

(Reprint No. 2)

SOUTH AUSTRALIA

ADMINISTRATION AND PROBATE ACT 1919

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 6 March 1995.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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APPENDIX

LEGISLATIVE HISTORY

ADMINISTRATION AND PROBATE ACT 1919

being

Administration and Probate Act 1919 No. 1367 of 1919
[Assented to 16 October 1919]

as amended by

Administration and Probate Act Amendment Act 1922 No. 1515 of 1922 [Assented to 22 November 1922]
Administration and Probate Act Amendment Act 1932 No. 2093 of 1932 [Assented to 30 November 1932]
Statute Law Revision Act 1934 No. 2168 of 1934 [Assented to 15 November 1934]
Statute Law Revision Act 1936 No. 2293 of 1936 [Assented to 8 October 1936]
Administration and Probate Act Amendment Act 1936 No. 2311 of 1936 [Assented to 19 November 1936]
Administration and Probate Act Amendment Act 1937 No. 2368 of 1937 [Assented to 8 December 1937]
Administration and Probate Act Amendment Act 1956 No. 19 of 1956 [Assented to 8 November 1956]¹
Administration and Probate Act Amendment Act 1960 No. 24 of 1960 [Assented to 13 October 1960]
Administration and Probate Act Amendment Act 1970 No. 4 of 1970 [Assented to 20 August 1970]
Age of Majority (Reduction) Act 1970-1971 No. 15 of 1971 [Assented to 8 April 1971]²
Administration and Probate Act Amendment Act 1972 No. 5 of 1972 [Assented to 23 March 1972]³
Administration and Probate Act Amendment Act 1973 No. 53 of 1973 [Assented to 22 November 1973]
Administration and Probate Act Amendment Act 1975 No. 26 of 1975 [Assented to 27 March 1975]⁴
Administration and Probate Act Amendment Act (No. 2) 1975 No. 99 of 1975 [Assented to 20 November 1975]⁵
Administration and Probate Act Amendment Act 1978 No. 80 of 1978 [Assented to 16 November 1978]⁶
Administration and Probate Act Amendment Act 1980 No. 15 of 1980 [Assented to 17 April 1980]⁷
Administration and Probate Act Amendment Act 1981 No. 86 of 1981 [Assented to 10 December 1981]⁸
Supreme Court Act Amendment Act (No. 2) 1983 No. 73 of 1983 [Assented to 3 November 1983]
Administration and Probate Act Amendment Act 1984 No. 57 of 1984 [Assented to 24 May 1984]
Administration and Probate Act Amendment Act (No. 2) 1984 No. 76 of 1984 [Assented to 15 November 1984]⁹
Administration and Probate Act Amendment Act 1986 No. 70 of 1986 [Assented to 27 November 1986]¹⁰
Administration and Probate Act Amendment Act 1990 No. 61 of 1990 [Assented to 29 November 1990]
Statutes Amendment (Attorney-General's Portfolio) Act 1991 No. 33 of 1991 [Assented to 24 April 1991]¹¹
Mental Health Act 1993 No. 59 of 1993 [Assented to 27 May 1993]¹²

¹ Came into operation 7 December 1956: *Gaz.* 6 December 1956, p. 1278.

² Came into operation 15 April 1971: *Gaz.* 15 April 1971, p. 1598.

³ Came into operation 18 May 1972: *Gaz.* 18 May 1972, p. 1926.

⁴ Came into operation 10 April 1975: *Gaz.* 10 April 1975, p. 1442.

⁵ Came into operation 29 January 1976: *Gaz.* 29 January 1976, p. 356.

⁶ Came into operation (except ss. 9 and 17) 6 September 1979: *Gaz.* 6 September 1979, p. 572; s. 17 came into operation 1 October 1979: *Gaz.* 13 September 1979, p. 645; s. 9 came into operation 31 July 1980: *Gaz.* 31 July 1980, p. 372.

⁷ Came into operation 31 July 1980: *Gaz.* 31 July 1980, p. 372.

⁸ Came into operation 17 June 1982: *Gaz.* 17 June 1982, p. 1970.

⁹ Came into operation (except ss. 3 and 14) 1 January 1985: *Gaz.* 13 December 1984, p. 1809; ss. 3 and 14 came into operation 1 July 1987: *Gaz.* 4 June 1987, p. 1430.

¹⁰ Came into operation 1 January 1987: *Gaz.* 18 December 1986, p. 1877.

¹¹ Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1776.

¹² Came into operation 6 March 1995: *Gaz.* 2 March 1995, p. 734.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

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

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

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

Arrangement of Act

2. The provisions of this Act are arranged as follows:—

PART 1—Preliminary

PART 2—Granting, Revoking, Etc., of Probate and Administration

PART 3—Vesting and Administration of Estates

PART 3A—Distribution on Intestacy

PART 4—The Public Trustee—

DIVISION 1—The Office of Public Trustee:

DIVISION 2—Appointment of Public Trustee to Administer Estates and Trusts:

DIVISION 3—Administration of Estates by the Public Trustee

PART 5—Miscellaneous.

Acts repealed and consolidated

3. (1) This Act is a consolidation of the Acts and parts of Acts mentioned in schedule 1, and the said Acts and parts are hereby repealed to the extent mentioned in such schedule.

Saving provisions

- (2) Such repeal shall not—

- (a) affect the operation prior to the passing of this Act of any of the repealed Acts or parts of Acts:
- (b) alter the past or future effect of the doing, suffering, or omission of anything prior to the passing of this Act:
- (c) affect any probate, administration, proclamation, notice, rule, regulation, order, matter or thing granted, made, given, published, or done under or in pursuance of any of the repealed Acts or parts of Acts:
- (d) affect any estate, right, title, interest, privilege, power, status, duty, obligation, liability, or penalty acquired, accrued, exercisable, incurred, or imposed by or under or liable to be imposed under any of the repealed Acts or parts of Acts:
- (e) affect any investigation, inquiry, legal or other proceeding in respect of any of the matters or things in this section before mentioned.

- (3) All matters and things mentioned in subsection (2) are, to the extent that they were respectively in force or in existence immediately before the passing of this Act, hereby preserved and continued and declared to be of the same force and effect as if this Act had been in force when respectively they were done, suffered, omitted, created, granted, acquired, incurred, held, imposed, or made, or had accrued, or become exercisable, or liable to be imposed, and they respectively had been done, suffered, omitted, created, granted, acquired, incurred, held, imposed or made, or had accrued, or had become exercisable or liable to be imposed under this Act.

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(4) All matters and proceedings commenced under any Act or part of an Act hereby repealed, and pending or in progress on the passing of this Act, may be continued, completed, and enforced under this Act.

(5) All offences committed, and all liabilities, forfeitures, and penalties incurred or imposed, or liable to be imposed, before the passing of this Act, may be tried, punished, inquired into, and enforced under this Act.

Interpretation

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

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

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

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

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

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

"**common fund**" means a common fund established by the Public Trustee under section 102;

"**the Common Fund Reserve Account**" means the account kept by the Treasurer pursuant to section 102 of this Act;

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

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

"**the Income Adjustment Account**" means the account kept by the Public Trustee pursuant to section 112 of this Act;

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

"**lawful spouse**", in relation to a deceased person, means a person who was married to that person on the date of his death;

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

"the Public Trustee" means—

- (a) the person appointed to be the Public Trustee under Part 4 of this Act; or
- (b) a Deputy Public Trustee or other officer appointed under this Act while exercising or performing any of the powers, authorities, duties or functions of the Public Trustee;

"putative spouse", in relation to a deceased person, means a person adjudged under the *Family Relationships Act 1975* to have been a putative spouse of that person as at the date of his death;

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

"rules" means the rules under this Act;

"spouse" includes a putative spouse;

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

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PART 2
GRANTING, REVOKING, ETC., OF PROBATE AND ADMINISTRATION

Jurisdiction of the Supreme Court

Probate jurisdiction of Supreme Court

5. (1) The like voluntary and contentious jurisdiction and authority as immediately before the coming into operation of this Act belonged to or were vested in the Supreme Court, in relation to granting or revoking probate of wills and letters of administration of the effects of deceased persons, shall be vested in and exercised by the said Court in relation to granting or revoking probate of wills and letters of administration of the estate, as well real as personal, of deceased persons within the said State; and the Court shall have the same power of granting probate or administration, where the only estate within the State consists of realty, as if such estate comprised both realty and personalty.

(2) The said Court shall also have and exercise the like powers, and its grants and orders shall have the like effect within the said State, in relation to the real and personal estate therein of deceased persons, as immediately before the coming into operation of this Act the said Court and its grants and orders respectively had within the said State, in relation to those matters and causes testamentary, and those effects of deceased persons, which were within the jurisdiction of the said Court.

(3) All duties which by statute or otherwise were, immediately before the coming into operation of this Act, imposed on or to be performed by the said Supreme Court in respect to probates, or administrations, or matters or causes testamentary within its jurisdiction shall continue to be performed by such Court within the said State.

The Registrar of Probates

Registrar of Probates

6. (1) There will be a Registrar of Probates and such deputy or acting Registrars of Probates and other officers as may be necessary for the proper administration of this Act.

(2) A person is not eligible for appointment as the Registrar unless he or she is a practitioner of the Supreme Court of at least three years standing (but it is not necessary for a deputy or acting Registrar to be a practitioner).

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

(4) The Registrar or a deputy Registrar must not be dismissed or reduced in status except on the recommendation or with the concurrence of the Chief Justice.

Registrar's powers

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

Exercise by Registrar of jurisdiction, powers or authorities of Court

7A. (1) The Registrar may exercise the jurisdiction, powers and authorities of the Court whether arising under this Act or otherwise to the extent authorised by the rules.

(2) Subject to the rules, an appeal shall lie to a Judge against a judgment, determination, order, direction or decision given or made by the Registrar in the exercise of a jurisdiction, power or authority of the Court.

Registrar to obtain direction of Judge in doubtful case

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

District Registries

Certain Local Courts may be appointed district registries

9. (1) The Governor may, by proclamation, appoint the Local Courts of Moonta, Gladstone, Mount Gambier, and Port Augusta, or any of them, to be district registries or a district registry of the Court.

(2) The Governor may appoint a special magistrate to be district registrar of any district registry.

(3) Probate of a will or administration may, where the value of the estate does not exceed two thousand dollars, be granted in common form by a district registrar in the name of the Supreme Court and under the seal prescribed to be used in the district registry.

(4) The Governor may, by proclamation, define the districts for which the local courts mentioned in subsection (1) hereof shall respectively be the district registries.

(5) No probate or administration shall be granted by a district registrar unless it appears by the affidavit of one or more of the applicants therefor that the testator or intestate had at the time of his death a fixed place of abode, to be mentioned in the affidavit, within the district for which such district registrar is district registrar.

(6) Any district registrar shall refuse to grant probate or administration in any case in which it appears to him that the same ought not to be granted in common form.

(7) Probate or administration granted by a district registrar under this Act shall have the same effect as probate or administration granted by the Supreme Court, and shall equally therewith be subject to revocation by the Supreme Court.

Judge may order proceedings in district registry to be removed to Supreme Court

10. (1) Any Judge may, on the application of any person interested, order that any proceedings in a district registry be removed into the Supreme Court.

(2) Upon such order being made and notified to the district registrar the whole of such proceedings shall be forthwith transmitted to the Supreme Court, and shall become records thereof.

District registrar may in certain cases apply through Registrar for directions of a Judge

11. (1) Where—

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

the district registrar shall transmit a statement of the matter in question to the Registrar.

(2) The Registrar shall obtain the directions of a Judge in relation to such matter.

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(3) The Judge may direct the district registrar to proceed with the matter according to such instructions as to the Judge seem advisable, or may forbid any further proceeding by the district registrar in relation to such matter, leaving the party applying for the grant to make application to the Supreme Court.

District Registrar may in certain cases obtain directions of Registrar

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

In this section "duty" means duty under the *Succession Duties Act 1929* or any Act amending the same or substituted therefor.

*Deposit of Wills***Wills may be deposited**

13. (1) Any will, duly executed as provided by subsection (3) of this section, and whereof an executor or executors is or are appointed, may at any time previous to the death of the testator be deposited for safe custody with the Registrar by the testator, or on his behalf by any district registrar, solicitor, notary public, or commissioner for taking affidavits in the Supreme Court.

(2) The Registrar shall—

- (a) enclose such will in a packet and seal the same; and
- (b) endorse on such packet the names of the testator and executor or executors, the date of the will, the time of its being deposited, and the number of the deposit; and
- (c) deliver to the depositor a certificate of such deposit.

(3) Every will deposited under this section shall be executed by the testator as required by law, and one of the attesting witnesses shall be the Registrar, a district registrar, notary public, solicitor, or a commissioner for taking affidavits in the Supreme Court.

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

Deposit of codicil

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

Withdrawal

15. (1) A deposited will may be withdrawn by the testator, or some one authorised by him.

(2) On such withdrawal the Registrar shall take a receipt for the will and enter a memorandum of the withdrawal and the time thereof in his index, and also on the will, before delivery.

(3) Any other will deposited by the testator shall not receive the number of the former will so withdrawn.

(4) On the withdrawal of a will, the certificate of deposit given by the Registrar shall be delivered up and cancelled, unless the Registrar sees fit to dispense with such delivery.

Proceedings for probate on death of testator where will has been deposited

16. (1) On the death of a testator, whose will is at the time of his death deposited with the Registrar, any executor of the will may in person apply for probate of such will.

(2) The Registrar shall thereupon supply the executor so applying with a printed form of declaration in the prescribed form, and upon the executor making such declaration the Registrar, if he thinks the case a proper one for the exercise of the power by this section given to him, may, on payment of all duties due, grant probate to the executor.

(3) Such probate shall be made out by the Registrar, or a clerk in his office, and the Registrar shall make the prescribed charges for the form of declaration and for making out the probate.

Sealing of Grants Made Outside this State

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

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

Bond to be required in certain circumstances before administration sealed

18. (1) Where an administrator is required to enter into a bond under section 31 of this Act, no administration shall be sealed under section 17 of this Act until that bond has been given.

(2) No probate or administration so sealed shall be issued out of the Supreme Court until the payment of all probate and other duties (if any) which would have been payable before the delivery by the Registrar to the executor or administrator of the like probate or administration granted by the Supreme Court.

As to foreign probate or administration

19. (1) In section 17, "**probate or administration granted by a foreign Court**" means any document as to which the Registrar is satisfied that it was issued out of a court of competent jurisdiction in a foreign country other than an Australasian State, or the United Kingdom, and that in such country it corresponds to a probate of a will or to an administration in this State.

(2) In order to satisfy himself, as mentioned in subsection (1) of this section, the Registrar may accept a certificate from a consul or consular agent in this State of the foreign country, or such other evidence as appears to him sufficient.

Definitions

20. For the purposes of sections 17 and 19—

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

Administration and Probate Act 1919

"United Kingdom" means Great Britain and Ireland and includes the Channel Islands;

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

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

*General Provisions Relating to Granting and Revoking
Probate and Administration*

Practice of the Court

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

Provisions for evidence in case of foreign will

22. (1) On any non-contentious application for probate or administration, with the will annexed, relating to a will made in a foreign country other than any of the British dominions, the Court may—

- (a) grant probate or administration on the consul or consular agent in this State for the foreign country, or any other person acquainted with the law of such country, testifying, to the satisfaction of the Court, that the will is valid according to such law; or
- (b) issue a commission to take evidence in the foreign country in support of the will and in proof of the law affecting the validity thereof.

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

* * * * *

Power to examine witnesses

24. (1) The Court may—

- (a) require the attendance of any person whom it thinks fit to examine, or cause to be examined, in any action or other proceeding in respect of matters or causes testamentary, whether an action is depending or not; and
- (b) examine or cause to be examined, upon oath or affirmation, as the case may require, parties and witnesses by word of mouth; and
- (c) either before or after, or with or without such examination, cause them, or any of them, to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be.

(2) The Court may, by writ, require such attendance, and order to be produced before itself, or otherwise, any deeds, evidences, or writings, in the same form, as nearly as may be, as that in which a writ of *subpoena ad testificandum*, or of *subpoena duces tecum*, is now issued by the Court.

(3) Every person disobeying any such writ shall be considered as in contempt of the Court, and also be liable to forfeit a sum not exceeding one thousand dollars.

Order to produce any instrument purporting to be testamentary

25. (1) The Court may, on motion or petition, or otherwise, in a summary way, whether any action or other proceeding is or is not pending in the Court with respect to any probate or administration, order any person to produce and bring into the office of the Court, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary which is shown to be in the possession or under the control of such person.

(2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open Court, or before a Judge in Chambers, or upon interrogatories, respecting the same.

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

(4) The costs of any such motion, petition, or other proceeding shall be in the discretion of the Court.

Caveats

26. (1) Caveats against the grant of probates or administrations may be lodged in the Probate Registry of the Court.

(2) Except where otherwise provided by this Act or by the rules, the practice and procedure with regard to such caveats in the Court shall correspond with the practice and procedure with regard to caveats in use in the Court immediately before the first day of February, 1892.

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

27. (1) Where proceedings are taken under this Act for proving a will in solemn form, or for revoking the probate of a will on the ground of the invalidity thereof, or where in any contentious cause or matter under this Act the validity of a will is disputed, except where the will affects only personal estate, the devisees, and other persons having or pretending interest in the real estate affected by the will, shall, unless the Court otherwise directs, be cited to see proceedings or otherwise summoned, and, subject to the rules under this Act or under the *Supreme Court Act 1935-1969*, may be permitted to become parties or intervene for their respective interests in such real estate, in like manner as the next of kin, or others having or pretending interest in the personal estate affected by a will are cited or summoned.

Persons interested in certain cases not to be cited, and when not cited not to be affected by probate

28. (1) Nothing herein contained shall make it necessary to cite any person having or pretending interest in the real estate of a deceased person—

- (a) in any case where the Court is not satisfied that the deceased was at the time of his decease seized of, or entitled to, or had power to appoint by will some real estate beneficially; or
- (b) in any case where the will propounded or of which the validity is in question would not in the opinion of the Court, though established as to personalty, affect real estate.

Administration and Probate Act 1919

(2) In any of the cases mentioned in subsection (1), and in any other case in which the Court, with reference to the circumstances of the property of the deceased or otherwise, thinks fit, the Court may proceed without citing the persons interested in real estate: Provided that the probate, decree, or order of the Court shall not in any case affect any person in respect of his interest in real estate, unless such person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

Safe custody of wills, etc.

29. (1) The Governor may, with the concurrence of the Chief Justice, by notice in the *Gazette*, appoint places for the safe custody, under the control of the Court, of—

- (a) wills deposited with the Registrar under this Act; and
- (b) wills brought into the Court for any purpose; and
- (c) wills of which probate has been granted, or in relation to which administration (with the will annexed) has been granted; and
- (d) such other documents as the Court may direct.

(2) Such original wills and documents may be inspected under the control of the Court, and subject to the rules.

* * * * *

Office copy of whole or part of will, or of probate or administration, may be obtained

30. (1) An office copy of the whole or any part of a will, or an official certificate of the grant of or an office copy of any probate or administration, may be obtained from the Registrar on the payment of such fees as are fixed by rules.

(2) Any such office copy of a probate or administration under the seal of the Court shall be equivalent as evidence to the original probate or administration.

Administration bonds

31. (1) A person to whom administration is granted and who is required to enter into an administration bond under subsection (2) of this section, shall enter into a bond with the Public Trustee, with one or more sureties, conditioned upon—

- (a) duly getting in and administering the estate of the deceased; and
- (b) the delivery by the administrator at the office of the Public Trustee, within six months from the date on which administration was granted, or such extended time as the Public Trustee upon the application of the administrator may allow, of a statement and account, verified by the administrator's declaration, of all the estate of the deceased, and of his administration thereof; and
- (c) the delivery by the administrator to the Public Trustee of an account of his administration of the estate, verified by his declaration, whenever ordered by the Court to give such an account; and
- (d) the due performance by him of all acts required of him under this Act.

(2) Subject to subsection (3) of this section, a person to whom administration is granted is required to enter into an administration bond if—

- (a) he is not resident in this State; or
- (b) he 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 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 an administration bond should be required.

(3) Notwithstanding the provisions of subsection (2) of this section no administration bond shall be required of—

- (a) any agency or instrumentality of the Crown; or
- (b) the Public Trustee; or
- (c) any body corporate authorised by a special Act to administer the estates of deceased persons.

Penalty in bond

32. Such bond shall be in a penalty of the amount under which the estate of the deceased is sworn; but the Court may reduce the amount of such penalty in any case, and may also order that more bonds than one be given, so as to limit the liability of any surety to such amount as to the Court seems reasonable.

Court may dispense with bond

33. (1) A Judge may, upon being satisfied by affidavit that it is beneficial or expedient so to do, order that administration issue without any administration bond being given.

(2) Such order may be obtained *ex parte* on the application of the person entitled to obtain administration.

Administration may be granted to duly authorised attorney

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

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

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

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

36. Whenever—

- (a) any person renounces probate of the will of which he is appointed executor or one of the executors, or

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

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

If executor or administrator out of jurisdiction, special administrator may be appointed

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

Special administrator to make certain affidavits

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

On return of original executor or administrator, special administration to be rescinded

39. (1) On the return to this State of the executor or administrator to whom probate or administration has originally been granted, such executor or administrator may apply to the Court, by petition, to rescind the special grant of administration.

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

On order being made for rescission, special administrator to account and pay over money

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

Original executor or administrator liable, although special administration not rescinded

41. If such executor or administrator neglects to apply for an order for the rescission of such special administration, he shall, notwithstanding such special administration remains unrescinded, be liable to answer and make good all claims and demands against the estate of the deceased to the extent of the assets which have come to his hands, or which might have come to his hands but for his wilful neglect or default.

Revocation of grants not to prejudice actions

42. (1) Where, before the revocation of any probate or administration, or the rescission of any special administration, proceedings have been commenced by or against the executor or administrator who obtained such probate or administration, the Court in which such proceedings are pending may order the revocation or rescission of such probate or administration, and the grant of any probate or administration which has been made consequent thereon, to be notified upon the record.

(2) Upon an order being made under subsection (1) hereof the proceedings shall be continued in the name of or against the new or original executor or administrator in like manner as if the proceedings had been originally commenced by or against such new or original executor, or administrator, but subject to such conditions and variations, if any, as the Court directs.

Protection to persons acting in reliance on probate or administration

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

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

(3) This section does not affect the rights that may lie against any person to whom property has been invalidly transferred, or to whom a payment has been invalidly made, by an executor or administrator.

(4) In this section—

"administration" includes an order under section 79 authorising the Public Trustee to administer the estate of a deceased person.

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

44. (1) A person who deals with an asset of the estate of a deceased person that is required to be disclosed under section 121A must satisfy himself by examination of the Registrar's certificate, or on the basis of some other reliable evidence, that the asset has in fact been so disclosed.

(2) A person who fails to comply with subsection (1) shall be guilty of a summary offence and liable to a penalty not exceeding two thousand dollars.

(3) This section does not apply to an asset of the estate of a deceased person who died before the day on which section 121A came into operation.

PART 3
VESTING AND ADMINISTRATION OF ESTATES

Vesting of intestate estates until administration

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

Provisions Relating to Land

Land to vest in executor or administrator of owner

46. (1) Land shall, after the death of the owner, and subject to any mortgage, trust, or equity affecting the same, pass to and become vested in his executor or administrator as if it were a chattel real.

(2) Such executor or administrator shall hold and deal with such land, and the same and the proceeds thereof, if sold, shall for all purposes be assets in his hands, and disposable and distributable for the payment of the debts and liabilities of the owner and under his will or intestacy as if such land had been a chattel real.

(3) No widow shall be entitled to her dower, nor husband to his curtesy, out of any lands passing under the provisions of this section.

(4) This section shall not affect the order in which, as between persons claiming under the owner, the assets of his estate are liable for the payment of debts or legacies, nor shall this section be deemed to impose any charge on land for the payment of legacies.

Court may make special orders as to management of undevised lands

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

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

Court may order partition

48. (1) In any case wherein upon such inquiry the Court is satisfied that a partition of the land would be advantageous to the parties interested, the Court may appoint one or more arbitrators to effect such partition, and to exercise in regard thereto under its direction and control powers similar to those of commissioners acting under a decree for partition.

(2) Upon the report and final award of the arbitrators setting forth the particulars of the land allotted to each party interested, the executor or administrator shall convey or transfer the land accordingly.

Interpretation

49. For the purposes of section 46—

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

"owner" means and includes—

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

Construction of word "heirs"

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

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

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

51. (1) Every executor or administrator shall, whether there is a charge of debts, or a trust for payment of debts, or not, have the same power of sale of real estate for payment of debts as an executor now has with regard to personal estate.

(2) No person purchasing real estate of a deceased person from his executor or administrator shall be bound or concerned to inquire as to the existence of debts, the necessity for sale, or the application of the purchase-money.

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

52. (1) When any person has died on or after the first day of February, 1892, seised of or entitled to any estate or interest in any land or other hereditaments in this State which are, at the time of his death, charged with the payment of money, by way of mortgage or other legal or equitable charge, including any lien for unpaid purchase-money, and such person has not, by his will, or deed, or other document, signified any contrary or other intention, the person becoming beneficially entitled to such land or hereditaments through or under the deceased person shall not

be entitled to have the money satisfied out of the personal estate, or any other real estate, of the deceased; but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all money with which the same is or are charged, every part thereof, according to its value, bearing a proportionate part of the money charged on the whole.

(2) The contrary or other intention mentioned in subsection (1) shall not be deemed to be signified by a direction for payment of debts out of, or a charge of debts upon, personal estate, or residuary real and personal estate, or residuary real estate, but such intention must be signified expressly and by distinct reference to the money charged.

(3) Nothing in this section contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying or otherwise, nor affect the rights of any person claiming under or by virtue of any will, deed, or document made before the first day of February, 1892.

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General Provisions relating to Administration of Estates

Statement and account to be delivered

56. (1) Every administrator shall, within six months from the date of the administration, or within such extended time as the Public Trustee upon application by the administrator shall allow, deliver at the office of the Public Trustee a statement and account, verified by his declaration, of all the estate of the deceased and of his administration thereof.

(2) This section shall not apply in any case where the administrator is a limited company registered under the *Companies Act 1962-1968* or any corresponding previous enactment and is acting as administrator in pursuance of any powers granted to it by any Act.

Court may order delivery of statement and account

56A. The Court may at any time, upon the application of the Public Trustee or any person interested in the estate of a deceased person, or of its own motion, order an administrator to deliver at the office of the Public Trustee a statement and account, verified by the administrator's declaration, of all the estate of the deceased, and of his administration thereof.

Power to Court to assign bond

57. (1) The Court may, on application made on motion, petition, or summons in a summary way, and on being satisfied that the condition of any bond given under section 31 has been broken, order the Public Trustee to assign such bond to some person to be named in such order, or may give leave to the Public Trustee to sue on such bond.

(2) Such person, his executors or administrators, or the Public Trustee, as the case may be, shall thereupon be entitled to sue on the said bond in his or their own name or names, as if the same had originally been given to him or them instead of to the Public Trustee, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the conditions of the said bond.

Proceedings to compel account

58. (1) If at any time any administrator—

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

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

(2) In case the administrator, being duly served with such summons, does not attend before the Judge at the time and place mentioned therein, or does not show any reasonable cause to the contrary, the Judge may from time to time order the administrator to deliver the statement and account, or the account, verified as aforesaid, either forthwith or within such further time as the Judge thinks fit to allow.

(3) On default in compliance with any order under subsection (2), a Judge may order the administrator in default to pay to the Public Trustee or person so applying any sum not exceeding one thousand dollars for every such default.

(4) Proceedings being taken under this section shall not prevent the Court from ordering the assignment of the bond to any person with a view of enforcing the penalty thereof as mentioned in section 57, or giving leave to the Public Trustee to sue on the bond.

(5) All costs and expenses of and incidental to the summoning of any administrator pursuant to this section shall either be chargeable to or paid out of the estate in respect of which such administrator is summoned, or shall be paid by such administrator, as the Judge orders.

All specialty and simple contract debts of deceased persons to stand in equal degree

59. (1) In the administration of the estate of every person who has died on or after the first day of January, 1880, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a specialty debt; but all the creditors of such person, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable, any statute or other law to the contrary notwithstanding.

(2) This section shall not prejudice or affect any bond, deed, or other instrument under seal given or executed before the coming into operation of Act No. 140 of 1879; but all such bonds, deeds, or other instruments shall be entitled to priority or preference, according to the law in force before the passing of such Act.

(3) This section shall not prejudice or affect any lien, charge, or other security which any creditor holds or is entitled to for the payment of his debt.

Filing of declaration that estate insufficient to pay debts

60. (1) Any executor, administrator, or creditor of a person dying on or after the first day of February, 1892, may file with the Registrar a declaration that he believes the estate of the deceased to be insufficient for the payment of its liabilities.

(2) On such a declaration being filed by a creditor, he shall, if probate or administration has been granted, serve a copy of the declaration with a memorandum of the date of filing on the executor or administrator.

(3) If probate or administration is granted after the filing of the declaration by a creditor, the Registrar shall, on issuing the probate or administration, issue therewith to the executor or administrator a copy of the declaration with a memorandum of the date of filing.

(4) After the service on or issue to the executor or administrator of the copy and memorandum where the declaration has been filed by a creditor, or after the filing of the declaration by an executor or administrator, the executor or administrator shall administer the estate so far as concerns the payment of liabilities in the same manner so far as practicable as it would have been administered for the benefit of creditors under a decree of the Supreme Court.

(5) The Court may, on the application, *ex parte* or otherwise, of the executor or administrator or of a creditor, order that any action against the executor or administrator shall not proceed beyond judgment without the leave of the Court.

(6) Any person entitled to make a claim against the estate under section 61 shall be deemed a creditor for the purposes of this section.

Rules in insolvency administration to prevail in certain cases

61. (1) In any administration by the Public Trustee under section 79 where the estate proves insufficient for the payment in full of the debts and liabilities of the deceased, and in any administration by an executor or administrator under section 60 and in any administration by the Court of the assets of any deceased person whose estate is insufficient for the payment in full of the debts and liabilities of the deceased, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future or contingent liabilities respectively, as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the estate of the deceased person, may come in under the administration of such estate, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

Estate how administered

62. In an administration by the Supreme Court, or under section 85, by the Public Trustee, of the estate of a person dying on or after the first day of February, 1892, and in the administration of any such estate by the executor or administrator under section 60, the following provisions shall have effect:—

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

Court may order sale of infant's property

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

Court may give leave to postpone realisation or carry on business

64. (1) The Court may, where it thinks it beneficial so to do, give leave to an executor, administrator, or trustee of a deceased person, or to the Public Trustee—

- (a) to postpone for such period as the Court thinks expedient the realisation of the estate or trust property:
- (b) to carry on, for such period or periods as the Court from time to time thinks expedient, the business or affairs of the testator or intestate, and for that purpose to use his estate, or such portion thereof as the Court directs.

(2) An executor, administrator, or trustee acting in pursuance of leave given under this section shall not be answerable for consequent loss, except in case of breach of trust, negligence, or wilful default.

(3) An order under this section may be made either *ex parte* 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.

Administrator to pay over money and deliver property to Public Trustee

65. (1) Every administrator who is possessed of or entitled to any property within this State, whether personal or real, belonging to any person who—

- (a) is not *sui juris*, or
- (b) is not resident in this State, and has no duly authorised agent or attorney therein:

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

(2) The Public Trustee shall then administer such property according to law, and in accordance with any will affecting such property.

(2a) The Public Trustee may, in his discretion, (but subject to the provisions of any will or instrument of trust) realise, or postpone the realisation of, any real or personal property delivered, conveyed or transferred to him under subsection (1) of this section.

(3) This section shall not apply in any case where the administrator is a limited company registered under the *Companies Act 1962-1968* or any corresponding previous enactment, and is acting as administrator in pursuance of any powers granted to it by any Act.

(4) This section shall not apply to an administrator acting under any probate or administration not granted by the Supreme Court but sealed with the seal of the Supreme Court in pursuance of the provisions of section 17 of this Act.

(5) Subject to the provisions of any will or instrument of trust, the Public Trustee may, if he is satisfied that it will be advantageous to the beneficiaries, authorise the sale of any trust property, not exceeding four thousand dollars in value, to the administrator, or to the administrator conjointly with any other person, notwithstanding that the property has not been offered for sale by public auction or otherwise.

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Administration bondsmen relieved

66. The delivery, conveyance, or transfer by an administrator to the Public Trustee of any property, pursuant to section 65, shall have the effect of discharging all parties to the bond given to the Public Trustee, upon the granting of the administration, from further responsibility in respect of the property so delivered, conveyed, or transferred.

Judge may dispense wholly or partially with compliance with section 65

67. (1) A Judge may, on being satisfied by affidavit that it is beneficial or expedient so to do, order—

- (a) that any administrator, or proposed administrator, shall not be bound by section 65; or
- (b) that any administrator, or proposed administrator, shall not be bound by the said section 65 until after a certain time to be mentioned in the order.

(2) The time mentioned in any order made under subdivision (b) of subsection (1) may be extended by a subsequent order.

(3) Any order under subsection (1) or (2) may be obtained *ex parte* on the application of the administrator or proposed administrator.

(4) An order under subdivision (a) of subsection (1) may be granted notwithstanding that an order has already been made under subdivision (b) of subsection (1).

(5) The making of any order under this section shall, if the Court so directs, have the effect of discharging from further responsibility all parties to the bond, if any, given to the Public Trustee upon the granting of the administration.

(6) The Public Trustee, or any person interested, may issue a summons requiring the administrator, or proposed administrator, to appear before a Judge to show cause why any order made under this section should not be set aside, and the Judge may set aside such order, or vary the same, or make such other order as seems to him best.

* * * * *

Public Trustee and other persons may obtain judicial advice or direction

69. (1) The Public Trustee shall, and any trustee, executor, or administrator may, when in difficulty or doubt, apply to a Judge for advice or direction as to matters connected with the administration of any estate, or the construction of any will, deed, or document.

(2) Such application may be made either *ex parte* or upon summons served upon any of the parties interested.

(3) Any person interested in any estate, who is dissatisfied with the conduct of the Public Trustee in any matter connected with the management or administration thereof, may apply to a Judge by summons to be served upon the Public Trustee to review such conduct.

(4) A Judge may, upon the hearing of an application under this section, make any order, declaratory or otherwise, that he sees fit as to the administration of the estate, or the construction of the will, deed, or document, which is the subject of the application, and also as to the costs of the application.

(5) Any such order made in the absence of an interested party shall have the same effect, or be of the same force or validity, so far as regards protection to the Public Trustee, or other trustee, or the executor, or administrator, as if the same had been a decree or order made in an action where all parties concerned were represented.

(6) The Judge may refer any question arising on an application under this section for the opinion of the Supreme Court by way of special case, or may direct an issue to be tried by, or an action to be instituted in, the Supreme Court.

Commission may be allowed to executors, administrators or trustees

70. (1) The Court may allow to any executor, administrator, or trustee, whether of the estate of a deceased person or otherwise, such commission or other remuneration out of the estate or trust property, and either periodically or otherwise, as is just and reasonable.

(2) No allowance shall be made to any administrator who neglects—

- (a) to deliver the statement and account required by section 56, as by such section required, or within such reasonable time as is allowed by the Court; or
- (b) to dispose of any estate with which he is chargeable according to the due course of administration.

(3) Every administrator so neglecting to dispose of any estate with which he is chargeable shall be charged with interest at the rate of seven dollars per centum per annum for such sum and sums of money as from time to time have been in his hands, whether he has or has not made interest thereof.

Payment of Certain Moneys in Deceased Estates without Grants

Payment without production of probate or letters of administration

71. (1) Where a Government employee dies and immediately before his death a sum not exceeding two thousand dollars was owing to him by the Government or by a person or authority representing the Government the Treasurer may in his discretion direct that such sum shall be paid to the surviving spouse of the deceased or to any other person to whom the Treasurer deems it just to pay it, or that such sum shall be divided among any of such persons.

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

(2) The Treasurer may refuse to give a direction under this section unless such indemnities or undertakings as he thinks necessary are given.

(3) A person shall not have a claim against the Crown, the Treasurer, or any other person representing the Crown in respect of the payment of money or the delivery of property pursuant to this section; but nothing in this section shall relieve a person receiving money paid or property delivered under this section from any liability to account for or apply that money or property in accordance with law.

(4) In this section—

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

"Government hospital" means—

- (a) any Government hospital within the meaning of the *South Australian Health Commission Act*; or

- (b) any other institution declared by the Treasurer, by notice published in the *Gazette*, to be a Government hospital for the purposes of this section.

Payment by bank three months after death of customer to the widow or husband of sums not exceeding \$2 000 without proof

72. (1) Whenever on the death of an ordinary customer or depositor the moneys standing to his credit on the books of any bank do not exceed two thousand dollars, and probate of his will or letters of administration of his estate is or are not produced to the manager of the bank within three months after the death of the customer or depositor, the manager of such bank may pay such money to the widow or husband of such customer or depositor without any proof other than the death of such customer or depositor and the identity of the widow or husband as the case may be.

(2) Every payment so made shall be valid, and be an effectual release to the bank against all claims and demands on account thereof.

(3) The next of kin, legatees, executors, or administrators of the deceased customer or depositor shall have all such remedies against the persons to whom such moneys were paid as they would have had against the bank if such payment had not been made by the bank as aforesaid.

PART 3A
DISTRIBUTION ON INTESTACY

Transitional provisions

72A. (1) This Part applies only in respect of the estate of a person who dies wholly or partially intestate after the commencement of the *Administration and Probate Act Amendment Act (No. 2) 1975*.

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

Interpretation

72B. (1) In this Part, unless the contrary intention appears—

"dwellinghouse" includes—

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

"intestate" means a person who—

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

"intestate estate" in relation to an intestate means—

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

"personal chattels" in relation to an intestate means—

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

but does not include any chattels used for business purposes;

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

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

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

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

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

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

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

Administrator to hold property on trust

72C. (1) The administrator of an intestate estate holds the estate on trust for the persons entitled to share in the estate in accordance with this Part.

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

* * * * *

Presumption of survivorship not to apply

72E. Where an intestate and his spouse die within twenty-eight days of each other this Part applies as if the spouse had not survived the intestate.

Value of intestate estate

72F. For the purposes of this Part, the value of an intestate estate shall be ascertained by deducting from the gross value of the estate an amount equal to—

(a) the—

- (i) debts and liabilities of the intestate; and
- (ii) funeral expenses; and
- (iii) testamentary expenses; and
- (iv) costs of administering the estate,

payable out of the intestate estate; and

(b) where the intestate is survived by a spouse, the value of the personal chattels of the intestate.

Distribution of intestate estate

72G. Subject to this Part, an intestate estate shall be distributed according to the following rules:

- (a) where the intestate is survived by a spouse and by no issue—the spouse is entitled to the whole of the intestate estate;
- (b) where the intestate is survived by a spouse and by issue—
 - (i) the spouse is entitled—
 - (A) if the value of the intestate estate does not exceed \$10 000, to the whole of the intestate estate; or

- (B) if the value of the intestate estate exceeds \$10 000, to the sum of \$10 000 and to one-half of the balance of the intestate estate; and
- (ii) the issue of the intestate is entitled to the balance (if any) of the intestate estate;
- (c) if the intestate is not survived by a spouse, but is survived by issue—the issue is entitled to the whole of the intestate estate;
- (d) if the intestate is not survived by a spouse or by issue but is survived by a relative, relatives, or issue of a relative or relatives—the relative, relatives or issue of a relative or relatives are entitled to the whole of the intestate estate;
- (e) if the intestate is not survived by a person entitled to the intestate estate under the foregoing provisions of this section—the intestate estate shall vest in the Crown.

Provision as to spouses

72H. (1) Where an intestate is survived by a spouse, the spouse is entitled to any personal chattels of the intestate.

(2) Where an intestate is survived by a lawful spouse and a putative spouse, they shall be entitled in equal shares to the property (including personal chattels of the intestate) that would have devolved upon the spouse if the intestate had been survived only by a single spouse.

(3) Where any dispute arises between a lawful spouse and a putative spouse as to the division of personal chattels of an intestate between them, the administrator may sell the personal chattels and divide the proceeds of the sale equally between them.

Distribution amongst issue

72I. The following rules govern distribution of an intestate estate, or part of an intestate estate, amongst issue of the intestate:—

- (a) if the intestate is survived by a child and by no other issue (apart from issue of that child) that child is entitled to the whole, or that part (as the case may be) of the intestate estate; and
- (b) if the intestate is survived by children and by no other issue (apart from issue of those children) those children are entitled to the whole, or that part (as the case may be) of the intestate estate, in equal shares; and
- (c) if the intestate is survived by a grandchild and by no other issue (apart from issue of that grandchild) that grandchild is entitled to the whole, or that part (as the case may be) of the intestate estate; and
- (d) if the intestate is survived by grandchildren and by no other issue (apart from issue of those grandchildren) those grandchildren are entitled to the whole or that part (as the case may be) of the intestate estate in equal shares; and
- (e) in any other case, the whole or that part of the intestate estate shall be divided into portions equal in number to the number of children of the intestate who either survived the intestate or left issue who survived him and—
 - (i) a child (if any) of the intestate who survived the intestate is entitled to one of the portions;

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- (ii) where a child of the intestate died before the intestate leaving issue that survived the intestate, that issue is entitled *per stirpem* (through all degrees) to one of those portions (and if the issue comprises two or more persons, they share equally).

Distribution amongst relatives

72J. The following rules govern distribution of an intestate estate amongst relatives, or issue of relatives, of the intestate:—

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

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

Gifts to be brought into hotchpot

72K. (1) Where—

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

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

- (c) the contrary intention was expressed, or appears from the circumstances of the case; or
- (d) the value of the property given or settled does not exceed one thousand dollars.

(2) For the purposes of subsection (1) of this section, the value of property given or settled by an intestate in his lifetime shall be determined as at the date of the gift or settlement.

Election by spouse to take matrimonial home

72L. (1) Subject to this Part, where the intestate estate of an intestate who is survived by his spouse includes an interest in a dwellinghouse in which the spouse of the intestate was residing at the date of the intestate's death, the spouse may elect to acquire that interest at its value as at the date of the death of the intestate.

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(2) An election under this section must be made—

- (a) where the spouse is an administrator of the intestate estate—within three months after the date on which administration of the intestate estate was granted by the Court; or
- (b) where the spouse is not an administrator of the intestate estate—within three months after the administrator serves a notice personally or by post upon him requiring him to make an election under this section,

or within such extended period as the Court may allow.

(3) An election by a spouse shall be furnished in writing—

- (a) if the spouse is not an administrator of the intestate estate—to the administrator; or
- (b) if the spouse is an administrator of the intestate estate—to the Public Trustee.

(4) Where a spouse elects, pursuant to the provisions of this section, to acquire an interest in a dwellinghouse—

- (a) the amount to which he is entitled out of the intestate estate shall be reduced by the value of that interest; and
- (b) if the value of that interest exceeds the amount to which the spouse is entitled out of the intestate estate, the spouse shall, upon making the election, pay into the intestate estate the difference between that value and the value of his interest in the intestate estate.

(5) Where the spouse of an intestate is an administrator of the intestate estate, he may, notwithstanding that he is a trustee, acquire in pursuance of this section an interest in a dwellinghouse that forms part of the intestate estate.

Limitation on right of personal representative to sell interest in dwellinghouse

72M. (1) Where a spouse of an intestate was, at the date of death of the intestate residing in a dwellinghouse, and an interest in that dwellinghouse forms part of the intestate estate—

(a) the spouse shall be entitled to continue to reside in the dwellinghouse—

- (i) until the expiration of the period within which he is entitled under this Act to elect to acquire the dwellinghouse; or
- (ii) where a person has by virtue of a mortgage or charge the right to enter into possession of the dwellinghouse or to dispose of the interest, until that right is exercised,

whichever first occurs; and

(b) the administrator of the intestate estate shall not dispose of the interest unless—

- (i) the dwellinghouse has ceased to be the spouse's ordinary place of residence; or
- (ii) the period within which the spouse is entitled under this Act to elect to acquire the dwellinghouse has elapsed.

This Part not to affect operation of Inheritance (Family Provision) Act

72N. Nothing in this Part affects the operation of the *Inheritance (Family Provision) Act 1972* in respect of an intestate estate.

Certain Imperial Acts not to apply in this State

72O. The following Acts of the Imperial Parliament shall have no further force or effect in this State:—

22 & 23 Charles II c. 10 s. 5

1 James II c. 17 s. 7

9 Henry III c. 1 s. 7

25 Edward I c. 7.

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**PART 4
THE PUBLIC TRUSTEE****DIVISION 1—THE OFFICE OF PUBLIC TRUSTEE****Appointment of Public Trustee and other officers**

73. (1) The Governor may, subject to and in accordance with the *Public Service Act 1967-1978*, appoint—

- (a) a Public Trustee; and
- (b) one or more Deputy Public Trustees; and
- (c) such other officers as he considers necessary for the purposes of this Act.

(2) Any person holding an office under this Part immediately before the commencement of the *Administration and Probate Act Amendment Act 1980* shall continue in that office subject to the provisions of the *Public Service Act 1967-1978*.

(3) An office under this section may be held in conjunction with any other office in the public service of the State.

Delegation by Public Trustee

74. (1) The Public Trustee may, by instrument in writing, delegate to a Deputy Public Trustee or any other officer appointed under this Act any of his powers, authorities, duties or functions under this Act.

(2) Any delegation by the Public Trustee shall be revocable at will and shall not prevent the Public Trustee from acting himself in any matter.

(3) Where the exercise or performance of any power, authority, duty or function depends upon the discretion of the Public Trustee that discretion may be exercised by any officer to whom the exercise or performance of that power, authority, duty or function has been delegated under this section.

The office of Public Trustee

75. (1) The Public Trustee—

- (a) shall be a body corporate with perpetual succession and a common seal; and
- (b) shall be capable of suing and being sued; and
- (c) shall be capable of acquiring, holding, dealing with, and disposing of any interest in real or personal property; and
- (d) shall be capable of acquiring or incurring any other rights or liabilities; and
- (e) shall have the powers, authorities, functions and duties conferred, assigned or imposed upon him by or under this or any other Act.

(2) The Public Trustee is an instrumentality of the Crown.

(3) An apparently genuine document purporting to bear the common seal of the Public Trustee shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the Public Trustee.

Policies to be observed by the Public Trustee

76. (1) The Public Trustee shall observe and carry out any direction of the Minister on a matter of policy.

(2) No direction under this section shall be such as to affect the efficient discharge of the obligations of the Public Trustee at law or in equity.

(3) The Public Trustee shall, at the request of the Minister, report to the Minister on any matter referred to in the request.

(4) The Public Trustee shall not, in a report prepared under subsection (3) of this section, divulge information in breach of any confidence reposed in him by any clients of the Public Trustee.

Capacities in which Public Trustee may act

77. (1) The Public Trustee is empowered to act in any of the following capacities:

- (a) as an executor of the will, or administrator of the estate, of any deceased person; or
- (b) as a trustee, administrator or manager in respect of any property; or
- (c) as a custodian, curator or stakeholder in respect of any property; or
- (d) as an agent or attorney; or
- (e) as the committee or guardian of a person of unsound mind; or
- (f) as a next friend or guardian of an infant; or
- (g) in any other capacity prescribed by or under this Act or any other Act.

(2) If the Court so approves, the Public Trustee may act in the same matter or transaction in different capacities or in the same capacity but as representative of different persons or interests and, in so doing, may commence and maintain proceedings against himself.

(3) In granting its approval under subsection (2), the Court may give such directions to the Public Trustee as it thinks fit.

Power of attorney continues to be exercisable notwithstanding that donor ceases to be *sui juris*

77A. (1) The Public Trustee may, subject to the terms on which a power of attorney has been granted, continue to act in pursuance of the power of attorney notwithstanding that the donor of the power has ceased to be *sui juris*.

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(2) A power of attorney granted to the Public Trustee by a person who has subsequently ceased to be *sui juris*—

- (a) shall determine upon the appointment, in pursuance of any Act, of a manager or administrator of the estate of that person; and
- (b) may be revoked at any time by the Court.

"Curator of Intestate Estates" to be read as if "Public Trustee" substituted therefor

78. From and after the first day of January, 1881, wherever the expression "Curator of Intestate Estates" occurs in any Act, document, deed, or instrument, the same shall be read and construed as if the expression "Public Trustee" were substituted therefor.

**DIVISION 2—APPOINTMENT OF PUBLIC TRUSTEE TO ADMINISTER
ESTATES AND TRUSTS**

Court may order administration to be granted to Public Trustee in certain cases

79. The Court may order that administration, either with or without a will annexed, be granted to the Public Trustee, or may make an order authorising the Public Trustee to administer the estate of a deceased person—

- I. Where, in the opinion of the Court, the deceased has died bankrupt or insolvent, or a creditor of his would be entitled to obtain administration of his estate, or to institute an action for the administration of such estate. In any case coming under this subdivision, where probate or administration has been granted to any person other than the Public Trustee, the Court may order that the same be revoked, but such revocation shall not affect the validity of any proceedings taken or act done under such probate or administration:
- II. Where the deceased has died wholly or partially intestate, leaving estate within this State, but not a widow, or husband, or lawful next of kin resident therein and of the age of eighteen years:
- III. Where the deceased has made a will without leaving any executor thereof resident within this State, and willing to act and capable of acting in the execution of such will, and there is no person of the age of eighteen years in the said State entitled to obtain administration with such will annexed:
- IV. Where the deceased has made a will and appointed an executor or executors thereof, and probate of such will has not been obtained within four months from the death of the testator:
- V. Where any person entitled to obtain administration, with or without a will annexed, does not obtain the same within three months after the death of the deceased:
- VI. Where probate or administration has been granted to any person who desires to retire from the office of executor or administrator. In such a case the Court may revoke the probate or administration without prejudice to any proceedings or act thereunder:

- VII. Where the estate, or portion thereof, is liable to waste, or is of a perishable nature, or is in danger of being lost or destroyed, or where great loss or expense may be incurred by reason of delay, and the executor or person entitled to administration, with the will annexed, or husband, or the widow or next of kin—
- (a) is absent from the locality of the estate; or
 - (b) is not known; or
 - (c) has not been found; or
 - (d) is unfit or incapable:
- VIII. Where any executor, or any person entitled to administration, requests the Public Trustee, in writing, to apply for an order under this section:
- IX. Where part of an estate, already partly administered, is unadministered owing to the death, incapacity, insolvency or absence from the State of the executor or administrator:
- X. Where part of an estate, already partly administered, is unadministered and the executor or administrator cannot be found.

On whose application order may be made

80. (1) An order may be made under section 79 on the application of the Public Trustee, or of any person interested in the estate, including a creditor, or of a guardian or blood relation of any person interested in the estate who is under the age of eighteen years.

(2) Such order may be obtained either *ex parte* or upon such notice to such persons as the Court in any case directs.

Court may appoint Public Trustee to be trustee, guardian, or committee, etc.

81. In any case in which the Court might appoint—

- (a) a trustee of a will, settlement, or other disposition of trust property; or
- (b) a guardian of the person and estate of an infant; or
- (c) a committee of any lunatic's estate; or
- (d) a next friend or guardian *ad litem* to any person for the purposes of any proceedings in any court,

the Court may appoint the Public Trustee to be such trustee, guardian, committee, or next friend or guardian *ad litem*.

Appointment of Public Trustee by executors, administrators, and trustees

82. (1) With the consent of the Court—

- (a) executors, whether appointed before or after the passing of this Act, may, unless expressly prohibited, appoint the Public Trustee sole executor; and

- (b) administrators, with or without a will annexed, whether appointed before or after the passing of this Act, may, unless expressly prohibited, appoint the Public Trustee sole administrator; and
- (c) trustees, whether appointed before or after the passing of this Act, and whether appointed by or under a will, settlement, declaration of trust, or otherwise howsoever, may, unless expressly prohibited, and notwithstanding the terms of the trust as to the number of trustees, appoint the Public Trustee (if he consents thereto) sole trustee in their place.

(2) Executors whose duties continue in the nature of a trusteeship after their administration is closed shall for the purpose of subsection (1) hereof be deemed to be trustees.

(3) Where there are more trustees, executors, or administrators than one, any one trustee or executor (whether before or after proving the will), or any one administrator, may apply to the Court to have the Public Trustee appointed sole trustee, executor, or administrator.

(4) All applications to the Court under this section may be by petition, summons, or otherwise; and the Court may make such order as it thinks fit: Provided that, in the case of an application under subsection (3) hereof, the Court shall not appoint the Public Trustee if there is any trustee, executor, or administrator willing, and, in the opinion of the Court, suitable to act.

(5) Where to the appointment of a trustee, executor, or administrator the consent of any person is requisite, and such person refuses to consent to the Public Trustee being appointed, or where the person to consent is an infant, or lunatic, or a person of unsound mind, or is absent from the said State, or is under any other disability, then an appointment of the Public Trustee may be made under this section without such consent.

Public Trustee may be appointed administrator *pendente lite*

83. (1) Pending any action touching the validity of the will of any deceased person, or for obtaining or revoking any grant of probate or administration, the Court may by order appoint the Public Trustee to be the administrator of the estate of such deceased person.

(2) The Public Trustee shall thereupon have all the rights and powers of a general administrator other than the right of distributing the residue of such estate, and he shall be under the immediate control of the Court, and act under its direction.

Remuneration of Public Trustee acting *pendente lite*

84. The Court may direct that the Public Trustee, acting as such administrator pending action, shall receive out of the estate of the deceased such reasonable remuneration as the Court thinks fit, not exceeding five dollars per centum on moneys collected up to two thousand dollars, and not exceeding two dollars fifty cents per centum on the excess over two thousand dollars.

Where there is reasonable ground to believe that any person has died, the Public Trustee may obtain an order to administer without strict legal proof of death

85. (1) Whenever it appears to the Court—

- (a) that there is reasonable ground to suppose that any person has died, leaving property within this State, and

- (b) that such person has died intestate or his will has not been duly proved within a reasonable time after his death,

the Court may order the Public Trustee to administer the estate of such person without requiring strict proof of his death.

- (2) Such order shall be in force until revoked.

(3) Such order shall empower the Public Trustee to administer the estate of the supposed deceased person for the benefit of his creditors, and to pay and discharge his debts and liabilities as if he were dead, and the Public Trustee had obtained an order to administer the estate under section 79.

Proceedings after payment of creditors under order of administration

86. (1) Where an order has been made under section 79 or section 85, the Court may, subject to subsection (3) order—

- (a) that probate be granted to any executor entitled to probate of the will of the deceased, or that letters of administration with such will annexed be granted to any person entitled to such letters; or
- (b) whether such probate or letters of administration be granted or not or whether there be a will or not, that all estate vested in or under the control of the Public Trustee be vested in or transferred or delivered to any person or persons entitled thereto, whether in trust or beneficially.

(2) Upon probate or administration with the will annexed being granted pursuant to an order made under subdivision (a) of subsection (1), the administration or order for administering granted in favour of the Public Trustee shall be revoked without affecting the validity of any proceedings or act under such administration or order.

(3) In case of an order having been made under section 85, no order shall be made under this section unless the Court thinks that the special circumstances of the case and the lapse of time since the order to administer justify an order under this section.

Public Trustee may receive properties subject to trusts

87. (1) In addition to the cases provided for by sections 81, 82, and 88, the Court in any case in which it sees fit may, on the application of any person holding any money or other property in trust for any person or purpose, make an order authorising the Public Trustee to receive and administer such money or other property.

(2) Such order may be made however the trust may have been created or arisen, whether by or under a will, settlement, or other disposition of property, or otherwise howsoever.

(3) The Court may order that the costs and expenses of and incidental to the application be paid out of such money or property, or by the person making the application, and, in case the money or property is held in trust for public or charitable purposes, may, if it thinks fit, direct that no Court fees shall be payable.

(4) No order shall be made under this section in any case in which the trust is exclusively for a religious purpose.

Public Trustee may be appointed executor or trustee under wills or settlements *inter vivos*

88. (1) Any person may appoint the Public Trustee, either solely or jointly with any other person or persons, to be executor or trustee of his will or to be trustee of any settlement or other disposition *inter vivos* of trust property made by him.

(2) The Public Trustee shall accept the office of trust so reposed in him.

(3) Where the Public Trustee is appointed executor or trustee jointly with any other person, all moneys belonging to the estate and received on account thereof, or, as the case may be, all moneys subject to the trusts created or arising by or under the settlement or other disposition *inter vivos* of trust property, shall be received by and remain subject to the control of the Public Trustee alone, and shall be held by him on account of the estate or of the said trusts, as the case may be, and in such case the receipt of the Public Trustee only shall be a sufficient discharge to every person paying such moneys.

(4) Notwithstanding anything contained in subsection (2) hereof, the Public Trustee may, by leave of a Judge, refuse to accept the office of executor or trustee of any will, or the office of trustee of any settlement or other disposition *inter vivos* of trust property, where, in the opinion of the Judge, the complicated, uncertain, risky, or trivial nature of the trusts and duties to be performed render it undesirable that the Public Trustee should act.

(5) Upon such refusal the rights and duties of the Public Trustee—

(a) if as executor or trustee of a will, shall wholly cease, and the representation of the testator and the administration of his estate shall go and devolve and be committed in like manner as if the Public Trustee had not been appointed; or

(b) if as trustee under a settlement or other disposition *inter vivos* of trust property, shall wholly cease, and thereafter the settlement or other disposition *inter vivos* of trust property shall be of the same effect as if the Public Trustee had not been appointed.

Court may direct amount of judgment, etc., to be paid to Public Trustee

88A. (1) If any court has adjudged, ordered, or decreed that money be paid, or property, real or personal, be delivered up or transferred, to a party to the cause or matter or to any other person, that court may direct in its judgment, order, or decree that such money or property be paid, delivered up, or transferred to the Public Trustee on behalf of such party or other person.

(2) The Public Trustee shall thereupon accept payment or delivery or transfer (as the case may be) of such money or property; and such acceptance shall be a sufficient discharge to the person paying, delivering, or transferring such money or property.

(3) The Public Trustee shall hold such money or property upon trust to apply the same, and the income thereof, in the manner and for the benefit of the party or other person directed in the said judgment, order, or decree, or in such manner and for the benefit of such person as the court by which the judgment, order or decree was made may from time to time direct.

(4) Subject to any direction of the court by which the judgment, order or decree was given or made, the Public Trustee shall have all the rights and powers, and shall undertake all the duties and liabilities, of a trustee (subject and according to the provisions of this Act) in relation to such money or property.

(5) In this section—

"court" means any court, or person acting judicially, exercising jurisdiction either within or outside this State.

Catherine Helen Spence and Tom Price Memorial Funds

89. The Public Trustee may continue to hold and administer a certain sum of four thousand four hundred and twenty dollars known as the Catherine Helen Spence Memorial Fund, and a certain sum of four thousand dollars known as the Tom Price Memorial Scholarship Fund, as if since the passing of the *Administration and Probate Amendment Act 1914* an order had been made under section 15 thereof authorising him to receive and administer such sums.

Certain documents may be deposited with the Public Trustee for safe keeping

90. The following documents may be deposited for safe custody with the Public Trustee, namely:—

- (a) any will whereof the Public Trustee is appointed the executor or one of the executors:
- (b) any settlement, declaration of trust, or other instrument whereby any trust is declared or created concerning any property of any kind, and the Public Trustee is appointed a trustee or one of the trustees.

Public Trustee need not give security

91. The Public Trustee need not, on obtaining administration, enter into any bond or give any security.

No action to be instituted after Public Trustee has obtained administration

92. After the grant of administration to the Public Trustee, or the making of an order authorising him to administer the estate of a deceased person, no person shall institute any action or other proceeding for the administration of such estate, and any such action or proceeding previously commenced shall, on the application of the Public Trustee, be stayed on such terms as to costs and otherwise as the Court thinks fit.

Provisions as to administrators to apply to Public Trustee when administering under order

93. When an order has been made under this Act authorising the Public Trustee to administer the estate of a deceased person—

- I. All the provisions of this Act as to an administrator, *mutatis mutandis*, shall apply to the Public Trustee, so far as such application is practicable and is not inconsistent with any of the provisions of this Act, to the same extent as if administration of such estate had been granted to the Public Trustee; and
- II. For the purposes of any other Act, and subject to the provisions thereof, the Public Trustee shall be deemed to be the administrator of such person.

DIVISION 3—ADMINISTRATION OF ESTATES BY THE PUBLIC TRUSTEE**Public Trustee may pay over to Curator of another State**

94. When the Public Trustee has obtained an order to administer the estate in this State of any person who at the time of his death was domiciled in one of the other States of the Commonwealth of Australia, or in the Dominion of New Zealand, and whose estate in the other State or the said Dominion is being administered by the Curator of such other State or Dominion, or by an executor or administrator duly appointed by the Supreme Court of such State or Dominion, the Public Trustee may pay over to the Curator of the State or Dominion in which the deceased was domiciled at the time of his death, or to such executor or administrator, the balance of the estate, after payment of his debts in this State and the charges provided for in this Act or the rules, without seeing to the application of any money so paid, and without incurring any liability in regard to such payment.

Public Trustee may receive from the Curator of another State

95. (1) When the Curator of any State of the Commonwealth of Australia (other than this State) or of the Dominion of New Zealand has in the said State or Dominion obtained administration of the estate of any deceased person whose estate in this State is being administered by the Public Trustee, and who at the time of his death was domiciled in this State, the Public Trustee may receive from the Curator of such other State or Dominion the balance of the deceased's estate in that State or Dominion, after payment of creditors and all charges provided for under the law of such State or Dominion.

(2) Such balance shall, when so received, form part of the estate of the deceased, and shall be dealt with according to the law of this State, but no commission shall be paid to or deducted by the Public Trustee.

Meaning of "Curator"

96. For the purposes of sections 94 and 95 "Curator", when used in reference to any State of the Commonwealth of Australia or the Dominion of New Zealand, means and includes the Curator of Intestate Estates or the Public Trustee for the time being of such State (other than this State) or of the said Dominion, as the case may require, or the officer discharging in such State or Dominion duties corresponding or similar to those discharged in this State by the Public Trustee.

Balances of estate may be paid or received under sections 94 and 95, notwithstanding deficiency of estate

97. In any case such as mentioned in section 94 or 95 of this Act, the Public Trustee, if satisfied that the total of the assets in the estate, wherever situated or recoverable, is insufficient for the payment in full of all creditors and all charges provided for by law, may make or receive under such of the said sections as is applicable to the case such payments as appear to be necessary for the due administration of the estate, notwithstanding that the creditors in this State or elsewhere have not been paid in full.

Duties of Public Trustee on obtaining administration

98. The Public Trustee having had administration granted to him, or being authorised to administer under section 79, shall, where there are creditors of the deceased person, administer the estate in the same manner as it would have been administered for the benefit of creditors under a decree of the Supreme Court, and shall, subject to the approval of the Court, have, for the purposes of such administration, power of sale of real estate.

Public Trustee to require transfer to him of property to which he is entitled

99. (1) The Public Trustee shall require administrators and other persons to deliver, convey, or transfer to him all property to which he becomes entitled under the provisions of this Act.

(2) For the purpose of ascertaining whether any administrator, or other person, is possessed of or entitled to any property which should be so delivered, conveyed, or transferred, the Public Trustee may institute such inquiries as he thinks proper regarding the particulars of estates under administration, and held in trust, and may, by summons under his hand, require any administrator or other person to appear before him, and answer all questions that he may put to such administrator or other person with reference to any estate.

(3) The Public Trustee shall pay or tender to the person so summoned the same amount as such person would have been entitled to had he been summoned as a witness to the Supreme Court.

Penalty on failure to attend, etc.

(4) Any administrator or other person who, after receiving such summons, fails to attend at the time and place mentioned therein, or who neglects to truly answer the questions put to him by or on behalf of the Public Trustee, shall forfeit and pay a penalty not exceeding two hundred dollars for each offence.

Power to summon administrator or other person before Judge

100. (1) If—

(a) any administrator or other person fails to deliver, convey, or transfer to the Public Trustee all property to which the Public Trustee is entitled under the provisions of this Act; or

(b) the procedure in the last section provided fails to elicit the particulars required,

the Public Trustee may issue a summons requiring such administrator, or other person, or any person who is supposed to be in possession of information relevant to the matter under investigation, to appear before a Judge, at a time and place to be therein mentioned, for the purpose of being examined touching such matters, and to produce any books, papers, deeds, or documents.

Order for transfer of property

(2) The Judge, if he is of opinion that such administrator or other person is possessed of or entitled to any property that should be delivered, conveyed, or transferred to the Public Trustee, may make an order requiring such administrator or other person to deliver, convey, or transfer all such property to the Public Trustee within such time as the Judge deems expedient.

(3) Such order may be made in the absence of the person summoned, if the summons has been duly served upon him.

Order as to costs

(4) The Judge may order such administrator or other person to pay all costs and expenses of and incidental to such summons and any examination consequent thereon.

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(5) If the Judge does not so order, then such costs and expenses shall be paid by the administrator of the estate with reference to which the proceedings have been taken, out of the general funds of such estate in priority to all other claims, or, if the Judge so orders, out of any particular portion of such funds.

Result of disobedience to summons

101. (1) Any administrator or other person who—

- (a) after receiving any summons under section 100 to appear before a Judge, fails to attend at the time and place mentioned; or
- (b) upon attending, refuses to be sworn or neglects to answer any question that is put to him by or on behalf of the Public Trustee; or
- (c) having been summoned to produce any books, papers, deeds, or documents, fails to produce the same without valid excuse, or, if so required, hand such books, papers, deeds, or documents over to the Public Trustee; or
- (d) disobeys any order made by a Judge upon the hearing of any such summons;

shall be guilty of contempt of Court.

(2) A Judge may make an order for the arrest of such administrator or other person, and his imprisonment, either for such period as the Judge thinks fit or until he has purged his contempt to the satisfaction of a Judge.

(3) The Judge may also order such administrator or other person to pay the costs of such proceedings.

Investment of trust funds

102. (1) Subject to this Act, where the Public Trustee receives any money (whether under this Act or otherwise) on behalf of any estate, trust or person, the Public Trustee shall initially pay that money into a bank account approved by the Minister for the purposes of this section.

(2) Subject to this Act and any other Act and the terms of any relevant instrument of trust or order of court, the Public Trustee shall invest such funds as are held in trust—

- (a) in a manner authorised by the instrument of trust; or
- (b) in a trustee investment; or
- (c) in a common fund established by the Public Trustee under this section; or
- (d) on deposit with the South Australian Government Financing Authority.

(3) For the purposes of making investments in accordance with subsection (2), the Public Trustee may, with the approval of the Minister, establish one or more common funds.

(4) The Public Trustee shall for each common fund determine the classes of investment (being trustee investments) in which the common fund may be invested (and those classes may be varied from time to time by the Public Trustee).

(5) No money shall be invested in a common fund unless the classes of investment in which that money could be invested on separate account are the same as, or include, the classes of investment in which the common fund may be invested.

(6) The Public Trustee shall keep an account showing at all times the current amount for the time being at credit in the common fund on account of each estate, trust or person.

(7) The Public Trustee has a discretion to realise investments in which money from a common fund has been invested and to reinvest the money in investments of an appropriate class.

(8) The Public Trustee may withdraw from a common fund any amount at credit in the common fund on account of any estate, trust or person—

- (a) for the purpose of reinvestment; or
- (b) for the purpose of defraying liabilities that are lawfully chargeable against that estate, trust or person; or
- (c) for the purpose of making a payment to a person who is beneficially entitled to that payment; or
- (d) for the purpose of making any other payment in accordance with this Act.

(9) The Public Trustee shall determine the value of the investments in which each common fund has been invested as at the first day of each month.

(10) Income arising from the investment of a common fund shall be applied as follows:

- (a) firstly, in the payment or crediting of income on amounts invested in the common fund; and
- (b) secondly, in making such contribution (if any) to the Common Fund Reserve Account as the Public Trustee determines to be appropriate; and
- (c) thirdly, towards meeting to such extent as the Public Trustee in consultation with the Treasurer determines to be appropriate any excess of operating expenditure over income as disclosed by the accounts of the office of the Public Trustee.

(11) The income payable on money invested in a common fund shall be at rates determined from time to time by the Public Trustee and those rates may vary according to—

- (a) the amount invested;
- (b) the period of the investment;
- (c) any other factor determined by the Public Trustee.

(12) The burden of contribution to operating expenditure of the Public Trustee under subsection (10)(c) should be spread across all common funds on an equitable basis.

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(13) The Common Fund Reserve Account shall continue to be kept at the Treasury as a trustee account and shall be applied by the Treasurer, at the request of the Public Trustee made with the written approval of the Auditor-General, towards making good any losses incurred in connection with the investment of a common fund or the administration of an estate by the Public Trustee.

(14) The common fund in existence immediately before the commencement of the *Administration and Probate Act Amendment Act 1986* shall, while there are amounts standing to the credit of that fund, continue in existence as a common fund under this section but—

- (a) the Public Trustee is not required to determine classes of investment for that common fund; and
- (b) the Public Trustee is not required to determine as at the first day of each month the value of the investments in which the common fund has been invested.

(15) In this section—

"trustee investment" means an investment in which a trustee is authorised by statute to invest trust funds.

Power to borrow on overdraft on security of common funds

102A. (1) The Public Trustee may, with the approval of the Minister—

- (a) borrow money on overdraft from a bank; and
- (b) deposit with a bank as security for the overdraft any securities representing money invested in a common fund.

(2) An approval under subsection (1) may be given subject to such conditions as the Minister thinks fit.

(3) The total amount of capital on loan to the Public Trustee under this section at any one time shall not exceed \$1 000 000.

Power of postponement of sale and leasing of real estate and chattels real

103. The Public Trustee may, with the approval of the Court, postpone for any period the sale, realisation, and conversion into money of any estate coming into his possession or under his control and in the meantime may demise or lease any real estate or chattels real to such person, at such rent, upon such terms and conditions, and in such manner (not inconsistent with the tenure of such real estate or chattels real) as the Court approves.

Indemnity to persons having dealings with Public Trustee

104. (1) No person purchasing or selling any estate, or receiving or paying any money from or to or having any other transaction with the Public Trustee, which requires the authority of the Court shall be bound or entitled to require evidence that such authority has been given, further than the order or an office copy of the order giving such authority.

(2) Such order or office copy shall, so far as all persons having any such transaction as aforesaid with the Public Trustee are concerned, be conclusive evidence of the regularity of such transaction on the part of the Public Trustee.

(3) The receipts in writing of the Public Trustee for any moneys payable to him under this Act shall be sufficient discharges for the same to the persons paying the same, who shall not afterwards be liable for any misapplication thereof.

Settlement on marriage of infant

105. If the Public Trustee has under his control the property of any person under the age of eighteen years who marries, a Judge may authorise the Public Trustee to deliver, transfer, or convey such property to such two or more persons as trustees, upon such trusts, to be defined by deed, as a Judge may approve.

* * * * *

Public Trustee to give notice to beneficiary of money or other property to which beneficiary is entitled

107. When any money in the hands of the Public Trustee becomes payable to any beneficiary, or when any beneficiary is entitled to the conveyance, transfer, or delivery of any other property, whether real or personal, vested in or under the control of the Public Trustee, the Public Trustee shall, when practicable, give notice to the beneficiary that such money is payable to him, or that he is entitled to the conveyance, transfer, or delivery of such property.

Administration of Public Trustee may be referred to Supreme Court

108. (1) Upon petition to the Court, by any person showing to the satisfaction of the Court that he has an interest in any property for the time being administered by the Public Trustee, the Court may summon the Public Trustee to attend at a time and place in the summons mentioned for the purpose of answering the allegations of the petition.

(2) The Court, on the hearing of such summons, may—

- (a) make such order in relation to the conduct of the Public Trustee as trustee guardian, or committee in the matter giving rise to such petition as the Court thinks fit; and
- (b) order the Public Trustee to produce or to pay and deliver over all money, books, and documents in his possession, control, or custody to any person or persons named in such order.

Public Trustee may hold inquiry as to validity of claim against the estate

109. (1) When an estate is in course of administration by the Public Trustee, and any claim is made by any person against such estate, whether as a creditor or beneficiary, the Public Trustee, if in doubt as to the validity of such claim, may institute such inquiries as he thinks proper regarding such claim, and may, by a summons signed by him, require the claimant and any other persons to appear before a Judge at any time and place therein mentioned, and then, or at any adjournment of the application, to answer all questions that may be put to them respectively with reference to such claim: Provided that the Public Trustee shall pay or tender to any person so summoned the same amount as such person would be entitled to if he had been summoned as a witness to the Supreme Court.

(2) If the claimant, after receiving a summons under this section, fails to attend at the time and place therein mentioned, or at any adjournment of the application, or if he refuses or fails to truly answer any question put to him by or on behalf of the Public Trustee, it shall be lawful for the Public Trustee, by direction of a Judge, either with or without proceeding under subsection (3) hereof, to reject the claim.

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(3) If the claimant or any other person, after receiving a summons under this section, fails to attend at the time and place therein mentioned, or at any adjournment of the application, or refuses or fails to truly answer any question put to him by or on behalf of the Public Trustee, he shall, if a Judge so directs, forfeit and pay a penalty not exceeding two hundred dollars, which shall be recoverable in a summary manner before a special magistrate or two justices of the peace, and sections 125 and 126 shall apply to and in respect of such penalty and the recovery thereof.

Public Trustee may make advances for purposes of administration

110. (1) When the Public Trustee is administering any estate, and there is property vested in him to the credit of such estate, but there is not sufficient money available to make payments required to be made on account of such estate, whether to beneficiaries or creditors, or for expenses of administration, or otherwise, the Public Trustee may, with the approval of a Judge, advance and pay, for or on account of such estate, any sum of money which he is authorised or required to pay: Provided that no greater amount shall be so advanced and paid than the value of the property so vested in the Public Trustee: Provided further that the Public Trustee may, without the approval of a Judge, advance and pay under this section any sum not exceeding forty per centum of the value of the property so vested in the Public Trustee.

(2) The sums so advanced, with interest thereon at a rate to be fixed by a Judge from time to time in respect of all such sums, shall be a first charge upon all the property in the estate.

(3) The Public Trustee shall be deemed to have had full power and authority to make advances and payments for or on account of any estate without the approval of a Judge where the amount of such advances has not exceeded forty per centum of the value of the property vested in the Public Trustee to the credit of any such estate.

Powers of trustees under s. 2 of the Trustee Act 1907 conferred on Public Trustee

111. The power conferred on a trustee by section 2 of the *Trustee Act 1907* is hereby conferred on the Public Trustee.

Custodian trustee

111A. (1) The Public Trustee may be appointed to be custodian trustee of any trust—

- (a) by order of the Court made on the application of any beneficiary or of any person on whose application the Court may order the appointment of a new trustee; or
- (b) by the instrument constituting the trust; or
- (c) by any person having power to appoint new trustees.

(2) Upon an appointment under subsection (1) of this section—

- (a) the trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose orders may be made by the Court vesting the property in the custodian trustee;
- (b) those persons who would, if there were no custodian trustee, be the sole trustees of the trust shall have the management of the trust property;
- (c) as between the custodian trustee and the managing trustees (without prejudice to the rights of any other persons) the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom.

(3) Subject to subsection (4) of this section the custodian trustee shall do all things necessary to enable the managing trustees to perform their functions and exercise their powers under the trust.

(4) Nothing in subsection (3) of this section requires the custodian trustee to do anything that is a breach of trust or subjects him to a personal liability.

(5) The custodian trustee shall not be liable for any act or default of the managing trustees to which he has not consented.

(6) All moneys payable out of the trust estate shall be paid by the custodian trustee and all moneys payable to the trust estate shall be paid to the custodian trustee or as he directs.

(7) Where the custodian trustee directs that trust property be paid or delivered to the managing trustees or at their direction he shall not be responsible for the application of that property or for its loss or misapplication.

(8) The custodian trustee shall not have power to appoint a new trustee but he shall be entitled to apply to the Court for the appointment of a new trustee in the circumstances that the managing trustees could apply to the Court for that purpose.

(9) On application by the custodian trustee, any of the managing trustees or any beneficiary the Court may—

- (a) terminate the custodian trusteeship; and
- (b) make such vesting orders and give such directions as are necessary,

if it is satisfied that—

- (c) termination of the trusteeship is the wish of the majority of beneficiaries; or
- (d) there are other reasons that make such an order expedient.

(10) The custodian trustee or the managing trustees may submit a dispute between them to a Judge in chambers who may determine the matters in dispute in such manner as he considers just.

Charges of Public Trustee

112. (1) In order to defray the expenses incidental to the establishment and maintenance of the office of the Public Trustee, there shall be charged on any property which becomes vested in him, or which comes into his possession or under his management or control, in addition to the amount of his proper expenses in connection with such money or property, a commission and fees in respect of his services in connection therewith.

(1a) Subject to subsection (1b) of this section, the commission or fees to which the Public Trustee is entitled shall be determined in accordance with the regulations.

(1b) The Court may, upon the application of the Public Trustee, determine—

- (a) the amount of the commission or fees to which the Public Trustee is entitled in a particular case; or

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- (b) the basis upon which the commission or fees to which the Public Trustee is entitled in a particular case are to be determined.

(2) In any case, such commission, fees and the money so expended may be deducted by the Public Trustee from the money received by him as aforesaid, or from any moneys in the same estate or trust or fund which are so received; or, with the approval of a Judge, such commission, fees and the moneys so expended, together with the costs and expenses of raising the same, may be raised by sale or mortgage of, or other charge on, any property of the estate or trust or fund in respect of which the services were rendered.

(3) The Court or a Judge may direct what part or parts of an estate or trust shall bear the burden of any commission, fees or expense provided for by this section, and in what proportions (if any) such burden is so to be borne.

(4) The moneys deducted or raised pursuant to this section in order to defray the expenses incidental to the establishment and maintenance of the office of the Public Trustee shall to the extent necessary for that purpose be paid to the Treasurer for the public revenue of the State and any surplus remaining after such payment shall be paid to the credit of an account to be called "the Income Adjustment Account" which shall be kept by the Public Trustee.

(4a) The Income Adjustment Account shall be applied by the Public Trustee—

- (a) firstly, towards repaying to the common funds any amounts paid out of those funds to defray operating expenses of the office of the Public Trustee (the repayments being equal to or proportionate to the amounts of the payments); and
- (b) secondly, for any purpose approved by the Minister.

(5) Notwithstanding anything in this section, the Court or a Judge may in any case, upon application by the Public Trustee or any person interested, if it or he considers that there are special circumstances which warrant so doing—

- (a) fix the commission to be charged at a higher or a lower rate than that fixed by or determined under the regulations and applicable to the particular case; or
- (b) direct that no commission be charged.

(6) The Governor may for the purposes of this section, by regulation—

- (a) fix the rate or amount of any commission or fee;
- (b) fix a maximum or minimum rate or amount for any commission or fee and provide that the Public Trustee may determine the rate or amount of such commission or fee in any particular case subject to the maximum or minimum so fixed.

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Costs and expenses, how to be defrayed

114. (1) All costs and expenses of and incidental to any proceedings to obtain judicial advice and other applications to the Court, and all costs and expenses incurred by the Public Trustee in instituting and carrying on or defending any action or suit, and all other costs and expenses incurred by the Public Trustee in the performance of his duties under this Act, or in connection with any estate, which are not ordinarily incurred in the administration of estates, shall be charged against the estate in respect of which such costs and expenses are incurred.

(2) The Public Trustee, by leave of the Court, may sell all or any of the property, whether real or personal, belonging to such estate, to obtain funds for the payment of such costs and expenses.

Public Trustee to keep accounts

115. (1) The Public Trustee shall keep full and accurate accounts of all estates and matters coming under his control, and of all his dealings and transactions in relation to such estates.

(2) Such accounts shall be audited by the Auditor-General half-yearly.

Public Trustee to pay unclaimed moneys to Treasurer

116. (1) In the first week in every January the Public Trustee shall pay to the Treasurer, for the public revenue of the State, all sums of money not belonging to a person not *sui juris* which, on the first day of that month, have been in his hands to the credit of any intestate estate and unclaimed for the term of six years next preceding and all sums of money not exceeding one thousand dollars not belonging to a person not *sui juris* which, on the first day of the said month, have been in his hands to the credit of any other deceased estate and unclaimed for the term of six years next preceding.

(2) If any land has remained vested in the Public Trustee for twenty years, and he is ignorant of any person beneficially entitled to or interested therein, he may, by leave of the Court to be given after such advertisements as the Court in each case directs, sell such land and convey or transfer it to the purchaser, and shall pay the purchase-money, less costs and expenses, to the Treasurer, for the public revenue of the State.

Provision for parties subsequently claiming who may petition the Supreme Court, etc.

117. (1) If, at any time after any such money has been so paid to the Treasurer—

(a) any person presents a petition to the Court praying for the payment to him of such money, or any part thereof (a copy of such petition being previously served on the Public Trustee); and

(b) the Court is of opinion, upon affidavit or other sufficient evidence, that the person petitioning is entitled to such money, or any part thereof—

the Court shall make an order for payment thereof, after deducting any costs and expenses which have been incurred by the Public Trustee, or otherwise, in respect of such application, or shall make such other order as is just.

(2) On any such order being served on the Treasurer, he shall pay the money mentioned in such order to the person entitled to receive the same in pursuance thereof, and the receipt of such person shall be a valid discharge for such sum.

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(3) No interest shall be paid on any such money by virtue of any such order or otherwise, from the time the same has been paid to the Treasurer.

(4) Notwithstanding the provisions of the preceding subsections of this section, the Treasurer may, at any time, pay any such money to the Public Trustee upon the certificate of the Public Trustee that the identity and whereabouts of the person or persons entitled thereto have been ascertained.

Power to pay certain money to widows

117A. Where any money paid (whether before or after the enactment of this section) to the Treasurer under section 116 of this Act is the share of the next of kin in the estate of any person who has died intestate leaving a widow and no children the Treasurer may, at his discretion, on the application of the widow, pay that money to her and thereafter no person shall have any further claim against the Public Trustee, the Treasurer, or any other person to the money so paid.

Responsibility of Government for acts of Public Trustee

118. (1) The public revenue of the State shall be responsible for the due application of all moneys which come into the hands of the Public Trustee, and for the payment of all judgments, decrees, rules, or orders which are given or made against the Public Trustee.

(2) The Public Trustee shall not be responsible for such moneys, nor for any act, deed, or omission to a greater extent than a trustee would by law be responsible in a similar case.

Expenditure of moneys on land

118A. (1) The Public Trustee may, with the consent of the Minister—

- (a) acquire any interest in land (either improved or unimproved) for use by the Public Trustee wholly or partially in connection with the execution of his powers, functions, duties and obligations under this Act; and
- (b) erect a building on the land so acquired or alter any existing building in such manner as the Public Trustee thinks fit; and
- (c) provide such plant, fixtures, fittings or furniture in connection with any such building as the Public Trustee thinks fit.

(2) The Public Trustee may—

- (a) lease, or grant rights of occupation in relation to, any part of any land or building acquired or built pursuant to this section; or
- (b) otherwise deal with any such land or building in a manner approved by the Minister.

(3) The Public Trustee may apply moneys from a common fund for the purposes of subsection (1) of this section.

(4) Subject to subsection (5) of this section, the interest that shall be paid upon moneys so applied and the terms upon which they shall be repaid to a common fund shall be determined by the Minister.

(5) The rate of interest to be paid upon the principal from time to time outstanding shall be not less than the long term bond rate.

(6) In this section—

"the long term bond rate" means a rate of interest payable in respect of a Commonwealth Public Loan having a currency exceeding five years being raised in Australia at the time the moneys are applied from the particular common fund, or if no such loan is then being raised, in respect of the Commonwealth Public Loan having a currency exceeding five years last raised in Australia prior to the application of moneys from the particular common fund.

DIVISION 4—UNCLAIMED PROPERTY

Appointment of Public Trustee as Manager of unclaimed property

118B. The Public Trustee may be appointed manager in accordance with this Division of any real or personal property in this State in the in the following cases:—

- (a) when, after due inquiry, it is not known who the owner of the property is, or where he is, or whether he is alive or dead;
- (b) when the owner of the property is absent from this State or dead and, after due inquiry, it is not known whether he has any agent or administrator in this State with authority to take possession of and administer the property, or where any such agent or administrator is, or whether he is alive or dead.

Mode of appointment

118C. (1) The Court may appoint the Public Trustee as manager of any property under this Division on application made *ex parte* by the Public Trustee and on being satisfied that the appointment is advisable—

- (a) in the interests of the owner of the property or of any other person; or
- (b) to secure the development or better utilisation of land.

(2) Notice of any such appointment shall be published in the *Gazette*.

(3) In any case where the Court considers that due inquiry has not been made for the owner of the property specified in any application made under subsection (1) of this section or for his agent or administrator, or as to whether the property is subject to any trust, it may, before making an order, require further inquiry to be made or advertisements published or notice given, and adjourn the application to enable that to be done.

Powers of Public Trustee

118D. (1) Unless the Court in any particular case otherwise orders, the Public Trustee, as manager under this Division of any property, may—

- (a) take or recover possession of the property, and recover all money, damages, and mesne profits payable to the owner or his administrator in respect of the property, whether the payment became due before or after the Public Trustee became manager of the property;
- (b) apply the property, money, damages, or mesne profits, or any part thereof or income therefrom for the maintenance or education (including past maintenance or education) or the advancement or benefit, in such manner as the Public Trustee in his absolute discretion thinks fit, of the wife or husband or children of the owner of the property or any other person who is or was dependent upon the owner;

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- (c) complete, carry out, perform, or enforce in such manner as he may think fit any contract affecting the property or entered into by the owner, and exercise any powers conferred by any such contract;
- (d) pay, out of money received, advanced, or borrowed by him in exercise of any powers conferred by this Division, any mortgages, charges, or other obligations on or attaching to the property, and any debts or other liabilities of the owner of the property;
- (e) perform or discharge any obligation or duty imposed by any Act or otherwise upon the owner of the property;
- (f) do any act or thing necessary to obtain or perfect the title to the property;
- (g) in the case of land, cut and gather crops growing or situate thereon and erect fences on or around the land or contribute to the erection of any dividing or boundary fences;
- (h) exercise any power of sale or other powers or rights conferred upon the owner by any mortgage, lease, Act, or instrument;
- (i) in the name of the owner, or at his discretion in his own name, bring any action or other proceeding relating to the property, and defend, confess, compromise, or submit to judgment in any action, claim, demand, or proceeding relating to the property;
- (j) exercise, as if he were the trustee of the property all powers which as trustee he could exercise without the consent of the Court under any Act or law;
- (k) exercise in respect of the property any other power that may be conferred on him by the Court.

(2) All deeds and other documents executed by the Public Trustee as manager of any property pursuant to the powers conferred on him by or under this Division shall have effect and may be registered in all respects as if they were executed by the owner of the property.

Public Trustee to have discretion as to exercise of powers

118E. (1) The Public Trustee is not obliged to take any steps or proceedings to cause himself to be appointed manager of any property under this Division.

(2) Where the Public Trustee is manager of any property under this Division, he shall, subject to any direction of the Court, have a complete discretion as to whether or not he exercises any of the powers conferred on him by or under this Division, and shall not be liable for anything done or omitted to be done by him in good faith in exercise of that discretion or of any such power.

Public Trustee may apply to Court for directions

118F. (1) The Public Trustee, as manager of any property under this Division, may apply *ex parte* to the Court for directions concerning the property, or in respect of the management or administration of the property, or in respect of the exercise of any power or discretion vested in him as manager.

(2) The Court may order any such application to be served upon such persons as it thinks expedient.

Money to form part of common fund

118G. All money for the time being held by the Public Trustee under this Division shall form part of a common fund.

Remuneration and expenses of Public Trustee

118H. (1) All expenditure incurred by the Public Trustee as manager of any property under this Division, and all fees, costs, commission, charges, interest and expenses incurred by or payable to the Public Trustee as manager of any property under this Division shall be a charge upon the property, which charge shall come next in priority to any mortgage or charge to which the property is subject when the Public Trustee becomes manager.

(2) The amount for the time being so charged on the property shall bear interest at a rate fixed from time to time by the Public Trustee.

Property of which Public Trustee takes possession to be held for owner

118I. Where the Public Trustee, as manager under this Division, takes possession of any property or receives or recovers any money, damages or mesne profits in respect of any property, the property, money, damages or mesne profits shall, after payment thereof of all money authorised to be applied, expended or charged by the Public Trustee, be held by him for the owner of the property.

Termination of managership

118J. (1) The Public Trustee shall cease to be manager of any property under this Division upon the happening of any of the following events:—

- (a) if the Court so orders on application served on the Public Trustee and made by the owner of the property or by his administrator or duly authorised agent, or by any person having any interest in the property or in any part thereof;
- (b) if the Public Trustee publishes notice in the *Gazette* that he has ceased to be the manager of the property under this Division;
- (c) if the Public Trustee transfers or delivers the property to the owner or his administrator or duly authorised agent.

(2) The termination of the Public Trustee's managership of any property under this Division shall not affect any charge acquired by the Public Trustee under this Division, or the validity of any act or thing done by the Public Trustee while he was manager of the property.

(3) No order shall be made by the Court under this section without the consent of the Public Trustee until the Public Trustee has been paid all amounts to which he is entitled under this Division in respect of all expenditure, fees, costs, commission, charges, interest and expenses, incurred by or payable to the Public Trustee as manager of the property, together with all costs incurred by the Public Trustee of and incidental to the application for the order.

(4) Upon the Public Trustee ceasing to be manager of any property which remains in his name or in his possession, the Public Trustee may transfer or deliver the property to the person entitled thereto.

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Transfer of unclaimed property to Crown

118K. (1) If, after twenty years from the date of the publication in the *Gazette* of the order by which the Public Trustee was appointed manager of any land, no person has established a claim to the land, and the Public Trustee has not become aware of the existence and whereabouts of any person who has a claim to the land—

- (a) where the land has not been sold by the Public Trustee in exercise of the powers conferred on him by this Division, it shall vest in the Crown;
- (b) all money held by the Public Trustee and derived from the land shall be paid into the General Revenue of the State.

(2) If, after seven years from the date of the publication in the *Gazette* of the order by which the Public Trustee was appointed manager of any property other than land, no person has established his claim to the property, and the Public Trustee has not become aware of the existence and whereabouts of any person who has or may have a claim to the property—

- (a) where the property has not been sold by the Public Trustee in exercise of the powers conferred on him by this Division, it shall vest in the Crown;
- (b) all money held by the Public Trustee and derived from the property shall be paid into the General Revenue of the State.

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**PART 5
MISCELLANEOUS**

Probate to be evidence of wills concerning real estate

119. (1) The probate of any will or letters of administration with the will annexed shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate.

(2) The copy attached or annexed to such probate or letters of administration, purporting to be a copy of such will, shall be evidence of the contents of such will.

(3) The probate of any will or letters of administration shall be evidence of the death, and the date of the death of the testator or intestate.

Certificate by Public Trustee of appointment to act

119A. A certificate under the hand and seal of the Public Trustee certifying that he has been appointed, or otherwise empowered, to act in any specified capacity shall, in the absence of proof to the contrary, be accepted as proof of the matter certified in any legal proceedings.

No will to be registered or admissible in evidence until proved

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

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

Interest upon pecuniary legacies

120A. (1) Subject to any testamentary direction or provision to the contrary, where a will provides for the payment of a pecuniary legacy of a specified amount and the legacy is not paid in full on or before the relevant date, then, as from the relevant date and until the date of payment, interest accrues on the legacy, or so much of the legacy as remains unpaid, at the rate from time to time fixed by regulation for the purposes of this section.

(2) A right to interest under this section does not exist independently of a right to payment of the legacy itself, and where a legacy abates, the extent of the abatement shall be taken into account in calculating interest for the purposes of this section.

(3) This section applies to legacies whether they become or became payable before or after the commencement of the *Administration and Probate Act Amendment Act 1981*, but it does not affect interest that may have accrued upon a legacy before the commencement of that amending Act.

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(4) In this section—

"the relevant date" means—

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

whichever is the later.

Inspection of documents in Lands Titles or General Registry Office

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

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

121A. (1) A person who applies—

- (a) for probate or administration; or
- (b) for the sealing of any probate or administration granted by a foreign court,

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

(2) An executor, administrator or trustee of the estate of a deceased person (being an estate in respect of which probate or administration has been granted or sealed by the Court) shall, in accordance with the rules, disclose to the Court any assets or liabilities of the deceased person (not being assets or liabilities previously disclosed under this section) which come to his knowledge while acting in that capacity.

(3) An executor, administrator or trustee of an estate shall not dispose of an asset of the estate in respect of which disclosure has not been made to the Court pursuant to this section.

(4) Nothing in subsection (3) affects the interests of a person who acquires an asset of an estate in good faith for valuable consideration and without knowing that the asset has not been disclosed to the Court pursuant to this section.

(5) An executor, administrator or trustee who contravenes or fails to comply with a provision of this section is guilty of a summary offence and liable to a penalty not exceeding two thousand dollars.

(6) This section does not apply in respect of an estate of a deceased person who died before the commencement of this section.

(7) A reference in this section to the assets and liabilities of a deceased person is a reference to—

- (a) assets and liabilities of the deceased at the date of his death; and
- (b) assets falling into the estate after the death of the deceased not being an accretion to the estate arising out of an asset existing at the date of his death,

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

(8) In this section—

"administration" includes an order under section 79 authorising the Public Trustee to administer the estate of a deceased person.

Court may make rules

122. (1) The Court, or any one or more Judges thereof, shall have power from time to time to make such rules as to the said Court, Judge, or Judges appear expedient—

- (a) for regulating the procedure and practice of the Court in its testamentary causes jurisdiction; and
- (b) for the guidance of executors and administrators in relation to lands passing under section 46; and
- (c) for defining the duties of the Registrar and other officers thereof; and
- (ca) for authorising and regulating the exercise by the Registrar of any specified jurisdiction, power or authority of the Court whether arising under this Act or otherwise; and
- (d) for determining what shall be deemed contentious and what non-contentious business; and
- (e) for regulating the procedure and practice under Part 3 and Division 3 of Part 4; and

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- (f) for prescribing forms; and
- (g) generally for carrying the provisions of this Act into effect.

(2) The Court, or any one or more Judge or Judges thereof, shall also have power, by rules made for that purpose, to revoke, amend, add to, or alter any such rules, or any rules in existence at the commencement of this Act.

Rules to be approved by Governor, published in *Gazette*, and laid before Parliament

(3) All such rules shall be approved by the Governor, and shall thereafter be published in the *Gazette*, and shall take effect from a time to be therein specified; and shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, or if Parliament is not then sitting, within fourteen days after the commencement of the then next session of Parliament.

(4) If either House of Parliament, by resolution passed within thirty-six days next after any such rules are laid before it, resolve that the whole or any part thereof ought not to continue in force, the whole of such rules, or such parts thereof as may be specified in the resolution (as the case may be), shall, from the passing of such resolution, cease to be binding.

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

Affidavits

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

Person making false oath guilty of perjury

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

Proceedings before special magistrate and justices

125. All proceedings before justices, or a special magistrate, shall be regulated by the *Justices Act 1921* and any amendment thereof, or any other Act or Acts for the time being in force relating to summary proceedings.

On non-payment of penalties, etc., special magistrate may imprison

126. (1) In every case of the adjudication of a fine or pecuniary penalty under this Act, and of the non-payment of such fine or pecuniary penalty, any special magistrate may commit the offender or person making default in payment to any gaol in this State for any time not exceeding three months, the imprisonment to cease on payment of the sum due and the costs of such proceedings as have been taken for the recovery thereof.

(2) This section shall not affect any remedy under the said *Justices Act 1921* for the recovery of any fine or any pecuniary penalty.

Restraint upon exercise of rights of retainer and preference

127. (1) No right of retainer or preference shall be exercised by the executor or administrator of the estate of a deceased person unless the executor or administrator has reasonable cause to believe, and does believe, that the assets or the estate are sufficient to satisfy its liabilities.

(2) Where a right of retainer or preference has been exercised in contravention of this section, the Court may—

(a) set aside any payment of money or disposition of property that has been made in contravention of this section; and

(b) make any other order that may be just in the circumstances.

(3) This section does not prevent an executor or administrator from exercising a right to retain assets from the estate of a deceased person where the extent to which he exercises that right is not such as to confer upon him a preference over other creditors of the estate.

Power of Public Trustee to move for attachment of an administrator

128. Where, in the opinion of the Public Trustee—

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

the Public Trustee may institute proceedings for the attachment of the administrator.

Governor may stay or compound any proceedings

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

Regulations

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

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SCHEDULES

SCHEDULE 1

Acts Consolidated and Repealed

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

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APPENDIX

LEGISLATIVE HISTORY

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 1 of The Public General Acts of South Australia 1837-1975 at page 121.
- Legislative history since 3 February 1976 (entries in bold type indicate amendments incorporated since the last reprint) is as follows:

Section 4:	definition of "the common fund" repealed and definition of "common fund" inserted in its place by 70, 1986, s. 3 definition of "the Common Fund Interest Account" repealed by 70, 1986, s. 3 definition of "the Public Trustee" inserted by 80, 1978, s. 3; substituted by 15, 1980, s. 3
Section 6:	substituted by 33, 1991, s. 4
Section 7A:	inserted by 57, 1984, s. 2
Section 18(1):	substituted by 80, 1978, s. 4
Section 29(1):	substituted by 33, 1991, s. 5(a)
Section 29(3):	repealed by 33, 1991, s. 5(b)
Section 31:	substituted by 80, 1978, s. 5
Sections 43 and 44:	substituted by 76, 1984, s. 3
Section 56A:	inserted by 80, 1978, s. 6
Section 58(1):	amended by 80, 1978, s. 7
Section 71(1a):	inserted by 80, 1978, s. 8(a)
Section 71(3):	amended by 80, 1978, s. 8(b), (c)
Section 71(4):	substituted by 80, 1978, s. 8(d)
Section 72D:	repealed by 76, 1984, s. 4
Sections 73 and 74:	substituted by 80, 1978, s. 9; 15, 1978, s. 4
Sections 75 and 76:	substituted by 80, 1978, s. 9
Section 77:	substituted by 80, 1978, s. 10; redesignated as s. 77(1) by 76, 1984, s. 5
Section 77(2) and (3):	inserted by 76, 1984, s. 5
Section 77A:	inserted by 80, 1978, s. 10
Section 79:	amended by 80, 1978, s. 11
Sections 102 and 102A:	substituted by 70, 1986, s. 4
Section 105:	amended by 76, 1984, s. 6
Section 106:	repealed by 80, 1978, s. 12
Section 111A:	inserted by 80, 1978, s. 13
Section 112(1):	amended by 80, 1978, s. 14(a)
Section 112(1a) and (1b):	inserted by 80, 1978, s. 14(b)
Section 112(4):	amended by 70, 1986, s. 5(a)
Section 112(4a):	amended by 70, 1986, s. 5(b)
Section 112(5):	amended by 61, 1990, s. 2(a)
Section 112(6):	substituted by 61, 1990, s. 2(b)
Section 112(7):	repealed by 61, 1990, s. 2(b)
Section 118A(1):	amended by 80, 1978, s. 15(a)
Section 118A(3):	amended by 70, 1986, s. 6(a)
Section 118A(4):	amended by 80, 1978, s. 15(b); 70, 1986, s. 6(b)
Section 118A(6):	amended by 70, 1986, s. 6(c)

Division 4 of Part 4 comprising ss. 118B - 118K and heading inserted by 80, 1978, s. 16

Section 118G: amended by 70, 1986, s. 7

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Part 4A comprising ss. 118L - 118S and headings inserted by 80, 1978, s. 17; amended by 57, 1984, s. 3; 76, 1984 ss. 7-13; 70, 1986, s. 8; repealed by 59, 1993, Sched. cl. 4

Section 119A:	substituted by 80, 1978, s. 18
Section 120A:	inserted by 86, 1981, s. 3
Section 121A:	inserted by 76, 1984, s. 14
Section 122(1):	amended by 73, 1983, s. 3; 57, 1984, s. 4
Sections 127 and 128:	inserted by 80, 1978, s. 19
Section 130:	inserted by 86, 1981, s. 4