House of Assembly—No 153
As laid on the table and read a first time, 23 June 2021

South Australia

Succession Bill 2021

A BILL FOR

An Act to consolidate and amend the law relating to wills, probate and administration, the administration of deceased estates, intestacy and family provision, to repeal the *Administration and Probate Act 1919*, the *Inheritance (Family Provision) Act 1972* and the *Wills Act 1936*, to make related amendments to various other Acts, and for other purposes.

Contents

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Succession Act 2021*.

2—Commencement

(1) This Act comes into operation on a day to be fixed by proclamation.

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

3—Interpretation

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

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

adult means a person of or above the age of 18 years;

annulment of a person's marriage means—

(a) the annulment of the marriage by the Family Court of Australia; or

(b) the annulment of the marriage under a law of a place outside Australia, if the annulment is recognised in Australia under the Family Law Act;

Australian jurisdiction means a State or Territory of the Commonwealth;

Australian legal practitioner means a local legal practitioner or an interstate legal practitioner;

child, in relation to a deceased person, includes a person who is recognised as a child of the deceased person by virtue of the *Family Relationships Act 1975*;

Convention means the *Convention providing a Uniform Law on the Form of an International Will 1973* signed in Washington D.C. on 26 October 1973;

Court means the Supreme Court of South Australia;

deemed grant of probate or administration means a grant of probate or administration taken to have been granted by virtue of the operation of section 73(4);

disposition includes—

(a) a devise, bequest, legacy or other gift of property under a will; and

(b) the creation by will of a power of appointment affecting property; and

(c) the exercise by will of a power of appointment affecting property;

divorce of a person means the termination of the person's marriage by—

(a) a divorce order in relation to the marriage taking effect under the Family Law Act; or

(b) the dissolution of the marriage in accordance with the law of a place outside Australia, if the dissolution is recognised in Australia under the Family Law Act;

domestic partner—

(a) in relation to a living person means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

(b) in relation to a deceased person means—

(i) a person declared under the *Family Relationships Act 1975* to have been the domestic partner of the deceased person as at the date of the deceased person's death; or

(ii) a person who was in a registered relationship with the deceased person as at the date of the deceased person's death;

estate comprises real and personal property and includes any money or other property subject to a trust and received by the Public Trustee under order of the Court;

Family Law Act means the *Family Law Act 1975* of the Commonwealth;

foreign grant, of probate or administration, means a grant of probate or administration issued by a court of competent jurisdiction outside Australia;

foreign will means a will made outside Australia;

international will means a will made in accordance with the requirements of the Annex to the Convention set out in Schedule 1;

interstate grant, of probate or administration, means a grant of probate or administration issued by a court of competent jurisdiction in another State or a Territory of the Commonwealth;

interstate legal practitioner has the same meaning as in the *Legal Practitioners Act 1981*;

intestate means a person who—

(a) dies without leaving a will; or

(b) dies leaving a will that does not effectively dispose of either the whole or part of the person's estate;

intestate estate in relation to an intestate means—

(a) in the case of an intestate who leaves a will—that part of the person's estate that is not effectively disposed of by the will; or

(b) in any other case—the whole of the person's estate;

Judge means a Judge of the Supreme Court of South Australia;

local legal practitioner has the same meaning as in the *Legal Practitioners Act 1981*;

minor means a person under the age of 18 years;

oath includes an affirmation;

parent, in relation to a deceased person, includes a person who is recognised as a parent of the deceased person by virtue of the *Family Relationships Act 1975*;

probate means probate of the will of a deceased person;

property means real property or personal property;

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

real property means an estate or interest in land;

registered relationship means a relationship that is registered under the *Relationships Register Act 2016*, and includes a corresponding law registered relationship under that Act;

Registrar means the Registrar of Probates or an acting or deputy Registrar of Probates;

Rules of Court or ***rules*** means the rules of court made under this Act;

spouse—

(a) a person is the spouse of a living person if the persons are legally married to each other;

(b) a person is the spouse of a deceased person if the person was legally married to the deceased person as at the date of the deceased person's death;

testamentary jurisdiction of the Court means the jurisdiction of the Court set out in section 18 of the *Supreme Court Act 1935*;

trustee company has the same meaning as in the *Trustee Companies Act 1988*;

undevised land means land forming part of a deceased estate that has not been disposed of by will (whether the deceased died wholly or partially intestate);

will includes a codicil and any other testamentary disposition.

(2) For the purposes of this Act—

(a) a person's marriage is ended when—

(i) the annulment of the person's marriage takes effect; or

(ii) the person's divorce takes effect;

(b) a person's registered relationship is ended when it is taken to end under the *Relationships Register Act 2016*.

(3) For the purposes of this Act—

(a) a person is a ***former domestic partner*** of a deceased person if the person was the domestic partner of the deceased person at some time other than immediately before the deceased person's death;

(b) a person is a ***former spouse*** of a deceased person if the person's marriage with the deceased person had ended at some time other than immediately before the deceased person's death.

Part 2—Wills

Division 1—Making, alteration, revocation and revival of wills

Subdivision 1—Property that may be disposed of by will

4—All property may be disposed of by will

A person may dispose by will of any property that the person is seized of, or is entitled to, at law or in equity at the time of the person's death (whether or not the entitlement existed at the date of the making of the will).

Subdivision 2—Testamentary capacity

5—Will of minor

(1) Subject to this Act, a minor cannot make, alter or revoke a will.

(2) A minor who is or has been married may make, alter or revoke a will as if the minor were an adult.

(3) A minor may make a will in contemplation of marriage (and may alter or revoke such a will) but the will is of no effect unless the contemplated marriage is solemnised.

6—Will of minor authorised by Court

(1) The Court may make an order authorising a minor—

(a) to make a will in specific terms approved by the Court; or

(b) to alter a will in specific terms approved by the Court; or

(c) to revoke a will.

(2) An order under this section may be made on application by a minor or by a person acting on behalf of a minor.

(3) The Court may impose such conditions on an authorisation under this section as the Court thinks fit.

(4) Before making an order under this section, the Court must be satisfied that—

(a) the minor understands the nature and effect of the proposed will or alteration or revocation of the will; and

(b) the proposed will or alteration or revocation of the will accurately reflects the intentions of the minor; and

(c) it is reasonable in all the circumstances that the order should be made.

(5) A will, or instrument altering or revoking a will, made pursuant to an order under this section—

(a) must be executed as required by law and 1 of the attesting witnesses must be the Registrar or the Public Trustee; and

(b) must be deposited for safe custody with the Registrar under Division 6.

(6) A will made pursuant to an order under this section may not be withdrawn from deposit with the Registrar by the minor unless—

(a) the Court has made an order authorising the minor to revoke the will; or

(b) the minor has reached the age of 18 years or is married.

7—Will of person lacking testamentary capacity authorised by Court

(1) The Court may make an order authorising—

(a) the making or alteration of a will, in specific terms approved by the Court, on behalf of a person who lacks testamentary capacity; or

(b) the revocation of a will on behalf of a person who lacks testamentary capacity.

(2) An order under this section may be made on the application of any person with the permission of the court.

(3) An authorisation under this section may be granted on such conditions as the Court thinks fit.

(4) Before making an order under this section, the Court must be satisfied that—

(a) the person lacks testamentary capacity; and

(b) the proposed will, alteration or revocation would accurately reflect the likely intentions of the person if the person had testamentary capacity; and

(c) it is reasonable in all the circumstances that the order should be made.

(5) In considering an application for an order under this section, the Court must take into account the following matters:

(a) any evidence relating to the wishes of the person;

(b) the likelihood of the person acquiring or regaining testamentary capacity;

(c) the terms of any will previously made by the person;

(d) the interests of—

(i) the beneficiaries under any will previously made by the person; and

(ii) any person who would be entitled to receive any part of the estate of the person if the person were to die intestate; and

(iii) any person who would be entitled to claim the benefit of Part 6 in relation to the estate of the person if the person were to die; and

(iv) any other person who has cared for or provided emotional support to the person;

(e) any gift for a charitable or other purpose the person might reasonably be expected to give by a will;

(f) the likely size of the estate;

(g) any other matter that the Court considers to be relevant.

(6) An order may be made under this section in relation to a minor.

(7) The Court is not bound by rules of evidence in proceedings under this section.

(8) The following persons are entitled to appear and be heard at proceedings under this section:

(a) the person in relation to whom the order is proposed to be made;

(b) a legal practitioner representing the person or, with the permission of the Court, some other person representing the person;

(c) the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*;

(d) the person's administrator (if any) appointed under the *Guardianship and Administration Act 1993*;

(e) the person's guardian (if any) appointed under the *Guardianship and Administration Act 1993*;

(f) the person's manager (if any) appointed under the *Aged and Infirm Persons' Property Act 1940*;

(g) the person's attorney (if any) appointed under an enduring power of attorney;

(h) any other person who has, in the Court's opinion, a proper interest in the matter.

(9) In determining an application under this section, the Court may make such incidental orders relating to costs or other matters as it thinks fit.

(10) A will or instrument altering or revoking a will made pursuant to an order under this section must be executed—

(a) by the will or instrument being signed by the Registrar; and

(b) by the will or instrument being sealed with the seal of the Court.

(11) The will or instrument altering or revoking a will must be retained by the Registrar and will be taken to have been deposited with the Registrar under Division 6.

(12) The will may not be withdrawn from deposit with the Registrar by or on behalf of the person on whose behalf it was made unless—

(a) the Court has made an order under this section authorising the revocation of the will (in which case the Registrar must withdraw it on presentation of a copy of the order); or

(b) the person has acquired or regained testamentary capacity.

(13) In this section—

testamentary capacity means the capacity to make a will.

Note—

The cause of incapacity to make a will may arise from mental incapacity or from physical incapacity to communicate testamentary intentions.

Subdivision 3—Execution and attestation of wills

8—Requirements as to writing and execution of will

Subject to this Act, a will is valid only if—

(a) the will is made in writing; and

(b) the will is executed in the following manner:

(i) the will is signed by the testator or by some other person in the testator's presence and by the testator's direction;

(ii) the signature is made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time;

(iii) the witnesses attest and sign the will (but no form of attestation is necessary);

(iv) the signatures of the witnesses are made or acknowledged in the presence of the testator (but not necessarily in the presence of each other); and

(c) it appears, on the face of the will or otherwise, that the testator intended by their signature to give effect to the will.

9—Exercise of power of appointment by will

If a person holds a power of appointment that is exercisable by will—

(a) the provisions of this Act relating to the formalities with which the will must be executed apply in relation to the will even though the power has been conferred on condition that a will made in exercise of the power should be executed with some other or lesser formality; and

(b) the power may be exercised by a will executed in accordance with this Act even though the power has been conferred on condition that a will made in exercise of the power should be executed with some other or additional formality.

10—Will of ADF member on active service

A person on active service as a member of the Australian Defence Force may dispose of the person's property by nuncupative will.

11—Validity of will

(1) A will is valid if executed in accordance with this Act, even if the will is not otherwise published.

(2) Subject to this Act, if the Court is satisfied that—

(a) a document expresses testamentary intentions of a deceased person; and

(b) the deceased person intended the document to constitute their will,

the document will be admitted to probate as a will of the deceased person even though it has not been executed with the formalities required by this Act.

(3) If the Court is satisfied that a document that has not been executed with the formalities required by this Act expresses an intention by a deceased person to revoke a document that might otherwise have been admitted to probate as a will of the deceased person, that document is not to be admitted to probate as a will of the deceased person.

(4) This section applies to a document whether it came into existence inside or outside the State.

(5) Rules of Court may authorise the Registrar to exercise the powers of the Court under this section.

12—Will not void by incompetency of witness

If a person who attests the execution of a will is at the time of the execution of the will or at any time afterwards incompetent to be admitted a witness to prove the execution of the will, the will is not on that account invalid.

13—Gifts to attesting witness

No will or testamentary provision in a will is void by reason only of the fact that the execution of the will is attested by a person, or the spouse or domestic partner of a person, who has or may acquire, in terms of the will or provision, an interest in property subject to the will or provision.

14—Creditor attesting to be admitted as witness

If by a will any real or personal property is charged with a debt and a creditor whose debt is so charged, or the spouse or domestic partner of any such creditor, attests the execution of that will, that creditor will, despite the charge, be admitted a witness to prove the execution of that will or its validity or invalidity.

15—Executor to be admitted as witness

No person is on account of being an executor of a will incompetent to be admitted a witness to prove the execution of that will or its validity or invalidity.

Subdivision 4—Alteration, revocation and revival of wills

16—Alteration of will

(1) No obliteration, interlineation or other alteration made in a will after its execution is valid or has any effect except so far as the words or effect of the will before such alteration are not apparent (unless the alteration is executed in the manner in which a will is required by this Act to be executed).

(2) However, the will with the alteration as part of the will is to be taken to be duly executed if the signature of the testator and the subscription of the witnesses are made in the margin or on some other part of the will opposite or near to the alteration or at the foot or end of or opposite to a memorandum referring to the alteration and written at the end or some other part of the will.

17—Revocation of will

(1) A will or part of a will may be revoked but only—

(a) if the revocation (whether by a will or other means) is authorised by an order under section 6 or 7; or

(b) by the operation of section 18 or 19; or

(c) by a later will; or

(d) by some writing that declares an intention to revoke the will and is executed in the manner in which this Act requires a will to be executed; or

(e) by the testator, or by some person in the testator's presence and at the testator's direction—

(i) burning, tearing or otherwise destroying the will or the part of the will with the intention of revoking it; or

(ii) writing on the will or the part of the will or dealing with the will in such a manner that the Court is satisfied from the state of the will that the testator intended to revoke it.

(2) No will or part of a will may be revoked by a presumption of an intention on the ground of an alteration in circumstances.

18—Effect of marriage or registered relationship on will

(1) Subject to this section, a will is revoked by—

(a) the marriage of the testator; or

(b) the testator commencing a registered relationship.

(2) A will is not revoked by marriage if the will was made in the exercise of a power of appointment when the real or personal property thereby appointed would not in default of such appointment pass to the person's heir executor or administrator, or the person entitled as the person's next of kin under Part 5.

(3) A will made on or after 27 February 1969 that is expressed to be made in contemplation of marriage is not revoked by the solemnisation of the marriage contemplated.

(4) A will made on or after 1 August 2017 that is expressed to be made in contemplation of the registration of a relationship under the *Relationships Register Act 2016* is not revoked by the commencement of the registered relationship contemplated.

19—Effect of end of marriage or registered relationship on will

(1) If, after a will is made, the testator's marriage or registered relationship is ended—

(a) any disposition of a beneficial interest in property by the will in favour of the testator's former spouse or partner is revoked; and

(b) any appointment by the will of the testator's former spouse or partner as an executor, trustee or guardian is revoked; and

(c) any grant by the will of a power of appointment exercisable by, or in favour of, the testator's former spouse or partner is revoked,

and the will is to have effect with respect to the revocation of such a disposition, appointment or grant of a power as if the former spouse or partner had died on the date that the marriage or registered relationship ended.

(2) However, the ending of the testator's marriage or registered relationship does not affect the following:

(a) a disposition or grant of a power in accordance with a contract between the testator and the former spouse or partner under which the testator is or was bound to dispose of property by will in a particular way;

(b) a disposition, appointment or grant of a power where it appears from the terms of the will that the testator intended that the disposition, appointment or grant would have effect despite the ending of the marriage or registered relationship;

(c) a disposition, appointment or grant of a power where if the will is re-executed, or a codicil is made to the will, after the ending of the marriage or registered relationship and the will or codicil shows no intention of the testator to revoke the disposition, appointment or grant.

(3) Nothing in this section affects a right of the former spouse of a testator to make an application under Part 6.

(4) In this section—

partner, in relation to a registered relationship, means either of the parties to the relationship;

spouse includes a party to a purported marriage.

20—Effect of change in testator's domicile

A change of domicile of a testator after the execution of the testator's will does not revoke or invalidate the will or change its construction.

21—Revival of revoked will

(1) A will or part of a will that has been revoked is revived only by—

(a) re-execution of the will; or

(b) execution of a will showing an intention to revive the will or part.

(2) A revival of a will that was partly revoked and later revoked as to the balance only revives that part of the will most recently revoked.

(3) Subsection (2) does not apply if a contrary intention appears in the reviving will.

(4) A will that has been revoked and is later wholly or partly revived is taken to have been executed on the day on which the will is revived.

Division 2—Rectification of wills

22—Rectification of will by order of Court

(1) If the Court is satisfied that a will does not accurately reflect the testamentary intentions of a deceased person, the Court may order that the will be rectified so as to give proper expression to those intentions.

(2) Subject to this section, an application for an order under subsection (1) (a ***rectification order***) must be made within 6 months after the grant of probate or administration.

(3) The Court may, after hearing such of the persons affected as the Court thinks necessary, extend the time for making an application for a rectification order.

(4) An extension of time to make an application may be granted—

(a) on such conditions as the Court thinks fit; and

(b) whether or not the time for making an application for a rectification order has expired.

(5) An application for extension of time under this section must be made before the final distribution of the estate.

(6) Any distribution of any part of the estate made before the application for extension of time must not be disturbed by reason of that application or any order made on the application.

(7) An application for a rectification order is to be taken to be made on the day on which the originating process by which it is commenced is filed in the Court.

(8) A copy of an application for a rectification order must be served on all parties to the proceedings—

(a) within 1 month after the proceedings are commenced; or

(b) within such longer period as the Court may allow.

(9) If the Court makes a rectification order, the Court must direct that a certified copy of the order be made on the probate of the will, or letters of administration of the estate, of the deceased person (and for that purpose the Court may require the production of the grant of probate or administration).

(10) Nothing in this section affects the operation of section 29 of the *Trustee Act 1936*.

Division 3—Construction of wills

23—When will takes effect

(1) A will takes effect with respect to the property disposed of by the will as if it had been executed immediately before the testator's death.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

24—Interests in property will disposes of

If a testator has made a will disposing of property but, after the making of the will and before the testator's death, the testator disposes of an interest in that property, the will operates to dispose of any remaining interest of the testator in that property.

25—When a disposition is not to be rendered inoperative

No conveyance or other act made or done after the execution of a will of or relating to any real or personal property comprised in the will (except an act by which the will is revoked) prevents the operation of the will with respect to such property or interest in that property as the testator had power to dispose of by will at the time of their death.

26—General disposition of land includes leaseholds

(1) A disposition of land of the testator or of land of the testator in any place or in the occupation of any person mentioned in the testator's will or otherwise described in a general manner, and any other general disposition which would describe a leasehold estate if the testator had no freehold estate which could be described by it, is to be construed to include the leasehold estates of the testator or any of the testator's leasehold estates to which such description extends (as the case may be), as well as freehold estates.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

27—What general disposition of property subject to power of appointment includes

(1) A general disposition of real property of the testator in any place or in the occupation of any person mentioned in the testator's will or otherwise described in a general manner in the will—

(a) is to be construed to include any real property or any real property to which the description extends (as the case may be) which the testator has power to appoint in any manner the testator may think proper; and

(b) operates as an execution of that power,

unless a contrary intention appears in the will.

(2) A disposition of personal property of the testator or any disposition of personal property described in a general manner in the will—

(a) is to be construed to include any personal property or any personal property to which the description extends (as the case may be) which the testator has power to appoint in any manner the testator may think proper; and

(b) operates as an execution of that power,

unless a contrary intention appears in the will.

28—Effect of disposition of real property without words of limitation

(1) A disposition of real property by will to a person without words of limitation is to be construed as passing the whole estate or interest of the testator in that property to that person.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

29—What a residuary disposition includes

(1) If—

(a) any real property or interest in real property is included or intended to be included in a disposition in a will; and

(b) the disposition fails or is void because—

(i) the person to whom the disposition is made or intended to be made dies during the lifetime of the testator; or

(ii) disposition is contrary to law or otherwise incapable of taking effect,

that property or interest in the property will be included in the residuary disposition (if any) contained in the will.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

30—How requirements to survive with issue are to be construed

(1) If a disposition of property to a person under a will uses the words "die without issue", "die without leaving any issue", "have no issue" or any other words that may import—

(a) a want or failure of issue of that person either in the person's lifetime or at their death; or

(b) an indefinite failure of issue of that person,

the words used are to be construed to mean a want or failure of issue in the person's lifetime or at the person's death and not an indefinite failure of their issue (unless a contrary intention appears in the will by reason of that person having a prior estate tail or of a preceding gift being without any implication arising from such words of limitation of an estate tail to that person or issue or otherwise).

(2) This section does not extend to cases where the words mentioned in subsection (1) import if no issue described in a preceding gift is born or if there is no issue who lives to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

31—Disposition to children or other issue who leave issue living at testator's death does not lapse

(1) If a person who is a child or other issue of the testator to whom any property disposed of by will is not determinable at or before the death of that person—

(a) dies during the lifetime of the testator leaving issue; and

(b) any such issue of that person is living at the time of the testator's death,

that disposition has effect as if the will had provided for that property to pass to the issue of that person.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

32—Construction of dispositions of real property to trustee or executor

(1) If any real property is disposed of by will to a trustee or executor, that disposition is to be construed to pass the whole estate or interest (whether the fee simple or any other estate or interest) which the testator had power to dispose of by will in that property unless a definite term of years absolute or determinable or an estate of freehold is thereby given to the trustee or executor expressly or by implication.

(2) If any real property is disposed of by will to a trustee without any express limitation of the estate to be taken by the trustee and—

(a) the beneficial interest in the property, or in the surplus rents and profits of the property, is not given to any person for life; or

(b) the beneficial interest in the property, or in the surplus rents and profits of the property, is given to any person for life but the purposes of the trust may continue beyond the life of that person,

that disposition is to be construed to vest in the trustee the whole legal estate (whether the fee simple or any other estate) which the testator had power to dispose of by will in that real property and not an estate determinable when the purposes of the trust are satisfied.

33—Disposition of estates tail do not lapse

(1) If—

(a) a person to whom any real property disposed of by will for an estate tail or an estate in quasi entail dies during the lifetime of the testator leaving issue who would be heritable under the entail; and

(b) any such issue are living at the time of the testator's death,

the disposition does not lapse but takes effect as if the death of that person had happened immediately after the death of the testator.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

34—Effect of referring to valuation in will

If a will refers expressly or by implication to a valuation made or accepted for the purpose of assessing succession duty or any other form of death duty, that reference is, if the valuation contemplated by the reference is not required under the law of this State or of any other place, to be construed as if it were a reference to a valuation made by a competent valuer.

Division 4—Wills made outside the State

35—Interpretation

In this Division, unless the contrary intention appears—

country means any place or group of places having its own law of nationality (including Australia and its territories);

internal law in relation to any country or place means the law which would apply in a case where no question of the law in force in any other country or place arose;

place means any territory (including a State or Territory of Australia);

statutory will means a will executed by virtue of a statutory provision on behalf of a person who, at the time of execution, lacked testamentary capacity.

36—Application of system of law

(1) If under this Act the internal law in force in any country or place is to be applied in the case of a will, but there are in force in that country or place 2 or more systems of internal law relating to the formal validity of wills, the system to be applied must be ascertained as follows:

(a) if there is in force throughout the country or place a rule indicating which of those systems can properly be applied in the case in question—that rule must be followed;

(b) if there is no such rule—the system will be that with which the testator was most closely connected at the relevant time (and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at the testator's death and the time of execution of the will in any other case).

(2) In determining for the purposes of this Act whether or not the execution of a will conformed to a particular law, regard must be had to the formal requirements of that law at the time of execution, but this does not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

(3) If (whether in pursuance of this Act or not) a law in force outside this State falls to be applied in relation to a will, any requirement of that law by which special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, will be treated, despite any rule of that law to the contrary, as a formal requirement only.

37—General rule as to formal validity

Despite any other provision of this Act, a will executed outside this State is to be treated as properly executed for all purposes if its execution conformed to the internal law in force in the place where it was executed, or in the place where, at the time of its execution or of the testator's death, the testator was domiciled or had their habitual residence, or in a country of which, at either of those times, the testator was a national.

38—Additional rules as to validity

Without limiting the generality of section 37, the following wills executed outside this State are to be treated as properly executed for the purpose of being admitted to probate in this State:

(a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(b) a will so far as it disposes of immovable property if its execution conformed to the internal law in force in the country or place where the property was situated;

(c) a will so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;

(d) a will so far as it exercises a power or appointment if the execution of the will conformed to the law governing the essential validity of the power.

39—Validity of statutory wills made outside State

A statutory will made according to the law of the place where the deceased was resident at the time of execution will be regarded as a valid will of the deceased.

40—Operation of international wills provisions not limited by this Division

This Division does not limit the operation of Division 5.

Division 5—International wills

41—Application of Convention

The Annex to the Convention set out in Schedule 1 has the force of law in this jurisdiction.

42—Persons authorised to act in connection with international wills

(1) For the purposes of this Division, the following persons are authorised to act in connection with an international will:

(a) an Australian legal practitioner;

(b) a public notary of any Australian jurisdiction.

(2) For the purposes of this Division, a reference in the Annex to the Convention to a person authorised to act in connection with international wills is a reference to—

(a) a person referred to in subsection (1) who is acting in Australia; or

(b) any other person who is acting as an authorised person under the law of a country (other than Australia) that is a party to the Convention.

Note—

This section gives effect to Articles II and III of the Convention.

43—Witnesses to international wills

The conditions requisite to acting as a witness to an international will are governed by the law of this jurisdiction.

44—Application of Act to international wills

To avoid doubt, the provisions of this Act that apply to wills extend to international wills.

Division 6—Deposit of and access to wills

45—Will may be deposited with Registrar

(1) A person may deposit a will with the Registrar.

(2) The deposit of a will under this section must be done in accordance with the rules.

46—Delivery of wills by Registrar

(1) If a will has been deposited with the Registrar under this Act, the testator may at any time apply in writing to the Registrar to be given the will or to have the will given to another person authorised by the testator in writing to receive it.

(2) On receiving the application, the Registrar must give the will to the testator or the person authorised by the testator unless the testator is a minor or a person who lacks testamentary capacity.

(3) If a will has been deposited with the Registrar under this Act and the testator has died, any executor named in the will or any person entitled to apply for letters of administration with the will annexed may apply to the Registrar to be given the will.

(4) On receiving the application referred to in subsection (3), the Registrar must give the will to the executor or other person or to an Australian legal practitioner or trustee company nominated by the executor or person.

(5) The Registrar may examine any will to enable the Registrar to comply with this Part.

(6) The Registrar must ensure that an accurate copy of every will given to a person under this section is made and retained by the Registrar.

(7) If there is any doubt as to whom a will should be given, the Registrar, or any other person, may apply to the Court for directions as to whom the Registrar should give the will.

47—Failure to retain does not affect validity of will

Any failure of the Registrar to retain a will as required by this Act does not affect the validity of the will.

48—Persons entitled to inspect will of deceased person

(1) A person who has possession or control of a will of a deceased person must allow any 1 or more of the following persons to inspect or be given copies of the will (or both) (at their own expense):

(a) a person named or referred to in the will (whether as a beneficiary or not);

(b) a person named or referred to in an earlier will as a beneficiary of the deceased person;

(c) the surviving spouse, domestic partner or child or stepchild of the deceased person;

(d) a former spouse or domestic partner of the deceased;

(e) a parent or guardian of the deceased person;

(f) a person who would be entitled to a share of the estate of the deceased person if the deceased person had died intestate;

(g) a parent or guardian of a minor referred to in the will or who would be entitled to a share of the estate of the testator if the testator had died intestate;

(h) a person committed with the management of the deceased person's estate under the *Guardianship and Administration Act 1993* immediately before the death of the deceased person.

(2) A person who has possession or control of a will of a deceased person must produce it in a court if the court requires the person to do so.

(3) The Court may, on application by a person (including a creditor) who has or may have a claim at law or in equity against the estate of a deceased person, make an order requiring a person who has possession or control of a will of the deceased person to allow the applicant to inspect the will.

(4) The Court must, before making an order under subsection (3), be satisfied that—

(a) the applicant has a proper interest in the matter; and

(b) inspection of the will by the applicant is appropriate in the circumstances.

(5) In this section—

will includes a revoked will, a document purporting to be a will, a part of a will and a copy of a will.

Part 3—Probate and administration

Division 1—Interpretation

49—Interpretation

In this Part, unless the contrary intention appears—

administrator means a person to whom administration has been granted;

deliver includes pay;

testamentary jurisdiction—see section 3.

Division 2—Granting and revoking of probate and administration

Subdivision 1—Court's practice in testamentary jurisdiction

50—Practice of Court

Except as otherwise provided by the rules, the practice of the Court in its testamentary jurisdiction will be according to the practice of the Court in its jurisdiction under section 5 of the *Administration and Probate Act 1919* and section 18 of the *Supreme Court Act 1935* immediately before the commencement of this Act.

Subdivision 2—Registrar of Probates

51—Registrar of Probates

(1) The office of Registrar of Probates continues in existence.

(2) There will be such deputy or acting Registrars of Probate and other officers as may be necessary for the proper administration of this Act.

(3) A person is not eligible for appointment as the Registrar or a deputy or acting Registrar unless the person is a legal practitioner of at least 5 years standing.

(4) A person may not be appointed as the Registrar or as a deputy or acting Registrar except on the recommendation of the Chief Justice.

(5) 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.

52—Registrar's powers and authorities

The Registrar has the same powers and authorities with respect to proceedings in the Court as immediately before the commencement of this Act.

53—Exercise by Registrar of jurisdiction, powers or authorities of Court

(1) The Registrar may, to the extent authorised by the rules, exercise the jurisdiction, powers and authorities of the Court whether arising under this Act or otherwise.

(2) Subject to the rules, an appeal lies 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.

54—Probate of will deposited with Registrar

(1) If a testator whose will is deposited with the Registrar dies, any executor of the will may apply for probate of the will.

(2) An application for a grant of probate under this section must be made in accordance with the rules.

(3) On application made in accordance with the rules, the Registrar may grant probate of the will to the executor.

55—Registrar to obtain direction of Judge in doubtful case

(1) If the Registrar has doubt—

(a) as to whether probate or administration should be granted in a particular case; or

(b) whether the Registrar should exercise a power or discretion relating to the Registrar's office in any particular case,

the Registrar may obtain the direction of a Judge.

(2) If the Registrar obtains the direction of a Judge, the Registrar must act in accordance with the direction (and the Registrar is subject in all cases to the control and orders of the Court).

Subdivision 3—General provisions relating to granting and revoking of probate and administration

56—Grant of probate or administration to adults only

A grant of probate or administration may not be made to a person under the age of 18 years.

57—Effect of probate and administration granted interstate or overseas

(1) If an interstate grant of probate or administration is produced to the Registrar and a copy of it is deposited with the Registrar, the Registrar may register that grant and once so registered—

(a) that grant of probate or administration has the same force, effect and operation as if it had been originally granted by the Court; and

(b) subject to this Act, every executor or administrator under that grant of probate or administration has, the same rights and powers, and must perform the same duties and be subject to the same liabilities, as if the probate or administration had been originally granted by the Court.

(2) If a foreign grant of probate or administration is produced to the Registrar and a copy of it is deposited with the Registrar, that grant of probate or administration may be sealed with the seal of the Court and once so sealed—

(a) that grant of probate or administration has the same force, effect and operation as if it had been originally granted by the Court; and

(b) subject to this Act, every executor or administrator under that grant of probate or administration has, the same rights and powers, and must perform the same duties and be subject to the same liabilities, as if the probate or administration had been originally granted by the Court.

(3) For the purposes of this section, a foreign grant of probate or administration includes any document that the Registrar is satisfied—

(a) was issued by a court of competent jurisdiction of the relevant country; and

(b) corresponds, according to the law of that country, to probate of a will or to an administration in this State.

(4) For the purposes of subsection (3), the Registrar may accept—

(a) a certificate from a consul or consular agent in this State of the relevant country; or

(b) such other evidence as the Registrar considers sufficient.

(5) For the avoidance of doubt, it is not necessary for an interstate grant of probate or administration to be sealed by the Court.

(6) In this section—

administration includes exemplification of letters of administration and such other formal evidence of letters of administration purporting to be under the seal of a court of competent jurisdiction that the Registrar considers sufficient;

probate includes exemplification of probate and any other formal document purporting to be under the seal of a court of competent jurisdiction that the Registrar considers sufficient.

58—Provisions for evidence in case of foreign will

(1) If an application for probate or administration with the will annexed is made in relation to a foreign will and the application is not contentious, the Court may—

(a) grant probate or administration on the consul or consular agent in this State for the relevant country, or any other person acquainted with the law of the relevant 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 relevant country in support of the will and in proof of the law affecting the validity of the will.

(2) The provisions of the law for the time being in force with regard to commissions issued from the Court in actions depending on commissions will, so far as applicable, apply to commissions issued under this section.

59—Appointment of joint administrators

The Court may grant administration to more than 1 person.

60—Examination of witnesses

(1) The Court may—

(a) require the attendance of a person the Court thinks fit to examine, or cause to be examined, in any proceedings in respect of testamentary matters; and

(b) examine orally, or cause to be examined orally, parties and witnesses under oath; and

(c) either before or after, or with or without such examination, cause any party or witness to be examined on interrogatories, or receive their affidavits or solemn affirmations (as the case may be).

(2) The Court may issue a subpoena to compel a person to attend the Court for examination under subsection (1).

61—Order to produce document purporting to be testamentary

(1) The Court may, whether or not any proceedings are pending in the Court with respect to probate or administration, issue a subpoena ordering a person to produce a document being or purporting to be testamentary which is shown to be in the possession of or under the control of that person.

(2) A subpoena issued under subsection (1) may, instead of providing for production of a document before the Court, provide for the production of the document to an officer of the Court nominated in the subpoena.

(3) If it is not shown that a document being or purporting to be testamentary is in the possession of or under the control of the person, but it appears that there are reasonable grounds for believing that the person has knowledge of such a document, the Court may, by subpoena, order the person to attend the Court for the purpose of being examined on oath in open court, or before a Judge in chambers, or on interrogatories, about the document.

(4) The costs of any proceedings under this section are in the discretion of the Court.

62—Caveats

(1) A caveat against the grant of probate or administration may be lodged in the Probate Registry of the Court.

(2) Except as otherwise provided by this Act or the rules, the practice and procedure with respect to caveats against the grant of probate or administration will correspond with the practice and procedure with respect to caveats in use in the Court immediately before the commencement of this Act.

63—When persons interested in real property affected by a will are to be served with proceedings

(1) If, in the case of a will that affects real property—

(a) proceedings are taken under this Act—

(i) for proving the will in solemn form; or

(ii) for revoking the grant of probate of the will on the ground of the invalidity of the will; or

(b) the validity of the will is disputed in a contentious cause or matter under this Act,

the devisees and other persons having or pretending interest in the real property affected by the will must, unless the Court otherwise directs, be served with the proceedings 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 that real property in the same manner as the next of kin or others having or pretending interest in personal property affected by a will are served.

(2) However—

(a) in a case in which the Court is not satisfied that the deceased was at the time of death seized of, or entitled to, or had power to appoint by will some real property beneficially; or

(b) in a case in which the will propounded, or of which the validity is in question, would not in the opinion of the Court, though established as to personal property, affect real property,

it is not necessary that any person having or pretending interest in the real property of the deceased be served with the proceedings.

(3) In—

(a) a case referred to in subsection (2); or

(b) a 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 serving with the proceedings the persons interested in real property provided that the probate, decree or order of the Court does not in any case affect any person in respect of their interest in real property, unless that person has been served with, or been made a party to, the proceedings, or derives title under or through a person who has been served with, or been made a party to, the proceedings.

64—Grant of administration to duly authorised attorney

If a person who is entitled to be granted probate or administration is outside the State, the person may, by power of attorney, appoint the Public Trustee or a person within the State to act for them, and administration may be granted to the Public Trustee or the other person on behalf of the person who appointed them on such terms and conditions as the Court thinks fit.

65—After grant of administration no person to have power to sue as executor

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

66—Rights of executor renouncing, not acting, or not appearing when cited, to cease as if not named in will

If—

(a) a person renounces probate of the will of which the person is appointed executor or 1 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 but does not appear to the citation,

the right of that person or executor in respect of the executorship wholly ceases, and the representation of the testator and the administration of the testator's estate will and may, without any further renunciation, go, devolve and be committed in the same manner as if the person had not been appointed executor.

67—Grant of probate or administration to person other than the person otherwise entitled

(1) If the Court considers it appropriate—

(a) for the proper administration of the estate of a deceased person; and

(b) in the interests of the persons who are, or may be, interested in the estate of the deceased person,

to grant probate of the deceased person's will or administration of the deceased person's estate to a person other than the person, or all of the persons, otherwise entitled to the grant of probate or administration, the Court may instead, on application, grant probate or administration to—

(c) without limiting paragraph (b), if there is more than 1 person entitled to the grant—any or all of the other persons entitled; or

(d) any person the Court considers appropriate.

(2) If the Court considers that there are reasonable grounds for believing that a person otherwise entitled to a grant of probate of the will of a deceased person or administration of the estate of a deceased person has committed an offence relating to the deceased person's death, the Court may instead of granting probate or administration to that person, grant probate or administration to—

(a) without limiting paragraph (b), if there is more than 1 person entitled to the grant—any or all of the other persons entitled; or

(b) any person the Court considers appropriate.

(3) An application for a grant of probate or administration under this section must be made in accordance with the rules.

(4) The Court may make a grant of probate or administration under this section subject to such conditions that the Court thinks appropriate (but may not require any surety in relation to the grant).

68—Special administration

(1) If at the expiration of 12 months from the death of a person—

(a) the executor to whom probate of the will of the deceased person has been granted; or

(b) the administrator to whom administration of the estate of the deceased person has been granted,

(the ***original executor or administrator***) is residing outside this State, the Court may grant a person special administration limited to the collection, management and distribution of the estate of the deceased person.

(2) A grant of special administration may only be made to—

(a) a person who was the spouse or domestic partner of the deceased; or

(b) a person who is the next of kin of the deceased; or

(c) a creditor of the deceased; or

(d) a person interested under the will; or

(e) the Public Trustee,

on application by that person.

(3) A person applying for a grant of special administration must, in addition to the oath usually taken by administrators—

(a) make oath that the original executor or administrator is resident outside this State; and

(b) if the applicant is not the Public Trustee—make oath that the person is, by reason that the original executor or administrator is outside the State, delayed in recovering or obtaining the payment of money or the possession of the estate to which the person is by law entitled.

(4) If the original executor or administrator returns to this State, the original executor or administrator may apply to the Court for an order revoking the grant of special administration.

(5) If the Court is satisfied that the original executor or administrator intends, in good faith, to remain within this State until the estate of the deceased has been duly administered, the Court may order the revocation of the grant of special administration on such terms and conditions as to security, costs or otherwise as seems reasonable to the Court.

(6) If the Court makes an order revoking a grant of special administration, the special administrator must duly account to the original executor or administrator and pay over and deliver all goods and money received by the special administrator, and transfer all lands vested in the special administrator, then remaining undisposed of.

(7) If the original executor or administrator returns to this State but fails to apply for an order revoking the grant of special administration, the original executor or administrator is, despite the grant of special administration remaining in effect, liable to answer and make good all claims and demands against the estate of the deceased to the extent of the assets that have come to the hands of the original executor or administrator, or that might have come to the hands of the original executor or administrator but for the wilful failure or default of the original executor or administrator.

69—Revocation of grant of probate or administration not to prejudice legal action

(1) If, before the revocation of a grant of probate or administration, proceedings are commenced against the executor or administrator who obtained the grant, the Court in which such proceedings are pending may order the revocation of the probate or administration, and the grant of any probate or administration which has been made consequent on the proceedings, to be notified on the record.

(2) If, before the revocation of a grant of special administration, proceedings are commenced against the administrator who obtained the grant, the Court in which such proceedings are pending may order the revocation of the special administration, and the grant of any administration which has been made consequent on the proceedings, to be notified on the record.

(3) On an order being made under this section, the proceedings will continue in the name of, or against, the new or original executor or administrator as if the proceedings had been originally commenced by or against the new or original executor or administrator, subject to such conditions and variations (if any) as the Court directs.

70—Protection to persons acting in reliance on probate or administration

(1) The revocation of a grant of probate or administration made under this Act does not render the executor or administrator liable for any prior act done by the executor or administrator in good faith and in reliance on the grant of probate or administration.

(2) Subject to this Act, if a person acting in good faith and in reliance on a grant of probate or administration made under this Act, deals with an asset of the estate of a deceased person, the person incurs no personal liability by so doing despite that the grant of probate or administration may subsequently prove to be invalid or be revoked.

(3) This section does not affect the rights that may lie against a 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.

71—Statement of assets and liabilities to be provided with application for probate or administration

(1) A person who applies—

(a) for a grant of probate or administration; or

(b) for the sealing of any grant of probate or administration made by a court outside Australia,

in respect of the estate of a deceased person must, in accordance with the rules, disclose to the Court the assets and liabilities of the deceased known to the person at the time of making the application.

(2) If an interstate grant of probate or administration is registered under section 57, the executor or administrator must, in accordance with the rules, disclose to the Court the assets and liabilities of the deceased person known to the executor or administrator at the time that the grant was registered.

(3) An executor, administrator or trustee of the estate of a deceased person (being an estate in respect of which a grant of probate or administration has been made, registered or sealed by the Court) must, 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 the knowledge of the executor, administrator or trustee while acting in that capacity.

(4) An executor or administrator acting under an interstate grant of probate or administration that has been registered under section 57 is not required to disclose assets located outside this State or liabilities that arose outside this State.

(5) If the deceased person was not, at the time of death, domiciled in Australia, the disclosure under subsection (1) or (3) 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.

(6) For the purposes of subsection (5), 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.

(7) An executor, administrator or trustee of an estate must not dispose of an asset of the estate of a deceased person in respect of which disclosure has not been made to the Court under this section.

(8) Nothing in subsection (5) affects the interests of a person who acquires an asset of a deceased estate in good faith for valuable consideration and without knowing that the asset has not been disclosed to the Court under this section.

(9) 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 the person's 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 the person's death,

but does not include a reference to any asset or liability prescribed by the rules.

(10) 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.

72—Obligation of person dealing with asset to ensure that it has been properly disclosed

A person who deals with an asset of the estate of a deceased person that is required to be disclosed under section 71 must satisfy themself—

(a) by examination of the grant of probate or administration; or

(b) by examination of the Registrar's certificate; or

(c) on the basis of some other reliable evidence,

that the asset has in fact been so disclosed.

Subdivision 4—Small estates

73—Deemed grant of probate or administration to Public Trustee for small estate

(1) For the purposes of this section, the ***maximum monetary value*** of property comprising a deceased person's estate is—

(a) $100 000; or

(b) such other amount—

(i) as may be fixed by the Minister by notice in the Gazette from time to time; or

(ii) as may be calculated in accordance with a formula or methodology determined by the Minister by notice in the Gazette from time to time.

(2) If—

(a) a person dies leaving personal property not exceeding the maximum monetary value; and

(b) the deceased person's estate consists only of personal property; and

(c) no application for a grant of probate or administration has been made in respect of the deceased person's estate; and

(d) the Public Trustee could apply for an administration order under section 9 of the *Public Trustee Act 1995* in respect of the deceased person's estate,

the Public Trustee may, by notice in the Gazette, give notice of the Public Trustee's intention to administer the estate under this section in accordance with the rules.

(3) The Public Trustee must, as soon as practicable after giving notice under subsection (2)—

(a) cause a copy of the notice to be published on a website approved by the Minister; and

(b) file the deceased person's will (if any exists) with the Registrar.

(4) On the expiry of 14 days after the publication of the notice under subsection (2), the Public Trustee will be taken to have been granted—

(a) if the deceased person died leaving a will—probate of the will of the deceased person; or

(b) in any other case—administration of the estate of the deceased person.

(5) The Court may, on application by the Public Trustee or a person interested in the estate of the deceased person, make an order revoking the Public Trustee's administration of the estate under this section.

(6) If, in the course of administering an estate under a deemed grant of probate or administration under this section, the value of the estate is found to exceed 120% of the maximum monetary value, the Public Trustee must as soon as practicable, apply for a grant of probate or administration in respect of the estate.

(7) This section does not affect the right of any person to recover the whole or part of any payment made or property delivered under this section from any person who received it from the Public Trustee.

Part 4—Administration of deceased estates

74—Interpretation

In this Part, unless the contrary intention appears—

administrator means a person to whom administration has been granted;

deliver includes pay;

testamentary jurisdiction—see section 3.

75—Vesting of intestate estate on person's death

If a person dies wholly or partially intestate, the person's estate, in so far as it is not affected by a will, vests in the Public Trustee from the time of the person's death until administration is granted in respect of the estate.

76—Vesting of land on person's death

(1) On the death of a person, any land forming part of the estate of the person will, subject to any mortgage, trust or equity affecting the land—

(a) in the case of land disposed of by will—

(i) if there is only 1 executor under the will—vest in that executor; or

(ii) if there is more than 1 executor under the will—vest jointly in the executors;

(b) in the case of undevised land—vest in the Public Trustee in accordance with section 75.

(2) Land vested under subsection (1)(a), and any proceeds of the sale of the land, are assets in the hands of the executor and are disposable and distributable for the payment of debts and liabilities of the deceased as if the land had been a chattel real forming part of the deceased person's estate.

(3) This section does not affect the order in which, as between persons claiming under the deceased, the assets of the deceased person's estate are liable for the payment of debts or legacies, nor is this section to be taken to impose any charge on land for the payment of legacies.

77—Vesting of intestate estate on grant of administration

(1) On the grant of administration of a deceased person's estate, the estate that vested in the Public Trustee at the time of the person's death under section 75—

(a) if the grant is made to 1 person—vests in that person;

(b) if the grant is made to more than 1 person—vests jointly in those persons.

(2) Any undevised land vested under subsection (1), and any proceeds of the sale of the land, are assets in the hands of the administrator and are disposable and distributable for the payment of debts and liabilities of the deceased as if the land had been a chattel real forming part of the deceased person's estate.

(3) This section does not affect the order in which, as between persons claiming under the deceased, the assets of the deceased person's estate are liable for the payment of debts or legacies, nor is this section to be taken to impose any charge on land for the payment of legacies.

78—Administrator to hold intestate 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 Part 5.

(2) Subject to Part 5, the administrator may sell, or convert into money, the whole or any part of an intestate estate.

79—Court's powers in relation to management of undevised land

(1) The Court may, from time to time, on application, give directions relating to the management of undevised land.

(2) An application for directions may be made by an executor or administrator or a person beneficially interested in the undevised land.

(3) The Court may direct the course of proceedings to be taken with respect to—

(a) the time and mode of sale of the land; and

(b) the letting and management of the land until its sale; and

(c) the application for maintenance or advancement or otherwise of shares or interests of minors; and

(d) the expediency and mode of effecting a partition of the land (if applied for),

and generally with respect to the administration of the property for the greatest advantage of all persons interested.

(4) The Court must, before giving directions under this section—

(a) ensure that notice of the application has been given as prescribed by the rules; and

(b) make such inquiries as the Court thinks fit.

80—Court may order partition of undevised land

(1) If, after such inquiries as the Court thinks fit, the Court is satisfied that a partition of undevised land would be advantageous to the parties interested, the Court may appoint 1 or more arbitrators to effect a partition of the land and to exercise, under the direction and control of the Court, powers similar to those of commissioners acting under a decree for partition.

(2) On the report and final award of the arbitrators setting out the particulars of the land allotted to each party interested, the executor or administrator in which the land is vested must convey or transfer the land in accordance with the report and final award.

81—General duties of executors and administrators

(1) An executor or administrator has the following general duties:

(a) to collect the deceased person's estate and administer it according to law;

(b) to deliver up the grant of probate or administration to the Court when required to do so by the Court;

(c) to distribute the deceased person's estate, subject to administration by the executor or administrator, as soon as practicable.

(2) Subsection (1) does not limit any other duty to which an executor or administrator may be subject under this Act or any other Act or law, or in equity.

82—Power of executor or administrator to sell real property for payment of debts

(1) An executor or administrator may sell real property forming part of a deceased estate for the payment of any debts of the estate.

(2) A person who purchases real property forming part of a deceased estate from the executor or administrator is not required to inquire as to the existence of debts, the necessity for sale or the application of the purchase money.

83—Payment of debts and liabilities in the case of solvent estates

(1) Subject to this Act, if the estate of a deceased person is sufficient to pay all its debts and liabilities, the estate will be applicable towards the discharge of debts and liabilities payable out of the estate in the following order:

(a) from personal or real property specifically appropriated, devised, bequeathed, directed to be sold (either by a specific or general description) or subject to a charge for the payment of a debt or liability of the estate;

(b) from personal and real property comprising the residuary estate and property in relation to which a disposition in the deceased's will operates as the exercise of a general power of appointment;

(c) from personal and real property specifically devised or bequeathed, including property specifically appointed under a general power of appointment and any legacy charged on the property devised, bequeathed or appointed.

(2) For the purposes of subsection (1)—

(a) property must be applied to the discharge of the estate's debts and liabilities rateably according to value; and

(b) if specific property is applied to the payment of a debt or liability of the estate and a legacy is charged on that property—

(i) the legacy and the property must be applied rateably according to the value of the property; and

(ii) the value of that property must be reduced by the amount of the legacy charged on it.

(3) This section does not apply if a contrary intention appears in the deceased person's will.

84—Mortgages and charges on land not be paid out of deceased's residuary or personal estate

(1) If, on a person's death—

(a) the person is seized of, or is entitled to, real property charged with a property debt; and

(b) the person has not (whether by their will, a deed or any other document) signified a contrary or other intention,

a person who becomes beneficially entitled to that property through the deceased person is not entitled to have the property debt satisfied out of any other property (whether real or personal) forming part of the estate of the deceased person, and the property charged with the property debt is, as between different persons claiming through or under the deceased person, primarily liable for the payment of the property debt with which it is charged, and each part of the property, according to its value, is to bear a proportionate part of the property debt.

(2) For the purposes of subsection (1), a contrary or other intention must be signified expressly and by distinct reference to the money charged, and is not to be taken to be signified by a direction for payment of debts out of, or a charge of debts on—

(a) personal property; or

(b) residuary real and personal property; or

(c) residuary real property,

forming part of the estate of the deceased person.

(3) Nothing in this section affects the right of a person entitled to real property charged with a property debt to obtain payment for, or satisfaction of, the property debt out of personal property forming part of the deceased person's estate or otherwise.

(4) In this section—

property debt, in relation to land, means a mortgage or any charge (whether legal or equitable), and includes a lien for unpaid purchase money.

85—Specialty and simple contract debts of deceased persons to stand in equal degree

(1) Despite any Act or law to the contrary, no debt or liability of a deceased person is entitled to priority or preference by reason only of the fact that the debt or liability is secured or arises under a bond, deed or other instrument under seal or is otherwise made or constituted a specialty debt rather than a debt under a simple contract, and all the creditors of the person are to be treated as standing in equal degree and are to be paid accordingly out of the assets (whether legal or equitable) of the deceased person.

(2) This section does not affect any lien, charge or other security that a creditor holds or is entitled to for the payment of debt.

86—Filing of declaration that estate is insufficient to pay debts and liabilities

(1) An executor, administrator or creditor of a deceased person may file with the Registrar a declaration that the executor, administrator or creditor (as the case may be) believes that the estate of the deceased person is insufficient for the payment of its debts and liabilities.

(2) If a declaration is filed by a creditor under subsection (1) and probate or administration has been granted, the creditor must give the executor or administrator a copy of the declaration with a memorandum of the date on which it was filed.

(3) If probate or administration is granted after a creditor has filed a declaration under subsection (1), the Registrar must, on issuing the grant of probate or administration, give the executor or administrator a copy of the declaration with a memorandum of the date on which it was filed.

(4) After a declaration under subsection (1) has been filed by an executor or administrator or a copy of a declaration filed by a creditor has been given to the executor or administrator, the executor or administrator must administer the deceased estate, in so far as it concerns the payment of liabilities, in the same manner (as far as practicable) as it would have been administered for the benefit of creditors under a decree of the Court.

(5) The Court may, on the application (with or without notice) of the executor or administrator, order that any action against the executor of administrator must not proceed beyond judgment without the permission of the Court.

(6) In this section—

creditor includes a person entitled to make a claim against the estate under section 87.

87—Rules in insolvency administration to prevail in certain cases

(1) If—

(a) the Public Trustee is the administrator of a deceased estate pursuant to an order under section 9 of the *Public Trustee Act 1995* and the estate has been found to be insufficient to pay the debts and liabilities of the deceased person; or

(b) a declaration that the estate of a deceased person is insufficient for the payments of the debts and liabilities of the deceased person has been filed under section 86 and probate or administration has been granted in respect of the estate; or

(c) the estate of a deceased person is being administered by the Court and the estate has been found to be insufficient to pay the debts and liabilities of the deceased person,

the same rules are to apply 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 would, in a case referred to in subsection (1), be entitled to prove for and receive dividends out of the estate of the deceased person may come in under the administration of the estate and make such claims against the estate as they may respectively be entitled to by virtue of this Act.

88—How estate is to be administered

In an administration of a deceased estate by the Court, by the Public Trustee under section 9 of the *Public Trustee Act 1995* or by an executor or administrator under section 86, the following provisions apply:

(a) the executor or administrator has no right of retainer;

(b) a creditor who has at any time obtained judgment against the executor or administrator does not, by reason of the judgment, have any priority over other creditors;

(c) subject to this Act, legal assets are to be administered in the same way as equitable assets.

89—Court may order sale of property belonging to minor

(1) The Court may, on application, order the sale of any real or personal property or part of it (whether or not specifically devised or bequeathed) that belongs to a minor or to which a minor is beneficially entitled if the Court considers it for the benefit of the minor that the sale should be effected.

(2) An application under this section may be made by—

(a) an executor, administrator or trustee in whom the property is vested; or

(b) a guardian of the estate; or

(c) the next friend of the minor.

90—Court may give permission to postpone realisation or carry on business

(1) The Court may, if it considers it beneficial to do so, 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 as the Court from time to time thinks expedient, the business or affairs of the testator or intestate, and for that purpose to use the estate of the testator or intestate, or such portion of it as the Court directs.

(2) An executor, administrator or trustee acting in accordance with the Court's permission under this section is not answerable for any consequent loss, except in the case of breach of trust, negligence or wilful default.

(3) An order under this section may be made either with or 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.

91—Administrator to pay over money and deliver property to Public Trustee

(1) If an administrator is possessed of or entitled to any real or personal property in this State belonging to a person who lacks legal capacity, the administrator must deliver, convey or transfer that property to the Public Trustee immediately after the expiry of 1 year from the date of the death of the testator or intestate, or within 6 months after such sooner time as the property or portion of it is available for that purpose has been sold, realised, collected or got in.

(2) However, the Court may, on application by an administrator or proposed administrator, if satisfied on the basis of evidence by affidavit that it would be beneficial or expedient to do so, order that—

(a) any administrator or proposed administrator is not bound to comply with subsection (1); or

(b) any administrator or proposed administrator is not bound to comply with subsection (1) until such time as is specified in the order.

(3) The time specified in an order under subsection (2) may be extended by the Court by subsequent order made on application by the administrator or proposed administrator.

(4) An order under this section may be obtained without notice to any interested party.

(5) An order under subsection (2)(a) may be granted despite the fact that an order under subsection (2)(b) has already been made.

(6) If the Court so directs, an order under this section has the effect of discharging the administrator from further responsibility in respect of the property to which the order relates.

(7) The Public Trustee or any person interested may apply to the Court to require the administrator or proposed administrator to appear before the Court to show cause why an order made under this section should not be set aside and the Court may set aside or vary the order, or make such other order, as seems best to the Court.

(8) The Public Trustee must, after receiving property under this section, administer the property according to law and in accordance with any will affecting the property.

(9) Subject to the provisions of any will or instrument of trust, the Public Trustee may, if satisfied that it would be advantageous to the beneficiaries, authorise the sale of any trust property not exceeding $4 000 in value to the administrator, or to the administrator jointly with any other person, despite the fact that the property has not been offered for sale by public auction or otherwise.

(10) Subject to the provisions of any will or instrument of trust, the Public Trustee may, in the Public Trustee's discretion, realise or postpone the realisation of any property received by the Public Trustee under this section.

(11) The delivery, conveyance or transfer of property to the Public Trustee under this section discharges the administrator from any further responsibility in relation to that property.

(12) This section does not apply to—

(a) an administrator acting under an interstate or foreign grant of probate or administration registered or sealed under section 57; or

(b) an administrator that is a limited company incorporated, or taken to be incorporated, under the *Corporations Act 2001* of the Commonwealth and is acting as administrator pursuant to powers granted to the company by any Act.

92—Statement and account to be provided to Public Trustee

(1) An administrator must—

(a) within 6 months after administration has been granted; or

(b) within such longer period as the Public Trustee may, on the application of the administrator, allow,

provide the Public Trustee with a statement and account, verified by the administrator by statutory declaration, of all of the estate of the deceased and of the administration of it by the administrator.

(2) This section does not apply if 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 pursuant to powers granted to the company by any Act.

93—Court may order provision of statement and account

The Court may at any time—

(a) on the application of the Public Trustee or a person interested in the estate of a deceased person; or

(b) on the Court's own initiative,

order an administrator of a deceased estate to provide the Public Trustee with a statement and account, verified by the administrator by statutory declaration, of all of the estate of the deceased and of the administration of it by the administrator.

94—Proceedings to compel provision of statements and account

(1) If an administrator—

(a) fails to comply with section 92(1); or

(b) fails to comply with an order made under section 93 within 1 month after the time allowed by the Court,

the Public Trustee or any person interested in the estate of the deceased person may apply to the Court to require the administrator to appear before the Court to show cause why the administrator should not provide the statement and account to the Public Trustee immediately.

(2) If an administrator who has required by the Court to appear before the Court—

(a) fails to appear as required by the Court; or

(b) fails to show cause why the administrator should not provide a statement and account to the Public Trustee immediately,

the Court may from time to time order the administrator to provide the statement and account to the Public Trustee immediately or within such further time as the Judge thinks fit to allow.

95—Public Trustee, executors, administrators and trustees may obtain judicial advice or direction

(1) The Public Trustee must, when in difficulty or doubt, apply to the Court for advice or direction as to any matter related to the administration of the estate of a deceased person or the construction of a will, deed or other document.

(2) An executor, administrator or trustee may, when in difficulty or doubt, apply to the Court for advice or direction as to any matter related to the administration of the estate of a deceased person or the construction of a will, deed or other document.

(3) An application under (1) or (2) may be made with or without—

(a) notice of the application being given to any of the parties interested; or

(b) any of the parties interested being served with the proceedings.

(4) A person interested in an estate who is dissatisfied with the conduct of the Public Trustee in any matter related to the administration of the estate of a deceased person or the construction of a will, deed or other document, may apply to the Court for a review of the Public Trustee's conduct.

(5) The Court may, on hearing an application under subsection (3), make any declaratory or other order as the Court thinks fit as to the administration of the estate of a deceased person or the construction of the will, deed or other document, that is the subject of the application and any order as to the costs of the application as the Court thinks fit.

(6) An order made in the absence of an interested party has the same effect and the same force or validity, with the respect to the protection of the Public Trustee or other trustee or executor or administrator, as if the order had been a decree or order made in an action in which all the parties concerned were represented.

(7) If an application under this section is dealt with by the Registrar or a Master of the Court, the Registrar or Master may refer any question of law arising on the application for the opinion of the Court or may direct an issue to be tried by, or an action to be commenced in, the Court.

96—Commission may be allowed to executors, administrators and trustees

(1) The Court may allow an 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 the Court considers just and reasonable.

(2) However, no commission or other remuneration is allowable to an administrator who fails to—

(a) provide the statement and account required by section 92 in accordance with that section or within such time as the Court may allow; or

(b) dispose of an estate with which the administrator is chargeable according to the due course of administration.

(3) An administrator who fails to dispose of an estate with which the administrator is chargeable will be charged with interest at the prescribed rate for such sums of money as have been in the hands of the administrator from time to time, whether or not the administrator has earned interest on the money.

97—Court may require undertakings from executor or administrator

The Court may require an executor or administrator to give undertakings to the Court as to—

(a) the manner in which the administration of a deceased estate is to be conducted or accounted for; or

(b) any other matter that, in the opinion of the Court, may assist in the proper administration of a deceased estate.

98—Remedy if executor or administrator fails to perform duties etc

(1) If an executor or administrator—

(a) fails to perform any duties required of the executor or administrator by law in the administration of a deceased estate; or

(b) fails to comply with any undertaking given to the Court as to the administration of a deceased estate; or

(c) fails to comply with any direction of the Court or the Registrar as to the administration of a deceased estate,

the Court may, on the application of a person aggrieved by the failure, make any order it considers appropriate.

(2) Without limiting subsection (1), the Court may make any or all of the following orders:

(a) an order requiring the executor or administrator to pay into the estate of the deceased person an amount equivalent to any financial benefit the executor or administrator has obtained (whether directly or indirectly) as a result of their failure;

(b) an order requiring the executor or administrator to compensate any person who has suffered loss or damage as a result of their failure;

(c) any other order that the Court considers appropriate to compensate persons who have suffered loss or damage as a result of the failure of the executor or administrator.

(3) An application for an order under this section must be made within 3 years from the time that the person aggrieved by the failure of the executor or administrator becomes aware of the failure.

99—Payment of interest on legacies

(1) If a legacy of a specified amount under a will is not paid in full to the beneficiary of the legacy on or before the relevant date—

(a) interest at the prescribed rate accrues from the relevant date on so much of the legacy as remains unpaid on the relevant date; and

(b) the executor must pay the beneficiary of the legacy interest on the unpaid amount at the prescribed rate until the legacy has been paid in full.

(2) If a legacy payable to a spouse from an intestate estate in accordance with Part 5 is not paid in full on or before the first anniversary of the deceased person's death—

(a) interest at the prescribed rate accrues from that anniversary on so much of the legacy as remains unpaid on that anniversary; and

(b) the administrator of the estate must pay to the beneficiary of the legacy interest on the unpaid amount at the prescribed rate until the legacy has been paid in full.

(3) Payment of interest on a legacy under subsection (1) is subject to a contrary intention in the will about any of the following:

(a) whether interest is payable on the legacy;

(b) the time from which interest is payable on the legacy;

(c) the rate of interest that is payable on the legacy.

(4) In this section—

relevant date means—

(a) the date fixed by the will as the date by which the legacy must be paid; or

(b) if no such date is fixed by the will—the date of the first anniversary of the testator's death.

100—Payment of money and personal property without grant of probate or administration

(1) A person who holds money or personal property for a deceased person of not more than $15 000 in value may, without requiring the production of a grant of probate or administration, pay the money or transfer the personal property to any of the following persons having legal capacity:

(a) a surviving spouse or domestic partner of the deceased;

(b) a child of the deceased.

(2) A payment of money or transfer of personal property under subsection (1) made in good faith is a complete discharge to the person holding the money or personal property of all liability for the money or personal property.

(3) This section does not affect the right of a person who has a claim to, or against, the deceased estate to enforce a remedy for the person's claim against a person to whom a payment or transfer has been made under subsection (1).

Part 5—Intestacy

Division 1—Interpretation

101—Interpretation

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

administrator means a person to whom administration has been granted;

dwelling means a house or other building occupied as a dwelling and includes—

(a) a part of a house or other building occupied as a separate dwelling; or

(b) the curtilage of a dwelling;

personal goods in relation to an intestate means—

(a) any articles of household or personal use or ornament that form part of the intestate's estate; and

(b) any motor vehicle that forms part of the intestate's estate,

but does not include any goods 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 sibling 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 sibling 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 the 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.

(3) For the purposes of this Part, a child born to a person within 10 months after the person's marriage or domestic partnership is ended by the death of the person's spouse or domestic partner will, in the absence of proof to the contrary, be presumed to be the child of that person and the person's deceased spouse or domestic partner.

(4) For the purposes of this Part, a person will not be regarded as having survived another person unless—

(a) the person survives the other person by at least 30 days; or

(b) the person is conceived before, but born after, the other person's death and survives for at least 30 days after birth.

(5) However, the rules set out in subsection (4) are not to be applied if, as a result of their application, the intestate estate would pass to the Crown.

Division 2—Election by spouse or domestic partner to acquire interest in dwelling

102—Election by spouse or domestic partner to acquire interest in dwelling

(1) Subject to this Part, if the intestate estate of an intestate who is survived by a spouse or domestic partner includes an interest in a dwelling 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) if the spouse or domestic partner is an administrator of the intestate estate—within 3 months after the date on which administration of the intestate estate was granted; or

(b) if the spouse or domestic partner is not an administrator of the intestate estate—within 3 months after the administrator gives the spouse or domestic partner notice requiring them to make an election under this section,

or within such longer period as the Court may allow.

(3) The Court may, on application, if it considers there are proper reasons for doing so, extend the time within which an election under this section may be made.

(4) A person who makes an election under this section may revoke it at any time before the transfer of the interest in the dwelling to them.

(5) An election, or revocation of an election, under this section is made by the spouse or domestic partner giving notice of the election or revocation—

(a) if the spouse or domestic partner is an administrator of the intestate estate—

(i) to any other administrator of the estate; and

(ii) to every person beneficially interested in the estate who has legal capacity; and

(iii) if any person beneficially interested in the estate lacks legal capacity—to the person who is legally responsible for the administration or management of the estate of the beneficiary; or

(b) if the spouse or domestic partner is not an administrator of the intestate estate—to the administrator of the estate.

(6) A notice under this section must be given in accordance with the regulations.

(7) If a person makes an election under this section to acquire an interest in a dwelling—

(a) the amount to which the person is entitled out of the intestate estate will be reduced by the value of that interest; and

(b) if the value of that interest exceeds the amount to which the person is entitled out of the intestate estate, the person must, on making the election, pay into the intestate estate the difference between that value and the value of the person's interest in the intestate estate.

(8) The administrator of an intestate estate must obtain a valuation of a dwelling in relation to which a spouse or domestic partner of the intestate may acquire an interest if—

(a) the value of the dwelling is not agreed on by all persons entitled to share in the distribution of the estate; or

(b) a valuation of the dwelling is requested by a person acting on behalf of a beneficiary who lacks legal capacity.

(9) A valuation for the purposes of subsection (8) must be conducted by a person who lawfully carries on a business that consists of or involves valuing land.

(10) A spouse or domestic partner of an intestate may acquire an interest in a dwelling under this section even though the spouse or domestic partner is—

(a) an administrator of the intestate estate or a trustee; or

(b) a minor; or

(c) a person who lacks legal capacity.

(11) If a spouse or domestic partner of an intestate revokes an election made by them under this section, any costs incurred in giving effect to that election are to be deducted from their share of the intestate's estate.

103—Restriction on right of spouse or domestic partner to acquire interest in dwelling

(1) An election under section 102 may only be made with the approval of the Court if—

(a) the dwelling forms part of a building and the deceased person's estate includes an interest in the whole of the building; or

(b) the dwelling forms part of a registered or registrable interest in land and—

(i) the deceased estate includes an interest in the whole of that interest; and

(ii) part or all of the land is used for agricultural purposes; or

(c) the dwelling forms part of a building used as a hotel, motel, boarding house or hostel at the date of the intestate's death.

(2) An application for the approval of the Court to make an election must be made—

(a) if the spouse or domestic partner is an administrator of the intestate estate—within 3 months after the date on which administration of the intestate estate was granted; or

(b) if the spouse or domestic partner is not an administrator of the intestate estate—within 3 months after the administrator gives the spouse or domestic partner notice requiring them to make an election under section 102,

or within such longer period as the Court may allow.

(3) The Court must not approve the making of an election under section 102 unless the Court is satisfied that the acquisition of the interest in the dwelling by the spouse or domestic partner of the intestate is not likely to—

(a) substantially diminish the value of the assets in the estate of the intestate; or

(b) make the disposal of the assets of the intestate estate substantially more difficult.

(4) If the Court makes an order approving the making of an election, the time for making the election under section 102 is extended by a period of 30 days commencing on the day on which the order is made.

104—Restriction on right of administrator to sell interest in dwelling

(1) An administrator of an intestate estate must not dispose of an interest in a dwelling in which the spouse or domestic partner of the intestate was residing at the time of the intestate's death unless—

(a) the period within which the spouse or domestic partner may elect to acquire the interest has expired and no election has been made; or

(b) the dwelling has ceased to be the ordinary place of residence of the spouse or domestic partner.

(2) An administrator of an intestate estate must not dispose of an interest in a dwelling pending the determination by the Court of any application made by the spouse or domestic partner of the intestate for approval to make an election under section 102 in relation to that interest.

(3) A spouse or domestic partner of an intestate may continue to reside in a dwelling in relation to which the spouse or domestic partner may make an election under section 102—

(a) until the period within which the spouse or domestic partner may make an election has expired; or

(b) if a person has by virtue of a mortgage or charge the right to enter into possession of the dwelling or to dispose of the interest—until that right is exercised,

whichever occurs first.

Division 3—Rules governing distribution of intestate estates

105—General rules as to distribution of intestate estate

(1) Subject to this Part, an intestate estate must be distributed according to the following rules:

(a) if the intestate is survived by a spouse or domestic partner but no children—the spouse or domestic partner is entitled to the whole of the intestate estate;

(b) if the intestate is survived by a spouse or domestic partner and by children and the value of the intestate estate does not exceed the preferential legacy—the spouse or domestic partner is entitled to the whole of the intestate estate;

(c) if the intestate is survived by a spouse or domestic partner and by children and the value of the intestate estate exceeds the preferential legacy—

(i) the spouse or domestic partner is entitled to the preferential legacy and to 1 half of the balance of the intestate estate; and

(ii) the children are entitled to the balance of the intestate estate in accordance with section 108;

(d) if the intestate is not survived by a spouse or domestic partner but is survived by children—the children are entitled to the whole of the intestate estate in accordance with section 108;

(e) if the intestate is not survived by a spouse or domestic partner, or by children, but is survived by a relative or relatives, or the children of a relative or relatives—the relative, relatives or children of a relative or relatives are entitled to the whole of the intestate estate in accordance with sections 108 and 109;

(f) if the intestate is not survived by a person entitled to the intestate estate under the preceding provisions of this subsection—the intestate estate vests in the Crown.

(2) For the purposes of this section, the ***preferential legacy*** to which a spouse or domestic partner is entitled is—

(a) $120 000 if the entitlement arises during the financial year in which this section comes into operation; or

(b) if the entitlement arises during a financial year commencing after the commencement of this section—

(i) $120 000; or

(ii) if the Minister has, by notice in the Gazette, determined a higher amount to be the preferential legacy applying during that financial year—that higher amount.

(3) However, if a spouse or domestic partner of an intestate is entitled to a preferential legacy and to 1 or more statutory legacies, the preferential legacy is an amount equal to the highest amount fixed by way of statutory legacy under the laws of other States or Territories under which the spouse or domestic partner is entitled to a statutory legacy subject to the following qualifications:

(a) amounts received by the spouse or domestic partner by way of statutory legacy under any of those laws are taken to have been paid towards satisfaction of the preferential legacy of the spouse or domestic partner;

(b) if any of those laws contain no provision corresponding to paragraph (a), no amount is payable by way of preferential legacy until the entitlements of the spouse or domestic partner under those laws are satisfied, or the spouse or domestic partner renounces their entitlements to payment, or further payment, by way of statutory legacy under those laws.

(4) In this section—

statutory legacy means an amount defined to be a statutory legacy by a law of another State, or a Territory, of the Commonwealth, being an amount to which a spouse of an intestate may be entitled under that law.

(5) The Minister may, by notice in the Gazette—

(a) on or before 1 July of the financial year commencing after the commencement of this section; and

(b) on or before 1 July in any subsequent year,

determine, in accordance with the methodology set out in the regulations, the preferential legacy for the following financial year.

106—Division of estate if intestate is survived by spouse or domestic partner, or both

(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 goods of the intestate.

(2) Subject to this section, if an intestate is survived by both a spouse and a domestic partner, each is entitled to an equal share of the property (including personal goods 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 goods of an intestate, the administrator of the intestate's estate must give the spouse and domestic partner notice in the prescribed manner that if they do not agree on the division of the personal goods of the intestate between them within 3 months of notice being given to them, the administrator may sell the personal goods and divide the proceeds of the sale equally between the spouse and domestic partner.

(4) If a surviving spouse and domestic partner of an intestate do not, within 3 months of the giving of notice to them by the administrator of the intestate estate, agree as to the division of the intestate's personal goods between them, the administrator may sell the personal goods and divide the proceeds of the sale equally between the spouse and domestic partner.

(5) The Court may, on application by the surviving spouse or domestic partner of an intestate, make an order that the estate of the intestate be distributed between the spouse and domestic partner of the intestate in such shares as it considers just and equitable.

(6) However, if the Court considers it just and equitable to do so, the Court may make an order allocating the whole of the estate to either the surviving spouse or the domestic partner to the exclusion of the other.

107—Spouse or domestic partner not entitled to intestate estate in certain cases

Despite sections 105 and 106, a spouse or domestic partner of an intestate has no entitlement to any part of the intestate's estate if, immediately before the death of the intestate, an agreement or order of a prescribed kind relating to the interests in property as between the spouse or domestic partner and the intestate was in force.

108—Distribution among children and grandchildren of intestate

The following rules govern the distribution of an intestate estate, or part of an intestate estate, among children and grandchildren of the intestate:

(a) if the intestate is survived by a child and by no other issue (apart from the issue of that child)—that child is entitled to the whole or that part (as the case may be) of the intestate estate;

(b) if the intestate is survived by children and by no other issue (apart from the 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;

(c) if the intestate is survived by a grandchild and by no other issue (apart from the issue of that grandchild)—that grandchild is entitled to the whole or that part (as the case may be) of the intestate estate;

(d) if the intestate is survived by grandchildren and by no other issue (apart from the 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;

(e) in any other case—the whole or that part of the intestate estate must 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 the intestate and—

(i) a child (if any) of the intestate who survived the intestate is entitled to 1 of the portions;

(ii) if 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 1 of those portions (and if the issue comprises 2 or more persons, they share equally).

109—Distribution among relatives of intestate

(1) The following rules govern the distribution of an intestate estate among relatives, or the children of relatives, of the intestate:

(a) if the intestate is survived by a single relative of the first degree—that relative is entitled to the whole of the intestate estate;

(b) if the intestate is survived by 2 relatives of the first degree—those relatives are entitled to the whole of the intestate estate in equal shares;

(c) if the intestate is not survived by a relative of the first degree but is survived by a relative of the second degree or the children of a relative of the second degree, then—

(i) if the intestate is survived by 1 relative of the second degree, and by no children of any such relative who predeceased the intestate—the surviving relative is entitled to the whole of the intestate estate;

(ii) if the intestate is survived by 2 or more relatives of the second degree, and by no children of any such relative who predeceased the intestate—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 children of any such relative who predeceased the intestate—the intestate estate must 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 children who survived the intestate and—

(A) any relative of the second degree who survived the intestate is entitled to 1 of those portions; and

(B) if a relative of the second degree died before the intestate leaving a child or children that survived the intestate—the child is entitled *per stirpem* (through all degrees) to 1 of those portions or the children share the portion equally;

(iv) if the intestate is not survived by a relative of the second degree, but is survived by children of such a relative—the intestate estate devolves on those children as if they were children of the intestate;

(d) if the intestate is not survived by any relative of the first or second degree, or by children 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 1 such relative—that relative is entitled to the whole of the intestate estate;

(ii) if the intestate is survived by more than 1 such relative—those relatives are entitled to the whole of the intestate estate in equal shares;

(e) if the intestate is not survived by a relative of the first, second or third degree, or by children of a relative of the second degree, but is survived by a relative of the fourth degree, or by children of such a relative, then—

(i) if the intestate is survived by only 1 relative of the fourth degree, and by no children of any such relative who predeceased the intestate—the surviving relative is entitled to the whole of the intestate estate;

(ii) if the intestate is survived by 2 or more relatives of the fourth degree, and by no children of any such relative who predeceased the intestate—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 children of any such relative who predeceased the intestate—the intestate estate must 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 children who survived the intestate and—

(A) any relative of the fourth degree who survived the intestate is entitled to 1 of those portions; and

(B) if a relative of the fourth degree died before the intestate leaving a child or children that survived the intestate—the child is entitled *per stirpem* (through all degrees) to 1 of those portions or the children share the portion equally;

(f) if the intestate is not survived by any relative of the fourth degree, but is survived by a child or children of 1 or more relatives of the fourth degree—each child is entitled to share *per stirpem* (through all degrees) in the intestate estate;

(g) if the intestate is not survived by a relative of the fourth degree or by children of a relative of the fourth degree, but is survived by a grandchild or grandchildren of 1 or more relatives of the fourth degree—each grandchild is entitled to share *per stirpem* (through all degrees) in the intestate estate.

(2) A person who is entitled to a share or portion of an intestate estate under subsection (1) may disclaim the person's share or portion (and in that case that share or portion of the intestate estate must be distributed as if the person who disclaimed it had died immediately before the intestate).

110—Intestate estate passes to Crown if no surviving beneficiaries

(1) If an intestate is not survived by any person entitled to the intestate estate under this Part, the Crown is entitled to the whole of the intestate estate.

(2) However, if the Crown is entitled to an intestate estate under subsection (1), the Minister may, on application for a waiver of the Crown's rights, waive the Crown's rights in whole or in part in favour of—

(a) dependants of the intestate; or

(b) any persons who have, in the Minister's opinion, a just or moral claim on the intestate; or

(c) any person or organisation for whom the intestate might reasonably be expected to have made provision; or

(d) the trustees for any person or organisation mentioned in a preceding paragraph; or

(e) any other person or organisation.

(3) The Minister may grant a waiver under this section on such conditions as the Minister considers appropriate.

Division 4—Distribution of intestate estates according to Court approved agreements

111—Court may approve distribution of intestate estate in accordance with agreement

(1) The Court may, on application by the administrator of an intestate estate, order that the intestate estate, or part of the intestate estate, be distributed in accordance with the terms of an agreement approved by the Court.

(2) An order under subsection (1) operates, subject to the terms of the agreement approved by the Court, to the exclusion of all other provisions of this Part governing the distribution of the intestate estate, or part of the intestate estate, to which the order relates.

(3) An agreement for the distribution of an intestate estate, or part of an intestate estate, in a manner other than provided for by Division 3 must not be approved by the Court unless—

(a) all persons entitled to share in the distribution of the intestate estate, or part of the intestate estate, under Division 3 are parties to the agreement and have been given notice of the application under this section in accordance with the rules; and

(b) the Court is satisfied that the terms of the agreement are, in all the circumstances, just.

(4) An agreement for the distribution of an intestate estate, or part of an intestate estate, submitted to the Court under this section may provide for shares or portions of the intestate estate, or part of the intestate estate, to be distributed to persons who are not relatives of the intestate by blood.

(5) If the Court approves an agreement under this section, the Court may make an order requiring a person to whom property forming part of the intestate estate was distributed before the date of the application to return the property to the administrator of the intestate estate for distribution in accordance with the agreement.

Division 5—Miscellaneous

112—Value of intestate estate

For the purposes of this Part, the value of an intestate estate must 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) if the intestate is survived by a spouse or domestic partner—the value of the personal goods of the intestate.

113—This Part not to affect operation of Part 6

Nothing in this Part affects the operation of Part 6 in relation to an intestate estate.

Part 6—Family provision

114—Interpretation

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

administrator means a person to whom administration has been granted;

disability has the same meaning as in the *Equal Opportunity Act 1984*;

family provision order—see section 116(1);

step-child, in relation to a deceased person, means a child of a spouse or domestic partner of the deceased.

(2) For the purposes of this Part, if an order has been made under this Act authorising the Public Trustee to administer the estate of a deceased person who has died leaving a will—

(a) the Public Trustee will be taken to be the administrator of the estate of the deceased person; and

(b) the order will be taken to be the grant of probate of the will, or letters of administration with the will annexed of the estate, of the deceased person.

115—Persons entitled to claim under this Part

(1) Subject to this Part, the following persons are, in respect of the estate of a deceased person, entitled to claim the benefit of this Part:

(a) the spouse of the deceased person;

(b) the domestic partner of the deceased person;

(c) a former spouse of the deceased person;

(d) a former domestic partner of the deceased person;

(e) a child of the deceased person;

(f) a step-child of the deceased person;

(g) a grandchild of the deceased person;

(h) a parent of the deceased person;

(i) a sibling of the deceased person.

(2) A former spouse or domestic partner of a deceased person is only entitled to claim the benefit of this Part if the spouse or domestic partner satisfies the Court that, immediately before the death of the deceased person, no agreement or order of a prescribed kind relating to the interests in property as between the spouse or domestic partner and the deceased person was in force.

(3) A step-child of a deceased person is only entitled to claim the benefit of this Part if the step-child satisfies the Court that—

(a) the step-child is disabled and is significantly vulnerable by reason of their disability; or

(b) the step-child was dependent on the deceased person at the time of the deceased person's death; or

(c) the step-child cared for, or contributed to the maintenance of, the deceased person immediately before the person's death; or

(d) the step-child substantially contributed to the estate of the deceased person; or

(e) assets accumulated by the step-child's natural parent substantially contributed to the estate of the deceased person.

(4) However, a step-child of a deceased person who is a minor is also entitled to claim the benefit of this Part if the step-child satisfies the Court that the step-child was maintained wholly or partly, or was legally entitled to be maintained wholly or partly, by the deceased person immediately before the person's death.

(5) A grandchild of a deceased person is only entitled to claim the benefit of this Part if the grandchild satisfies the Court that—

(a) the grandchild's parents died before the deceased person; or

(b) the grandchild was maintained wholly or partly, or was legally entitled to be maintained wholly or partly, by the deceased person immediately before the deceased person's death.

(6) A parent of a deceased person is only entitled to claim the benefit of this Part if the parent satisfies the Court that—

(a) in the case of a deceased person who died in a residential facility—the parent cared for, or contributed to the maintenance of, the deceased person immediately before the person entered a residential facility; or

(b) in any other case—the parent cared for, or contributed to the maintenance of, the deceased person immediately before the person's death.

(7) A sibling of a deceased person is only entitled to claim the benefit of this Part if the sibling satisfies the Court that—

(a) in the case of a deceased person who died in a residential facility—the sibling cared for, or contributed to the maintenance of, the deceased person immediately before the person entered the residential facility; or

(b) in any other case—the sibling cared for, or contributed to the maintenance, of the deceased person immediately before the person's death.

(8) In this section—

residential facility means a facility at which residential care (as defined in the *Aged Care Act 1997* of the Commonwealth) is provided.

116—Persons entitled may obtain order for maintenance etc out of estate of deceased person

(1) Subject to this Part, if—

(a) a person has died domiciled in this State or owning real or personal property in this State; and

(b) by reason of the person's testamentary dispositions, or the operation of Part 5, or both, a person entitled to claim the benefit of this Part is left without adequate provision for their proper maintenance, education or advancement in life,

the Court may, in its discretion, on application by or on behalf of a person so entitled, make an order (a ***family provision order***) that such provision as the Court thinks fit be made out of the estate of the deceased person for the maintenance, education or advancement of the person so entitled.

(2) In determining whether to make a family provision order—

(a) the wishes of the deceased person is the primary consideration of the Court; and

(b) the Court must have regard to—

(i) any evidence of the deceased person's reasons for making the dispositions in the deceased person's will (if any); and

(ii) the applicant's vulnerability and dependence on the deceased; and

(iii) the applicant's contribution to the estate of the deceased person; and

(iv) the character and conduct of the applicant; and

(c) the Court may have regard to any other matter that the Court considers relevant.

(3) In determining whether to make a family provision order, and the amount that a claimant should receive if a family provision order is made, the Court must take into account any government welfare payments that the claimant receives, or may be entitled to receive, and whether the making of a family provision order could worsen the claimant's financial position.

(4) The Court may refuse to make a family provision order in favour of any person on the ground that the person's character or conduct is such as, in the opinion of the Court, to disentitle the person to the benefit of this Part, or for any other reason that the Court thinks sufficient.

(5) The Court may, in making a family provision order, impose such conditions, restrictions and limitations as it thinks fit.

(6) If, in respect of an application for a family provision order, it appears to the Court that the matter would be more appropriately determined by proceedings outside the State, the Court may (without limiting the powers conferred on it by the preceding provisions of this section) refuse to make an order under this section or adjourn the hearing of the application for such period as the Court thinks fit.

(7) In making a family provision order the Court may, if it thinks fit, order that the provision will consist of a lump sum or periodic or other payments or a lump sum and periodic or other payments.

117—Power to require security for costs

(1) The Court may order a party to proceedings under this Part to give security for the payment of costs that may be awarded against the party if it appears to the Court that the party's claim for provision may be without merit or the party is unwilling to negotiate a settlement of a claim for provision.

(2) The security for costs will be of such amount, and given at such time and in such manner and form, as the Court directs.

118—Time within which application must be made

(1) Subject to this section, an application for a family provision order must be made within 6 months after the grant of probate or administration.

(2) The Court may, after hearing such of the persons affected as the Court thinks necessary, extend the time for making an application for a family provision order.

(3) An extension of time to make an application may be granted—

(a) on such conditions as the Court thinks fit; and

(b) whether or not the time for making an application for a family provision order has expired.

(4) An application for extension of time under this section must be made before the final distribution of the estate.

(5) Any distribution of any part of the estate made before the application for extension of time must not be disturbed by reason of that application or any order made on the application.

(6) An application for a family provision order is to be taken to be made on the day on which the originating process by which it is commenced is filed in the Court.

(7) A copy of an application for a family provision order must be served on all parties to the proceedings—

(a) within 1 month after the proceedings are commenced; or

(b) within such longer period as the Court may allow.

(8) If subsection (7) is not complied with, the application for a family provision order will be taken to have been dismissed at the end of the period within which the application must be served.

(9) If an application for a family provision order has been made, the Court may, if the Court is satisfied that it is just and expedient to do so, permit at any time prior to the final determination of the proceedings, the joinder of further claimants as parties to the application.

119—Provisions relating to family provision orders

(1) A family provision order must—

(a) specify the amount and nature of the provision made by the order; and

(b) specify the part or parts of the estate of the deceased person out of which that provision is to be raised or paid, and prescribe the manner of raising and paying that provision; and

(c) set out the conditions, restrictions or limitations imposed by the Court.

(2) Subject to subsection (3) and unless the Court otherwise orders, the burden of any such provision will, as between the persons beneficially entitled to the estate of the deceased person, be borne by those persons in proportions to the values of their respective interests in the estate.

(3) If the deceased person died leaving a will under which 2 or more persons are successively entitled to any property, the successive interests will not, unless the Court otherwise orders, be separately valued for the purposes of subsection (2), but the proportion of the provision to be borne by that property will be raised or charged against the corpus of such property.

(4) If the Court makes a family provision order, the Court must direct that a certified copy of the order be made on the probate of the will, or letters of administration of the estate, of the deceased person (and for that purpose the Court may require the production of the grant of probate or administration).

(5) The Court may at any time, and from time to time, on the application of the administrator or of any person beneficially entitled to or interested in any part of the estate of the deceased person, rescind or alter any order made under this Part.

(6) Notice of an application for the rescission or alteration of an order must be served on all persons entitled to the benefit of the order in respect of which the application is made.

(7) On any order being made under this Part, the portion of the estate affected by the order must be held subject to the provisions of the order.

(8) The Court may make such order as to the costs of any proceeding under this Part as the Court considers just.

120—Order to operate as will or codicil

Subject to this Act, every provision made by a family provision order will operate and take effect as if it had been made—

(a) if the deceased person died leaving a will—by a codicil to that will executed immediately before the person's death; or

(b) if the deceased person died intestate—by a will executed immediately before the person's death.

121—Court may fix periodic payment or lump sum

(1) The Court may at any time fix a periodic payment, or lump sum, or a periodic payment and a lump sum, to be paid by any person, to represent, or in commutation of, the proportion of the sum ordered to be paid that falls on the portion of the estate to which the person is entitled, and to exonerate that portion of the estate from further liability.

(2) The Court may give incidental directions as to the payment or investment of the lump sum or the manner in which the periodic payments are to be made or secured.

122—Court may vary or discharge order

If the Court has ordered periodic payments, or has ordered a lump sum to be invested for the benefit of any person, the Court may inquire whether at any subsequent date the party benefitted by the order has otherwise become possessed of, or entitled to, provision for the person's proper maintenance, education and advancement, and into the adequacy of that provision, and may discharge, vary, or suspend the order, or make such other order as the Court considers just in the circumstances.

123—Mortgage or assignment of provision invalid

No mortgage, charge or assignment of any kind whatever of or over the provision made by an order under this Part will, unless made with the prior permission of the Court, be of any force, validity or effect.

124—Liability of administrator after distribution of estate

(1) An administrator of the estate of a deceased person who has lawfully distributed the estate or any part of the estate is not liable to account for that estate or that part of the estate (as the case may be) to any person claiming the benefit of this Part, unless the administrator had notice of the claim at the time of the distribution.

(2) Subsection (1) does not prevent the Court from ordering that any provision under this Part be made out of the estate, or any part of the estate, after it has been distributed.

Part 7—Miscellaneous

125—Person disqualified from taking interest or share in deceased estate to be treated as having predeceased testator or intestate

(1) If a person is for any reason disqualified from—

(a) taking their interest under a will as a beneficiary; or

(b) taking their share in the distribution of an intestate estate,

the person will be treated as having predeceased the testator or intestate (as the case may be).

(2) Subsection (1)(a) does not apply if a contrary intention appears in the will.

126—Presumption of survivorship

Subject to this Act and any order of the Court, if 2 or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths will, for all purposes affecting title to property, be taken to have occurred in order of seniority, and accordingly the younger person will be taken to have survived the elder person for a period of 1 day.

127—Devolution of jointly-owned property in case of simultaneous deaths

If property is owned jointly and exclusively by 2 or more persons (other than as trustees) and all of the owners of the property die at the same time or in an order that is uncertain, the property devolves as if the joint owners had, at the time of their deaths, held the property as tenants in common in equal shares.

128—Safe custody of wills and other documents

(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; and

(d) wills in relation to which administration (with the will annexed) has been granted; and

(e) such other documents as the Court may direct.

(2) Wills and other documents kept at a place appointed under this section may be inspected under the control of the Court and subject to this Act and the rules.

129—Office copies of wills or probate or administration may be obtained

(1) A person may, on payment of the prescribed fee, obtain—

(a) an office copy of the whole or part of a will; or

(b) an office copy of any grant of probate or administration.

(2) An office copy of a grant of probate or administration under the seal of the Court is equivalent as evidence to the original grant of probate or administration.

130—Probate to be evidence of wills concerning real property

(1) The probate of a will or letters of administration with the will annexed is evidence of the due execution of the will on all questions concerning real and personal property (and the copy attached or annexed to the probate or letters of administration, purporting to be a copy of the will, is evidence of the contents of the will).

(2) The probate of a will or letters of administration is evidence of the death, and of the date of the death, of the testator or intestate.

131—Will not to be registered or admissible as evidence until proved

(1) A will of a deceased person cannot be registered or be admissible in evidence, except in criminal proceedings or on application for probate or letters of administration, until administration in respect of the estate comprised in the application for probate or letters of administration has been granted.

(2) In this section—

administration means—

(a) probate or administration; or

(b) an order under section 9 of the *Public Trustee Act 1995* authorising the Public Trustee to administer the estate of a deceased person; or

(c) any other document, order or means by which a person becomes entitled at law to administer the estate of a deceased person.

132—Inspection of documents in Land Titles Registration Office or General Registry Office

If the inspection of a deed or other document in the Land Titles Registration Office or the General Registry Office is required by the Registrar for the purposes of this Act, the Registrar-General must produce the deed or document to the Registrar or a person appointed by the Registrar to make the inspection.

133—Power of Public Trustee to move for attachment of administrator

If 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.

134—Restrictions on exercise of rights of retainer and preference

(1) An executor or administrator of the estate of a deceased person must not exercise a right of retainer or preference unless the executor or administrator has reasonable cause to believe, and does believe, that the assets of the estate are sufficient to satisfy its liabilities.

(2) If a right of retainer or preference is exercised in contravention of subsection (1), the Court may—

(a) set aside any payment of money or disposition of property that has been made in contravention of subsection (1); 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 if the extent to which the executor or administrator exercises that right is not such as to confer on the executor or administrator a preference over other creditors of the estate.

135—Delegation

(1) The Minister may delegate a function or power of the Minister under this Act to—

(a) a specified body or person; or

(b) a person for the time being holding or acting in a specified office or position.

(2) A delegation—

(a) must be by instrument in writing; and

(b) may be made subject to conditions or limitations; and

(c) does not derogate from the ability of the delegator to act in any matter; and

(d) is revocable at will.

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

136—Person making false oath commits perjury

A person who knowingly and wilfully makes a false oath or declaration under this Act or the rules is guilty of perjury.

137—Applications to Court

Unless expressly provided otherwise by this Act, an application to the Court under this Act must be made in accordance with the rules.

138—Rules of Court

(1) The Court, or any 1 or more Judges of the Court, may make rules of court under this Act on any subject contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the rules may—

(a) regulate the practice and procedure of the Court in its testamentary jurisdiction; and

(b) regulate the practice and procedure of the Court in its jurisdiction under Part 6; and

(c) determine what testamentary matters are to be taken to be contentious or non-contentious; and

(d) provide for the guidance of executors and administrators in relation to land passing under section 75; and

(e) define the duties of the Registrar and other officers of the Court; and

(f) authorise and regulate the exercise by the Registrar of any specified jurisdiction, power or authority of the Court; and

(g) prescribe forms for the purposes of this Act.

(3) The power to make rules of court conferred by this section are in addition to, and do not derogate from, the powers of the Court to make rules under the *Supreme Court Act 1935*.

(4) Until rules are made under this section for the purposes of regulating the practice and procedure of the Court in its jurisdiction under Part 6, the general practice and procedure of the Court must, so far as applicable and not inconsistent with this Act, apply to all proceedings of the Court under Part 6.

139—Regulations and fee notices

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

(2) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the matters or circumstances to which they are expressed to apply; and

(c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and

(d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other specified person or body.

(3) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

(4) A fee notice may provide for the waiver, reduction or remission of fees.

Schedule 1—Annex to Convention providing a Uniform Law on the Form of an International Will 1973

ANNEX

UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL 1973

Article 1

1 A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2 The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1 The will shall be made in writing.

2 It need not be written by the testator himself.

3 It may be written in any language, by hand or by any other means.

Article 4

1 The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2 The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1 In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2 When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.

3 The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1 The signatures shall be placed at the end of the will.

2 If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1 The date of the will shall be the date of its signature by the authorized person.

2 This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1 I, ...(name, address and capacity), a person authorized to act in connection with international wills

2 Certify that on .....(date) at .....(place)

3 (testator) .....(name, address, date and place of birth) in my presence and that of the witnesses

4(a) .....(name, address, date and place of birth)

(b) ..... (name, address, date and place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

5 I furthermore certify that:

6(a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason .....

—I have mentioned this declaration on the will
*—the signature has been affixed by
.....(name, address)

7(b) the witnesses and I have signed the will;

8*(c) each page of the will has been signed by .....and numbered;

9(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11*(f) the testator has requested me to include the following statement concerning the safekeeping of his will:.....

12 PLACE

13 DATE

14 SIGNATURE and, if necessary, SEAL

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

_____

*To be compIeted if appropriate

Schedule 2—Related amendments

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Aged and Infirm Persons' Property Act 1940*

2—Amendment of section 11—Variation or rescission of protection order

Section 11(3)—delete "pursuant to the *Administration and Probate Act 1919*" and substitute:

under the *Succession Act 2021*

3—Amendment of section 31—Expenses and remuneration of manager

Section 31(2)—delete "a commission and fees determined in accordance with regulations made pursuant to section 112 of the *Administration and Probate Act 1919* or as is otherwise allowed by the court, and such other charges" and substitute:

such commission, fees and other charges

Part 3—Amendment of *Guardianship and Administration Act 1993*

4—Substitution of heading to Part 4 Division 3

Heading to Part 4 Division 3—delete the heading and substitute:

Division 3—Administration orders (general)

5—Insertion of Part 4 Division 3A

After section 48 insert:

Division 3A—Administration orders (missing persons)

48A—Administration orders (missing persons)

(1) If the Supreme Court is satisfied, on an application made in accordance with the rules, that—

(a) a person is a missing person; and

(b) it is not known whether the person is alive; and

(c) all reasonable efforts have been made to locate the person; and

(d) persons residing at the place where the person was last known to reside, or relatives or friends, with whom the person would be likely to communicate, have not heard from, or of, the person for at least 90 days; and

(e) it is in the best interests of the missing person to make an order under this section,

the Court may make an order appointing 1 or more administrators of the missing person's estate.

(2) The Court must not appoint a person as an administrator of a missing person's estate unless satisfied that—

(a) the person to be appointed is a fit and proper person to act as an administrator of the missing person's estate; and

(b) the person to be appointed is competent to administer the missing person's estate; and

(c) the appointment would not give rise to a conflict of interest.

(3) The fact that a proposed appointee is related to the missing person by blood or marriage will not, of itself, be taken to give rise to a conflict of interest.

(4) An administration order under this section remains in force for a period determined by the Court.

(5) An administration order under this section authorises the administrator of the missing person's estate to take such action as may be necessary or desirable for—

(a) the payment of the missing person's debts; and

(b) the maintenance and benefit of dependants of the missing person; and

(c) the care and maintenance of property of the missing person.

(6) An administrator appointed under this section must give the Court notice in accordance with the rules as soon as practicable after the administrator becomes aware that—

(a) the missing person is alive (whether in this State or elsewhere); or

(b) the missing person has died.

(7) The Court may by order, on application in accordance with the rules, vary or revoke an administration order made under this section.

(8) An administrator appointed under this section must keep accurate records and accounts of all dealings and transactions made by the administrator pursuant to the administration order.

(9) An application for an order under this section may be made by—

(a) the spouse or domestic partner of the missing person; or

(b) a relative of the missing person; or

(c) the Public Trustee; or

(d) any other person who has an interest in the estate of the missing person.

(10) An administrator appointed under this section is subject to direction and control by the Court.

Part 4—Amendment of *Law of Property Act 1936*

6—Amendment of section 114—Power of Court to sell interest of Crown in real estate

Section 114(3)—delete subsection (3)

7—Repeal of section 115

Section 115—delete the section

Part 5—Amendment of *Public Trustee Act 1995*

8—Substitution of section 52

Section 52—delete the section and substitute:

52—Deposit of certain wills and other documents with Public Trustee

(1) The following documents may be deposited for safe custody with the Public Trustee:

(a) a will of which the Public Trustee is appointed the executor or 1 of the executors;

(b) a will prepared by a legal practitioner who—

(i) has died; or

(ii) has ceased, or is about to cease, the practice of the law in this State; or

(c) a will held by a legal practitioner or legal practice that was executed by a testator who cannot be located; or

(d) a settlement, declaration of trust or other instrument by which a trust is declared or created concerning property of any kind where the Public Trustee is appointed the trustee or 1 of the trustees; or

(e) any other document prepared by the Public Trustee.

(2) The Public Trustee must keep a register of wills deposited under this section.

(3) No fee is payable for depositing a will with the Public Trustee but a person may be required to pay a fee for any 1 or more of the following services:

(a) searching for a will deposited under this section;

(b) recovery of a will deposited under this section;

(c) delivery of a will deposited under this section.

(4) The Public Trustee may destroy a will deposited with the Public Trustee if—

(a) the testator has died; and

(b) a reasonable period has elapsed during which a person might be expected to have sought access to the will.

(5) The Public Trustee is not liable for—

(a) the loss of, or damage to, any will deposited with the Public Trustee under this section; or

(b) any inaccuracy or omission in the register kept under this section.

9—Substitution of section 55

Section 55—delete the section and substitute:

55—Regulations and fee notices

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

(2) Without limiting the generality of subsection (1), the regulations may—

(a) regulate the deposit of wills and other documents with the Public Trustee;

(b) regulate the payment, refund, waiver or reduction of fees prescribed by the Minister under subsection (3).

(3) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

Part 6—Amendment of *Supreme Court Act 1935*

10—Substitution of section 18

Section 18—delete the section and substitute:

18—Testamentary jurisdiction

(1) Subject to this Act and the *Succession Act 2021*, the court has jurisdiction, including jurisdiction for all purposes the court considers appropriate—

(a) to make and revoke a grant of probate of the will or letters of administration of the estate of any deceased person; and

(b) to hear and decide all testamentary matters; and

(c) to hear and decide all matters relating to the estate and the administration of the estate of any deceased person.

(2) The court may make any declaration, and make and enforce any order, that may be necessary or convenient in the exercise of its jurisdiction under the *Succession Act 2021*.

Part 7—Amendment of *Trustee Act 1936*

11—Amendment of section 91—Advice and directions of court and commission

Section 91—delete "Sections 69 and 70 of the *Administration and Probate Act 1919*" and substitute:

Sections 94 and 95 of the *Succession Act 2021*

Schedule 3—Repeals and revocations

1—Repeal of *Administration and Probate Act 1919*

The *Administration and Probate Act 1919* is repealed.

2—Repeal of *Inheritance (Family Provision) Act 1972*

The *Inheritance (Family Provision) Act 1972* is repealed.

3—Repeal of *Wills Act 1936*

The *Wills Act 1936* is repealed.

4—Revocation of *Administration and Probate Regulations 2009*

The *Administration and Probate Regulations 2009* are revoked.

Schedule 4—Savings and transitional provisions

1—Interpretation

In this Schedule—

designated day means a day appointed by proclamation as the designated day for the purposes of the provision in which the term is used;

repealed Act means an Act repealed by Schedule 3.

2—Continuation of proceedings under repealed Acts

Any proceedings commenced in the Court under a repealed Act that have not been finally determined before the designated day may be continued and completed under that Act as if this Act had not been enacted.