

ADMINISTRATION OF ESTATES ACT.

Act No. 40, 1954.

An Act to amend the law of intestacy; for this and other purposes to amend the Wills, Probate and Administration Act, 1898, the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 6th December, 1954.]

Elizabeth II,
No. 40, 1954.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Administration of Estates Act, 1954."

Short title,
citation and
commence-
ment.

(2) The Wills, Probate and Administration Act, 1898, as amended by subsequent Acts and by this Act, may be cited as the Wills, Probate and Administration Act, 1898-1954.

(3) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts and by this Act, may be cited as the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

(4) The Public Trustee Act, 1913, as amended by subsequent Acts and by this Act, may be cited as the Public Trustee Act, 1913-1954.

(5) The Conveyancing Act, 1919, as amended by subsequent Acts and by this Act, may be cited as the Conveyancing Act, 1919-1954.

(6)

264 Administration of Estates Act.

No. 40, 1954. (6) This Act shall commence upon the first day of January, one thousand nine hundred and fifty-five.

Amendment of Act No. 13, 1898. 2. (1) The Wills, Probate and Administration Act, 1898-1947, is amended—

New Div. 2A. (a) by inserting next after section sixty-one the following new Division:—

DIVISION 2A.—*Persons dying intestate or partially intestate on or after 1st January, 1955.*

Modification of Division 2 in respect of persons dying intestate or partially intestate on or after 1st January, 1955.

61A. (1) As respects a person dying intestate or partially intestate on or after the first day of January, one thousand nine hundred and fifty-five, Division 2 of this Part of this Act has effect subject to the amendments set out in this section.

(2) For sections forty-nine, fifty and fifty-one the following sections are substituted:—

Succession to real and personal estate on intestacy or partial intestacy. cf. 15 Geo. 5. c. 23, s. 46 (1).

49. (1) Subject as aforesaid, and subject to the provisions of sections fifty, fifty-two and fifty-three of this Act, the real and personal estate, vesting as aforesaid, as to which any person (in this section referred to as “the intestate”) dies intestate shall—

(a) be held by the administrator on intestacy, or in the case of partial intestacy by the executor or administrator with the will annexed, as the case may be—

(i) as to the real and personal estate—

(a) where the intestate leaves issue, in statutory trust for the issue of the intestate;

(b)

- (b) where the intestate leaves No. 40, 1954.
no issue but both parents,
in trust for the father and
the mother in equal
shares;
- (c) where the intestate leaves
no issue but one parent, in
trust for the surviving
father or mother;
- (d) where the intestate leaves
no issue or parent, in trust
for the following persons
living at the death of the
intestate, and in the fol-
lowing order and manner,
namely:—

First, in statutory trust
for the brothers and
sisters of the whole blood
of the intestate; but if
there is no member of this
class; then

Secondly, in statutory
trust for the brothers and
sisters of the half blood
of the intestate; but if
there is no member of this
class; then

Thirdly, for the grand-
parents of the intestate
and, if more than one
survive the intestate, in
equal shares; but if there
is no member of this class;
then

Fourthly,

Fourthly, for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate) and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Fifthly, for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate) and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Sixthly, for the surviving husband or wife of the intestate; and also

(ii) as to the real estate as if the same had been devised to the persons for whom it is held in trust under this section; and

(b) in default of any person taking an interest under paragraph (a) of this subsection or under section fifty of this Act, belong to the Crown as bona vacantia.

The Crown may, out of any property devolving upon it under this paragraph, provide, in accordance with existing practice, for dependants, whether kindred or not of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(2) (a) Where under this section real and personal estate of an intestate or any part thereof is directed to be held in statutory trust for the issue of the intestate, the same shall be held upon the following trusts, namely:—

(i) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, and for all or any of the issue living at the death of the intestate of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking.

(ii) Where the real and personal estate of the intestate held in statutory trust for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the

No. 40, 1954.
cf. 15
Geo. 5.
c. 23, s.
47 (1) (i)
(iii), (3).

No. 40, 1954.

the administrator, executor or administrator with the will annexed, as the case may be.

This subparagraph applies only where the intestate dies totally intestate or, though leaving a will, dies intestate as to the complete beneficial interest in his real and personal estate.

(b) Where under this section real and personal estate of an intestate or any part thereof is directed to be held in statutory trust for any class of relatives of the intestate, other than issue of the intestate, the same shall be held in trust corresponding to the statutory trust for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trust (other than as aforesaid) were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

(3) No executor as such shall be entitled to take beneficially any residue not expressly disposed of by the will of the testator, unless it appears by the will that the executor is intended so to take.

cf. 15
Geo. 5.
c. 23, s.
46(2).

(4) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.

cf. *Ibid.*
s. 55 (2).

(5) References in this section and in section fifty of this Act to a child or issue living at the death of any person include a child or issue en ventre sa mere at the death.

Husband's
interest in
wife's
estate and
vice versa.

50. (1) Subject to subsection two of this section, any husband or wife shall be entitled on the death of the other (in this section referred

referred to as "the intestate"), as to the No. 40, 1954.
property as to which he or she dies intestate,
to the following shares only:—

- (a) where there is issue living at the death of the intestate—
 - (i) in the case where such issue comprises or includes two or more children of the intestate, to one-third share of such property;
 - (ii) in any other case, to one-half share of such property.
- (b) where there is no issue living at the death of the intestate, and in case of total intestacy—
 - (i) where the net value of the property of the intestate does not exceed the sum of three thousand pounds, to the whole of such property;
 - (ii) where the net value of such property exceeds the sum of three thousand pounds, to the sum of three thousands pounds absolutely and exclusively, which sum with interest thereon from the date of the death until payment at the rate of four pounds per centum per annum shall be a charge upon the whole of such property; and in addition thereto to one-half share of the residue of such property after the payment of such sum of three thousand pounds and interest, if any.
- (c) where there is no issue living at the death of the intestate and in case of partial intestacy, to one-half share of such property.

No. 40, 1954.

(2) Nothing in subsection one of this section affects any interest that the surviving husband or wife may be entitled to under paragraph (a) of subsection one of section forty-nine of this Act in default of any other person taking an interest under that paragraph.

Right of illegitimate child and mother of illegitimate child to succeed on intestacy of other.
cf. 16 & 17 Geo. 5. c. 60. s. 9.

51. (1) Where, on or after the first day of January, one thousand nine hundred and fifty-five, the mother of an illegitimate child dies intestate as respects all or any of her real or personal property, and does not leave any legitimate issue her surviving, the illegitimate child, or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

(2) Where, on or after the first day of January, one thousand nine hundred and fifty-five, an illegitimate child dies intestate in respect of all or any of his real or personal property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

Sec. 1.
(Short title and division.)
(Consequential.)

(b) by inserting in section one next after the matter relating to Division 2 of Part II the following:—

DIVISION 2A.—*Persons dying intestate or partially intestate on or after 1st January, 1955*
—s. 61A.

Amendment of Act No. 19. 1913.
Sec. 33.
(Payment to widow or to relatives of illegitimate.)

(2) (a) The Public Trustee Act, 1913-1942, is amended by omitting paragraphs (b) and (c) of subsection one of section thirty-three.

(b) The amendment made by paragraph (a) of this subsection does not apply to or in respect of an intestate or deceased person who died before the commencement of this Act.

(c)

(c) Save as provided in this subsection nothing in this section affects the operation of the Public Trustee Act, 1913-1954. No. 40, 1954.

(3) The Conveyancing Act, 1919-1953, is amended— Amendment
of Act No.
6, 1919.

- (a) by inserting in subsection one of section thirty-three after the words "this Act" the words "but before the commencement of the Administration of Estates Act, 1954"; Sec. 33.
(Meaning
of heir,
next of kin,
or statutory
next of kin
of any
person.)
- (b) by inserting in the same subsection after the words "lastmentioned Act" the words "as in force immediately before the commencement of the Administration of Estates Act, 1954";
- (c) by inserting next after the same subsection the following new subsection:—

(1A) Where, under the terms of any instrument coming into operation after the commencement of the Administration of Estates Act, 1954, any property vests in—

- (a) the heirs of any person; or
- (b) the next of kin of any person; or
- (c) the next of kin of any person to be determined in accordance with the Wills, Probate and Administration Act, 1898,

the property shall vest in the persons who on the death of such person intestate would be beneficially entitled to his real and personal estate under Division 2A of Part II of the said lastmentioned Act, and in the same shares:

Provided that the share of the husband or wife of such person shall be as follows:—

- (a) where there is issue surviving—
- (i) in the case where such issue comprises or includes two or more children of such person, one-third share of the property;
- (ii)

No. 40, 1954.

(ii) in any other case, one-half share of the property;

(b) where there is no issue surviving, one-half share of the property.

Further amendment of Act No. 13, 1898.

3. The Wills, Probate and Administration Act, 1898-1947, is further amended—Sec. 30.
(Place of original wills.)

(a) by omitting from section thirty the words “deposited and preserved at the Supreme Court-house or at such other one place in Sydney under the control of the Court as the Governor may by notice in the Gazette direct,” and by inserting in lieu thereof the words “preserved under the control of the Court in such manner as the Probate Judge may direct,”;

Sec. 36.
(Appointment of Registrar.)

(b) by inserting in section thirty-six after the words “a Deputy Registrar” the words “or Deputy Registrars”;

Sec. 38.
(Deputies may exercise powers and perform duties of Registrar.)

(c) by omitting from section thirty-eight the words “The Deputy Registrar” and by inserting in lieu thereof the words “A Deputy Registrar”;

Sec. 43.
(Delegation of certain powers of the Court.)

(d) by inserting next after paragraph (c) of section forty-three the following new paragraphs:—

(ci) the making of special orders under subsections one, (1A) and two of section eighty-five of this Act and the making of orders under subsection four of that section;

(cii) the ordering of an executor, administrator or trustee, summoned before the court under subsection two of section eighty-seven of this Act, to file an inventory or file or file and pass accounts in the court forthwith;

(ciii)

- (ciii) the barring of claims under section No. 40, 1954. ninety-three of this Act and the making of any other order that the court may make under subsection two of that section;
- (civ) the making of orders *nisi* and the enlarging of such orders under section one hundred and forty-five of this Act and, where the caveator does not appear, the making absolute of such orders under section one hundred and forty-seven of this Act;
- (cv) the withdrawal or removal of caveats under section one hundred and forty-eight of this Act;
- (cvi) the revocation or rescission of the grant of any probate or administration where the revocation or rescission is not contested;
- (e) (i) by inserting next after subsection one of section eighty-five the following new subsection:—
- Sec. 85.
(Executor or administrator to pass accounts.)
- (1A) Every trustee of the estate of a deceased person shall file or file and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be fixed by the rules of Court, or as the Court may specially order.
- Nothing in this subsection affects the operation of section 35A of the Public Trustee Act, 1913-1954.
- (ii) by inserting at the end of the same section the following new subsection:—
- (4) Where the Court, in passing any such accounts, disallows in whole or in part the amount of any disbursement, the Court may order the executor, administrator or trustee to refund the amount disallowed to the estate of the deceased.

Nothing

No. 40, 1954.

Nothing in this subsection alters or diminishes the right of any person to proceed in equity in the same way as if this subsection had not been enacted.

Sec. 87.

(If accounts not exhibited Registrar to summon administrator before Judge who may inflict penalty.)

- (f) (i) by inserting in subsection one of section eighty-seven after the words "as aforesaid" the words ", or in case any such trustee neglects to file or file and pass such accounts as aforesaid, in either case";
- (ii) by omitting from the same subsection the words "or administrator" and by inserting in lieu thereof the words ", administrator or trustee";
- (iii) by omitting from subsection two of the same section the words "or administrator" and by inserting in lieu thereof the words ", administrator or trustee";
- (iv) by inserting in the same subsection after the word "why" the words ", in the case of an executor or administrator,";
- (v) by inserting at the end of the same subsection the words "or, in the case of a trustee, he should not be ordered to file or file and pass such accounts in the Court forthwith";
- (vi) by omitting from subsection three of the same section the words "or administrator" and by inserting in lieu thereof the words ", administrator or trustee";

Sec. 88.

(Proceedings under last section not to prejudice proceedings on bond.)

- (g) by omitting from section eighty-eight the words "or administrator" and by inserting in lieu thereof the words ", administrator or trustee";

Sec. 93.

(Claims barred against executor or administrator in certain cases.)

- (h) by omitting from section ninety-three the words "six months" wherever occurring and by inserting in lieu thereof the words "three months";

(i)

- (i) by omitting from section one hundred and one the words "three hundred pounds" and by inserting in lieu thereof the words "one thousand pounds"; No. 40, 1954.
Sec. 101.
(Application to be made to Registrar or to district agent.)
- (j) by omitting from section one hundred and nine the words "published twice in one or more Sydney daily newspapers" and by inserting in lieu thereof the words "published as prescribed by rules of Court"; Sec. 109.
(Notice of intention to apply.)
- (k) by omitting from section one hundred and fifty-one the words "commissioners of the Supreme Court," and by inserting in lieu thereof the words "solicitors of the Supreme Court, commissioners for taking affidavits"; Sec. 151.
(Oaths.)
- (l) by omitting subsection two of section one hundred and fifty-four and by inserting in lieu thereof the following subsection:— Sec. 154.
(Rules.)

(2) All such rules shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; **and**
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

No. 40, 1954. 4. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916-1938, is amended—

Amendment
of Act No.
41, 1916.
Sec. 3.
(Family
main-
tenance—
intestacy.)

- (a) (i) by inserting in subsection (1A) of section three after the words "any person" the words "(hereinafter called 'the intestate')";
- (ii) by omitting from the same subsection the words "the provisions of sections fifty and fifty-one of the Wills, Probate and Administration Act, 1898-1938," and by inserting in lieu thereof the words "the provisions of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, that are applicable to the distribution of his estate as on intestacy,";
- (iii) by omitting from the same subsection the word "is" and by inserting in lieu thereof the words ", or children, or any or all of them, are";
- (iv) by omitting from the same subsection the words "her proper maintenance," and by inserting in lieu thereof the words "their proper maintenance, education, or advancement in life as the case may be,";
- (v) by inserting in the same subsection after the words "such widow," the words "or children, or any of them,";
- (vi) by inserting in the same subsection after the word "maintenance" where lastly occurring the words ", education, and advancement";
- (vii) by inserting at the end of the same subsection the words—

In this subsection "children" includes children (being under the age of twenty-one years at the death of the intestate) of any child of the intestate who died before the intestate.

(b)

- (b) by omitting subsection two of section four and by inserting in lieu thereof the following subsection:—

Sec. 4.
(Operation of provision made under Act.)

(2) Any order made under subsection (1A) of section three of this Act in respect of the estate of a deceased person shall, subject to this Act, operate and take effect as a modification of the provisions of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, that are applicable to the distribution of that estate as on intestacy.

- (c) (i) by omitting the proviso to subsection one of section five;
- (ii) by inserting next after subsection two of the same section the following new subsection:—

Sec. 5.
(Time within which application must be made.)

(2A) Notwithstanding anything in subsections one and two of this section—

- (a) the time for making an application under either of those subsections may be extended for a further period by the court, after hearing such of the parties affected as the court thinks necessary, and this power extends to cases where the time for applying has already expired, including cases where it has expired before the commencement of the Administration of Estates Act, 1954; but every application for extension shall be made before the final distribution of the estate, and no distribution of any part of the estate made before the application shall be disturbed by reason of the application or of an order made thereon;

(b)

cf. N.Z. Act, 1908, No. 60, s. 33(9).

No. 40, 1954.

- (b) if, in any case to which the provisions of subsection one of section three of this Act apply, all the children and the widow or widower, as the case may be, shall in writing, at any time after the death of the testator, whether the testator died before or after the commencement of the Administration of Estates Act, 1954, agree to be bound by the will of the testator and if there are infants such agreement is confirmed by the Court, then no application shall be made thereafter under that subsection;
- (c) if, in any case to which the provisions of subsection (1A) of section three of this Act apply, all the children and the widow shall in writing, at any time after the death of the intestate, whether the intestate died before or after the commencement of the Administration of Estates Act, 1954, agree to be bound by the provisions of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, that are applicable to the distribution of the intestate's estate as on intestacy and if there are infants such agreement is confirmed by the court, then no application shall be made thereafter under that subsection.

In this paragraph "children" includes children (being under the age of twenty-one years at the death of the intestate) of a child of the intestate who died before the intestate.

(2) (a) This subsection shall be read and construed as one with subsection (1A) of section three of the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1954.

(b)

**Local Government and Other Authorities (Superannuation)
Amendment Act.**

279

(b) The amendments made by paragraph (a) No. 40, 1954.
of subsection one of this section apply in all cases, ^{cf. N.Z.}
whether the intestate died before or after the commence- ^{Act, 1947,}
ment of this Act: ^{No. 60,}
^{s. 15 (3).}

Provided that no distribution of any part of the estate of an intestate that has been made before that commencement shall be disturbed by reason of any application made by virtue of those amendments or by reason of any order made on any such application.

