.6.2007</b>
s 39		
s 39(1)	amended by 17/2006 s 23(1)	4.9.2006
s 39(2)	amended by 17/2006 s 23(2)	4.9.2006
s 43	substituted by 76/1984 s 3	1.7.1987
s 43(4)		
administration	amended by 50/1995 Sch 2 cl (d)	3.8.1995
s 44	substituted by 76/1984 s 3	1.7.1987
Pt 3 Div 1	heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 3 Div 2	heading preceding s 46 deleted and Div 2 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 46		
s 46(1)	substituted by 40/2003 s 7	1.3.2005
s 47	amended by 17/2006 s 24	4.9.2006
Pt 3 Div 3	heading preceding s 56 deleted and Div 3 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 56		
s 56(2)	amended by 23/2001 s 4	15.7.2001
s 56A		
	inserted by 80/1978 s 6	6.9.1979
	amended by 17/2006 s 25	4.9.2006
s 57	<i>deleted by 40/2003 s 8</i>	1.3.2005
s 58		

s 58(1)	amended by 80/1978 s 7	6.9.1979
s 58(4)	substituted by 40/2003 s 9	1.3.2005
s 60		
s 60(5)	amended by 17/2006 s 26(1), (2)	4.9.2006
s 61		
s 61(1)	amended by 50/1995 Sch 2 cl (e)	3.8.1995
s 62	amended by 50/1995 Sch 2 cl (f)	3.8.1995
	I—III redesignated as s 62(a)—(c) by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 63	amended by 17/2006 s 27	4.9.2006
s 64		
s 64(1)	amended by 17/2006 s 28(1)	4.9.2006
s 64(2)	amended by 17/2006 s 28(2)	4.9.2006
s 64(3)	amended by 17/2006 s 28(3)	4.9.2006
s 65		
s 65(3)	amended by 23/2001 s 5	15.7.2001
s 66	substituted by 40/2003 s 10	1.3.2005
s 67		
s 67(3)	amended by 17/2006 s 29	4.9.2006
s 67(5)	substituted by 40/2003 s 11	1.3.2005
s 69		
s 69(2)	amended by 17/2006 s 30(1)	4.9.2006
s 69(6)	amended by 17/2006 s 30(2), (3)	4.9.2006
Pt 3 Div 4	heading preceding s 71 deleted and Div 4 heading inserted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 71		
s 71(1)	<b>amended by 43/2006 s 11(1)</b>	<b>1.6.2007</b>
s 71(1a)	inserted by 80/1978 s 8(a)	6.9.1979
	<b>amended by 43/2006 s 11(2)</b>	<b>1.6.2007</b>
s 71(3)	amended by 80/1978 s 8(b), (c)	6.9.1979
s 71(4)	substituted by 80/1978 s 8(d)	6.9.1979
Government hospital	substituted by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 72		
s 72(1)	amended by 33/1999 Sch (item 4(a))	1.7.1999
	<b>amended by 43/2006 s 12</b>	<b>1.6.2007</b>
s 72(2) and (3)	amended by 33/1999 Sch (item 4(a))	1.7.1999
s 72(4)	<i>inserted by 30/1997 s 5</i>	<i>3.7.1997</i>
	<i>deleted by 33/1999 Sch (item 4(b))</i>	<i>1.7.1999</i>
Pt 3A		
s 72D	<i>deleted by 76/1984 s 4</i>	<i>1.1.1985</i>
s 72E	<b>amended by 43/2006 s 13(1), (2)</b>	<b>1.6.2007</b>
s 72F	<b>amended by 43/2006 s 14</b>	<b>1.6.2007</b>
s 72G	<b>amended by 43/2006 s 15</b>	<b>1.6.2007</b>

**Administration and Probate Act 1919—1.6.2007 to 25.2.2009**  
Legislative history

s 72H	substituted by 43/2006 s 16	1.6.2007
s 72K		
s 72K(1)	amended by 43/2006 s 17	1.6.2007
s 72L		
s 72L(1)	amended by 43/2006 s 18(1), (2)	1.6.2007
s 72L(2)	amended by 43/2006 s 18(3)	1.6.2007
s 72L(3)	amended by 43/2006 s 18(4)	1.6.2007
s 72L(4)	amended by 43/2006 s 18(5)	1.6.2007
s 72L(5)	amended by 43/2006 s 18(6)	1.6.2007
s 72M		
s 72M(1)	amended by 43/2006 s 19(1), (2)	1.6.2007
Pt 4	<i>amended by 80/1978 ss 10—16</i>	6.9.1979
	<i>amended by 80/1978 s 9</i>	31.7.1980
	<i>amended by 15/1980 s 4</i>	31.7.1980
	<i>amended by 76/1984 ss 5, 6</i>	1.1.1985
	<i>amended by 70/1986 ss 4—6</i>	1.1.1987
	<i>amended by 61/1990 s 2</i>	29.11.1990
	<i>deleted by 50/1995 Sch 2 cl (g)</i>	3.8.1995
Pt 4A	<i>inserted by 80/1978 s 17</i>	1.10.1979
	<i>amended by 57/1984 s 3</i>	24.5.1984
	<i>amended by 76/1984 ss 7—13</i>	1.1.1985
	<i>amended by 70/1986 s 8</i>	1.1.1987
	<i>deleted by 59/1993 Sch cl 4</i>	6.3.1995
Pt 5		
s 119A	<i>substituted by 80/1978 s 18</i>	6.9.1979
	<i>deleted by 50/1995 Sch 2 cl (h)</i>	3.8.1995
s 120A	inserted by 86/1981 s 3	17.6.1982
s 121A	inserted by 76/1984 s 14	1.7.1987
s 121A(2a)	inserted by 33/2002 s 5(a)	3.3.2003
s 121A(7a)	inserted by 33/2002 s 5(b)	3.3.2003
s 121A(8)	amended by 42/1999 s 4	3.10.1999
s 122		
s 122(1)	amended by 73/1983 s 3	3.11.1983
	amended by 57/1984 s 4	24.5.1984
ss 125 and 126	<i>deleted by 56/2005 Sch 2 cl 4</i>	1.7.2006
ss 127 and 128	inserted by 80/1978 s 19	6.9.1979
s 130	inserted by 86/1981 s 4	17.6.1982

## **Transitional etc provisions associated with Act or amendments**

### ***Administration and Probate (Administration Guarantees) Amendment Act 2003***

#### **12—Transitional provision**

A bond held by the Public Trustee under section 31 of the principal Act, immediately before the commencement of this section, will continue to be held by the Public Trustee, and the principal Act, as in force immediately before that commencement, continues to apply in relation to the bond.

### ***Statutes Amendment (Domestic Partners) Act 2006***

#### **20—Transitional provision**

An amendment made by this Act to the *Administration and Probate Act 1919* applies only in relation to the estate of a deceased person whose death occurs after the commencement of the amendment.

## **Historical versions**

Reprint No 1—1.7.1991

Reprint No 2—6.3.1995

Reprint No 3—3.8.1995

Reprint No 4—3.7.1997

Reprint No 5—1.7.1999

Reprint No 6—3.10.1999

Reprint No 7—15.7.2001

Reprint No 8—3.3.2003

Reprint No 9—24.11.2003

1.3.2005

1.7.2006

4.9.2006