

**WILLS, PROBATE AND ADMINISTRATION
(AMENDMENT) ACT, 1977**

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 122, 1977.

An Act to amend the Wills, Probate and Administration Act, 1898, with respect to the formal validity of wills, with respect to the distribution of intestate estates and with respect to certain other matters. [Assented to, 9th December, 1977.]

BE

Wills, Probate and Administration (Amendment).

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 :—

Short title. **1.** This Act may be cited as the "Wills, Probate and Administration (Amendment) Act, 1977".

Commence-
ment. **2.** (1) This section and sections 1, 3 and 7 and Schedule 4 shall commence on the date of assent to this Act.

(2) Section 4 and Schedule 1 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 5 and Schedule 2 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) The days appointed and notified under subsections (2) and (3) may be the same or different days.

(5) Section 6 and Schedule 3 shall commence on the day appointed and notified under section 2 of the Supreme Court (Amendment) Act, 1977.

Schedules. **3.** This Act contains the following Schedules :—

**SCHEDULE 1.—AMENDMENTS TO THE WILLS,
PROBATE AND ADMINISTRATION ACT, 1898.**

Wills, Probate and Administration (Amendment).

SCHEDULE 2.—FURTHER AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898.

SCHEDULE 3.—FURTHER AMENDMENT TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898.

SCHEDULE 4.—AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898, BY WAY OF STATUTE LAW REVISION.

4. The Wills, Probate and Administration Act, 1898, is amended in the manner set forth in Schedule 1. Amendment of Act No. 13, 1898.

5. The Wills, Probate and Administration Act, 1898, is further amended in the manner set forth in Schedule 2. Further amendment of Act No. 13, 1898.

6. The Wills, Probate and Administration Act, 1898, is further amended in the manner set forth in Schedule 3. Further amendment of Act No. 13, 1898.

7. The Wills, Probate and Administration Act, 1898, is further amended in the manner set forth in Schedule 4. Further amendment of Act No. 13, 1838.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898.

(1) Section 1—

After the matter relating to Part I, insert :—

PART 1A.—*Formal validity of wills*—ss. 32A–32F.

Wills, Probate and Administration (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND
ADMINISTRATION ACT, 1898—*continued.*

(2) Part IA—

After Part I, insert :—

PART IA.

Formal validity of wills.

Interpre-
tation:
Pt. IA.
cf. 1963,
c. 44, s. 6,
U.K.

32A. (1) In this Part, except so far as the context or subject-matter otherwise indicates or requires—

“country” means a territory or group of territories having its own law of citizenship, and includes the Commonwealth;

“internal law”, in relation to any country or territory, means the law of that country or territory excluding such part of that law as applies rules of private international law;

“territory” includes a State or territory of the Commonwealth.

(2) Where under this Part the internal law in force in any country or territory is to be applied in the case of a will, but two or more systems of law relating to the formal validity of wills are in force in that country or territory, the system to be applied shall be ascertained as follows :—

- (a) if there is in force throughout the country or territory a rule of law indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or

Wills, Probate and Administration (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND
ADMINISTRATION ACT, 1898—*continued.*

(b) if there is no such rule, the system to be applied shall be that with which the testator was most closely connected at the relevant time.

(3) For the purpose of subsection (2) (b), the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death and the time of the execution of the will in any other case.

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

32B. This Part applies in respect of a will executed by a testator either before or after the commencement of section 4 of the Wills, Probate and Administration (Amendment) Act, 1977, but only if the testator died after that commencement.

Application
of Pt. IA.
cf. 1963,
c. 44, s. 7 (4),
U.K.

32C. A will shall be treated as properly executed if its execution conformed to the internal law in force—

General rule
as to formal
validity.
cf. 1963,
c. 44, s. 1,
U.K.

(a) in the territory in which it was executed ;

Wills, Probate and Administration (Amendment).

 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE WILLS, PROBATE AND
 ADMINISTRATION ACT, 1898—*continued.*

- (b) in the territory where the testator, at the time of its execution or at the time of his death, was domiciled or habitually resided ;
or
- (c) in a country of which the testator was, at either of the times referred to in paragraph (b), a citizen.

Additional
 rules.
 cf. 1963,
 c. 44, s. 2,
 U.K.

32D. (1) Without limiting section 32C, the following wills shall be treated as properly executed :—

- (a) a will executed on board a vessel or an aircraft of any description, if its execution conformed to the internal law in force in the territory with which the vessel or aircraft may, having regard to its registration (if any) and other relevant circumstances, be taken to have been most closely connected ;
- (b) a will, so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property is situated ;
- (c) a will, so far as it revokes a will which under this Part would be treated as properly executed or revokes a provision which under this Part would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated ; and

Wills, Probate and Administration (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND
ADMINISTRATION ACT, 1898—*continued.*

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

(2) A will, so far as it exercises a power of appointment, shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

(3) For the purposes of subsection (1) (a), “vessel” includes a hovercraft.

32E. Where, whether pursuant to this Part or not, a law in force outside New South Wales falls to be applied in relation to a will, any requirement of that law by virtue of which—

Certain requirements to be treated as formal. cf. 1963, c. 44, s. 3, U.K.

(a) special formalities are to be observed by testators answering a particular description ;
or

(b) witnesses to the execution of a will are to possess certain qualifications,

shall, notwithstanding any rule of that law to the contrary, be treated as a formal requirement only.

32F. The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

Construction of wills. cf. 1963, c. 44, s. 4, U.K.

Wills, Probate and Administration (Amendment).

Sec. 5.

SCHEDULE 2.

FURTHER AMENDMENTS TO THE WILLS, PROBATE AND
ADMINISTRATION ACT, 1898.

(1) (a) Section 1—

Omit the matter relating to Division 2A of Part II,
insert instead :—

DIVISION 2A.—*Distribution of intestate estates*
—ss. 61A–61F.

(b) Section 1—

From the matter relating to Division 8 of Part
II, omit “152”, insert instead “153”.

(2) Section 49—

Omit the section.

(3) Section 50 —

Omit the section.

(4) Section 51—

Omit the section.

(5) Section 53—

Omit the section, insert instead :—

Value to be
accepted
instead of
partition.

53. A husband or wife of an intestate who is entitled to share in real estate (other than real estate comprising an interest in a dwelling-house in respect of which the husband or wife has exercised the right conferred by section 61D) shall be bound to accept the value of that real estate instead of partition if all other persons entitled to that real estate with him or her so desire.

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

(6) Section 55—

Omit the section.

(7) Part II, Division 2A—

Omit the Division, insert instead :—

DIVISION 2A.—*Distribution of intestate estates.*

61A. (1) This Division shall not apply in respect of the estate of a person who died wholly or partially intestate before the commencement of section 5 of the Wills, Probate and Administration (Amendment) Act, 1977, and any such estate shall be distributed in accordance with the enactments and rules of law in force at the death of that person.

Application
and inter-
pretation:
Pt. II,
Div. 2A.

(2) In this Division, except so far as the context or subject-matter otherwise indicates or requires—

“dwelling-house” means—

- (a) a building that is designed to be used, or designed to be used principally, as a separate residence for one family or person, together with the land which forms the curtilage of the building; or

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

- (b) an apartment or flat that is so designed, together with any interest in any part of the building of which the apartment or flat forms part, or in any part of the curtilage of that building, that is owned or otherwise held in conjunction with that apartment or flat;

“household chattels”, in relation to an intestate, means all furniture, curtains, drapes, carpets, linen, china, glassware, ornaments, domestic appliances and utensils, garden appliances, utensils and effects and other chattels of ordinary household use or decoration, liquors and consumable stores and domestic animals, which, immediately before the intestate’s death, were owned by him (whether absolutely or subject to any charge, encumbrance or lien securing the payment of money) or in which, immediately before his death, he held an interest as grantor under a bill of sale or as hirer under a hire-purchase agreement within the meaning of subsection (1) of section 2 of the Hire-Purchase Act, 1960, or within the meaning of any enactment of another State, or of a Territory, of the Commonwealth corresponding to that subsection, but does not include any motor vehicle, boat, aircraft, racing animal, original painting, trophy, clothing, jewellery or other chattel of a personal nature which was so owned by him or in which he held such an interest;

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

“interest”, in relation to a matrimonial home,
means—

- (a) an estate in fee simple;
- (b) a leasehold estate which has not less than 14 years to run or, in the case of a leasehold estate having less than 14 years to run, which confers a right of renewal for one or more terms of not less than 14 years in the aggregate; or
- (c) an exclusive licence to occupy conferred by virtue of a holding of shares in a company that owns the parcel of land on which is erected the building in which the matrimonial home is included,

and includes an interest held by an intestate as a tenant in common (but only if there is only one other tenant in common and that tenant in common is the surviving husband or wife of the intestate), but does not include an interest so held as a joint tenant;

“matrimonial home”, in relation to an intestate’s estate, means a dwelling-house in which the intestate held an interest in respect of which the surviving husband or wife of the intestate is entitled to exercise the right conferred by section 61D.

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

“prescribed amount”, in relation to an intestate’s estate, means—

- (a) if no regulation referred to in paragraph (b) is in force at the death of the intestate—\$50,000; or
- (b) if a regulation made under section 153 and prescribing another amount is in force at the death of the intestate—that other amount ;

“value”—

- (a) in relation to—
 - (i) an intestate’s estate; or
 - (ii) a share of any person in such an estate,

means the value, fixed in accordance with section 61E, of that estate or share at the date of the intestate’s death; and

- (b) in relation to an interest in a matrimonial home included in an intestate’s estate, means the value, fixed in accordance with section 61E, of that interest—
 - (i) where the right conferred by section 61D is exercised with respect to that interest

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

within the period of 12
months after the intestate's
death—at the date of that
death; or

- (ii) where that right is exercised
after the expiration of that
period—at the date on
which the right is exercised.

(3) References in this Division to a child or
issue living at the date of death of any person shall
be construed as including references to any child or
issue who has been conceived and not born at that
date but who is subsequently born alive.

61B. (1) Where a person dies wholly intestate, the real and personal estate of that person shall, subject to the payment of all such funeral and administration expenses, debts and other liabilities as are properly payable out of that estate, be distributed or held in trust in the manner specified in this section, and the real estate of that person shall be held as if it had been devised to the persons for whom it is held in trust under this section. Succession to real and personal property on intestacy.

(2) If the intestate leaves a husband or wife but no issue, the estate shall be held in trust for the husband or wife absolutely.

(3) If the intestate leaves a husband or wife and also leaves issue, then if the value of the estate (excluding any household chattels) does not exceed the prescribed amount, the whole estate shall be held

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

in trust for the husband and wife, but if the value of the estate (excluding any household chattels) exceeds the prescribed amount, then—

- (a) the household chattels (if any);
- (b) the prescribed amount; and
- (c) one-half of the estate (excluding any household chattels and the prescribed amount),

shall be held in trust for the husband or wife and the residue of the estate shall be held in statutory trust for the issue of the intestate.

(4) If the intestate leaves issue but no husband or wife, the estate shall be held in statutory trust for the issue of the intestate.

(5) If the intestate leaves no husband or wife and no issue but one or both of his parents, the estate shall be held—

- (a) where both parents survive the intestate, in trust for those parents in equal shares; or
- (b) where only one parent survives the intestate, in trust for that parent absolutely.

(6) If the intestate leaves no husband or wife, no issue and no parents, the estate shall be held for the following persons living at the death of the intestate and in the following order and manner :—

- (a) firstly, in statutory trust for the brothers and sisters of the whole blood of the intestate; but if there are no such brothers or sisters. then

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

- (b) secondly, in statutory trust for the brothers and sisters of the half blood of the intestate; but if there are no such brothers or sisters, then
- (c) thirdly, in trust for the grandparents of the intestate and, if more than one of them survive the intestate, in equal shares; but if there are no such grandparents, then
- (d) fourthly, in trust 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 of them survive the intestate, in equal shares; but if there are no such uncles or aunts, then
- (e) fifthly, in trust 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 of them survive the intestate, in equal shares.

(7) In default of any person taking an interest under subsections (2) to (6), the estate shall belong to the Crown as bona vacantia, and in place of any right to escheat.

(8) The Crown, without prejudice to any other powers, may, out of the whole or any part of the property devolving on it as bona vacantia, provide for dependants, whether kindred or not, of the

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

intestate and any other persons for whom the intestate might reasonably have been expected to make provision.

(9) A husband and wife shall for all purposes of distribution under this section be treated as two persons.

(10) Where household chattels referred to in subsection (3) (a) are subject to a hire-purchase agreement within the meaning of subsection (1) of section 2 of the Hire-Purchase Act, 1960, or within the meaning of any enactment of another State, or of a Territory, of the Commonwealth corresponding to that subsection, the surviving husband or wife, as referred to in subsection (3), shall be entitled to those chattels but subject to the rights of the owner under the agreement and under the provisions of the Hire-Purchase Act, 1960, or, as the case may be, of the enactment of that other State or that Territory corresponding to that Act.

(11) Subsection (3) (a) has effect subject to section 145 of the Conveyancing Act, 1919.

(12) Where the prescribed amount is held in trust for the husband or wife of an intestate under subsection (3), the husband or wife is entitled, in addition to his or her entitlement under that subsection, to interest on that amount at the rate prescribed for the purposes of section 84A from the date of death of the intestate until that amount is paid or appropriated to him or her.

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

(13) Notwithstanding subsection (3), where the interest of an intestate in a matrimonial home is, under section 61D, held in trust for the surviving husband or wife of the intestate, the share of the intestate's estate to which the husband or wife would, but for this subsection, have been entitled under subsection (3) (b) and (c) shall—

- (a) where the value of that interest is equal to or exceeds the value of that share, be deemed to be fully satisfied and, if the value of that interest exceeds the value of that share, the share of the issue under subsection (3) shall be reduced by the amount of the excess; or
- (b) where the value of that interest is less than the value of that share, be deemed to be satisfied to the extent of the value of that interest.

61c. (1) Where under this Division the estate, or any part of the estate, of an intestate is directed to be held in statutory trust for the issue of the intestate, that estate or part shall be held in trust—

- (a) for any child of the intestate, or if more than one, for any children of the intestate in equal shares, living at the death of the intestate; and

Statutory trusts in favour of issue and other classes of relatives of intestate.

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

(b) subject to subsection (2), for all or any issue living at the death of the intestate of any child of the intestate who predeceases the intestate but so that no issue shall take whose parent is living at the death of the intestate and is capable of so taking.

(2) The issue referred to in subsection (1) (b) shall take through all degrees, according to their stocks, in equal shares if more than one, the share which their parents would have taken if living at the death of the intestate.

(3) Where under this Act the estate, or any part of the estate, of an intestate is directed to be held in statutory trust for any class of relatives of the intestate other than his issue, that estate or part shall be held in trust corresponding to the statutory trust for the issue of the intestate as if that trust 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.

Rights of
surviving
husband or
wife with
respect to
matrimonial
home.

61D. Subject to the Fourth Schedule, where—

- (a) an intestate dies leaving a husband or wife and issue;
- (b) the value of the estate of the intestate (excluding any household chattels) exceeds the prescribed amount;
- (c) the intestate, at the time of his death, held an interest in a dwelling-house which is situated in New South Wales ; and

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

- (d) that dwelling-house was, at that time, occupied by the intestate and her husband or his wife or by her husband or his wife as their or, as the case may be, his or her only or principal residence,

the husband or wife may require the administrator to hold that interest in trust for the husband or wife, and on being so required, the administrator shall hold that interest accordingly.

61E. (1) The administrator of the estate of an intestate may, for the purposes of this Division, from time to time, by duly qualified agents, ascertain and fix the value of—

Valuations.
cf. Act No.
14, 1925,
s. 52.

- (a) the intestate's estate;
- (b) a share of any person in the intestate's estate; or
- (c) subject to subsection (3), the value of the interest of the intestate in a matrimonial home.

(2) Any valuation so made in good faith shall be binding on all persons interested in the intestate's estate.

(3) In ascertaining and fixing the value of the interest of an intestate in a matrimonial home, the administrator shall—

- (a) ascertain the market value of the home as at the date at which the value is required to be ascertained:

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

- (b) ascertain the amount (if any) which was, as at that date, outstanding under any mortgage, charge or other encumbrance to which the home was subject as at that date; **and**
- (c) fix the value of the home as the difference between the market value ascertained under paragraph (a) and the amount (if any) ascertained under paragraph (b).

Applica-
tion to
cases of
partial
intestacy.

61F. (1) Where a person dies having made a will which effectively disposes of only part of his estate, sections 61A, 61B, 61C, 61D and 61E, so far as applicable and subject to the modifications specified in subsection (2), shall apply to and in relation to the part of his estate that is not disposed of by the will as if the last-mentioned part had comprised the whole of his estate.

(2) For the purpose of applying subsection (1)—

- (a) references in the sections referred to in subsection (1) to the estate of a person who dies wholly intestate or to the estate of an intestate shall be construed as references to that part of the estate of a person who dies having made a will referred to in that subsection that is not disposed of by that will; **and**

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

(b) references in those sections to a person who dies wholly intestate or to an intestate shall be construed as references to a person who dies as referred to in subsection (1).

(3) The executor or administrator of the estate of a person who dies leaving a will referred to in subsection (1) shall, subject to the rights and powers conferred on him by law for the purposes of the administration of the estate, be a trustee for the persons entitled under this Division in respect of any part of that estate that is not expressly disposed of, unless it appears from the will that he is intended to take that part beneficially.

(8) Section 84A—

After section 84, insert :—

84A. (1) Subject to subsection (2), where interest is payable on any legacy or on any arrears of an annuity in accordance with the will or instrument pursuant to which the legacy or annuity is payable or with any enactment or rule of law, that interest shall, unless the will or instrument otherwise provides, or the Court otherwise orders, be payable at such rate as may be prescribed in a regulation made under section 153. ^{Interest on legacies and annuities.}

(2) Where an executor or administrator, in accordance with any power conferred on him in that behalf, appropriates any property in or towards satisfaction of any legacy (other than an annuity), the legatee shall be entitled to the income from the

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO THE WILLS, PROBATE
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property so appropriated, and interest shall not be payable out of any other part of the estate on so much of the legacy as has been satisfied by the appropriation.

(9) Section 92 (1), (2)—

Omit the subsections, insert instead :—

(1) Where the executor or administrator of the estate of a testator or an intestate has published notices in or to the effect of the form prescribed by rules of the Court requiring the claims of beneficiaries (including children conceived but not yet born at the death of the testator or intestate), creditors and other persons in respect of the assets of the estate of the testator or intestate to be submitted to the executor or administrator by or on behalf of those beneficiaries, creditors or other persons, the executor or administrator may, at the expiration of the period for submitting those claims specified in the notices or, as the case may be, specified in the last of the notices, distribute the assets, or any part of the assets, of that estate, among the persons entitled, having regard to the claims of which the executor or administrator has notice at the time of the distribution.

(2) An executor or administrator who distributes the assets or any part of the assets of the estate of a testator or an intestate in accordance with subsection (1) is not liable in respect of those assets or that part of those assets to any person who has a

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

claim in respect of those assets or that part unless he had notice of the claim at the time of the distribution.

(10) Sections 93, 94, 95—

Omit the sections, insert instead :—

93. (1) When the executor or administrator of the estate of a testator or an intestate has published the notices referred to in section 92 (1) and a claim in respect of the assets of that estate is submitted to him, he may, if he disputes the claim, serve on the person by whom or on whose behalf the claim was submitted a notice calling on him to take proceedings to enforce his claim within a period of 3 months from the date of service of the notice and to prosecute his claim.

Claims barred against executor or administrator in certain cases.

(2) If, after a notice has been served on a person in accordance with subsection (1) and the period of 3 months referred to in the notice has expired, that person does not satisfy the Court that he is prosecuting his claim, the Court may, on an application in that behalf made by the executor or administrator—

- (a) make an order barring the claim of that person as against the executor or administrator, subject to such conditions (if any) as it thinks just and equitable; or

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE AND
ADMINISTRATION ACT, 1898—*continued.*

- (b) make such other order in respect of the application as it thinks just and equitable, having regard to the circumstances of the case.

Distribution
of estate by
executor or
adminis-
trator.

94. (1) Where the executor or administrator of the estate of a testator or an intestate—

- (a) is, in his capacity as such, liable in respect of—

- (i) the rents, covenants or agreements contained in a lease, or in an agreement for a lease, granted or assigned to the testator or intestate; or
- (ii) the rents, covenants or agreements contained in any conveyance on chief rents or rent charges, or in an agreement for any such conveyance, made and entered into with the testator or intestate; and

- (b) has—

- (i) satisfied all liabilities under the lease or agreement for a lease, or, as the case may be, under the conveyance or agreement for a conveyance, that have accrued and been claimed up to the time of the assignment or conveyance referred to in subparagraph (iii);

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE AND
ADMINISTRATION ACT, 1898—*continued.*

- (ii) set aside an amount sufficient to meet any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee or grantee to be expended in respect of the property leased or agreed to be leased, or conveyed or agreed to be conveyed, although the period for expending that sum may not have arrived; and
- (iii) assigned the lease or agreement for a lease or conveyed the property or assigned the agreement for the conveyance of the property, as the case may be, to a purchaser or to a legatee, devisee or other person entitled,

he may distribute those assets of the estate remaining in his hands among the parties entitled without appropriating any part or any further part of those assets, as the case may be, to meet any future liability under the lease, agreement for a lease, conveyance or agreement for a conveyance.

- (2) An executor or administrator who—
 - (a) has assigned a lease or an agreement for a lease, made or executed a conveyance or assigned an agreement for a conveyance, as referred to in subsection (1) (b) (iii); and
 - (b) has, where necessary, set aside a sufficient amount as referred to in subsection (1) (b) (ii),

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE AND
ADMINISTRATION ACT, 1898—*continued.*

shall not be personally liable in respect of any subsequent claim under any such lease, agreement for a lease, conveyance or agreement for a conveyance.

(3) In this section—

“assignment” and “conveyance” include an acknowledgment within the meaning of section 83;

“lease” includes an under lease.

Right to
follow
assets.

95. Nothing contained in section 92, 93 or 94 prejudices the right of any beneficiary, creditor or other person who has a claim in respect of the assets of the estate of a testator or an intestate or the right of a lessor or grantor under a lease, agreement for a lease, conveyance or agreement for a conveyance referred to in section 94, or any person claiming under any such lessor or grantor, to follow those assets or any part of those assets into the hands of the persons or any of the persons among whom those assets or that part may have been distributed or who may have received those assets or that part.

(11) Section 153—

After section 152, insert :—

Regulations.

153. (1) The Governor may make regulations for or with respect to—

- (a) prescribing an amount for the purpose of paragraph (b) of the definition of “prescribed amount” in section 61A (2); and
- (b) prescribing a rate of interest for the purpose of section 84A (1).

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE AND
ADMINISTRATION ACT, 1898—*continued.*

(2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under subsection (1) as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(12) Fourth Schedule—

After the Third Schedule, insert :—

FOURTH SCHEDULE.

Sec. 61D.

RIGHTS OF SURVIVING SPOUSE OF INTESTATE WITH RESPECT
TO ACQUISITION OF THE MATRIMONIAL HOME.

1. This Schedule shall be construed as forming part of section 61D. Construction
of Schedule.

2. (1) The right conferred by section 61D shall be exercisable by Exercise of
right con-
ferred by
sec. 61D.
notification in writing—
 - (a) where there is a sole administrator who is not the surviving husband or wife of the intestate, delivered to that administrator;
 - (b) where there are two or more administrators, delivered to each of those administrators (other than one who is the surviving husband or wife of the intestate); or
 - (c) where there is a sole administrator who is the surviving husband or wife of the intestate, filed in the office of the Registrar.

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

(2) A notification delivered or filed under subclause (1) of this clause shall not be revocable except with the consent of the Court.

(3) For the purpose of enabling the surviving husband or wife to decide whether or not to exercise the right conferred by section 61D, he or she may require the administrator to ascertain and fix the value of the interest of the intestate in the matrimonial home and to inform him or her of that value.

Restrictions
on the
exercise
of right
conferred by
sec. 61D.

3. (1) The right conferred by section 61D shall not be exercisable—
- (a) after the death of the surviving husband or wife of the intestate;
 - (b) after the expiration of 12 months from the date on which letters of administration were first taken out in respect of the estate of the intestate;
 - (c) if the interest of the intestate in the matrimonial home is required by the administrator to meet funeral and administration expenses, debts and other liabilities payable out of the estate of the intestate; or
 - (d) in any case in which the transfer or conveyance by the administrator to the husband or wife of the interest of the intestate in the matrimonial home would require compliance with the provisions of—
 - (i) the Local Government Act, 1919, the Conveyancing Act, 1919, and any other Act with respect to the manner of dividing land into parts, and with respect to any requirement incidental to the manner of dividing land into parts; or
 - (ii) the Strata Titles Act, 1973, with respect to the manner of subdividing land within the meaning of section 7 (1) of that Act or of any lot within the

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

meaning of section 5 (1) of that Act, and with respect to any requirement incidental to the manner of subdividing any such land or lot,

unless those provisions would be complied with.

- (2) Without limiting subclause (1) of this clause, where—
- (a) the matrimonial home forms part of a building and an interest in the whole of the remainder of the building is comprised in the intestate's estate;
 - (b) the matrimonial home is held with land used for agricultural, pastoral or horticultural purposes and an interest in that land is comprised in that estate;
 - (c) the whole or a part of the matrimonial home was, at the time of the intestate's death, used as a hotel or lodging house; or
 - (d) a part of the matrimonial home was, at that time, used for purposes other than residential purposes,

the right conferred by section 61D shall not be exercisable unless the Court, on the application of the administrator or of the surviving husband or wife of the intestate (not being the sole administrator), makes an order declaring itself to be satisfied that the exercise of that right is not likely to diminish the value of assets in the estate (disregarding household chattels, if any, and the interest of the intestate in the matrimonial home) or to make those assets more difficult to dispose of.

- (3) During the period of 12 months referred to in subclause (1) (b) of this clause the administrator (not being the surviving husband or wife of the intestate) shall not, except as authorised under subclause (4) of this clause, without the written consent of the surviving husband or wife sell or otherwise dispose of the interest of the intestate in the matrimonial home except in the course of administration due to want of other assets.

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

(4) Where in respect of an application made under subclause (2) of this clause the Court does not order that the right conferred by section 61D shall be exercisable by the surviving husband or wife, it may authorise the administrator to dispose of the interest of the intestate in the matrimonial home before the expiration of the period of 12 months referred to in subclause (1) (b) of this clause.

Deter-
mination
of
curtilage
of
building.

4. (1) Where, in any case in which the surviving husband or wife of an intestate exercises the right conferred by section 61D in relation to a building referred to in paragraph (a) of the definition of "dwelling-house" in section 61A (2), the area of—

- (a) the land on which the building is erected; and
- (b) the land which is attached to and occupied with the building for the amenity or convenience of the building,

does not exceed 2 500 square metres and no estate or interest in any land contiguous with the land comprised in that area is comprised in the intestate's estate, the land referred to in paragraph (b) shall be presumed, until the contrary is proved, to form the curtilage of the building.

(2) Where the surviving husband or wife of an intestate exercises the right conferred by section 61D in relation to a building referred to in paragraph (a) of the definition of "dwelling-house" in section 61A (2), but a question arises as to the curtilage of the building, the administrator or any person beneficially interested in the estate of the intestate may apply to the Court for an order to determine the question, and on any such application being made, the Court may make such order with respect to the question as it thinks just.

Power of
administrator of a matrimonial home, being—
to create
easements,
etc., in
certain
cases.

5. Where the right conferred by section 61D is exercised in respect of a matrimonial home, being—

- (a) a dwelling-house referred to in paragraph (a) of the definition of "dwelling-house" in section 61A (2) which is contiguous with other land in which an estate or interest is comprised in the intestate's estate; or

Wills, Probate and Administration (Amendment).

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898—*continued.*

- (b) a dwelling-house referred to in paragraph (b) of the definition of "dwelling-house" in section 61A (2) which is contiguous with another part of the building of which the dwelling-house forms part and in which an estate or interest is comprised in the intestate's estate,

the administrator, when transferring or conveying the interest of the intestate in the matrimonial home or, as the case may be, the estate or interest in the other land or the other part of the building may, by the instrument of transfer or conveyance create such easements or restrictions as to user benefiting or burdening the matrimonial home or benefiting or burdening that other land or part of the building as he considers necessary for the purpose of rendering usable that other land or part of the building or, as the case may be, the matrimonial home.

6. A requirement or consent made or given under this Schedule by a surviving husband or wife who is a minor is as valid and effective as it would be if he or she had attained his or her majority.
- Power of surviving spouse to make a valid requirement, etc., where spouse is a minor.

7. (1) Nothing in section 61D or in this Schedule confers on the surviving husband or wife of an intestate whose estate includes a matrimonial home any right as against any person who has in good faith purchased for value from the administrator the interest of the intestate in the matrimonial home.
- Miscellaneous matters.

(2) Where the surviving husband or wife of an intestate whose estate includes a matrimonial home is one of two or more administrators, the rule that a trustee may not be a purchaser of trust property shall not prevent the husband or wife from purchasing out of the intestate's estate any interest of the intestate in the matrimonial home.

Wills, Probate and Administration (Amendment).

Sec. 6.

SCHEDULE 3.

FURTHER AMENDMENT TO THE WILLS, PROBATE
AND ADMINISTRATION ACT, 1898.

Section 3, definition of "Seal of the Court"—

Omit "of the Probate Division".

Sec. 7.

SCHEDULE 4.

AMENDMENTS TO THE WILLS, PROBATE AND
ADMINISTRATION ACT, 1898, BY WAY OF STATUTE
LAW REVISION.

(1) Section 32 (2)—

Omit "1919–1930", insert instead "1919".

(2) Section 40A (2)—

Omit "1919–1930", insert instead "1919".

(3) Section 46B (3)—

Omit "the last preceding subsection", insert instead
"subsection (2)".

(4) Section 46C (1)—

Omit "Commonwealth Bankruptcy Act, 1924–1929",
insert instead "Bankruptcy Act 1966 of the Parliament
of the Commonwealth".

Wills, Probate and Administration (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898, BY WAY OF STATUTE LAW REVISION—*continued.*

(5) Section 58 (3), (5)—

Omit ““Real Property Act,” or any Act amending or consolidating the same” wherever occurring, insert instead “Real Property Act, 1900”.

(6) (a) Section 75A (2), paragraph (b) of the proviso—

Omit “1906–1935”, insert instead “1973”.

(b) Section 75A (4) (b)—

Omit “of the age”, insert instead “have attained the age”.

(c) Section 75A (5)—

(i) Omit “such person”, insert instead “that person”.

(ii) Omit “said period of twenty-eight days”, insert instead “period of 28 days’ notice given to that person under subsection (4), or, where the Court has directed that service of notice on that person be dispensed with, the period of 28 days after the giving of that direction.”.

(d) Section 75A (8)—

Omit “1919–1938”, insert instead “1919”.

Wills, Probate and Administration (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION
ACT, 1898, BY WAY OF STATUTE LAW REVISION—*continued.*

(7) Section 83 (1)—

(a) Omit “Real Property Act” or any Act amending or consolidating the same”, insert instead “Real Property Act, 1900”.

(b) Omit “part”, insert instead “Part”.

(8) Section 85 (1A)—

Omit “1913–1954”, insert instead “1913”.

(9) (a) Section 97 (1) (a)—

Omit “division”, insert instead “Division”.

(b) Section 97 (1) (b)—

Omit “part”, insert instead “Part”.

(10) Section 98 (1)—

Omit “thirty miles”, insert instead “48 kilometres”.

(11) Section 100—

Omit “Stamp Duties Act Amendment Act of 1886,” or of any Act amending or consolidating the same”, insert instead “Stamp Duties Act, 1920”.

Wills, Probate and Administration (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION
ACT, 1898, BY WAY OF STATUTE LAW REVISION—*continued.*

(12) Section 144 (1)—

Omit “division”, insert instead “Division”.

(13) Section 152 (1) (d), (2) (g)—

Omit “subsection (9) of section 75A” wherever
occurring, insert instead “section 75A (9)”.
