

South Australia

Administration and Probate (Administration Guarantees) Amendment Act 2003

An Act to amend the *Administration and Probate Act 1919*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Administration and Probate (Administration Guarantees) Amendment Act 2003*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Administration and Probate Act 1919*

4—Substitution of section 18

Section 18—delete the section and substitute:

18—Administration guarantees may be required before administration sealed

- (1) A surety must be provided in accordance with this section before the sealing of administration under section 17 if a surety would be required under section 31 on the granting of such administration.
- (2) The surety must guarantee to make good, subject to this section, any loss that a person interested in the administration of the South Australian estate of the deceased may suffer in consequence of a breach by the administrator of his or her duties in administering the South Australian estate.
- (3) The maximum liability of a surety under a guarantee given for the purposes of this section is—
 - (a) the amount under which the South Australian estate of the deceased is sworn; or
 - (b) if the Court, on application, orders a lesser amount, the lesser amount.
- (4) If a guarantee is given for the purposes of this section, the Court may, at any time, on the application of a person interested in the administration of the South Australian estate—
 - (a) require that there be a further or additional guarantee; or
 - (b) order that the maximum liability of a surety under the guarantee is reduced to an amount that the Court thinks reasonable.
- (5) If a further or additional guarantee is not given as required under subsection (4)(a), the Court may cancel the seal of the administration.
- (6) A guarantee required under this section operates for the benefit of every person interested in the administration of the South Australian estate as if the guarantee were contained in a deed to which the surety and every such person are parties (and, where there are two or more sureties, as if they had bound themselves jointly and severally).
- (7) A proceeding may only be brought on a guarantee with the leave of the Court and on such terms and conditions as the Court thinks fit.

- (8) If, on the application of a surety, it appears to the Court that—
- (a) the South Australian estate is being wasted, or is in danger of being wasted; or
 - (b) the surety is being in any way prejudiced, or is in danger of being prejudiced, by the act or default of the administrator; or
 - (c) a surety desires to be relieved from further liability,
- the Court may grant such relief as it thinks fit.
- (9) This section does not apply to—
- (a) the Public Trustee; or
 - (b) any other agency or instrumentality of the Crown; or
 - (c) a trustee company under the *Trustee Companies Act 1988*.
- (10) The Court may, if satisfied that it is beneficial or expedient to do so, dispense with the requirement to provide a surety.
- (11) An order under subsection (10) may be obtained *ex parte* on the application of the person who would be the administrator on the sealing of the administration.
- (12) If a surety dies or ceases to be *sui juris*, the administrator must, as soon as reasonably practicable, apply to the Court for directions.
Maximum penalty: \$2 000.
- (13) In this section—
- South Australian estate*, in relation to the estate of a deceased person, means the property of the person's estate situated in South Australia at the date of the person's death.

5—Insertion of section 23

After section 22 insert:

23—Power to appoint joint administrators

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

6—Substitution of sections 31 to 33

Sections 31 to 33 (inclusive)—delete the sections and substitute:

31—Administration guarantees

- (1) A person to whom administration is granted must provide a surety in accordance with this section if—
- (a) the person is not resident in this State; or
 - (b) the person has any legal or equitable claim against, or interest in, the estate of the deceased arising from a liability incurred by the deceased before his or her death; or

- (c) any person who is not *sui juris* is entitled to participate in the distribution of the estate; or
 - (d) the Court is of the opinion that in the circumstances of the case a surety is required.
- (2) The surety must guarantee to make good, subject to this section, any loss that a person interested in the administration of the South Australian estate of the deceased may suffer in consequence of a breach by the administrator of his or her duties in administering the South Australian estate.
- (3) The maximum liability of a surety under a guarantee given for the purposes of this section is—
 - (a) the amount under which the South Australian estate of the deceased is sworn; or
 - (b) if the Court, on application, orders a lesser amount, the lesser amount.
- (4) If a guarantee is given for the purposes of this section, the Court may, at any time, on the application of a person interested in the administration of the South Australian estate—
 - (a) require that there be a further or additional guarantee; or
 - (b) order that the maximum liability of a surety under the guarantee is reduced to an amount that the Court thinks reasonable.
- (5) If a further or additional guarantee is not given as required under subsection (4)(a), the Court may revoke the administration.
- (6) A guarantee required under this section operates for the benefit of every person interested in the administration of the South Australian estate as if the guarantee were contained in a deed to which the surety and every such person are parties (and, where there are two or more sureties, as if they had bound themselves jointly and severally).
- (7) A proceeding may only be brought on a guarantee with the leave of the Court and on such terms and conditions as the Court thinks fit.
- (8) If, on the application of a surety, it appears to the Court that—
 - (a) the South Australian estate is being wasted, or is in danger of being wasted; or
 - (b) the surety is being in any way prejudiced, or is in danger of being prejudiced, by the act or default of the administrator; or
 - (c) a surety desires to be relieved from further liability,the Court may grant such relief as it thinks fit.
- (9) This section does not apply to—
 - (a) the Public Trustee; or
 - (b) any other agency or instrumentality of the Crown; or

- (c) a trustee company under the *Trustee Companies Act 1988*.
- (10) The Court may, if satisfied that it is beneficial or expedient to do so, dispense with the requirement to provide a surety.
- (11) An order under subsection (10) may be obtained *ex parte* on the application of the person entitled to obtain administration.
- (12) Without limiting the effect of subsection (10), the Court may, if administration is granted to two or more persons and the Court is satisfied that it is beneficial or expedient to do so, dispense with the requirement to provide a surety.
- (13) If—
- (a) a surety dies or ceases to be *sui juris*; or
 - (b) after the grant of administration to two or more persons, an administrator dies or ceases to be *sui juris* or refuses or fails to carry out the duties of an administrator,
- the administrator, or the other administrator, as the case may be, must, as soon as reasonably practicable, apply to the Court for directions.

Maximum penalty: \$2 000.

- (14) In this section—

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

7—Amendment of section 46—Land to vest in executor or administrator of owner

Section 46(1)—delete subsection (1) and substitute:

- (1) Land will, after the death of the owner, and subject to any mortgage, trust or equity affecting it—
- (a) if there is only one executor or administrator, pass to the executor or administrator and become vested in the executor or administrator as if it were a chattel real; or
 - (b) if there is more than one executor or administrator, pass to the executors or administrators and become vested jointly in the executors or administrators as if it were a chattel real.

8—Repeal of section 57

Section 57—delete the section

9—Amendment of section 58—Proceedings to compel account

Section 58(4)—delete subsection (4) and substitute:

- (4) The fact that proceedings have been or are being taken under this section does not prevent an action from being brought on a guarantee given under section 18 or 31.

10—Substitution of section 66

Section 66—delete the section and substitute:

66—Effect of delivery, etc to Public Trustee

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

11—Amendment of section 67—Judge may dispense wholly or partly with compliance with section 65

Section 67(5)—delete subsection (5) and substitute:

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

12—Transitional provision

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