

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of New South Wales.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 15 December, 1932.

New South Wales.



ANNO VICESIMO TERTIO

GEORGII V REGIS.

Act No. 49, 1932.

An Act to amend the law relating to wills probate and administration; to amend the Wills Probate and Administration Act, 1898, and certain other Acts; and for purposes connected therewith. [Assented to, 21st December, 1932.]

BE it enacted by the King'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 "Wills Probate and Administration (Amendment) Act, 1932." Short title.

(2)

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

W. T. MISSINGHAM,
Chairman of Committees of the Legislative Assembly.

Wills Probate and Administration (Amendment).

(2) This Act shall be construed with the Wills Probate and Administration Act, 1898, and any Acts amending the same.

(3) The Wills Probate and Administration Act, 1898, as so amended, is referred to in this Act as the Principal Act.

(4) The Principal Act, as amended by this Act, may be cited as the "Wills Probate and Administration Act, 1898-1932."

Amendment of
Act No. 13, 1898.
New sections
40A-40D.
Evidence or
presumption
of death.

2. After section forty of the Principal Act the following sections are inserted:—

40A. (1) Where the court is satisfied, whether by direct evidence or on presumption of death, that any person is dead, the court shall have jurisdiction to grant probate of his will or administration of his estate, notwithstanding that it may subsequently appear that he was living at the date of the grant.

(2) The provisions of this Act, the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and Part XV of the Conveyancing Act, 1919-1930, relative to a deceased person shall, unless the context or subject-matter otherwise indicates or requires, extend to any person with respect to whom the court is satisfied in accordance with subsection one of this section that he is dead.

(3) The provisions of this section shall extend to a case where the grant of probate or administration was made before, as well as to a case where the grant is made after the commencement of the Wills Probate and Administration (Amendment) Act, 1932, provided that nothing in this section shall affect any action or proceeding decided before or pending at the commencement of that Act.

Presumption
of death.

40B. (1) If a grant of probate or administration is made on presumption of death only, the provisions of this section shall have effect.

(2) The grant shall be expressed to be made on presumption of death only.

(3) The estate shall not be distributed without the leave of the court.

The

Wills Probate and Administration (Amendment).

The leave may be given in the grant of probate or administration or by other order, and either unconditionally or subject to such conditions as the court deems reasonable, and in particular, if the court thinks fit, subject to an undertaking being entered into or security being given by any person who takes under the distribution that he will restore any money or property received by him or the amount or value thereof in the event of the grant being revoked.

(4) The court may direct the executor or administrator before distributing the estate to give such notices as the court deems proper in the circumstances, in order that the person whose death has been presumed, if he is still living, or if he has died since the date of the grant, then in order that any person interested in the estate may lodge with the registrar within such time as may be specified a caveat against the distribution.

If the court directs any such notice to be given, the executor or administrator shall not have the benefit of section ninety-two of this Act, unless he complies with the direction.

If a caveat is duly lodged within such time as may be specified, the executor or administrator shall not distribute the estate until the caveat is withdrawn or removed.

(5) An application for leave to distribute the estate and for directions may be made, and a caveat may be lodged withdrawn or removed, as prescribed by rules of court, and the Probate Judge may make such order in respect of costs and otherwise as he deems proper.

(6) The provisions of this section, with the exception of subsection two, shall extend to a case where the grant of probate or administration was made before, as well as to a case where the grant is made after the commencement of the Wills Probate and Administration (Amendment) Act, 1932, but shall not affect any distribution made before such commencement.

Wills Probate and Administration (Amendment).

Person living
at date of
grant.

40C. (1) Where the court grants probate of the will or administration of the estate of any person, and it subsequently appears that he was living at the date of the grant, the court shall revoke the grant on such terms, if any, with respect to any proceedings at law or in equity commenced by or against the executor or administrator, and in respect of costs and otherwise, as the court thinks proper.

(2) Proceedings for the revocation may be taken either by the person himself, or if he has died since the date of the grant, by any person entitled to apply for probate or administration or by any person interested in the estate.

The proceedings may be by suit or otherwise as prescribed by rules of court.

(3) The court may at any time, whether before or after the revocation, make such orders, including an order for an injunction against the executor or administrator or any other person, and an order for the appointment of a receiver, as the court may deem proper for protecting the estate.

(4) The provisions of this section shall extend to a case where the grant of probate or administration was made before, as well as to a case where the grant is made after the commencement of the Wills Probate and Administration (Amendment) Act, 1932.

Effect of
revoking
grant.

40D. (1) If a grant of probate or administration is revoked under section 40C of this Act, the provisions of this section shall have effect.

(2) The executor or administrator under the revoked grant shall be bound duly to account and to pay and transfer all money and property received by or vested in him as such executor or administrator and then remaining in his hands as the court may direct, but shall not be liable for any money or property paid or transferred by him in good faith under the probate or administration before the revocation.

Nothing

Wills Probate and Administration (Amendment).

Nothing in this subsection shall affect any commission protection indemnity reimbursement or right to which the executor or administrator is entitled under any other provision of this Act.

(3) The revocation shall not invalidate any payment or transfer lawfully made by or to the executor or administrator in the course of administration before the revocation, but nothing in this subsection shall prejudice the right of the person himself, or if he has died since the date of the grant, the executor or administrator to whom a grant of probate or administration is made consequent on the revocation, or any other person, to follow assets into the hands of the persons or any of them among whom the same may have been distributed, or who may have received the same.

(4) The person himself, or if he has died since the date of the grant, the executor or administrator to whom a grant of probate or administration is made consequent on the revocation, shall be entitled to receive from the Consolidated Revenue Fund the amount of death duty paid thereto in respect of the revoked grant.

(5) The court may make such vesting order as it deems proper.

(6) The provisions of this section, with the exception of subsection four, shall extend to a case where the grant of probate or administration was made before, as well as to a case where the grant is made after the commencement of the Wills Probate and Administration (Amendment) Act, 1932.

3. Section forty-three of the Principal Act is amended by omitting paragraph (b) and inserting in lieu thereof the following :—

(b) the passing and allowance of the accounts of executors and administrators, including the allowance of commission or percentage to executors administrators and trustees for their pains and trouble.

Further amendment of Act No. 13, 1898, s. 43.

(Delegation of certain powers of the court).

Wills Probate and Administration (Amendment).

Further amend-
ment of Act No.
13, 1898, s. 51.
Substituted
section.

Share of
infant.

Further amend-
ment of Act No.
13, 1898, s. 61.
(Vesting of
property of
deceased.)

Further
amendment
of Act No.
13, 1898,
s. 81.
(Revocation
of grants
not to
prejudice
actions or
suits.)

Transfer of
deposited
wills from
Registrar-
General to
Registrar of
Probates.

4. Section fifty-four of the Principal Act (as inserted therein by section three of the Administration Amending Act, 1906) is omitted and the following section inserted in lieu thereof:—

54. The court shall have the same power and jurisdiction as the Supreme Court in its equitable jurisdiction to authorise the application of the share or interest of any infant under any will or intestacy for the benefit of the infant.

5. Section sixty-one of the Principal Act is amended by omitting the words "Chief Justice, or if there shall be no Chief Justice, then in the senior puisne judge for the time being" and by inserting in lieu thereof the words "Public Trustee."

6. Section eighty-one of the Principal Act is amended by inserting at the end thereof the following subsection:—

(3) If the grant of probate or administration is revoked under the provisions of section 40c of this Act, the court in which the proceedings are pending may in lieu of the suggestion referred to in subsection one of this section, order that such suggestion be made as it deems proper, and thereupon the proceedings shall be continued in the name of such person as the court directs as if the proceedings had been originally commenced by or against that person, but subject to such conditions and variations, if any, as the court directs, or the court may stay the proceedings on such terms in respect of costs or otherwise as it thinks just.

7. (1) All wills deposited with the Registrar-General in pursuance of section thirty-two of the Principal Act or of any section thereby replaced shall, on a day to be appointed by the Governor and notified by proclamation published in the Gazette, be handed over by the Registrar-General to the Registrar of Probates together with any indices thereof or papers or documents relative to any will so to be handed over, and such wills shall as and from such day so appointed be deemed to be deposited in the office of the said registrar in pursuance of the provisions of section thirty-two of the Principal Act as amended by this section.

(2)

Wills Probate and Administration (Amendment).

(2) As from the day appointed in pursuance of subsection one of this section,—

Consequential amendments of Act No. 13, 1898.

(a) Section thirty-two of the Principal Act is amended—

Sec. 32.

(Deposit of wills.)

(i) by omitting the words “the Registrar-General” wherever occurring and by inserting in lieu thereof the words “the Registrar of Probates”;

(ii) by inserting at the end thereof the following new subsection:—

(2) Rules of court may prescribe the fees to be paid for receiving and noting any will so deposited, for searches in the index of deposited wills, and for the delivery or return of the will to the persons entitled to receive the same. Until rules of court in that behalf are made the fees shall be those prescribed under section two hundred and two of the Conveyancing Act, 1919-1930.

(b) Section forty-two of the Principal Act is amended by omitting from subsection three thereof the words “the Registrar-General”

Sec. 42.

(Application for probate or administration may be made by petition.)

and by inserting in lieu thereof the words “the Registrar.”

(c) Section one hundred and four of the Principal Act is amended by omitting from paragraph

Sec. 104.

(Registrar to issue probate or administration in the name of the court.)

(d) of subsection one thereof the words “the Registrar-General” and by inserting in lieu thereof the words “him or with the Public Trustee.”

8. (1) The Wills Probate and Administration Act, 1898, is further amended—

Further amendment of Act No. 13, 1898, (Corrections.)

(a) by omitting from section one the figures “151,” “152” and “156” and by inserting in lieu thereof the figures “150,” “151” and “155” respectively;

Sec. 1.

(b) by omitting from subsection two of section forty-six the words “subject to the provisions of section fifty-six hereof”;

Sec. 46 (2).

(c)

Wills Probate and Administration (Amendment).

- Sec. 64 (2). (c) by omitting from subsection two of section sixty-four the word "Curator" and by inserting in lieu thereof the words "Public Trustee";
- Sec. 110. (d) by omitting from section one hundred and ten the words "Curator of intestate estates" and by inserting in lieu thereof the words "Public Trustee";
- Second Schedule. (e) by omitting the Second Schedule.
- Sec. 82 (2) and (3). (2) Subsections two and three of section eighty-two of the Wills Probate and Administration Act, 1898, as originally enacted, shall be renumbered as subsections three and four respectively.
- Amendment of Act No. 14, 1906, s. 3. (3) The Administration Amending Act, 1906, is amended by omitting section three.
- (Consequential.)

In the name and on behalf of His Majesty I assent to this Act.

PHILIP GAME,
Governor.

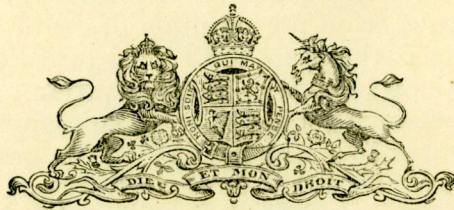
*Government House,
Sydney, 21st December, 1932.*

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 6 December, 1932.*

New South Wales.



ANNO VICESIMO TERTIO

GEORGI V REGIS.

Act No. , 1932.

An Act to amend the law relating to wills probate and administration; to amend the Wills Probate and Administration Act, 1898, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King'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
5 the same, as follows:—

1. (1) This Act may be cited as the "Wills Probate Short title. and Administration (Amendment) Act, 1932."

Wills Probate and Administration (Amendment).

(2) This Act shall be construed with the Wills Probate and Administration Act, 1898, and any Acts amending the same.

(3) The Wills Probate and Administration Act, 1898, as so amended, is referred to in this Act as the Principal Act.

(4) The Principal Act, as amended by this Act, may be cited as the "Wills Probate and Administration Act, 1898-1932."

10 **2.** After section forty of the Principal Act the following sections are inserted:—

Amendment of Act No. 13, 1898. New sections 40A-40D.

15 40A. (1) Where the court is satisfied, whether by direct evidence or on presumption of death, that any person is dead, the court shall have jurisdiction to grant probate of his will or administration of his estate, notwithstanding that it may subsequently appear that he was living at the date of the grant.

Evidence or presumption of death.

20 (2) The provisions of this Act, the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and Part XV of the Conveyancing Act, 1919-1930, relative to a deceased person shall, unless the context or subject-matter otherwise indicates or requires, extend to any person with respect to whom the court is satisfied in accordance with subsection one of this section that he is dead.

25 (3) The provisions of this section shall extend to a case where the grant of probate or administration was made before, as well as to a case where the grant is made after the commencement of the Wills Probate and Administration (Amendment) Act, 1932, provided that nothing in this section shall affect any action or proceeding decided before or pending at the commencement of that Act.

30 40B. (1) If a grant of probate or administration is made on presumption of death only, the provisions of this section shall have effect.

Presumption of death.

(2) The grant shall be expressed to be made on presumption of death only.

40 (3) The estate shall not be distributed without the leave of the court.

The

Wills Probate and Administration (Amendment).

5 The leave may be given in the grant of probate
or administration or by other order, and either
unconditionally or subject to such conditions as
the court deems reasonable, and in particular, if
the court thinks fit, subject to an undertaking
being entered into or security being given by any
person who takes under the distribution that he
will restore any money or property received by him
or the amount or value thereof in the event of the
10 grant being revoked.

(4) The court may direct the executor or
administrator before distributing the estate to give
such notices as the court deems proper in the
circumstances, in order that the person whose
15 death has been presumed, if he is still living, or
if he has died since the date of the grant, then
in order that any person interested in the estate
may lodge with the registrar within such time as
may be specified a caveat against the distribution.

20 If the court directs any such notice to be given,
the executor or administrator shall not have the
benefit of section ninety-two of this Act, unless
he complies with the direction.

25 If a caveat is duly lodged within such time as
may be specified, the executor or administrator
shall not distribute the estate until the caveat
is withdrawn or removed.

(5) An application for leave to distribute
30 the estate and for directions may be made, and a
caveat may be lodged withdrawn or removed, as
prescribed by rules of court, and the Probate Judge
may make such order in respect of costs and
otherwise as he deems proper.

35 (6) The provisions of this section, with the
exception of subsection two, shall extend to a case
where the grant of probate or administration was
made before, as well as to a case where the grant is
made after the commencement of the Wills Probate
and Administration (Amendment) Act, 1932, but
40 shall not affect any distribution made before such
commencement.

Wills Probate and Administration (Amendment).

40c. (1) Where the court grants probate of the will or administration of the estate of any person, and it subsequently appears that he was living at the date of the grant, the court shall revoke the grant on such terms, if any, with respect to any proceedings at law or in equity commenced by or against the executor or administrator, and in respect of costs and otherwise, as the court thinks proper.

Person living
at date of
grant.

(2) Proceedings for the revocation may be taken either by the person himself, or if he has died since the date of the grant, by any person entitled to apply for probate or administration or by any person interested in the estate.

The proceedings may be by suit or otherwise as prescribed by rules of court.

(3) The court may at any time, whether before or after the revocation, make such orders, including an order for an injunction against the executor or administrator or any other person, and an order for the appointment of a receiver, as the court may deem proper for protecting the estate.

(4) The provisions of this section shall extend to a case where the grant of probate or administration was made before, as well as to a case where the grant is made after the commencement of the Wills Probate and Administration (Amendment) Act, 1932.

40d. (1) If a grant of probate or administration is revoked under section 40c of this Act, the provisions of this section shall have effect.

Effect of
revoking
grant.

(2) The executor or administrator under the revoked grant shall be bound duly to account and to pay and transfer all money and property received by or vested in him as such executor or administrator and then remaining in his hands as the court may direct, but shall not be liable for any money or property paid or transferred by him in good faith under the probate or administration before the revocation.

Nothing

Wills Probate and Administration (Amendment).

Nothing in this subsection shall affect any commission protection indemnity reimbursement or right to which the executor or administrator is entitled under any other provision of this Act.

5 (3) The revocation shall not invalidate any payment or transfer lawfully made by or to the executor or administrator in the course of administration before the revocation, but nothing in this subsection shall prejudice the right of the person himself, or if he has died since the date of the grant, the executor or administrator to whom a grant of probate or administration is made consequent on the revocation, or any other person, to follow assets into the hands of the persons or any 10 of them among whom the same may have been distributed, or who may have received the same.

15 (4) The person himself, or if he has died since the date of the grant, the executor or administrator to whom a grant of probate or administration is made consequent on the revocation, shall be entitled to receive from the Consolidated Revenue Fund the amount of death duty paid thereto in respect of the revoked grant.

20 (5) The court may make such vesting order as it deems proper.

25 (6) The provisions of this section, with the exception of subsection four, shall extend to a case where the grant of probate or administration was made before, as well as to a case where the grant is made after the commencement of the Wills Probate and Administration (Amendment) Act, 30 1932.

3. Section forty-three of the Principal Act is amended by omitting paragraph (b) and inserting in lieu thereof 35 the following:—

(b) the passing and allowance of the accounts of executors and administrators, including the allowance of commission or percentage to executors administrators and trustees for their 40 pains and trouble.

Further amendment of Act No. 13, 1898, s. 43.

(Delegation of certain powers of the court.)

Wills Probate and Administration (Amendment).

4. Section fifty-four of the Principal Act (as inserted therein by section three of the Administration Amending Act, 1906) is omitted and the following section inserted in lieu thereof:—
- 5 54. The court shall have the same power and jurisdiction as the Supreme Court in its equitable jurisdiction to authorise the application of the share or interest of any infant under any will or intestacy for the benefit of the infant.
- 10 5. Section sixty-one of the Principal Act is amended by omitting the words "Chief Justice, or if there shall be no Chief Justice, then in the senior puisne judge for the time being" and by inserting in lieu thereof the words "Public Trustee."
- 15 6. Section eighty-one of the Principal Act is amended by inserting at the end thereof the following sub-section:—
- (3) If the grant of probate or administration is revoked under the provisions of section 40C of this Act, the court in which the proceedings are pending may in lieu of the suggestion referred to in sub-section one of this section, order that such suggestion be made as it deems proper, and thereupon the proceedings shall be continued in the name of such person as the court directs as if the proceedings had been originally commenced by or against that person, but subject to such conditions and variations, if any, as the court directs, or the court may stay the proceedings on such terms in respect of costs or otherwise as it thinks just.
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- 25
- 30
7. (1) All wills deposited with the Registrar-General in pursuance of section thirty-two of the Principal Act or of any section thereby replaced shall, on a day to be appointed by the Governor and notified by proclamation published in the Gazette, be handed over by the Registrar-General to the Registrar of Probates together with any indices thereof or papers or documents relative to any will so to be handed over, and such wills shall as and from such day so appointed be deemed to be deposited in the office of the said registrar in pursuance of the provisions of section thirty-two of the Principal Act as amended by this section.
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- 40

Further amendment of Act No. 13, 1898, s. 51.
Substituted section.

Share of infant.

Further amendment of Act No. 13, 1898, s. 61.
(Vesting of property of deceased.)

Further amendment of Act No. 13, 1898, s. 81.
(Revocation of grants not to prejudice actions or suits.)

Transfer of deposited wills from Registrar-General to Registrar of Probates.

Wills Probate and Administration (Amendment).

(2) As from the day appointed in pursuance of subsection one of this section,—

Consequential amendments of Act No. 13, 1898.

(a) Section thirty-two of the Principal Act is amended—

Sec. 32.

(Deposit of wills.)

5

(i) by omitting the words "the Registrar-General" wherever occurring and by inserting in lieu thereof the words "the Registrar of Probates";

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(ii) by inserting at the end thereof the following new subsection:—

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(2) Rules of court may prescribe the fees to be paid for receiving and noting any will so deposited, for searches in the index of deposited wills, and for the delivery or return of the will to the persons entitled to receive the same. Until rules of court in that behalf are made the fees shall be those prescribed under section two hundred and two of the Conveyancing Act, 1919-1930.

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(b) Section forty-two of the Principal Act is amended by omitting from subsection three thereof the words "the Registrar-General"

Sec. 42.

(Application for probate or administration may be made by petition.)

25

and by inserting in lieu thereof the words "the Registrar."

(c) Section one hundred and four of the Principal Act is amended by omitting from paragraph

Sec. 104.

(Registrar to issue probate or administration in the name of the court.)

30

(d) of subsection one thereof the words "the Registrar-General" and by inserting in lieu thereof the words "him or with the Public Trustee."

8. (1) The Wills Probate and Administration Act, 1898, is further amended—

Further amendment of Act No. 13, 1898. (Corrections.)

35

(a) by omitting from section one the figures "151," "152" and "156" and by inserting in lieu thereof the figures "150," "151" and "155" respectively;

Sec. 1.

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(b) by omitting from subsection two of section forty-six the words "subject to the provisions of section fifty-six hereof";

Sec. 46 (2).

(c)

Wills Probate and Administration (Amendment).

- (c) by omitting from subsection two of section Sec. 64 (2).
sixty-four the word "Curator" and by inserting
in lieu thereof the words "Public Trustee";
- 5 (d) by omitting from section one hundred and ten Sec. 110.
the words "Curator of intestate estates" and
by inserting in lieu thereof the words "Public
Trustee";
- (e) by omitting the Second Schedule. Second
Schedule.
- 10 (2) Subsections two and three of section eighty-two Sec. 82 (2)
of the Wills Probate and Administration Act, 1898, as and (3).
originally enacted, shall be renumbered as subsections
three and four respectively.
- (3) The Administration Amending Act, 1906, is Amendment of
Act No. 14, 1906,
3.
(Consequential.)
amended by omitting section three.