

Queensland



BRITISH PROBATES ACT 1898

**Reprinted as in force on 12 January 1996
(includes amendments up to Act No. 58 of 1995)**

Reprint No. 1

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 12 January 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use standard punctuation consistent with current drafting practice (s 27)
- use expressions consistent with current drafting practice (s 29)
- reorder definitions consistent with current drafting practice (s 30)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit the enacting words (s 42A).

Also see endnotes for information about when provisions commenced.

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BRITISH PROBATES ACT 1898

[as amended by all amendments that commenced on or before 12 January 1996]

An Act to provide for the recognition of probates and letters of administration granted in other parts of Her Majesty's dominions

Short title

1. This Act may be cited as the *British Probates Act 1898*.

Definitions

2. In this Act—

“British court in a foreign country” means any British court having jurisdiction out of Her Majesty's dominions.

“court of probate” means any court or authority, by whatever name designated, having jurisdiction in matters of probate.

“probate” and **“letters of administration”** include confirmation in Scotland, and any instrument having in any part of Her Majesty's dominions the same effect which under the law of Queensland is given to probate and letters of administration respectively.

“the Supreme Court” means the Supreme Court of Queensland or a judge thereof.

Application of Act by regulation

3. When the Governor in Council is satisfied that the legislature of any part of Her Majesty's dominions has made adequate provision for the recognition in that part of probates and letters of administration granted by the Supreme Court, the Governor in Council may declare by regulation that

this Act shall, subject to any stated changes, apply to that part of Her Majesty's dominions.

Sealing in Queensland of British probates and letters of administration

4.(1) When a court of probate in a part of Her Majesty's dominions to which this Act applies has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the Supreme Court, be sealed with the seal of that court, and thereupon shall be of the like force and effect and have the same operation in Queensland as if granted by that court.

(2) Provided that no probate or letters of administration shall be sealed under this section until there has been filed in the Supreme Court a certificate under the hand of the commissioner of stamp duties to the effect that adequate security has been given for payment of all probate and succession duty in respect of so much (if any) of the estate as is liable to duty in Queensland.

(3) The Supreme Court may, if it thinks fit, upon the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Queensland, and also, if it thinks fit, upon the application of any beneficiary or next of kin, require that adequate security be given for the protection of the interests of such beneficiary or next of kin.

(4) For the purposes of this section a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

Application of Act to British courts in foreign countries

5. This Act shall extend to authorise the sealing in Queensland of any probate or letters of administration granted by a British court in a foreign country, in like manner as it authorises the sealing of a probate or letters of administration granted in a part of Her Majesty's dominions to which this

Act applies, and the provisions of this Act shall apply accordingly with the necessary modifications.

Regulation making power

6. The Governor in Council may make regulations under this Act.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 January 1996. Future amendments of the British Probates Act 1898 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 List of legislation

British Probates Act 1898 62 Vic No. 10

date of assent 9 December 1898

commenced on date of assent

as amended by—

Stamp Act Amendment Act 1918 9 Geo 5 No. 11 s 6(4)

date of assent 1 November 1918

commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

5 List of annotations

Definitions

- s 2 def “**British court in a foreign country**” amd 1995 No. 58 s 4 sch 1
 def “**probate duty**” om 1995 No. 58 s 4 sch 1

Application of Act by regulation

- prov hdg** amd 1995 No. 58 s 4 sch 1
 s 3 amd 1995 No. 58 s 4 sch 1

Sealing in Queensland of British probates and letters of administration

- s 4 amd 1918 9 Geo 5 No. 11 s 6(4); 1995 No. 58 s 4 sch 1

Regulation making power

- s 6 sub 1995 No. 58 s 4 sch 1

Application of Act to probates, &c., already granted

- s 7 om 1995 No. 58 s 4 sch 1