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# Update Summary

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**UPDATE 54**

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**AUSTRALIAN SUCCESSION LAW**

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## UPDATE COMMENTARY

Author Madeleine Harland has updated several chapters, and the more significant issues are mentioned below.

### **Grant of Probate and LOA**

#### *Succession Act 2023 (SA)*

References throughout chapters 14-20 have been updated to refer to the new *Succession Act 2023* (SA). This Act was assented to on 28 September 2023 and commenced on 1 January 2025. It repealed three Acts (the *Administration and Probate Act 1919* (SA), the *Inheritance (Family Provision) Act 1972* (SA) and the *Wills Act 1936* (SA)) and amends several others that overlap with this area of law.

Importantly, the new Act brings the state's laws more closely in line with other jurisdictions, such as NSW and Victoria. See [4035.110].

#### *Estates not requiring a grant*

The deemed grant model in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania and Victoria permits the Public Trustee (or its equivalent) to administer small estates without applying for a formal grant of representation.

Further, in SA, a person who holds money or personal property for a deceased person of not more than \$15,000 in value may pay the money or transfer the personal property to a surviving spouse, domestic partner or child of the deceased, without a grant of probate or administration: *Succession Act 2023* (SA) s 100. See [405.570].

#### *Common form*

A copy of a will may be admitted to probate. For recent examples see [405.830].

#### *Administration with the will annexed*

The court has jurisdiction at common law to grant letters of administration of a copy will: *Re Sleeman* [2024] QSC 274; *Frizzo v Frizzo* [2011] QSC 107. See [405.970].

#### *General administration*

Where an application for a general grant on total intestacy is made by a person other than a spouse or de facto partner, the affidavit in support must show that the deceased did not leave a domestic partner who would be entitled to the estate. See [405.990].

### **Personal Representative**

#### *Duties with respect to the funeral and disposal of the dead body*

Helpful comments by Lindsay J in *State of New South Wales v Gill* [2024] NSWSC 1263 note that the court's jurisdiction is not directed towards the determination of competing rights between competent parties but towards an orderly and respectful disposal of the remains of an individual person, informed by the witness of those who knew the deceased, but not confined by the evidence of any person or party as might be the case

in an adversarial contest about competing claims of right between competent adversarial parties. See [415.370].

#### *Duty to pay interest on legacies*

It is noted that the rates of interest payable are prescribed by legislation and regulation and in SA reference is made to the Reserve Bank of Australia Cash Target Rate or the actual rate of interest earned on the unpaid legacy. See [415.510].

#### *Duty to account*

where at least one instance of “wilful default” has been established, an account may be taken on the footing of “wilful default”. Examples include the failure by an executor or trustee to get in an asset of the estate or the trust, or the sale of an estate or trust asset at an undervalue. It is not necessary to demonstrate conscious wrongdoing on the part of the executor or trustee to establish wilful default. See [415.530].

### **The Administration Process**

#### *[420.510] Solvent estates – order of application of assets*

In South Australia, the statutory order is as follows (Succession Act 2023 (SA), s 83):

**Class 1:** Personal or real property specifically appropriated, devised, bequeathed, directed to be sold or subject to a charge for the payment of a debt of the liability of an estate.

**Class 2:** Personal and real property comprising the residuary estate and property in relation to which a disposition in the deceased’s will operates as the exercise of a general power of appointment.

**Class 3:** Personal and real property specifically devised or bequeathed, including property specifically appointed under a general power of appointment and any legacy charged on the property devised, bequeathed or appointed.

### **Practice Notes**

Current Practice Notes for NSW, Queensland and Western Australia have been substituted.

