

# CONCURRENCE COPY

## WILLS, PROBATE AND ADMINISTRATION (AMENDMENT) BILL, 1981

---

### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are—

- (a) to make further provision for the administration of the estates of persons who die on or after 31st December, 1981, consequent upon the abolition, on and from that date, of death duty, by—
  - (i) requiring the legal personal representative to disclose to the Supreme Court the assets and liabilities of the deceased (Schedule 1 (2)—proposed section 81A);
  - (ii) preventing the legal personal representative from completing dealings with such property of the deceased as has not been disclosed to the Court (Schedule 1 (2)—proposed section 81B);
  - (iii) specifying the persons by whom and the circumstances in which accounts relating to the estate are, or an inventory of the estate is, required to be filed with the Court or so filed and passed (Schedule 1 (3));
  - (iv) providing for the consequences of neglect to comply with the requirements relating to the accounts or inventory referred to in subparagraph (iii) (Schedule 1 (5)—proposed section 87); and
  - (v) limiting the immunity and protection conferred on persons who rely, bona fide, on documents issued by the Court, to dealings in property listed in those documents (Schedule 1 (6));
- (b) to enable the Court to reduce a commission or amount charged in respect of an estate where the Court is of the opinion that the commission or amount is excessive (Schedule 1 (4)—proposed section 86A);
- (c) to increase, from \$2,000 to \$15,000, the value of estates in the administration of which assistance may be given by the Registrar in Probate or a district agent for the Registrar (Schedule 1 (8), (9) and (11)); and
- (d) to make other provisions of a minor, ancillary or consequential nature.

# CONCURRENCE COPY

1981 PROVISIONAL ADMINISTRATION (AMENDMENT)  
Bill, 1981

## EXPLANATORY NOTE

This Bill amends the Administration of Justice Act 1980.

The object of the Bill is to amend the law relating to the

jurisdiction of the High Court in relation to the winding up of companies.

The Bill amends section 122 of the Insolvency Act 1986 so as to

enable the High Court to wind up a company which is not a company

incorporated in Great Britain or the Channel Islands.

The Bill also amends section 123 of the Insolvency Act 1986 so as to

enable the High Court to appoint an administrator of a company which

is not a company incorporated in Great Britain or the Channel Islands.

The Bill also amends section 124 of the Insolvency Act 1986 so as to

enable the High Court to appoint a receiver of the property of a company

which is not a company incorporated in Great Britain or the Channel Islands.

Act No. 1981

Wills, Probate and Administration (Amendment) Bill, 1981

**WILLS, PROBATE AND ADMINISTRATION (AMENDMENT)  
BILL, 1981**

No. , 1981.

---

---

**A BILL FOR**

An Act to amend the Wills, Probate and Administration Act, 1898, to make further provision for the administration of the estates of certain persons consequent upon the abolition of death duty, to enable the Supreme Court to reduce excessive commissions and to increase the value of estates in the administration of which assistance may be given by the Registrar in Probate or his agent.

[MR WALKER—24 November, 1981.]

---

---

---

*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:—

**5 Short title.**

1. This Act may be cited as the "Wills, Probate and Administration (Amendment) Act, 1981".

**Commencement.**

2. (1) This Act, section 3 and Schedule 1 excepted, shall commence on  
10 the date of assent to this Act.

(2) Section 3 and Schedule 1 shall commence on 31st December, 1981.

**Amendment of Act No. 13, 1898.**

3. The Wills, Probate and Administration Act, 1898, is amended in the  
15 manner set forth in Schedule 1.

---

SCHEDULE 1.

(Sec. 3.)

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

(1) Section 1—

20 Omit "PART 1A", insert instead "PART IA".



---

*Wills, Probate and Administration (Amendment).*

---

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

## (2) Sections 81A, 81B—

5 After section 81, insert:—

**Disclosure of assets and liabilities of deceased.**

10 81A. (1) A person who applies for a grant of probate or administration in respect of the estate of a person who dies on or after 31st December, 1981, shall, in accordance with the rules of Court, disclose to the Court the assets and liabilities of the deceased.

15 (2) An executor, administrator or trustee of the estate of a person who dies on or after 31st December, 1981, shall, in accordance with the rules of Court, disclose to the Court any assets and liabilities of the deceased which have not previously been disclosed to the Court.

**Power to deal with assets, &c.**

20 81B. (1) Nothing in this Part enables an executor, administrator or trustee of the estate of a person who dies on or after 31st December, 1981, to complete the disposition of, and such an executor, administrator or trustee shall not complete the disposition of, any property of the deceased vested in him which has not been disclosed to the Court pursuant to section 81A (1) or (2).

(2) Nothing in subsection (1) prevents an executor or administrator from effecting an appointment pursuant to section 75A.

25 (3) Nothing in subsection (1) affects any interest in any property acquired from an executor, administrator or trustee referred to in that subsection by a person where the interest was acquired in good faith, for valuable consideration and without notice that the property had not been disclosed to the Court pursuant to section 81A  
30 (1) or (2).

---

*Wills, Probate and Administration (Amendment).*

---

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

## (3) (a) Section 85 (1)—

5 Omit “Every”, insert instead “In respect of the estate of a person who died before 31st December, 1981, every”.

## (b) Section 85 (1AA)—

After section 85 (1), insert:—

10 (1AA) In respect of the estate of a person who dies on or after 31st December, 1981, every person to whom probate or administration has been or is granted and who is—

(a) a creditor of the estate of the deceased;

(b) the guardian of a minor who is a beneficiary of the estate of the deceased;

15 (c) the executor or administrator of the estate where the whole, or a part which, in the opinion of the Court, is a substantial part, of the estate passes to one or more charities or public benevolent institutions;

20 (d) a person, not being a beneficiary, or, in the opinion of the Court, a substantial beneficiary, of the estate, selected at random by the Court; or

(e) a person otherwise required to do so by the Court,

25 shall verify and file or verify, file and pass his accounts relating to the estate within such time, and from time to time, and in such manner as may be fixed by the rules, or as the Court may order.

## (c) Section 85 (1A)—

Omit “file or”, insert instead “verify and file or verify,”.

## (d) Section 85 (1B)—

30 After section 85 (1A), insert:—

(1B) In respect of the estate of a person who dies on or after 31st December, 1981, every person to whom probate or

---

*Wills, Probate and Administration (Amendment).*

---

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

5 administration has been or is granted and who is not a person to whom subsection (1AA) applies may verify and file or verify, file and pass his accounts relating to the estate within such time, and from time to time, and in such manner as may be fixed by the rules, or as the Court may order.

## (e) Section 85 (5)—

10 After section 85 (4), insert:—

(5) Every executor, administrator or trustee of the estate of a deceased person shall verify and file an inventory of the estate of the deceased within such time, and from time to time, and in such manner as may be fixed by the rules, or as the Court may order.

15

## (4) Section 86A—

After section 86, insert:—

**Reduction of excessive commission, &c.**

20 86A. Where the Court is of the opinion that a commission or amount charged or proposed to be charged in respect of any estate, or any part of any such commission or amount, is excessive, the Court may, of its own motion, or on the motion of any person interested in the estate, review the commission, amount or part and may, on that review, notwithstanding any provision contained in a will authorising the charging of the commission, amount or part, reduce that commission, amount or part.

25

## (5) Section 87—

Omit the section, insert instead:—

**Effect of neglect to file, &c., inventory or accounts.**

30 87. (1) Where an executor, administrator or trustee neglects to file, or verify and file, an inventory of the estate of the deceased or to file, or file and pass, or verify and file, or verify, file and pass, his



---

*Wills, Probate and Administration (Amendment).*

---

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

5 accounts relating to the estate in accordance with a requirement made  
by or under section 85 within one month after the expiration of the  
time fixed for compliance, the Registrar shall cause the executor,  
administrator or trustee to be notified of his neglect.

10 (2) Where, on the expiration of one month after having been  
notified, under subsection (1), of his neglect, an executor, administra-  
tor or trustee further neglects to comply with the requirement in  
respect of which the notification under that subsection was given, the  
Court may, of its own motion, order the executor, administrator or  
trustee to show cause before the Court why he should not be ordered  
15 or to file, or verify and file, an inventory of the estate of the deceased  
or to file, or file and pass, or verify and file, or verify, file and pass,  
his accounts relating to the estate, as the case may require, in the  
Court forthwith.

20 (3) Where an executor, administrator or trustee to whom  
subsection (2) applies fails to show cause as referred to in that  
subsection, he shall be liable to punishment for contempt of court or  
to the payment of a fine not exceeding \$2,000.

25 (4) An executor, administrator or trustee to whom subsec-  
tion (2) applies shall, unless the Court otherwise orders, be personally  
liable for the cost and expenses of any proceedings pursuant to this  
section.

## (6) (a) Section 91—

Omit “part”, insert instead “Part”.

## (b) Section 91 (2)—

At the end of section 91, insert:—

30 (2) In respect of the estate of a person who dies on or after  
31st December, 1981, the indemnity and protection conferred  
by subsection (1) shall apply only in relation to property of the  
estate of the deceased which is listed in a document issued by  
the Court in relation to the probate, administration or order.



---

*Wills, Probate and Administration (Amendment).*

---

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

- (7) Section 100—  
5 Omit the section.
- (8) Section 101—  
Omit “two thousand dollars in value,” insert instead “\$15,000 in value or, where some other amount is prescribed, not exceeding that other amount so prescribed in value.”
- 10 (9) Section 104 (1) (b)—  
Omit “six hundred dollars in value”, insert instead “the amount in value determined in accordance with section 101”.
- (10) Section 152 (1) (b)—  
Omit “all”.
- 15 (11) (a) Section 153 (1) (a)—  
Omit “and”.
- (b) Section 153 (1) (b)—  
Omit “section 84A (1).”, insert instead “section 84A (1); and”.
- (c) Section 153 (1) (c)—  
20 After section 153 (1) (b), insert:—  
(c) prescribing an amount for the purposes of section 101.

---

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981

Public Finance and Administration (Amendment)

SECTION 137

Amendment to the Public Finance and Administration Act, 1977—contd.

(1) Section 137—

omit the section.

(2) Section 137—

omit two thousand dollars in value, insert "and \$212,000 in value or when some other amount is prescribed not exceeding that or an amount so provided in value".

(3) Section 137 (1) (a)—

omit two hundred dollars in value, insert instead the amount in value stipulated in accordance with section 137.

(4) Section 137 (1) (b)—

omit "and".

(5) Section 137 (1) (a)—

omit "and".

(6) Section 137 (1) (b)—

omit "Section 87 (1) (c) shall have effect as if it read".

(7) Section 137 (1) (c)—

omit "Section 137 (1) (b) insert—

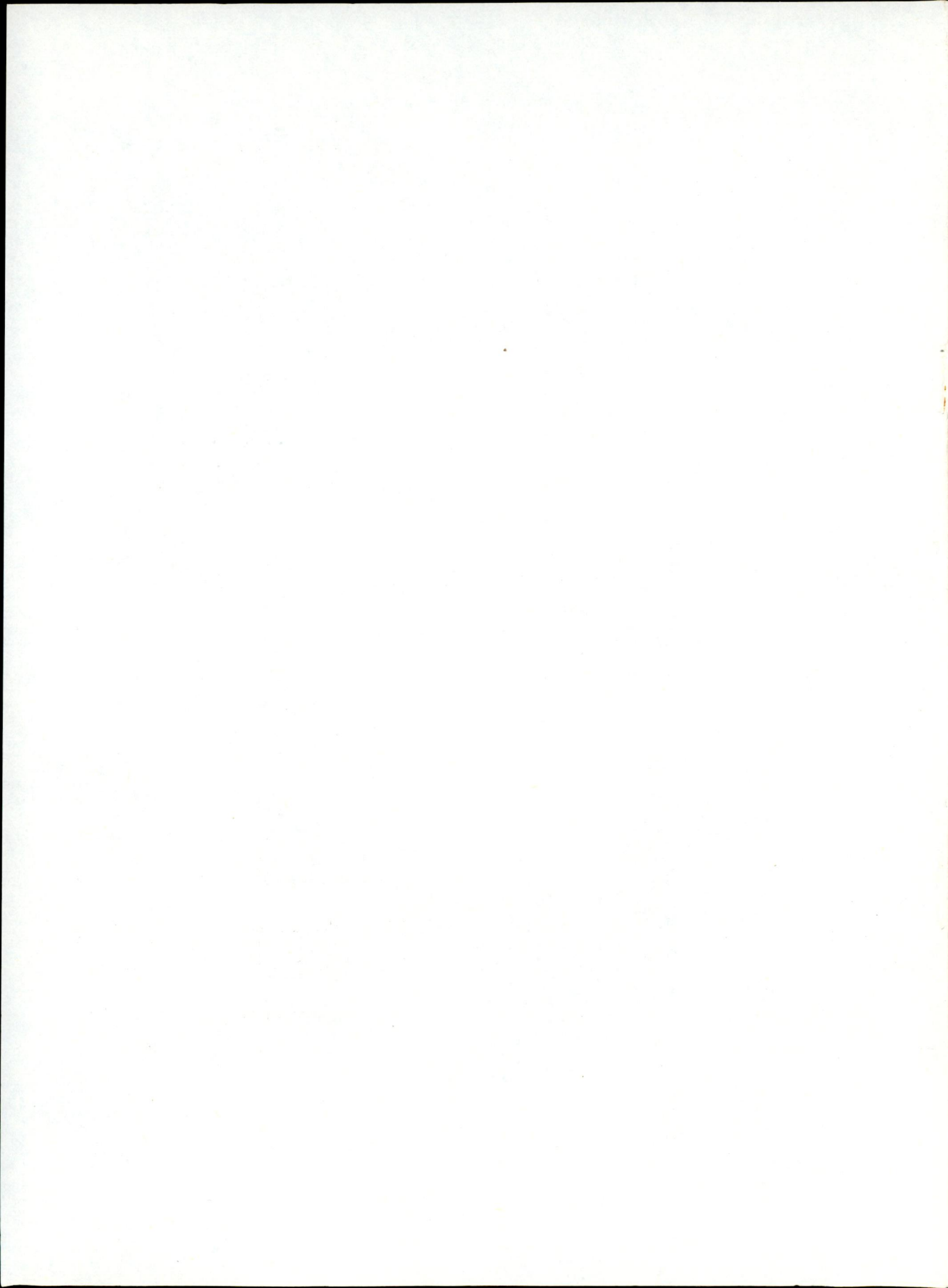
(1) prescribing an amount for the purpose of section 137.

... (11) ... (12) ... (13) ... (14) ... (15) ... (16) ... (17) ... (18) ... (19) ... (20) ... (21) ... (22) ... (23) ... (24) ... (25) ... (26) ... (27) ... (28) ... (29) ... (30) ... (31) ... (32) ... (33) ... (34) ... (35) ... (36) ... (37) ... (38) ... (39) ... (40) ... (41) ... (42) ... (43) ... (44) ... (45) ... (46) ... (47) ... (48) ... (49) ... (50) ... (51) ... (52) ... (53) ... (54) ... (55) ... (56) ... (57) ... (58) ... (59) ... (60) ... (61) ... (62) ... (63) ... (64) ... (65) ... (66) ... (67) ... (68) ... (69) ... (70) ... (71) ... (72) ... (73) ... (74) ... (75) ... (76) ... (77) ... (78) ... (79) ... (80) ... (81) ... (82) ... (83) ... (84) ... (85) ... (86) ... (87) ... (88) ... (89) ... (90) ... (91) ... (92) ... (93) ... (94) ... (95) ... (96) ... (97) ... (98) ... (99) ... (100) ...

... (101) ... (102) ... (103) ... (104) ... (105) ... (106) ... (107) ... (108) ... (109) ... (110) ... (111) ... (112) ... (113) ... (114) ... (115) ... (116) ... (117) ... (118) ... (119) ... (120) ... (121) ... (122) ... (123) ... (124) ... (125) ... (126) ... (127) ... (128) ... (129) ... (130) ... (131) ... (132) ... (133) ... (134) ... (135) ... (136) ... (137) ... (138) ... (139) ... (140) ... (141) ... (142) ... (143) ... (144) ... (145) ... (146) ... (147) ... (148) ... (149) ... (150) ... (151) ... (152) ... (153) ... (154) ... (155) ... (156) ... (157) ... (158) ... (159) ... (160) ... (161) ... (162) ... (163) ... (164) ... (165) ... (166) ... (167) ... (168) ... (169) ... (170) ... (171) ... (172) ... (173) ... (174) ... (175) ... (176) ... (177) ... (178) ... (179) ... (180) ... (181) ... (182) ... (183) ... (184) ... (185) ... (186) ... (187) ... (188) ... (189) ... (190) ... (191) ... (192) ... (193) ... (194) ... (195) ... (196) ... (197) ... (198) ... (199) ... (200) ...

СОЮЗВЕЙСЕ СОЪА





**WILLS, PROBATE AND ADMINISTRATION  
(AMENDMENT) ACT, 1981, No. 106**

**New South Wales**



ANNO TRICESIMO

**ELIZABETHÆ II REGINÆ**

\*\*\*\*\*

**Act No. 106, 1981.**

An Act to amend the Wills, Probate and Administration Act, 1898, to make further provision for the administration of the estates of certain persons consequent upon the abolition of death duty, to enable the Supreme Court to reduce excessive commissions and to increase the value of estates in the administration of which assistance may be given by the Registrar in Probate or his agent. [Assented to, 10th December, 1981.]

---

*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, 1981".

**Commencement.**

**2. (1)** This Act, section 3 and Schedule 1 excepted, shall commence on the date of assent to this Act.

**(2)** Section 3 and Schedule 1 shall commence on 31st December, 1981.

**Amendment of Act No. 13, 1898.**

**3.** The Wills, Probate and Administration Act, 1898, is amended in the manner set forth in Schedule 1.

---

SCHEDULE 1.

(Sec. 3.)

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

(1) Section 1—

Omit "PART 1A", insert instead "PART IA".



---

*Wills, Probate and Administration (Amendment).*

---

SCHEDULE 1—*continued.*

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

(2) Sections 81A, 81B—

After section 81, insert:—

**Disclosure of assets and liabilities of deceased.**

81A. (1) A person who applies for a grant of probate or administration in respect of the estate of a person who dies on or after 31st December, 1981, shall, in accordance with the rules of Court, disclose to the Court the assets and liabilities of the deceased.

(2) An executor, administrator or trustee of the estate of a person who dies on or after 31st December, 1981, shall, in accordance with the rules of Court, disclose to the Court any assets and liabilities of the deceased which have not previously been disclosed to the Court.

**Power to deal with assets, &c.**

81B. (1) Nothing in this Part enables an executor, administrator or trustee of the estate of a person who dies on or after 31st December, 1981, to complete the disposition of, and such an executor, administrator or trustee shall not complete the disposition of, any property of the deceased vested in him which has not been disclosed to the Court pursuant to section 81A (1) or (2).

(2) Nothing in subsection (1) prevents an executor or administrator from effecting an appointment pursuant to section 75A.

(3) Nothing in subsection (1) affects any interest in any property acquired from an executor, administrator or trustee referred to in that subsection by a person where the interest was acquired in good faith, for valuable consideration and without notice that the property had not been disclosed to the Court pursuant to section 81A (1) or (2).

---

*Wills, Probate and Administration (Amendment).*

---

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

## (3) (a) Section 85 (1)—

Omit “Every”, insert instead “In respect of the estate of a person who died before 31st December, 1981, every”.

## (b) Section 85 (1AA)—

After section 85 (1), insert:—

(1AA) In respect of the estate of a person who dies on or after 31st December, 1981, every person to whom probate or administration has been or is granted and who is—

- (a) a creditor of the estate of the deceased;
- (b) the guardian of a minor who is a beneficiary of the estate of the deceased;
- (c) the executor or administrator of the estate where the whole, or a part which, in the opinion of the Court, is a substantial part, of the estate passes to one or more charities or public benevolent institutions;
- (d) a person, not being a beneficiary, or, in the opinion of the Court, a substantial beneficiary, of the estate, selected at random by the Court; or
- (e) a person otherwise required to do so by the Court,

shall verify and file or verify, file and pass his accounts relating to the estate within such time, and from time to time, and in such manner as may be fixed by the rules, or as the Court may order.

## (c) Section 85 (1A)—

Omit “file or”, insert instead “verify and file or verify”.

## (d) Section 85 (1B)—

After section 85 (1A), insert:—

(1B) In respect of the estate of a person who dies on or after 31st December, 1981, every person to whom probate or



---

*Wills, Probate and Administration (Amendment).*

---

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

administration has been or is granted and who is not a person to whom subsection (1AA) applies may verify and file or verify, file and pass his accounts relating to the estate within such time, and from time to time, and in such manner as may be fixed by the rules, or as the Court may order.

## (e) Section 85 (5)—

After section 85 (4), insert:—

(5) Every executor, administrator or trustee of the estate of a deceased person shall verify and file an inventory of the estate of the deceased within such time, and from time to time, and in such manner as may be fixed by the rules, or as the Court may order.

## (4) Section 86A—

After section 86, insert:—

**Reduction of excessive commission, &c.**

86A. Where the Court is of the opinion that a commission or amount charged or proposed to be charged in respect of any estate, or any part of any such commission or amount, is excessive, the Court may, of its own motion, or on the motion of any person interested in the estate, review the commission, amount or part and may, on that review, notwithstanding any provision contained in a will authorising the charging of the commission, amount or part, reduce that commission, amount or part.

## (5) Section 87—

Omit the section, insert instead:—

**Effect of neglect to file, &c., inventory or accounts.**

87. (1) Where an executor, administrator or trustee neglects to file, or verify and file, an inventory of the estate of the deceased or to file, or file and pass, or verify and file, or verify, file and pass, his



---

*Wills, Probate and Administration (Amendment).*

---

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

accounts relating to the estate in accordance with a requirement made by or under section 85 within one month after the expiration of the time fixed for compliance, the Registrar shall cause the executor, administrator or trustee to be notified of his neglect.

(2) Where, on the expiration of one month after having been notified, under subsection (1), of his neglect, an executor, administrator or trustee further neglects to comply with the requirement in respect of which the notification under that subsection was given, the Court may, of its own motion, order the executor, administrator or trustee to show cause before the Court why he should not be ordered to file, or verify and file, an inventory of the estate of the deceased or to file, or file and pass, or verify and file, or verify, file and pass, his accounts relating to the estate, as the case may require, in the Court forthwith.

(3) Where an executor, administrator or trustee to whom subsection (2) applies fails to show cause as referred to in that subsection, he shall be liable to punishment for contempt of court or to the payment of a fine not exceeding \$2,000.

(4) An executor, administrator or trustee to whom subsection (2) applies shall, unless the Court otherwise orders, be personally liable for the cost and expenses of any proceedings pursuant to this section.

(6) (a) Section 91—

Omit “part”, insert instead “Part”.

(b) Section 91 (2)—

At the end of section 91, insert:—

(2) In respect of the estate of a person who dies on or after 31st December, 1981, the indemnity and protection conferred by subsection (1) shall apply only in relation to property of the estate of the deceased which is listed in a document issued by the Court in relation to the probate, administration or order.

---

*Wills, Probate and Administration (Amendment).*

---

SCHEDULE 1—*continued.*

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

(7) Section 100—

Omit the section.

(8) Section 101—

Omit “two thousand dollars in value,” insert instead “\$15,000 in value or, where some other amount is prescribed, not exceeding that other amount so prescribed in value,”.

(9) Section 104 (1) (b)—

Omit “six hundred dollars in value”, insert instead “the amount in value determined in accordance with section 101”.

(10) Section 152 (1) (b)—

Omit “all”.

(11) (a) Section 153 (1) (a)—

Omit “and”.

(b) Section 153 (1) (b)—

Omit “section 84A (1).”, insert instead “section 84A (1); and”.

(c) Section 153 (1) (c)—

After section 153 (1) (b), insert:—

(c) prescribing an amount for the purposes of section 101.

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

J. A. ROWLAND,  
*Governor.*

*Government House,  
Sydney, 10th December, 1981.*

