



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 99 of 1975

**An Act to amend the Administration and Probate Act,
1919-1975.**

[Assented to 20th November, 1975]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Administration and Probate Act Amendment Act (No. 2), 1975".

(2) The Administration and Probate Act, 1919-1975, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Administration and Probate Act, 1919-1975".

**Commence-
ment.**

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

**Amendment of
principal Act,
s. 2—
Arrangement
of Act.**

3. Section 2 of the principal Act is amended by inserting after the item:

PART III—Vesting and Administration of Estates

the item:

PART IIIA—Distribution on Intestacy.

**Amendment of
principal Act,
s. 4—
Interpretation.**

4. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "Judge" the following definition:—

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

(b) by inserting after the definition of "matters and causes testamentary" the following definition:—

"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: ;

and

(c) by inserting after the definition of "rules" the following definition:—

"spouse" includes a putative spouse: .

5. Section 23 of the principal Act is repealed. Repeal of
s. 23 of
principal Act.
6. Section 37 of the principal Act is amended by striking out the passage "the widow" and inserting in lieu thereof the passage "a spouse". Amendment of
principal Act,
s. 37—
Special
administration.
7. Sections 53, 54, 55 and 55a and the heading immediately preceding section 53 of the principal Act are repealed. Repeal of
ss. 53, 54, 55
and 55a of
principal Act.
8. Section 71 of the principal Act is amended by striking out from subsection (1) the passage "one thousand two hundred dollars" and inserting in lieu thereof the passage "two thousand dollars". Amendment of
principal Act,
s. 71—
Payment by
Treasurer
without
production
of probate
etc.
9. Section 72 of the principal Act is amended by striking out from subsection (1) the passage "one thousand two hundred dollars" and inserting in lieu thereof the passage "two thousand dollars". Amendment of
principal Act,
s. 72—
Payment by
bank without
production
of probate
etc.
10. The following Part is enacted and inserted in the principal Act immediately after section 72 thereof:— Enactment of
Part IIIA of
principal Act—

PART IIIA

DISTRIBUTION ON INTESTACY

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. Transitional
provisions.

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

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

"dwellinghouse" includes—

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

(b) the curtilage of a dwellinghouse:

"intestate" means a person who—

(a) does not leave a will;

or

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

“intestate estate” in relation to an intestate means—

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

or

(b) in any other case the whole of his estate:

“personal chattels” in relation to an intestate means—

(a) any articles of household or personal use or
ornament that form part of his intestate estate;

and

(b) any motor vehicles that form part of his intestate
estate,

but does not include any chattels used for business
purposes:

“relative” means a relative of the first, second, third or fourth
degree:

“relative of the first degree” in relation to an intestate means a
parent of the intestate:

“relative of the second degree” in relation to an intestate means
a brother or sister of the intestate:

“relative of the third degree” in relation to an intestate means a
grandparent of the intestate:

“relative of the fourth degree” in relation to an intestate means a
brother or sister of a parent of the intestate:

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

(2) For the purposes of this Part it is immaterial whether a relation-
ship 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.

Provision
relating to
persons who
at the date of
death of the
intestate
are infants.

72d. (1) Where a person who is entitled under the provisions of
this Part to the whole or part of an intestate estate has not attained, at
the date of death of the intestate, the age of eighteen years, and is not
married or widowed, that person is entitled to take the intestate estate,
or that part of the intestate estate, upon his attaining the age of eighteen
years, or marrying before attaining that age.

(2) Where a person to whom subsection (1) of this section applies
dies before attaining the age of eighteen years, and without having
married, the intestate estate shall be distributed as if that person had
not survived the intestate.

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. Presumption of survivorship not to apply.

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— Value of intestate estate.

(a) the—

- (i) debts and liabilities of the intestate;
- (ii) funeral expenses;
- (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.

72g. Subject to this Part, an intestate estate shall be distributed according to the following rules:— Distribution of intestate estate.

(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.

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

(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;
- (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;
- (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;
- (d) if the intestate is survived by grandchildren and by no other issue (apart from issue of those grandchildren) those grandchildren are entitled to the whole or that part (as the case may be) of the intestate estate in equal shares;

and

- (e) in any other case, the whole or that part of the intestate estate shall be divided into portions equal in number to the number of children of the intestate who either survived the intestate or left issue who survived him and—
 - (i) a child (if any) of the intestate who survived the intestate is entitled to one of the portions;
 - (ii) where a child of the intestate died before the intestate leaving issue that survived the intestate, that issue is entitled *per stirpem* (through all degrees) to one of those portions (and if the issue comprises two or more persons, they share equally).

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—

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- (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.

721. (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.

Election by spouse to take matrimonial home.

(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.

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—

Limitation on right of personal representative to sell interest in dwellinghouse.

(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.

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

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.

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

Certain Imperial Acts not to apply in this State.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor