

ADMINISTRATION AND PROBATE

No. 25 of 1970

An Ordinance to amend the *Administration and Probate Ordinance 1929-1969*.

1.—(1.) This Ordinance may be cited as the *Administration and Probate Ordinance 1970*.^{*} Short title and citation.

(2.) The *Administration and Probate Ordinance 1929-1969*[†] 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 1929-1970*.

2. This Ordinance shall come into operation on a date to be fixed by the Minister of State for the Interior by notice published in the *Gazette*.[‡] Commencement.

3. The amendments made by this Ordinance apply to and in relation to the estates of all persons dying on or after the commencement of this Ordinance. Application of amendments.

4. Section 4 of the Principal Ordinance is amended— Parts.

(a) by omitting the words—

“Part II.—Administration (Sections 6-8).

Part III.—Grant of Representation

Division 1.—Jurisdiction of the Court (Sections 9-32B).”

and inserting in their stead the words—

“Part II.—Administration (Sections 6-8B).

Part III.—Grant of Representation

Division 1.—Jurisdiction of the Court (Sections 8C-32B).”; and

(b) by inserting after the words—

“Part V.—Recognition of Foreign Grants (Sections 80-83).”

the words—

“Part VA.—Special Provisions with Respect to Death Duties payable under State Law (Sections 83A-83B).”.

^{*} Made on 20 June 1970; notified in the *Commonwealth Gazette* on 2 July 1970.

[†] Ordinance No. 18, 1929, as amended by Ordinance No. 11, 1930; No. 13, 1932; No. 9, 1933; Nos. 2 and 6, 1934; Nos. 3, 13 and 27, 1937; No. 35, 1938; No. 7, 1943; No. 15, 1947; No. 16, 1950; No. 5, 1953; No. 2, 1954; No. 6, 1960; No. 20, 1965; Nos. 9 and 23, 1967; and No. 16, 1969.

[‡] The date fixed was 20 July 1970; see *Commonwealth Gazette* 16 July 1970, p. 4716.

5. Before section 9 of the Principal Ordinance, the following section is inserted in Division 1 of Part III.:—

The Court to make finding with respect to the domicile of deceased person.

“ 8C.—(1.) On an application made under this Ordinance—

- (a) for the grant of probate of the will, or administration of the estate, of a deceased person;
- (b) to have probate of the will, administration of the estate, or an order to collect and administer the estate, of a deceased person granted by a court of competent jurisdiction in a State or other Territory sealed with the seal of the Court; or
- (c) by the Curator for an order to collect and administer the estate of a deceased person,

the Court shall not grant the application or the Registrar shall not issue the grant of probate or administration, seal the probate, administration or order of the court, or grant an order to the Curator, as the case requires, unless the Court or the Registrar has made a finding with respect to the domicile at the time of his death of the deceased person, and, if the Court or the Registrar has found that the deceased person was, at that time, domiciled in a State, the Court shall not grant the application or the Registrar shall not issue the grant of probate or administration, seal the probate, administration or order of the court or grant an order to the Curator, as the case requires, unless—

- (d) the Court or Registrar is satisfied that an assessment has been made, in accordance with the law of the State in which the deceased person was domiciled at the time of his death, of the amount of death duty that is, under that law, payable out of the estate of the deceased person; or
- (e) the appropriate officer of the State in which the deceased person was domiciled at the time of his death has consented in writing to—
 - (i) the grant of probate or administration;
 - (ii) the sealing with the seal of the Court of the probate, administration or order; or
 - (iii) the grant of the order to the Curator,
 as the case requires.

“ (2.) In the last preceding sub-section—

- (a) a reference to death duty shall be read as including a reference to succession duty and probate duty; and
- (b) a reference to the appropriate officer of the State in which a deceased person was domiciled shall be read as a reference to the person for the time being occupying, or performing the duties of, the office specified in the following table opposite to the name of the State in which the deceased person was domiciled.

State	Appropriate Officer
New South Wales	Commissioner of Stamp Duties
Victoria	Commissioner of Probate Duties
Queensland	Commissioner of Stamp Duties
South Australia	Commissioner of Succession Duties
Tasmania	Commissioner of Taxes
Western Australia	Commissioner of Stamps

6. After Part V. of the Principal Ordinance, the following Part is inserted:—

“ PART VA.—SPECIAL PROVISIONS WITH RESPECT TO DEATH DUTY PAYABLE UNDER STATE LAW.

“ 83A. In this Part, a reference to death duty shall be read as including a reference to succession duty and probate duty. Interpretation.

“ 83B.—(1.) Where—

(a) in the case of a deceased person who was, at the date of his death, domiciled in a State—

Death duty, &c., payable under law of a State to constitute a debt payable out of Territory assets.

- (i) probate of the will, or administration of the estate, of the deceased person is granted under this Ordinance;
- (ii) probate of the will, administration of the estate, or an order to collect and administer the estate, of the deceased person granted by a court of competent jurisdiction in a State or other Territory is sealed with the seal of the Court; or
- (iii) an order to collect and administer the estate of the deceased person is granted to the Curator; and

(b) death duty is, under the law of the State in which the person was domiciled at the time of his death, payable out of the estate of the deceased person,

the amount of the death duty so payable constitutes a debt due to the Crown in the right of the State in which the deceased person was domiciled, and the debt is payable, as if it were a debt of the deceased person, by the executor of the will, or the administrator of the estate, of the deceased person or the Curator, as the case requires, out of the real and personal estate of the deceased person that has become vested in him under this Ordinance.

“ (2.) Where a debt is payable under the last preceding subsection by an executor, by an administrator, or by the Curator, as the case requires, out of the estate of a deceased person, then, for the purposes of administration and distribution of the estate under this Ordinance—

(a) a reference in this Ordinance to a debt of a deceased

person and to a debt payable out of the estate of a deceased person shall be read as including a reference to the debt payable under the last preceding sub-section; and

- (b) the Crown in the right of the State in which the person was domiciled shall, for the purposes of sections nine B, sixty-four, sixty-five and ninety-nine of this Ordinance, be deemed to be a creditor of the estate for the amount of the debt so payable and to have a claim against the estate for the debt so payable.”.