

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 13 of 1937.

AN ORDINANCE

To amend the Administration and Probate Ordinance
1929-1937.

BE it ordained by the Deputy of the Governor-General in and
over 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 1910-1933*, as follows:—

1.—(1.) This Ordinance may be cited as the *Administration and Probate Ordinance (No. 2) 1937*. Short title
and citation.

(2.) The *Administration and Probate Ordinance 1929-1934*, as
amended by the *Administration and Probate Ordinance 1937*, is in
this Ordinance referred to as the Principal Ordinance.

(3.) Section one of the *Administration and Probate Ordinance
1937* is amended by omitting sub-section (2.).

(4.) The Principal Ordinance, as amended by this Ordinance,
may be cited as the *Administration and Probate Ordinance
1929-1937*.

2. The Principal Ordinance is amended as set out in the
Schedule to this Ordinance. Consequential
amendments.

3. Section five of the Principal Ordinance is amended—

Definitions.

(a) by omitting from the definition of “Administration”
the words “, and orders to the Curator to collect”;

(b) by omitting from the definition of “Administrator”
the words “the Curator and any other” and inserting
in their stead the word “any”;

(c) by omitting the definition of “the Court” and insert-
ing in its stead the following definition:—

“‘the Court’ means the Supreme Court;”;

(d) by inserting, after the definition of “Deceased person”,
the following definition:—

“‘Distribute’ means to pay, deliver, or divide the
estate or property referred to, to or among the
person or persons entitled thereto under any
intestacy or under any will;” and

(e) by omitting the definition of "Justice" and inserting in its stead the following definition:—

"'Judge' means the Judge of the Supreme Court and includes an Acting Judge;".

Proceeding where executor neglects to prove will.

4. Section twenty-five of the Principal Ordinance is amended by omitting paragraph (ii) of sub-section (1.).

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

5. Section sixty-one of the Principal Ordinance is amended by omitting from sub-section (1.) the words "or curator".

6. After section eighty-seven of the Principal Ordinance the following section is inserted:—

Appointment of agents.

"87A.—(1.) The Curator may, subject in each case to the approval in writing of the Attorney-General, appoint persons to act as his agents for the purpose of collecting or administering all or any estates in his hands.

"(2.) Agents of the Curator shall, in all respects, act in the management, collection, and getting in of estates under the directions of the Curator, and the Curator shall not be answerable for any act or omission of his agents contrary to his directions or which has not happened by the default or neglect of the Curator."

Order to Curator to collect and administer.

7. Section eighty-eight of the Principal Ordinance is amended—

(a) by inserting in sub-section (1.), after the word "collect", the words "and administer";

(b) by inserting in paragraph (a) of sub-section (1.), after the word "widow", the word "husband,"; and

(c) by inserting in paragraph (a) of sub-section (1.), after the word "his" (wherever occurring), the words "or her".

Effect of order.

8. Section eighty-nine of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

"(1.) Where an order to collect and administer the estate of any deceased person is granted, the Curator shall have the same powers, rights, and obligations in respect of the estate, except as otherwise expressly provided, as he would have had if administration had been granted to him, and the estate of the deceased shall vest in him."

Probates and administrations may be granted notwithstanding appointment of Curator.

9. Section ninety of the Principal Ordinance is amended by inserting in sub-section (1.), after the word "collect", the words "and administer".

10. Section ninety-two of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1.) the word “manage” and inserting in its stead the word “administer”;
and
(b) by inserting in sub-section (2.) after the word “collect” (second occurring) the words “and administer”.

When there is reasonable ground to believe that any person has died the Curator may obtain order to collect and administer estates within the jurisdiction of the Court.

11. Section ninety-three of the Principal Ordinance is amended by inserting after the word “collect” the words “and administer”.

Notice of order to be published.

12. Section ninety-four of the Principal Ordinance is repealed and the following sections are inserted in its stead:—

“94.—(1.) Where any monies or personal chattels are payable or deliverable by the Curator to the subject of any country out of His Majesty’s jurisdiction, the Attorney-General may authorize the Curator to pay the monies or deliver the chattels to an official of that country, or to a consular officer of that country resident in Australia, on behalf of the person entitled, and the receipt of that official or consular officer shall be a sufficient discharge therefor to the Curator who shall not be further concerned to see to the application thereof.

Money, &c., payable abroad.

“(2.) Where any monies or personal chattels are payable or deliverable by the Curator to any person in any part of the British dominions other than the Territory or in any place within His Majesty’s jurisdiction outside the British dominions, the Attorney-General may authorize the Curator to pay the monies or deliver the chattels to an official of that part or place on behalf of the person entitled and the receipt of that official shall be a sufficient discharge therefor to the Curator who shall not be further concerned to see to the application thereof.

“94A. Where the Curator is administering the estate in the Territory of any person who, at the time of his death, was domiciled in one of the States or other Territories of the Commonwealth or the Dominion of New Zealand and whose estate in that State, Territory or Dominion is being administered by the public trustee, public curator or curator of that State, Territory or Dominion, the Curator may pay to that public trustee, public curator or curator the balance of the proceeds of the estate in the Territory of the deceased, after payment of creditors and the charges provided for in this Ordinance, without obligation to see to the application of that balance.

Payment to Curator in a State or Territory.

“94B.—(1.) Where the estate of a deceased person who, at the time of his death was domiciled in the Territory, is being administered by the Curator, and the public trustee, public curator or curator of any State or other Territory of the Commonwealth or of the Dominion of New Zealand has obtained administration

Curator may receive payment of estate situated in another State or Territory.

of the estate in that State, Territory or Dominion, the Curator may receive from that public trustee, public curator or curator the balance of the proceeds of the estate in that State, Territory or Dominion.

“(2.) The balance of any estate received by the Curator pursuant to sub-section (1.) of this section shall form part of the estate of the deceased person in the Territory.”.

Court to have
summary
jurisdiction
over Curator.

13. Section ninety-five of the Principal Ordinance is amended by inserting in sub-section (1.) after the word “collect” the words “and administer”.

Applications
how heard.

14. Section ninety-six of the Principal Ordinance is amended by omitting paragraph (c) of sub-section (1.) and inserting in its stead the following paragraph:—

“(c) from the estate administered by the Curator,”.

Curator to
act as the
Court
directs.

15. Section ninety-seven of the Principal Ordinance is amended by inserting after the word “collect”, the words “and administer”.

16. After section ninety-seven of the Principal Ordinance the following section is inserted:—

Curator may
obtain
directions of
Court.

“97A.—(1.) The Curator may, *ex parte*, take the opinion or obtain the direction of the Court upon any question, whether of law or of fact, arising under this Part, or in the course of his duties.

“(2.) Any such question shall be submitted to the Judge in such manner and at such time as he directs, and shall be accompanied by such statement of facts, documents and other information as he requires and the Curator shall, if the Judge so desires, attend upon him at such time and place as he appoints.

“(3.) The Judge may, before giving his opinion or direction, require the attendance of, or communication with, any person interested in the estate to which the question relates, but no person shall have a right to be heard unless the Judge otherwise directs.

“(4.) The Judge shall give his opinion or direction to the Curator, and the Curator shall act in accordance therewith and shall, upon the request of any person interested in the estate, communicate to him the effect of the opinion or direction.”.

Payment of
debts.

17. Section ninety-nine of the Principal Ordinance is amended—

(a) by omitting from sub-section (1.) the word “administer” and inserting in its stead the words “collect and administer”; and

(b) by omitting from sub-section (6.) all the words after the word “shall” and inserting in their stead the words “, subject to this Ordinance, distribute the residue of the estate”.

18. Section one hundred and one of the Principal Ordinance is amended by omitting from sub-section (1.) the word "administer" and inserting in its stead the words "collect and administer".

Accounts to be kept, &c.

19. Section one hundred and three of the Principal Ordinance is amended by inserting, after the word "collect", the words "and administer".

Quarterly returns to Attorney-General and accounts.

20. Section one hundred and four of the Principal Ordinance is amended by inserting, after the word "collection", the words "and administration".

The Curator to invest moneys after expiration of six months.

21. Section one hundred and twenty-eight of the Principal Ordinance is repealed.

Repeal.

22. Where an order to collect granted to the Curator under the Principal Ordinance is in force at the commencement of this Ordinance, that order shall have the same force and effect as if it were an order to collect and administer granted under the Principal Ordinance as amended by this Ordinance.

Application to existing orders to collect.

THE SCHEDULE.

CONSEQUENTIAL AMENDMENTS IN THE PRINCIPAL ORDINANCE.

Section.	Extent of Amendment.
15	Omit "or a Justice", insert "or the Judge"; omit "or Justice", insert "or Judge".
17	Omit "or a Justice", insert "or the Judge".
18	Omit "or a Justice" (wherever occurring), insert "or the Judge".
28	Omit "or a Justice", insert "or the Judge"; omit "or Justice" (wherever occurring), insert "or Judge".
32	Omit "or a Justice" (wherever occurring), insert "or the Judge"; omit "or Justice" (wherever occurring), insert "or Judge".
49	Omit "or a Justice", insert "or the Judge".
51	Omit "or a Justice", insert "or the Judge"; omit "or Justice", insert "or Judge".
52	Omit "or Justice" (wherever occurring), insert "or Judge".
53	Omit "or a Justice", insert "or the Judge".
57	Omit "or a Justice", insert "or the Judge"; omit "or Justice", insert "or Judge".
61	Omit "or a Justice", insert "or the Judge".
64	Omit "High Court", insert "Supreme Court".
65	Omit "or a Justice", insert "or the Judge"; omit "or Justice" (wherever occurring), insert "or Judge".
70	Omit "or a Justice" (wherever occurring), insert "or the Judge".
71	Omit from sub-section (1.) "sub-rule", insert "sub-section"; omit from sub-section (3.) "rule", insert "section"; omit from sub-section (3.) "or a Justice", insert "or the Judge".

SCHEDULE—*continued.*

Section.	Extent of Amendment.
92	Omit "or a Justice", insert "or the Judge".
93	Omit "or a Justice", insert "or the Judge".
95	Omit "or a Justice" (wherever occurring), insert "or the Judge".
96	Omit "or a Justice", insert "or the Judge".
97	Omit "or a Justice", insert "or the Judge"; omit "or Justice", insert "or Judge".
98	Omit "or a Justice" (wherever occurring), insert "or the Judge".
100	Omit "or a Justice", insert "or the Judge"; omit "or Justice", insert "or Judge".
104	Omit "or a Justice", insert "or the Judge".
109	Omit "or a Justice", insert "or the Judge".
111	Omit "or a Justice", insert "or the Judge"; omit "or Justice", insert "or Judge".
113	Omit "or a Justice", insert "or the Judge".
114	Omit "or Justice", insert "or Judge".
115	Omit "or Justice", insert "or Judge".
116	Omit "or Justice" (wherever occurring), insert "or Judge".
124	Omit "or a Justice" (wherever occurring), insert "or the Judge"; omit "or Justice", insert "or Judge".
129	Omit "The Justices of the High Court or a majority of them", insert "The Judge of the Court".

Dated this eighteenth day of August, 1937.

WAKEHURST

Deputy of the Governor-General.

By His Excellency's Command,

ROBERT G. MENZIES

for Minister of State for the Interior.

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.