



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 26 of 1975

**An Act to amend the Administration and Probate Act,
1919-1973.**

[Assented to 27th March, 1975]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Administration and Probate Act Amendment Act, 1975".

(2) The Administration and Probate Act, 1919-1973, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Administration and Probate Act, 1919-1975".

**Commence-
ment.**

2. This Act shall come into operation on a day to be fixed by proclamation.

**Amendment of
principal Act,
s. 4—
Interpretation.**

3. Section 4 of the principal Act is amended—

(a) by inserting immediately after the definition of "the common fund" the following definitions:—

"the Common Fund Interest Account" means the account kept by the Public Trustee pursuant to section 102 of this Act:

"the Common Fund Reserve Account" means the account kept by the Treasurer pursuant to section 102 of this Act.;

and

(b) by inserting immediately after the definition of "estate" the following definition:—

"the Income Adjustment Account" means the account kept by the Public Trustee pursuant to section 112 of this Act.:

4. Section 24 of the principal Act is amended by striking out from subsection (3) the passage "two hundred" and inserting in lieu thereof the passage "one thousand".

Amendment of principal Act, s. 24—
Power to examine witnesses.

5. Section 54 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "first day of February, 1892," and inserting in lieu thereof the passage "commencement of the Administration and Probate Act Amendment Act, 1975,";

Amendment of principal Act, s. 54—
Succession of widow or widower.

(b) by striking out from subsection (1) the passage "one thousand" wherever it occurs and inserting in lieu thereof, in each case, the passage "thirty thousand";

and

(c) by striking out subsection (2).

6. Section 58 of the principal Act is amended by striking out from subsection (3) the passage "two hundred" and inserting in lieu thereof the passage "one thousand".

Amendment of principal Act, s. 58—
Proceedings to compel account.

7. Section 99 of the principal Act is amended by striking out from subsection (4) the passage "twenty" and inserting in lieu thereof the passage "two hundred".

Amendment of principal Act, s. 99—
Public Trustee to require transfer to him of property to which he is entitled.

8. Section 102 of the principal Act is amended by striking out subsections (5), (6), (7) and (8) and inserting in lieu thereof the following subsections:—

Amendment of principal Act, s. 102—
Moneys received by Public Trustee to be paid into bank and invested.

(5) Interest earned by investments made from the common fund shall be paid to the credit of an account in the common fund to be called "the Common Fund Interest Account" which shall be kept by the Public Trustee.

(6) The Common Fund Interest Account shall be applied by the Public Trustee—

(a) firstly, in payment on each first day of June to the credit of the respective trusts or estates, the moneys of which form the common fund, of the interest payable under this Act on the amounts from time to time at credit in the common fund to those trusts or estates, or where the administration of such trust or estate is completed, in such payment upon that completion;

and

(b) secondly, in payment from any balance at credit in the Common Fund Interest Account after the payment referred to in paragraph (a) of this subsection—

(i) if the amount deducted or raised by way of commissions and fees pursuant to section 112 of this Act is in any financial year insufficient to defray the expenses incidental to the establishment and maintenance of the office of the

Public Trustee in that financial year, to the Treasurer for the public revenue of the State of such amount as, in addition to that amount, is necessary to defray those expenses;

and

(ii) to the credit of the Common Fund Reserve Account of such amount, if any, as the Public Trustee deems necessary.

(7) The interest payable on the amounts at credit in the common fund shall, on and from the commencement of the Administration and Probate Act Amendment Act, 1975, be at the rates fixed by the Public Trustee, which may vary according to the source and nature of each amount, the period for which it will form part of the common fund and such other factors as the Public Trustee considers relevant.

(8) No estate, trust or person shall be entitled to any interest on any amount at credit in the common fund further or other than interest paid in accordance with subsection (6) of this section at the rate fixed in respect of that amount pursuant to subsection (7) of this section.

(9) The account kept immediately before the commencement of the Administration and Probate Act Amendment Act, 1975, by the Treasurer at the Treasury as a trust account and called "the Common Fund Reserve Account" shall continue to be so kept under that name and shall continue to be applied by the Treasurer upon request made by the Public Trustee at the discretion of the Public Trustee and with the written approval of the Auditor-General towards making good any losses incurred in connection with the common fund or the administration of any estate by the Public Trustee.

Amendment of
principal Act,
s. 109—
Public Trustee
may hold
inquiry as to
validity of
claim against
the estate.

9. Section 109 of the principal Act is amended by striking out from subsection (3) the passage "twenty" and inserting in lieu thereof the passage "two hundred".

Amendment of
principal Act,
s. 112—
Charges of
Public Trustee.

10. Section 112 of the principal Act is amended—

- (a) by inserting in subsection (1) after the word "commission" the passage "and fees";
- (b) by inserting in subsection (2) after the word "commission", twice occurring, in each case the word ", fees";
- (c) by inserting in subsection (3) after the word "commission" the word ", fees";
- (d) by striking out subsection (4) and inserting in lieu thereof the following subsections:—

(4) The moneys deducted or raised pursuant to this section in order to defray the expenses incidental to the establishment and maintenance of the office of the Public Trustee shall to the extent necessary for that purpose be paid to the Treasurer for the public revenue of the State and any surplus remaining after such payment shall be paid to the credit of an account in the common fund to be called "the Income Adjustment Account" which shall be kept by the Public Trustee.

(4a) The Income Adjustment Account shall be applied by the Public Trustee—

(a) firstly, towards repaying to the Common Fund Interest Account any amount paid from that account pursuant to subparagraph (i) of paragraph (b) of subsection (6) of section 102 of this Act;

and

(b) secondly, for any purpose approved by the Minister.;

(e) by inserting in subsection (6) after the word “commission” the passage “and fees”;

and

(f) by striking out subsection (7) and inserting in lieu thereof the following subsection:—

(7) Until a scale of fees is fixed pursuant to subsection (6) of this section, the scale of fees in force under the Fees Regulation Act, 1927, immediately before the commencement of the Administration and Probate Act Amendment Act, 1975, shall continue in force.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor