

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 11 of 1930.

AN ORDINANCE

To amend the Administration and Probate Ordinance 1929.

BE it ordained by the Deputy of the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909 and the *Seat of Government (Administration) Act* 1910-1930, as follows:—

1.—(1.) This Ordinance may be cited as the *Administration and Probate Ordinance* 1930. Short title and citation.

(2.) The *Administration and Probate Ordinance* 1929 is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Administration and Probate Ordinance* 1929-1930.

2. Section three of the Principal Ordinance is amended by adding at the end thereof the words “as from midnight on the dates specified therein”. Repeal.

3. Section five of the Principal Ordinance is amended—

(a) by omitting from the definition of “Deceased person” or “the deceased” the word “thirty-first” and inserting in its stead the word “first”; and Definitions.

(b) by omitting from the definition of the word “Rules” the words “any Act or this Ordinance” and inserting in their stead the words “this Ordinance or under any Act, applicable to matters arising under this Ordinance”.

4. Section seven of the Principal Ordinance is amended by inserting in sub-section (3.), after the word “powers”, the words “and functions”. Registrar, Curator, &c.

5. Section eight of the Principal Ordinance is repealed and the following section is inserted in its stead:— Powers and duties of Deputies.

“8. The Attorney-General may appoint any person to be Deputy Registrar or Deputy Curator, who shall have such of the powers and functions and exercise such of the duties of the Registrar or Curator, respectively, as are assigned to him by the Registrar or Curator, as the case may be.”

1443.—PRICE 5D.

6. After section ten of the Principal Ordinance the following section is inserted:—

Sealing of
probate and
letters of
administration.

“10A. The seal of the Court shall not be affixed to any probate or letters of administration—

- (a) until all probate, stamp and other duties (if any), but not including estate duty, payable under any law in force in the Territory have been paid; and
- (b) except upon an affidavit that notice of the intention to apply in that behalf has been published once in a newspaper circulating in the Territory fourteen days before the making of the affidavit and that no caveat has been lodged.”

Amount of
penalty on
administration
bond.

7. Section fifteen of the Principal Ordinance is amended—

- (a) by inserting, after the word “Court” (first occurring), the words “or a Justice”;
- (b) by inserting, after the word “it”, the words “or he”;
- (c) by inserting, after the word “Court” (second occurring), the words “or Justice”; and
- (d) by omitting the words “regulations as the Court by rule directs” and inserting in their stead the words “conditions as are prescribed”.

Order may be
made to assign
the bond.

8. Section seventeen of the Principal Ordinance is amended by omitting the words “may, on application made on motion in a summary way, and” and inserting in their stead the words “or a Justice may,”.

Court may in
creditor's
administration
order
assignment of
administration
bond to
Curator or
some other
person.

9. Section eighteen of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1.), after the word “Court”, the words “or a Justice”;
- (b) by inserting in sub-section (1.), after the word “it”, the words “or he”;
- (c) by inserting in sub-section (3.), after the word “Court”, the words “or a Justice”; and
- (d) by inserting in sub-section (3.), after the word “it”, the words “or he”.

Renunciation,
&c., by person
appointed both
executor and
trustee of will.

10. After section twenty of the Principal Ordinance the following section is inserted:—

“20A.—(1.) If a person who is appointed by will both executor and trustee thereof renounces probate or after being duly cited fails to apply for probate, the renunciation or failure shall be deemed to be a disclaimer of the trust contained in the will.

“(2.) Where there is any such renunciation or failure or any such person dies before probate is granted to him or instead of applying for probate authorizes a trustee company to apply for administration with the will annexed and where

administration with the will annexed is granted to a trustee company, the trustee company shall by virtue of the grant and without any further appointment be deemed to be appointed trustee of the will in the place of the person thereby appointed.

“(3.) In this section ‘trustee company’ means any company authorized by or under any law in force in the Territory to act as executor, administrator or trustee.”.

11. Section twenty-eight of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) the words “by petition” and inserting in their stead the words “or a Justice”;
- (b) by inserting in sub-section (2.), after the word “Court” (first occurring), the words “or Justice”;
- (c) by omitting from sub-section (2.) the word “petition” and inserting in its stead the word “application”;
- and
- (d) by inserting in sub-section (2.), after the word “Court” (second occurring), the words “or Justice”.

On return of original executor or administrator by special administration to be rescinded.

12. Section thirty-one of the Principal Ordinance is amended by omitting the word “the” (second occurring) and inserting in its stead the word “that”.

Revocation of grants not to prejudice actions or suits.

13. Section thirty-two of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) the words “, upon application in a summary way by summons in chambers,” and inserting in their stead the words “or a Justice”;
- (b) by inserting in sub-section (1.), after the word “Court” (second and third occurring), the words “or Justice”; and
- (c) by inserting in sub-section (2.), after the word “Court”, the words “or a Justice”.

Discharge or removal of executor or administrator.

14. Section forty-nine of the Principal Ordinance is amended by inserting in sub-section (1.), after the word “Court”, the words “or a Justice”.

Net value.

15. Section fifty-one of the Principal Ordinance is amended—

- (a) by inserting, after the word “Court” (first occurring), the words “or a Justice”; and
- (b) by inserting, after the word “Court” (second occurring), the words “or Justice”.

Court may make special order.

16. Section fifty-two of the Principal Ordinance is amended by inserting after the word “Court” (wherever occurring), the words “or Justice”.

Court may order partition in a summary way.

Personal representative not required to continue to act against own consent.

Summary application for legacy, &c.

Executor or administrator to pass accounts.

Passing and allowance of the accounts of executors and administrators.

Court may make order as to disposal of moneys in hands of executor, &c.

Payments under revoked probates or administrations valid.

Claims barred against executor or administrator in certain cases.

17. Section fifty-three of the Principal Ordinance is amended by inserting, after the word "Court", the words "or a Justice".

18. Section fifty-seven of the Principal Ordinance is amended—

- (a) by omitting the words "by summons";
- (b) by inserting, after the word "Court" (first occurring), the words "or a Justice";
- (c) by inserting, after the word "Court" (second occurring), the words "or Justice"; and
- (d) by inserting, after the word "it", the words "or he".

19. Section fifty-eight of the Principal Ordinance is amended by inserting in sub-section (1.), after the word "thereto", the words "in such cases,".

20. After section fifty-eight of the Principal Ordinance the following section is inserted:—

"58A. The Registrar in the name and under the seal of the Court may make any order or grant any certificate which the Court may make or grant—

- (a) in and about the passing and allowance of the accounts of executors and administrators and the costs in connexion therewith where no commission is applied for; and
- (b) in and about the granting of further time to executors and administrators to file and pass their accounts in any case where no objection is raised thereto by any person interested or no doubt or difficulty arises."

21. Section sixty-one of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1.), after the word "Court", the words "or a Justice"; and
- (b) by inserting in sub-section (1.), after the word "it", the words "or he".

22. Section sixty-two of the Principal Ordinance is amended—

- (a) by omitting from sub-section (2.) the words " , in respect " and inserting in their stead the words " for, an amount equal to the amount"; and
- (b) by omitting from sub-section (2.) the word "with" and inserting in its stead the word "which".

23. Section sixty-five of the Principal Ordinance is amended—

- (a) by inserting in sub-section (2.), after the word "Court" (first occurring), the words " or a Justice";
- (b) by inserting in sub-section (2.), after the word "Court" (second occurring), the words " or Justice"; and
- (c) by inserting in sub-section (2.), after the word "Court" (third occurring), the words "or Justice".

24. Section sixty-six of the Principal Ordinance is amended by omitting from sub-section (3.) the word "fifty-seven" and inserting in its stead the word "fifty-six".

Distribution of estate by executors and administrators.

25. Section seventy of the Principal Ordinance is amended—

Executors, &c., may be allowed commission.

- (a) by inserting in sub-section (1.), after the word "Court", the words ", a Justice"; and
- (b) by inserting in sub-section (2.), after the word "Court" (first occurring), the words "or a Justice".

26. Section seventy-one of the Principal Ordinance is amended—

Limits of professional charges for obtaining probate or letters of administration.

- (a) by omitting from sub-section (2.) the word "sub-rule" and inserting in its stead the word "sub-section";
- (b) by inserting in sub-section (3.), after the word "Court", the words "or a Justice";
- (c) by omitting from sub-section (3.) the word "sub-rule" and inserting in its stead the word "sub-section"; and
- (d) by omitting sub-section (4.) and inserting in its stead the following sub-section:—

"(4.) An application under the last preceding sub-section shall be accompanied by an affidavit showing the exceptional circumstances upon which the applicant relies."

27. Section seventy-seven of the Principal Ordinance is amended by inserting in sub-section (1.), after the word "officer", the words "of that State or any officer who may from time to time be authorized to register wills in the Territory".

Registrar to issue probate or administration in the name of the Court.

28. Section eighty-two of the Principal Ordinance is amended—

Seal not to be affixed till duty is paid, &c.

- (a) by inserting in sub-section (1.), after the words "(if any)", the words "but not including estate duty"; and
- (b) by omitting from sub-section (3.) the words "twice in one or more newspapers circulating in or near to" and inserting in their stead the words "once in a newspaper circulating in".

29. Section ninety-five of the Principal Ordinance is amended—

Court to have summary jurisdiction over Curator.

- (a) by omitting from sub-section (1.) the words "*ex parte* upon affidavit to a Justice in chambers" and inserting in their stead the words "to the Court or a Justice upon affidavit";
- (b) by inserting in paragraph (i) of sub-section (1.), after the word "Court", the words "or a Justice"; and
- (c) by inserting in sub-section (2.), after the word "Court", the words "or a Justice".

Applications,
how heard.

30. Section ninety-six of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1.), after the word “Court”, the words “or a Justice”;
- (b) by inserting in sub-section (1.), after the word “in” (second occurring), the words “its or”; and
- (c) by omitting from sub-section (2.) the words “High Court in its equitable jurisdiction” and inserting in their stead the word “Court”.

Curator to act
as the Court
directs.

31. Section ninety-seven of the Principal Ordinance is amended—

- (a) by inserting, after the word “Court” (first occurring), the words “or a Justice”;
- (b) by omitting the word “petition” and inserting in its stead the word “application”; and
- (c) by inserting, after the word “Court” (second occurring), the words “or Justice”.

Mode of
proceeding
under this
Ordinance.

32. Section ninety-eight of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) the words “on petition” and inserting in their stead the words “or a Justice”; and
- (b) by inserting in sub-section (2.), after the word “Court”, the words “or a Justice”.

Payment to
relatives, &c.,
in petty cases.

33. Section one hundred of the Principal Ordinance is amended—

- (a) by inserting, after the word “Court” (first occurring), the words “or a Justice”; and
- (b) by inserting, after the word “Court” (second occurring), the words “or Justice”.

Payment to
Attorney-
General after
six years.

34. Section one hundred and eight of the Principal Ordinance is amended by omitting the words “one hundred and five” and inserting in their stead the words “one hundred and four”.

Parties entitled
may apply
subsequently.

35. Section one hundred and nine of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1.), after the word “Court”, the words “or a Justice”; and
- (b) by omitting from sub-section (1.) the word “petition” and inserting in its stead the word “application”; and
- (c) by adding, after sub-section (2.), the following sub-section:—

“(3.) Notice of any application under this section shall be served on the Curator seven clear days before the application is heard.”

36. Section one hundred and eleven of the Principal Ordinance is amended—

Court may make order for widow's or children's maintenance.

- (a) by inserting, after the word "Court" (first occurring), the words "or a Justice";
- (b) by inserting, after the word "its", the words "or his";
- (c) by inserting, after the word "it", the words "or he"; and
- (d) by inserting, after the word "Court" (second occurring), the words "or Justice".

37. Section one hundred and twelve of the Principal Ordinance is repealed. Repeal of s. 112

38. Section one hundred and thirteen of the Principal Ordinance is amended—

Service of notice of application.

- (a) by inserting, after the word "Court", the words "or a Justice"; and
- (b) by inserting, after the word "it", the words "or he".

39. Section one hundred and fourteen of the Principal Ordinance is amended by inserting, after the word "Court", the words "or Justice". Powers of Court.

40. Section one hundred and fifteen of the Principal Ordinance is amended by inserting, after the word "Court", the words "or Justice". Court to consider net estate and widow's or children's means.

41. Section one hundred and sixteen of the Principal Ordinance is amended—

Cases in which Court may refuse application.

- (a) by inserting in sub-section (1.), after the word "Court" (wherever occurring), the words "or Justice";
- (b) by inserting in sub-section (2.), after the word "Court", the words "or Justice"; and
- (c) by inserting in sub-section (2.), after the word "it", the words "or he".

42. Section one hundred and twenty of the Principal Ordinance is repealed. Repeal of s. 120.

43. Section one hundred and twenty-four of the Principal Ordinance is amended—

Order to produce an instrument purporting to be testamentary.

- (a) by inserting in sub-section (1.), after the word "Court" (first occurring), the words "or a Justice";
- (b) by omitting from sub-section (1.) the words "on motion, or petition, or otherwise, in a summary way,";
- (c) by inserting in sub-section (2.), after the word "Court", the words "or a Justice"; and
- (d) by inserting in sub-section (4.), after the word "Court", the words "or Justice".

Rules.

44. Section one hundred and twenty-nine of the Principal Ordinance is amended by omitting sub-section (5.) and inserting in its stead the following sub-section:—

“(5.) Subject to Rules made under this Ordinance and so far as such Rules do not extend, the practice and procedure of the Court in so far as the jurisdiction conferred on it by this Ordinance is concerned shall be regulated as nearly as may be according to the Rules made under the *Judiciary Act* 1903-1927 and the *High Court Procedure Act* 1903-1925 and, so far as such lastmentioned Rules do not extend, as nearly as may be according to the practice and procedure for the time being of the Supreme Court of New South Wales in its Probate Jurisdiction.”.

Fees.

45. Section one hundred and thirty of the Principal Ordinance is amended by omitting the word “Curator” and inserting in its stead the word “Registrar”.

First Schedule.

46. The First Schedule to the Principal Ordinance is repealed and the following Schedule inserted in its stead:—

“THE FIRST SCHEDULE.

Short Title of Act.	Number of Act.	Extent to which Act ceases to Apply.	Date from which Act ceases to Apply.
<i>Wills, Probate and Administration Act</i> 1898	No. 13, 1898	Part II. . .	20th October, 1929
<i>Stamp Duties Act</i> 1898	No. 27, 1898	The whole so far as applicable	30th June, 1929
<i>Administration (Validity) Act</i> 1900 . .	No. 38, 1900	The whole..	20th October, 1929
<i>Companies (Death Duties) Act</i> 1901 . .	No. 30, 1901	The whole } Part III. } The whole }	30th June, 1929
<i>Stamp Duties (Amendment) Act</i> 1904	No. 24, 1904		
<i>Stamp Duties (Deductions) Act</i> 1904 . .	No. 34, 1904		
<i>Administration Amending Act</i> 1906 . .	No. 14, 1906	The whole..	20th October, 1929”.

Dated this eighteenth day of July, One thousand nine hundred and thirty.

SOMERS

Deputy of the Governor-General.

By His Excellency's Command,

FRANK BRENNAN

for Minister of State for Home Affairs.

By Authority: H. J. GREEN, Government Printer, Canberra.