

**Northern Territory Law Reform  
Committee**

**Report on Proposals for the Reform of  
the Law of Wills in the Northern  
Territory**



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1 March 1999

The Hon Denis Burke MLA  
Attorney-General  
GPO Box 3146  
DARWIN NT 0801

My Dear Attorney,

## **REPORT ON THE LAW OF WILLS**

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I have pleasure in presenting you with the Committee's Report dealing with proposals for the reform of the law of wills.

These proposals arise from reports generated by the National Committee For Uniform Succession Laws. This is a Committee established by the Standing Committee of Attorneys-General. The National Committee produced for the Attorneys the Uniform Wills Bill 1997.

The Northern Territory Law Reform Committee has examined the proposals in the Uniform Bill. The Committee recommends that the proposals be adopted in the Northern Territory. The adoption of the proposals will bring Northern Territory succession law more into line with the law in place in the other parts of Australia than is presently the case.

This, in the view of the Committee, is a critical consideration given that many Territorians die in circumstances where their affairs are at least in part regulated by laws of the Northern Territory and by laws in place in other parts of Australia.

The Committee has considered whether there was a need to distribute a discussion paper prior to reporting to you in accordance with the formal reference given on 24 December 1998 by the former Attorney-General, the Hon Shane Stone MLA. The Committee takes the view that there is no need for formal distribution of a discussion paper. The proposals in the report have been widely distributed around Australia. Thus there is little to be gained by further distribution within the Northern Territory.

However the Committee recommends that there is a need for any legislation arising from this Report to have at least a 3 month period between the making of the legislation and the commencement of the legislation.

Yours sincerely

**Hon Austin Asche AC QC**  
**PRESIDENT**

## **The Northern Territory Law Reform Committee**

The members of the Committee as at the date of this report are:

Hon Austin Asche, AC QC, Darwin  
Max Horton, Solicitor, Alice Springs  
Hugh Bradley, Chief Magistrate, Darwin  
Peter Boyce, Ombudsman, Darwin  
Maria Ceresa, Executive Officer, NT Law Society, Darwin  
Sally Gearin, Barrister, Darwin  
Dirk de Zwart, Solicitor, Darwin  
Nicolina Babic, Solicitor, Darwin  
Richard Bruxner, Barrister, Darwin  
Georgia McMaster, Solicitor, Northern Territory Police  
Brett Midena, Solicitor, Northern Land Council, Darwin  
John Hughes, Solicitor, Northern Australian Aboriginal Legal Aid, Darwin  
Stephen Gray, Lecturer, Northern Territory University

In addition the Attorney-General, the Chief Executive Officer of the Northern Territory Attorney-General's Department and the Solicitor-General are ex officio members of the Committee.

The Executive Officer is Robert Bradshaw

## Preface

The law of wills for the Northern Territory is contained in the *Wills Act*.

The laws relating to wills was substantially reformed in 1837 by *Wills Act 1837 (UK)*<sup>1</sup>. This law was adopted as a law of South Australia in 1842<sup>2</sup>. The Territory inherited this law when the Territory became part of South Australia in 1863. This law was repealed and re-enacted in more modern language in 1938<sup>3</sup>.

Since 1938 the *Wills Act* has not been subject to major review. There have been developments in other laws and changes in social arrangements that call for a re-consideration of some of the legal and social policies that are enshrined in the Act. Aside from adopting a national scheme for the recognition of foreign wills the Act is little changed from its 1938 form.

Additionally, the law relating to the operation of any particular will or other testamentary disposition may vary depending on the place of death of the person who made the will and the place or places where the property of that person is located. This is a factor of significance to the Northern Territory. A large number of Northern Territory citizens have property or will inherit property outside of the Northern Territory. The administration of their estates can become unduly complicated if the various parts of the estate are administered under laws that differ concerning matters such as the effects of marriage or divorce on a will.

These facts led the Standing Committee of Attorneys-General<sup>4</sup> to commission in 1991 State and Territory Law Reform Agencies to develop uniform succession laws for Australia.

Consequent to this commission, law reform agencies established the National Committee for Uniform Succession Laws. This Committee is comprised of representatives from State and Territory law reform agencies and of experts in succession laws. The Queensland Law Reform Commission co-ordinated the work of the National Committee.

The Northern Territory Law Reform Committee did not have the resources to participate to any great extent in the development of the project. However, the Executive Officer of the Committee has, as a member of the Northern Territory Attorney-General's Department, co-operated in the work of the National Committee.

The National Committee has over the course of the past 4 years produced numerous discussion papers on various aspects of succession law. In December 1997 the Committee provided to the Standing Committee its report entitled "*Consolidated Report to the Standing*

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1 For a copy of this Act, see appendix IV of *Reforming the Law of Wills* - Parliament of Victoria Law Reform Committee, May 1994. Referred to in this document as the Victorian Report 1994.

2 An Act for adopting a certain Act of Parliament intituled (sic) "*An Act for the Amendment of the Laws with respect to Wills*" in the administration of justice in South Australia in like manner as other laws of England are applied therein (Act No. 16 of 1842)

3 This appears to have followed the consolidation and re-enactment in 1936 of the South Australian *Wills Act* 1936.

4 A Committee comprising the Attorneys-General of the Commonwealth of Australia and of the Australian States and the two self governing Territories. The Attorney-General for New Zealand also participates from time to time.

*Committee of Attorneys-General on the Law of Wills*<sup>5</sup>.

This report comprised:

- a draft Wills Bill 1997 (referred to in this paper as the Uniform Wills Bill 1997)
- a commentary on the proposals that are incorporated in the Wills Bill 1997.

The Northern Territory Law Reform Committee considers it appropriate that the Bill be analysed in terms of its possible impact on Northern Territory laws.

The Law Reform Committee may take the view that the specific application of the proposals to the Northern Territory should be spelt out and circulated within the Northern Territory.

This Report comprises:

- the National Committee's Bill (as annotated for Northern Territory purposes);
- the current Northern Territory *Wills Act*;
- a commentary explaining each of the provisions. This provides a reference to the current provision of the Northern Territory *Wills Act* and the changes (and the reasons for the changes) that may be brought about if the Uniform Wills Bill 1997 is enacted in the Northern Territory.

The commentary on each of the provisions is extremely brief. Further background to each of the proposals is contained in the following Reports:

*Reforming the Law of Wills*<sup>6</sup> -Parliament of Victoria Law Reform Committee, May 1994.

This Report contains the Bill referred throughout this paper as the Victorian Wills Bill 1994.

*Consolidated Report to the Standing Committee of Attorneys-General on the Law of Wills - Uniform Succession Laws Project Committee December 1997.*

This Report contains the Uniform Wills Bill 1997.

*Uniform Succession Laws - The Law of Wills*, New South Wales Law Reform Commission Report 85

This Report published the *Consolidated Report to the Standing Committee of Attorneys-General on the Law of Wills - Uniform Succession Laws Project Committee December 1997.*

*Succession Law: A Succession (Wills) Act (1997)* NZLC Report 41

In general terms the Work of the other Reform Agencies has been such as to suggest that the policy need for uniformity is a significant factor in determining what should be policy

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<sup>5</sup> The National Commission on Succession laws has also presented a report on Family Provisions to the Standing Committee of Attorneys-General. Additionally, the Committee expects to present to the April 1999 Ministerial meeting a Report on the Administration of Estates.

<sup>6</sup> The Victorian report 1994.

decisions on particular aspects of the law of wills.

## **Summary of the major innovations in the Uniform Wills Bill 1997**

The following are the major changes that would occur to Northern Territory law if the Uniform Wills Bill 1997 were to be enacted in the Northern Territory:

- relaxing the requirements concerning the execution of wills (clause 8);
- the absolute prohibition on witnesses taking anything under a will is relaxed (clause 12);
- divorces mean that the divorced spouse is written out of the will (clause 15);
- deeming wills, in the absence of a contrary intention, to require that a beneficiary survive the testator by 30 days in order to take under the will;
- the making of statutory wills for persons who lack the capacity to make wills;
- abolition of special requirements concerning the wills of soldiers and others;<sup>7</sup> and
- transferring the Wills Registry from the Public Trustee back to the Registrar of Probate (however, it should be noted in respect of this issue that the critical policy position is that there be a Wills Register, a place for the safekeeping of wills and that, in terms of uniformity, that it be located in the *Wills Act*. There is no particular reason why the Registrar of Probates should be the Officer with responsibility for maintaining the Register).

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<sup>7</sup> The New Zealand Draft Succession (Wills) Act continues to provide for informal making and revoking of wills by the armed forces, seafarers, and prisoners of war (see Part 6).



# Commentary on each of the provisions of the Wills Bill 1999

## Part 1 Preliminary

### 1 Name of Act

The proposal is that the name is to remain the same. The main alternative would be to incorporate the legislation dealing with Wills into an omnibus *Succession Act* dealing with the laws of intestacy and the administration of estates. This is an issue on which the Law Reform Committee has no strong view.

### 2 Commencement

The Bill should be commenced on a day fixed by the Administrator. This will enable adequate notice of the legislation to be given.

### 3 Purpose

Clause 3 states the general purposes of the Bill. Clause 3 is modelled on clause 1 of the draft Victorian Bill 1994.

### 4 Definitions

The main point to note is that the word "document" is defined in a narrow way so that the emphasis is on the need for writing. However, the court will, by clause 10 be given the power to look at materials other than documents for the purposes of dispensing with the need to have complied with the formalities. Also, see the definition of "disposition" - as discussed in the Victorian Report 1994, p 17-18

### 5 Application of Act

Clause 5 sets out the application of the Act.

The purpose of the clause is to:

- (a) identify which clauses apply to wills and issues that may have existed prior to the commencement of the Act;
- (b) identify which provisions are only to apply to wills and issues that exist after the commencement of the Act.

The present draft of the Bill only applies the new provisions relating to divorce to wills existing prior to the commencement of the Act. This was an issue left open by the National Succession Law Committee.

However it has been argued<sup>8</sup> that the Bill should take a somewhat broader sweep on the basis that the provisions are remedial. Thus, it may be that the following clauses should apply to all wills:

- how should a will be executed (clause 8);
- dispensing with the requirements for execution (clause 10);
- how a will is altered (clause 13);
- rectification of wills (clause 27);
- what should be done with the income of contingent and future dispositions (clause 33);
- admission of extrinsic evidence to clarify a will (clause 31);
- how to construe certain residuary dispositions (clause 41);
- dispositions to unincorporated associations of persons (clause 42);
- 'delegation of will making powers' (clause 43);

## **Part 2 Capacity and formal requirements**

### **Division 1 Capacity**

<b>6 Property that may be disposed of by will</b>
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Clause 6 states the law as to what property can be disposed of by a will. The intention is that all property (of whatever kind) except property owned as a trustee can be disposed of by a will.

This clause replaces section 5 of the *Wills Act*. It needs to be read with the definition of "property" in clause 4. The clause is modelled on section 4 of the Victorian Draft Wills Bill 1994.<sup>9</sup>

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<sup>8</sup> For an example by the Victorian Law Reform Committee, see Victorian report 1994, pages 166-168

<sup>9</sup> The New Zealand Draft Succession (Wills) Act s 12 repeats s 3 of the *Wills Act 1837* (UK) but clarifies in plain language: the property that may be disposed of by will; a will-makers' ability to dispose of property which accrues to their estates after their deaths; and will-makers' inability to dispose of property of which when they died they were not beneficial owners but trustees.

## **7 Minimum age for making a will**

This clause provides that a person must, subject to specified exceptions, be 18 years of age in order to make a valid will. This clause acknowledges the view of the National Committee and other law reform agencies<sup>10</sup> to the effect that there should not be a lowering of the age of will making capacity. See also clause 18 for the circumstances where a Court may authorise the making of a will by a person aged under 18 years of age.

The wording for the clause is modelled on section 5 of the Victorian Draft Wills Bill 1994. The clause replaces clause 6 of the *Wills Act*.<sup>11</sup>

### **Division 2 Execution of a will**

## **8 How a will should be executed**

Clause 8 sets out the formal requirements for the making of a will.

This amends the current law in so far as there will no longer be a requirement that the 2 witnesses to the execution of the will attest and sign the will in the present of one another - though there is a retention of the requirement that they both be present when the testator signs the will. Similarly the current requirement that the will be signed at the foot thereof has been dropped.<sup>12</sup>

The purpose of the amendments is to reduce the possibility of wills being apparently invalid because of failure to comply with requirements that do not affect the policy sought to be achieved by the provision.

Clause 8 replaces sections 7, 7A and 8 of the *Wills Act*.

It should be noted that the special rules (exemptions) regarding wills made by soldiers and others are proposed to be abolished. For a discussion of the policy reasons behind this see pages 62-66 of the Victorian Report 1994 and Chapter 11 of the report of the NSW Law Reform Commission entitled *Wills - Execution and Revocation*.

<sup>10</sup> For example, Victorian Law Reform Committee which canvassed the issue on page 31 of its report. The prospect that the age of will making capacity should be reduced so as to equate with age of capacity to marry (16) was raised and rejected

<sup>11</sup> The New Zealand Draft Succession (Wills) Act s 6 has re-enacted the general rule from s 2 of the Wills Amendment Act 1969 with some changes. For example, unlike the Victorian Draft Wills Bill 1994, it provides for approvals to be granted for will-making generally rather than for a specific will. This allows a minor to have on-going testamentary capacity.

<sup>12</sup> The New Zealand Draft Succession (Wills) Act s 8 is modelled on the Victorian Draft Wills Bill 1994 clause 7 which has relaxed the requirement that the testator's signature be made at the foot of the will.

## **9 Witnesses need not know the contents of what they are signing**

Clause 9 states the law that there is no requirement that witnesses need to know the contents of a will. The policy is that a testator has the right to privacy concerning both the contents and even whether the document is a will.

Clause 9 is based on provisions originally enacted in the 1837 UK legislation.<sup>13</sup>

Clause 9 will replace, in part, section 12(1) of the *Wills Act*. There is no substantial change in policy.

## **10 When Court may dispense with the requirements for execution of wills**

Clause 10 sets out the circumstances where the Supreme Court can accept material other than a formally executed will for the purposes of the implementation of a person's testamentary intentions. In essence, the Court is entitled to have regard to any information in constructing a document that does not comply with the formalities required by clause 8.<sup>14</sup>

Clause 10 replaces section 12 of the *Wills Act*. Compared to section 12, Clause 10 gives the Court considerably more discretion as to what material it can recognise for the purpose of determining a person's testamentary intentions. It also alters the onus of proof (as to the testamentary intentions) from the criminal law standard of "beyond reasonable doubt" to the civil law standard of "balance of probabilities".

## **11 Persons who cannot act as witnesses to wills**

Clause 11 provides that a person may not act as the witness to a will if that person is "unable to see and attest" that a person has signed a document.

There is no equivalent current statutory provision in the Northern Territory.

The provision adopts principles contained in the Qld *Succession Act* (section 14) and in the Victorian Draft Wills Bill 1994. The words "unable to see and attest" have been used instead of "blind" so as to make it plain that the section applies to persons who are not blind but be may be temporarily unable to see and attest.

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13 The New Zealand Draft Succession (Wills) Act s 9 would replace the Wills Act 1837 (UK) s 13. The new provision states in plain language that a witness need not know the contents of what they are signing.

14 Section 10 of the Draft Succession (Wills) Act would be new to New Zealand. It is based on but does not adopt exactly the wording of the Victorian Draft Wills Bill 1994. The logic behind the introduction of the provision is that there is no reason why the ways of proving a deceased's genuine intention should be confined to complying with the formal requirement's if the intention can be proved in other ways.

## 12 Can an interested witness benefit from a disposition under a will?

Clause 12 sets out the basic rule that a disposition to an interested witness is void. The general rule operates subject to the qualification that the disposition can be valid if there were 2 other disinterested witnesses, and there is consent from other interested parties - ie the Court is satisfied that the testator freely and voluntarily made the disposition.

This clause replaces section 17 of the *Wills Act*. It is based on section 13(2)(c) of the *Wills, Probate and Administration Act 1898 (NSW)*.<sup>15</sup>

Clause 12, compared to section 17, is:

- (a) stricter in the sense that it applies to any person claiming under the will rather than just the spouse;
- (b) more liberal in the sense that it articulates a set of circumstances in which the voiding rule should not operate.

The main policy difference is that the proposed clause does not absolutely disqualify a witness from taking a benefit under a will. However, there is an onus on such a witness to justify to the Court that it is appropriate that the witness take the benefit. See pages 82-92 of the Victorian report for a lengthy discussion of the origins of the rule (as a rule of evidence which was transformed into a rule to protect against undue influence) and the reasons for and against the retention of the rule.

### Division 3 Revocation, alteration and revival of wills

## 13 How a will may be revoked

Clause 13 sets out the circumstances in which a will can be revoked. These include documented intention (eg another will), destruction (including destruction by others) or by writing.

Clause 13 will replace section 22 and, to some extent, sections 21 and 23 of the *Wills Act*.<sup>16</sup>

<sup>15</sup> The New Zealand Draft Succession (Wills) Act s 11(2)(a) repeats the *Wills Amendment Act 1977* s 3, however, s 11(2)(b)-(c) are two new provisions saving gifts to their spouses if certain conditions are satisfied. They are based not on the Victorian draft but on the New South Wales *Wills, Probate and Administration (Amendment) Act 1988* s 3.

<sup>16</sup> The New Zealand Draft Succession (Wills) Act s 17 would replace the *Wills Act 1837 (UK)* s 20. Under the proposed provision an act of destruction is defined more widely. It now includes any writing on the will by the testator, any act of crumpling up the will by the testator, or any other symbolic act of destruction, so long as the intention of the testator can be clearly ascertained.

## 14 Effect of marriage on a will

Clause 14 provides that marriage revokes a will except where the will is made in contemplation of marriage. However, dispositions made to the deceased person's spouse at the time of death and certain other specified dispositions or appointments are not affected.

For the purposes of this clause the word "marriage" is not defined. This means that de facto marriages would not affect a will. This is an issue that may require further discussion.

Clause 14 replaces section 22 of the *Wills Act*. The clause is modelled on clause 12(1) and (2) of the Victorian Draft Wills Bill 1994 and on section 15(3) and (4) of the *Wills, Probate and Administration Act 1898* (NSW).<sup>17</sup>

The new clause makes it plain that the will is only revoked so as to protect the interests of the spouse. Thus, for example, it does not affect provisions in favour of the spouse, nor does it require that the will document contain evidence that the will was made in contemplation of marriage.

Additionally, the clause is drafted as being remedial and thus applies to wills made prior to the commencement of the legislation.

## 15 Effect of divorce etc on a will

Clause 15 provides that the ending of a marriage revokes dispositions in the will to the former spouse except appointments concerning trust property for beneficiaries that include the spouse's children and grants of appointments that exclusively concern the children of the testator and the former spouse. The clause operates subject to a contrary intention.

Such "revocations" take effect as if the spouse had died before the testator.

Section 15(5) defines the end of a marriage as essentially being an end of or nullity of a marriage as recognised under the *Family Law Act 1975*.<sup>18</sup>

There is no equivalent provision in the *Wills Act*. Accordingly, this clause, if adopted in the Northern Territory, would represent a major policy shift.

Clause 15 is based on section 16A of the Victorian *Wills Act 1958*.<sup>19</sup>

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<sup>17</sup> The New Zealand Draft Succession (Wills) Act s 18 and ss (3) would replace the Wills Act 1837 (UK) s 18 and s 13 respectively. The New Zealand Law Commission has retained the general rule that a will should be revoked upon marriage, and supports the contention that wills made in contemplation of marriage should not be revoked.

<sup>18</sup> The remaining weakness is that of whether property settlements (without a divorce) ought to have some bearing on wills.

<sup>19</sup> The New Zealand Draft Succession (Wills) Act s 19 would replace the Wills Amendment Act 1977 s 2. It provides that a dissolution order revokes some gifts to a spouse and some appointments of a spouse. However, unlike the Victorian Draft Wills Bill 1994, s 19 provides for revocation upon a separation order made in respect of the parties to a marriage under Part III of the Family Proceedings Act 1980.

The effect of the clause is, in the absence of a contrary intention, to revoke powers of appointment by the ex-spouse in favour of children other than children of the testator. Thus, for example, appointments given to the ex spouse in favour of the children of the testator are preserved.

## **16 How a will may be altered**

Clause 16 sets out that a will can be altered in the alteration is executed in accordance with the Act, however, any alteration is not effective if the purported result is that the words or effect of the will are no longer apparent.

Clause 16 replaces section 24 of the *Wills Act*.

Clause 16 is modelled on clause 15 of the Victorian Draft Wills Bill 1994.<sup>20</sup>

## **17 How a revoked will may be revived**

Clause 17 provides that a will or part of a will can be revived by re-execution. Such a will takes affect from the day of re-execution.<sup>21</sup>

Clause 17 is based on clause 16 of the Victorian Draft Wills Bill 1994.

Clause 17 replaces section 4 of the *Wills Act*.

There is a query as to whether the clause should be stated as applying to actions that may have taken place prior to the commencement of the legislation.

## **Part 3 Wills made or rectified under Court**

### **Division 1 Wills by minors**

## **18 Court may authorise wills by minors**

Clause 18 sets out that the Court can approve wills made by children. In essence the Court may approve a person aged under 18 making a will. The will must be witnessed by the Registrar of Probates and must be retained in the office of the Registrar of Probates. Additionally, wills made under similar laws in other jurisdictions are recognised.

There is no equivalent provision in the *Wills Act*.

The clause is based clause 5(3)-(6) of the Victorian Draft Wills Bill 1994 and sections 4 and

<sup>20</sup> The New Zealand Draft Succession (Wills) Act s 21 would replace the Wills Act 1837 (UK) s 21. The new section covers much of the original section, but does so with much more clarity. Subsection (1)(d) differs from the corresponding Victorian Draft Wills Bill 1994 which seemed to the New Zealand Law Commission to be less clear than it should be.

<sup>21</sup> The New Zealand Draft Succession (Wills) Act s 2 would replace the Wills Act 1837 (UK) s 22. It is also based on Clause 16 of the Victorian Draft Wills Bill 1994, although it includes an additional subsection which states that a will revoked by destruction cannot be revived.

7(9)-(10) of the *Wills Act* 1936 (South Australia).

## **Division 2 Wills for persons without testamentary capacity**

### **19 Court may make certain orders**

Clause 19 provides that the Court may, in respect of a person who is alive, approve the making of a will on behalf of a person who lacks testamentary capacity. For a strongly argued case of the policy need for the Courts to have the power to approve the making of statutory wills, see Victorian Report 1994, pages 34-53.

There is no equivalent provision in the *Wills Act*.

Clause 19 is based on clause 6 of the Victorian Draft Wills Bill 1994 (which in turn was a refinement of section 7 of the *Wills Act* 1936 (South Australia)).<sup>22</sup> Consideration was given by the National Uniform Succession Laws Committee to the possibility of the court permitting these kinds of wills to be made after the death of the person who lacked testamentary capacity. However, the Committee recommended against such a policy position<sup>23</sup>. Instead, the proposed new Family Provisions Model Bill<sup>24</sup> should deal with this kind of issue.

### **20 Leave of Court is required to make an application**

Clause 20 sets out the requirements to be met by a person seeking an order from the court under clause 19 (making wills on behalf of persons with a testamentary incapacity). In brief, the Court must be provided with all relevant information about the person with the incapacity and must be provided with a draft of the proposed will.

### **21 Court must be satisfied as to certain matters**

Clause 21 sets out that the Court must, before making an order under clause 19 (making of a statutory will), be satisfied that the person may have a testamentary incapacity; that the person may have made the proposed will if he or she had the capacity to do so; that the applicant is an appropriate person and that persons with a potential interest have been given an adequate opportunity to be represented.

### **22 Application for leave: the orders of the Court**

Clause 22 sets out the Court's options when dealing with an application under clause 20.

22 The New Zealand Draft Succession (Wills) Act does not contain a provision for wills to be made for persons without testamentary capacity. Instead such law is dealt with under the *Protection of Personal and Property Rights Act* 1988, ss 54(2)(5)(6) and 55(1). The New Zealand Law Commission supports the continuation of the granting of a power to the court to make a will on behalf of a person who lacks testamentary capacity under the aforementioned act.

23 Note that the Victorian Law Reform Committee came to the opposite conclusion -see Victorian Report 1994 Report, pages 35-41.

24 This Bill is also being prepared by the National Committee. .



### **23 Application for authorisation of making, alteration or revocation of a will**

Clause 23 provides that the Court, in dealing with an application under clause 20, can inform itself as it sees fit and is not bound by the rules of evidence.

### **24 Execution of a will**

Clause 24 provides that a will made by an order of the Court under clause 23(2) must be signed by the Registrar and sealed with the seal of the Court.

### **25 Retention of a will or instrument**

Clause 25 provides that a will made by order of the Court under clause 23(2) must be deposited with the Registrar.

### **26 Recognition of statutory wills**

Clause 26 provides for the recognition of statutory wills made outside of the Northern Territory.

## **Division 3 Rectification of wills by Court**

### **27 Court may rectify a will**

Clause 27 provides that the Court may rectify a will if there is a clerical error or if the will does not give effect to the testator's intentions. Applications must be made within 6 months of the death (but the period can be extended).

There is no equivalent provision in the *Wills Act*.

In developing this clause the National Committee considered section 12A of the ACT *Wills Act* which gives the Court broad powers to rectify a will to more fully meet the probable intentions of the testator - eg to deal with effects not fully understood by the testator, events that were not anticipated by the testator or events that took place after the death of the testator. However, the National Committee adopted provisions modelled on clause 37 of the Victorian Draft Wills Bill 1994. The Court's powers of rectification are limited to clerical errors or provisions that do not give effect to the testator's intentions.

## Part 4 Construction of will

### 28 What interest in property does a will dispose of?

Clause 28 provides that the will disposes of all interests in property other than interests disposed of prior to death.

Clause 28 is based on clause 20 of the Victorian Draft Wills Bill 1994.<sup>25</sup>

Clause 28 makes it clear that a disposition of property includes a disposition of any remaining interest in the property.

### 29 When a will takes effect

Clause 29 provides that, subject to a contrary intention, a will takes effect as if executed immediately before the death.

Clause 29 is modelled on Victorian Draft Wills Bill 1994.

Clause 29 replaces section 27 of the *Wills Act*.

### 30 Effect of failure of a disposition

Clause 30 provides that, subject to a contrary intention, the effect of a wholly or partially failed disposition is that the property concerned becomes part of the residue.

The purpose of clause 30 is to minimise partial intestacies.

Clause 30 replaces clause 28 of the *Wills Act*.

Clause 30 is modelled on clause 22 of the Victorian Draft Wills Bill 1994.<sup>26</sup>

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<sup>25</sup> The New Zealand Draft Succession (Wills) Act s 13 is also based on the Victorian Draft Wills Bill 1994 clause 20. It basically repeats in plain language s 23 of the Wills Act 1937 (UK).

<sup>26</sup> The New Zealand Draft Succession (Wills) Act s 23 is also modelled on the Victorian Draft Wills Bill 1994 clause 22 and would replace the *Wills Act 1837* (UK) s 25.

### **31 Use of extrinsic evidence to clarify a will**

Clause 31 provides that evidence is admissible for construing language in a will that renders the will (in whole or part) meaningless or ambiguous.

The purpose of the clause is to permit Courts to resolve ambiguities in a will. It widens the powers of the Court under common law or the Evidence Act. However, the power to use extrinsic evidence is limited because of the policy view that wills should be in writing.

Clause 31 is modelled on section 12B of the ACT *Wills Act*.<sup>27</sup>

There is no equivalent in the *Wills Act* to clause 31.

### **32 Effect of a change in testator's domicile**

Clause 32 provides that the change in domicile (after execution of the will) does not affect the construction of a will

Clause 32 is modelled on clause 24 of the Victorian Draft Wills Bill 1994.

Clause 32 replaces section 23 of the *Wills Act*. There is no substantive change in policy.

### **33 Income on contingent, future or deferred dispositions**

Clause 33 provides that income on these dispositions is included in the disposition

Clause 33 is based on clause 25 of the Victorian Draft Wills Bill 1994 and section 62 of the *Succession Act 1981* (Qld).<sup>28</sup> At common law there are various rules which have the effect that income on dispositions that have not taken effect goes into the residue of the estate. The effect of this clause is that the income is retained for the person who is to receive the deferred disposition.

### **34 Beneficiaries must survive testator by 30 days**

Clause 34 provides that, subject to a contrary intention, a beneficiary who does not survive the testator by 30 days is written out of the will. Aside from anti-lapsing provisions (such as section 36 of the *Wills Act*), devises and bequests lapse if the beneficiary does not live longer than the testator. The purpose of clause 34 is to extend the operation of this rule so that, subject to a contrary intention, it applies to beneficiaries who do not survive the testator by 30 days.

<sup>27</sup> The use of extrinsic evidence is not currently provided for by the *Wills Act 1837* (UK). The New Zealand Draft Succession (Wills) Act has adopted the ACT provision contained in the 1991 amendment to the *Wills Act 1968* (ACT). The provision, however, is limited due to the fundamental principle that a will must be in writing.

<sup>28</sup> The New Zealand Draft Succession (Wills) Act does not contain a provision for income on contingent, future or deferred dispositions as it is adequately covered by the *Trustee Act 1956* (NZ) s 40.

Clause 34 is modelled on section 26 of the Victorian Draft Wills Bill 1994 and section 32 of the *Succession Act* 1981 (Qld).

There is no current provision in the *Wills Act*. Often clauses are written into wills to give effect to the policy in the section.

The purpose of the clause is to avoid the double administration of property when, for example, related persons die in a common accident. It also leads to the avoidance of problems if there is a need to work out who died first.

The policy assumption is that testators prefer that, in these kinds of cases, their estate should go to their second choice for inheritance rather than to the heirs of the person who has died within 30<sup>29</sup> days of the death of the testator.

### **35 What does a general disposition of property include?**

Clause 35 provides that, subject to a contrary intention, a general disposition of property includes property in respect of which the testator has a general power of appointment.

Clause 35 is modelled on clause 28 of the Victorian Draft Wills Bill 1994 and section 28(d) of the *Succession Act* 1981 (Qld).<sup>30</sup>

### **36 What does a general disposition of land include?**

Clause 36 provides that, subject to a contrary intention, a general disposition of land is taken to include leasehold interests.

Clause 36 is modelled on clause 27 of the Victorian Draft Wills Bill 1994.<sup>31</sup>

Clause 36 will replace section 29 of the *Wills Act*. There is no substantial change in policy.

### **37 Effect of devise of real property without words of limitation**

Clause 37 provides that, subject to a contrary intention, such a devise is effective to pass the whole of the property.

Clause 37 is modelled on clause 29 of the Victorian Draft Wills Bill 1994.<sup>32</sup>

Clause 37 replaces section 31 of the *Wills Act*. There is no substantial change in policy.

<sup>29</sup> See Victorian Report 1994 page 138 where statistics are quoted in support of fixing 30 days as the relevant period (rather than a shorted period). The statistic is that victims of road accidents generally either die in the accident or die within 20 days of the accident.

<sup>30</sup> The New Zealand Draft Succession (Wills) Act s 15 is also modelled on the Victorian Draft Wills Bill 1994 which is a simplified version of the *Wills Act* 1837 (UK) s 27 and has the same effect.

<sup>31</sup> The New Zealand Draft Succession (Wills) Act s 14 is also modelled on clause 27 of the Victorian Draft Wills Bill 1994, and would repeat more directly the provisions of the *Wills Act* 1837 (UK) s 26.

<sup>32</sup> The New Zealand Draft Succession (Wills) Act s 16 is also modelled on clause 29 the Victorian Draft Wills Bill 1994 and would replace the *Wills Act* 1837 (UK) s 28.

### **38 How dispositions to issue operate**

Clause 38 provides that, subject to a contrary intention, a clause devising gifts to children or other issue, is to be construed as if the person had died intestate leaving only issue surviving.

The purpose of this clause is to maintain the current position - namely that the issue of deceased issue share, in the absence of a contrary intention, the share that the deceased person would have received. Thus, for example, in the case of a person who had a daughter with 2 children and a son with 5 children and is survived only by the grandchildren. The son's children would each receive  $1/10^{\text{th}}$  and the daughter's children would each receive  $1/4^{\text{th}}$ . An alternate approach would be say all surviving issue of equal rank would receive the same amount - in this case  $1/7^{\text{th}}$ .

Clause 38 is based on clause 30 of the Victorian Draft Wills Bill 1994.

### **39 How requirements to survive with issue are construed**

Clause 39 provides that, subject to a contrary intention, the conditions relating to issue are to be construed as if they relate to the person's lifetime.

Clause 39 is modelled on clause 31 of the Victorian Draft Wills Bill 1994.

Clause 39 replaces section 32 of the *Wills Act*. There is no substantive policy change.<sup>33</sup>

### **40 Dispositions not to fail because issue have died before testator**

Clause 40 provides that, subject to a contrary intention, dispositions to issue who do not survive for 30 days after the death are taken to be held in trust for the issue of that issue.

The purpose of clause 40 is to provide that the children of a family beneficiary share the property that that person would have inherited if that person had survived the testator. If a testator does not wish the issue of a child who predeceases the testator to inherit then there would need to be a clause in the will to the effect that the "property is not to go to the issue of any child who does not survive me". See clause 40(4).

Clause 40 is modelled on clause 32 of the Victorian Draft Wills Bill 1994.

Clause 40 will replace section 36 of the *Wills Act*. The main policy difference is to introduce a 30 day period that the issue concerned must survive the testator.

<sup>33</sup> The New Zealand Draft Succession (Wills) Act has not reproduced the *Wills Act 1837* (UK) s 29 which is the equivalent to this section. For the rationale behind this decision see *Succession Law: A Succession (Wills) Act*, New Zealand Law Report, Report 41, October 1997.

#### **41 Construction of dispositions**

Clause 41 provides that, if the disposition of the residue of an estate only refers to either real or personal property, then it is to be taken as referring to both.

The purpose of this clause is to avoid partial intestacies where clauses in wills dealing with the residue of an estate are written too narrowly. The assumption is that a devise of the residue is meant to include all of the residue and not a part of it.

Clause 41 is based on clause 33 of the Victorian Draft Wills Bill 1994.<sup>34</sup>

#### **42 Legacies to unincorporated associations of persons**

Clause 42 deals with legacies directed to unincorporated associations that are not charities. It provides for the method of such payments and the effect of such payments. The clause exists for the purposes of removing various doubts about these legacies.

Clause 42 is modelled on section 63 of the *Succession Act* 1981 (Qld) and clause 34 of the Victorian Draft Wills Bill 1994.<sup>35</sup>

There is no equivalent to clause 42 in the *Wills Act*. Many wills drafted in the Northern Territory duplicate these provisions.

#### **43 Can a person, by will, delegate the power to dispose of property?**

Clause 43 provides that a person can, by will, delegate the power to dispose of property, so long as the power could have been exercised during the lifetime of the testator. The purpose of the clause is to remove any doubt that might otherwise exist that a power of appointment in a will is an unacceptable delegation of the testators power to make a will.

Clause 43 is based on clause 35 of the Victorian Draft Wills Bill 1994.<sup>36</sup>

There is no equivalent to clause 43 in the *Wills Act*.

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34 The New Zealand Draft Succession (Wills) Act s 27 is also based on clause 33 (2)(3) of the Victorian Draft Wills Bill 1994 and would be new to New Zealand. Section 27 is designed to repair any omissions in wills that are not well-drawn, in order to avoid partial intestacies.

35 The New Zealand Draft Succession (Wills) Act s 37 is also based on clause 34 of the Victorian Draft Wills Bill 1994. This section would be new to New Zealand.

36 The New Zealand Draft Succession (Wills) Act s 7 would be new to New Zealand. The general rule has been that a testator cannot delegate his or her will-making powers to another person. Section 7 would remove this anomalous disability.

#### **44 Effect of referring to valuation in a will**

Clause 44 provides that, subject to a contrary intention (in the will or elsewhere) a reference to a valuation in a will is to be read as a reference to a "competent valuer". The purpose of the clause is to ensure that there is certainty as to the meaning in wills of references to valuations.

Clause 44 is modelled on clause 36 of the Victorian Draft Wills Bill 1994.

There is no equivalent to clause 44 in the *Wills Act*.

### **Part 5 Wills under foreign law**

Part 5 of the Model Bill deals with the status of wills made out of the Northern Territory. The part has the intention of adopting the 1961 *Hague Convention on the Conflict of Laws Relating to the Form of Testamentary Dispositions*. This convention has been adopted in most Australian jurisdictions but the wording used to adopt the provision is not consistent across Australia.

#### **45 Definition of "internal law"**

Clause 45 provides a definition of the "internal law". The internal law of a place is the law that would apply in that place if there were no issues about laws of other places.

This definition is substantially the same as that contained in section 15A of the *Wills Act*.

#### **46 General rule as to formal validity**

Clause 46 provides that a will is to be taken as being valid if it complies with the internal law of the place of execution or domicile/residence or place of nationality. See also clause 46(2) for specific rules governing ships etc., places of immovable revocations and powers of appointment.

This clause will replace section 15B of the *Wills Act*. It will not make any substantial change to the law.

#### **47 Ascertainment of system of internal law**

Clause 47 deals with the situation as to which internal competing system is to apply. For example, the United States could be thought to have 52 systems of internal law.

Clause 47 would replace section 15A(3) of the *Wills Act*. It does not make any substantial change to the law.

<b>48</b>	<b>Construction of the law applying to wills under foreign law</b>
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Clause 48 provides that the basic law to be applied in construing foreign wills is the law in place at the time of the execution of the will. However, account may be taken of later amendments which enable the will to be treated as properly executed. Special formalities of non Territory jurisdictions shall be taken as being "formal requirements" only.

Clause 48 would replace section 15(4) of the *Wills Act*.

## **Part 6 Deposit of wills with Registrar**

<b>49</b>	<b>Will may be deposited with Registrar</b>
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Clause 49 provides that wills may be deposited with the Registrar.

This would replace section 88A of the *Public Trustee Act* which provides that wills may be deposited with the Public Trustee. Section 88B came into existence on 25 June 1987 following the repeal of provisions in the *Wills Act* which had permitted the lodgment of wills with the Supreme Court. The *Wills Act* was amended so as to oblige the Registrar of Probate to hand over all wills to the Public Trustee.

<b>50</b>	<b>Delivery of wills by Registrar</b>
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Clause 50 sets out the duties of the Registrar in respect of the holding of wills. These duties include a duty to keep a copy of all wills given out.

Clause 50 would replace section 88A(5) of the *Public Trustee Act*.

<b>51</b>	<b>Retention of wills</b>
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Clause 51 provides that the failure of the Registrar to retain a will does not affect the validity of a will.

There is no equivalent provision in Northern Territory legislation.



## Part 7 Miscellaneous

### **52 Persons entitled to see will**

Clause 52 provides that a person with a copy of a will of a deceased person must permit prescribed persons to see the will. These prescribed people include:

- persons named in it;
- surviving spouse, parent, guardian or issue of the deceased person;
- any person who would be entitled if the testator had died intestate;
- creditors;
- beneficiaries of prior wills;
- parents or guardians of minors who may have rights under the will.

The National Committee says that this clause is necessary because of the “misconceived notion” that wills are, following the death of the testator, “private documents”. However, a will after being admitted to probate is clearly a public document.

Clause 52 is based on section 66A of the Victorian *Administration and Probate Act 1958*.

There is no equivalent provision in Northern Territory legislation.

### **53 Personal representatives may make maintenance distributions within 30 days**

Clause 53 provides that the personal representative can make maintenance payments to dependent persons within 30 days of the death even if that person’s interest is contingent. This clause is, to some extent, ancillary to the proposal that gifts lapse, in the absence of contrary intention, if the beneficiary does not survive the testator by 30 days.

Clause 53 is modelled on section 99B of the *Administration and Probate Act (Vic)*

### **54 Regulations**

Clause 54 provides for the making of regulations.

### **55 Amendment of [insert name of appropriate Act for jurisdiction]**

Clause 55 would deal with consequential amendments.

**Schedule 1 Amendment of Acts that will be amended consequentially to any enactment of this Bill.**

# **Uniform Wills Bill 1999**

[STATE ARMS]

## **Wills Bill 1999**

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#### **Schedule 1 Amendment of [insert name of appropriate Act for jurisdiction]**

[STATE ARMS]

**Wills Bill 1999**

No , 1999

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**A Bill for**

**An Act to reform the law relating to the making, alteration, revocation, rectification and construction of wills;  
and for other purposes.**

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The Legislature of [insert name of State or Territory] enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Wills Act 1999*.

### 2 Commencement

This Act comes into operation on a date fixed by the Administrator by notice in the *Gazette*.

### 3 Purpose

The purpose of this Act is to reform the law relating to the making, alteration, rectification, revocation and construction of wills and to make particular provision for:

- (a) the formalities required for the making, alteration and revocation of wills and the dispensation of those requirements in appropriate cases, and
- (b) the making of wills by minors and other persons lacking testamentary capacity, and
- (c) the effect of marriage and divorce on wills.

### 4 Definitions

- (1) In this Act:

**Court** means the Supreme Court.

**disposition** includes:

- (a) any gift, devise or bequest of property under a will, and
- (b) the creation by will of a power of appointment affecting property, and
- (c) the exercise by will of a power of appointment affecting property.

**document** means any paper or other material on which there is writing.

**minor** means a person under the age of 18 years.

**property** includes:

- (a) any contingent, executory or future interest in property, and
- (b) any right of entry or recovery of property or right to call for the transfer of title to property.

**Registrar** means [insert position of appropriate officer in jurisdiction].

**will** includes a codicil and any other testamentary disposition.

- (2) Notes in the text of this Act do not form part of this Act.

### 5 Application of Act

- (1) This Act applies only to wills executed on or after the commencement of this Act, except as provided by this section.
- (2) The *Wills Act*, as in force immediately before the commencement of this Act, continues to apply to wills executed before the commencement of this Act, in so far as those wills do not come under the operation of subsection (3) or under the operation of the sections specified in subsection (4).
- (3) Section 15 applies to a will executed before the commencement of this Act, if the granting of the decree absolute of the dissolution of the marriage or the annulment of the marriage occurs on or after the commencement of this Act.
- (4) Sections [insert sections] apply to wills whether or not they are executed before, on or after the commencement of this Act, if the testator dies on or after that commencement.

## **Part 2 Capacity and formal requirements**

### **Division 1 Capacity**

#### **6 Property that may be disposed of by will**

- (1) A person may dispose by will of property to which the person is entitled at the time of his or her death.
- (2) A person may dispose by will of property to which the personal representative of that person becomes entitled by virtue of the office of personal representative after the death of that person. It does not matter if the entitlement of the person or of the personal representative did not exist at the date of the making of the will or at the time of the person's death.
- (3) A person may not dispose by will of property of which the person was trustee at the time of the death of the person.

#### **7 Minimum age for making a will**

- (1) A will made by a minor is not valid.
- (2) Despite subsection (1):
  - (a) a minor may make a will in contemplation of marriage (and may alter or revoke such a will) but the will is of no effect if the marriage contemplated does not take place, and
  - (b) a minor who is married may make, alter or revoke a will, and
  - (c) a minor who has been married may revoke the whole or any part of a will made while the minor was married or in contemplation of that marriage.

**Note.** Division 1 of Part 3 provides for the authorisation by the Court of wills by minors.

### **Division 2 Execution of a will**

#### **8 How a will should be executed**

- (1) A will is not valid unless:
  - (a) it is in writing and signed by the testator or by some other person in the presence of and at the direction of the testator, and
  - (b) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and
  - (c) at least two of those witnesses attest and sign the will in the presence of the testator (but not necessarily in the presence of each other).
- (2) The signature of the testator must be made with the intention of executing the will, but it is not essential that the signature be made at the foot of the will.
- (3) It is not essential for a will to have an attestation clause.
- (4) If a testator purports to make an appointment by his or her will in the exercise of a power of appointment by will, the appointment is not valid unless the will is executed in accordance with this section.
- (5) If a power is conferred on a person to make an appointment by a will that is to be executed in some particular manner or with some particular solemnity, the person may exercise the power by a will that is executed in accordance with this section, but is not executed in that manner or with that solemnity.

**9 Witnesses need not know the contents of what they are signing**

A will that is executed in accordance with this Act is validly executed even if one or more witnesses to the will did not know that it was a will.

**10 When Court may dispense with the requirements for execution of wills**

- (1) A document or part of a document purporting to embody the testamentary intentions of a deceased person, even though it has not been executed in the manner required by this Act, constitutes a will of the deceased person, an alteration of such a will or the revocation of such a will, if the Court is satisfied that the deceased person intended the document to constitute his or her will, an alteration to his or her will or the revocation of his or her will.
- (2) In forming its view, the Court may have regard (in addition to the document or any part of the document) to any evidence relating to the manner of execution or testamentary intentions of the deceased person, including evidence (whether admissible before the commencement of this section or otherwise) of statements made by the deceased person.
- (3) This section applies to a document whether it came into existence within or outside the Territory.
- (4) For the purposes of this section:  
*document* means any record of information, and includes:
  - (a) anything on which there is writing, or
  - (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
  - (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
  - (d) a map, plan, drawing or photograph.

**11 Persons who cannot act as witnesses to wills**

A person who is unable to see and attest that a testator has signed a document may not act as a witness to a will.

**12 Can an interested witness benefit from a disposition under a will?**

- (1) If any beneficial disposition is given or made by will to a person (in this section called the *interested witness*) who attests the execution of the will, the disposition is void so far only as it concerns the interested witness or any person claiming under the interested witness.
- (2) However, a beneficial disposition given or made by will is not made void by this section if:
  - (a) at least 2 of the people who attested the execution of the will are not interested witnesses, or
  - (b) all the persons who would benefit directly from the avoidance of the disposition consent in writing to the distribution of the disposition according to the will (if those persons have the capacity to give that consent), or
  - (c) the Court is satisfied that the testator knew and approved of the disposition and it was given or made freely and voluntarily by the testator.

### **Division 3      Revocation, alteration and revival of wills**

#### **13    How a will may be revoked**

The whole or any part of a will may be revoked only:

- (a) in the circumstances mentioned in Division 1 or 2 of Part 3 or by the operation of section 14 or 15, or
- (b) by a later will, or
- (c) by some writing declaring an intention to revoke it, executed in the manner in which a will is required to be executed by this Act, or
- (d) by the testator, or some person in his or her presence and by his or her direction, burning, tearing or otherwise destroying it with the intention of the testator of revoking it, or
- (e) by the testator, or some person in his or her presence and by his or her direction, writing on the will or dealing with the will in such a manner that the Court is satisfied from the state of the will that the testator intended to revoke it.

#### **14    Effect of marriage on a will**

- (1) A will is revoked by the marriage of the testator.
- (2) However, the following are not revoked by the marriage of the testator:
  - (a) a disposition to the person to whom the testator is married at the time of his or her death, and
  - (b) any appointment as executor, trustee, advisory trustee or guardian of the person to whom the testator is married at the time of his or her death, and
  - (c) a will made in exercise of a power of appointment, if the property so appointed would not pass to the executor, administrator or the Public Trustee if the power of appointment was not exercised.
- (3) A will made in contemplation of a marriage, whether or not that contemplation is expressed in the will, is not revoked by the solemnisation of the marriage contemplated.
- (4) A will that is expressed to be made in contemplation of marriage generally is not revoked by the solemnisation of a marriage of the testator.

#### **15    Effect of divorce etc on a will**

- (1) The ending of a testator's marriage revokes:
  - (a) any beneficial disposition made in a will in existence at the time the marriage ends by a testator to the testator's spouse, and
  - (b) any appointment of the testator's spouse as an executor, trustee, advisory trustee or guardian made by the will, and
  - (c) any grant made by the will of a power of appointment exercisable by, or in favour of, the testator's spouse.
- (2) However, the ending of a testator's marriage does not revoke:
  - (a) the appointment of the testator's spouse as trustee of property left by the will on trust for beneficiaries that include the spouse's children, or
  - (b) the grant of a power of appointment exercisable by the testator's spouse exclusively in favour of the children of whom both the testator and spouse are parents.
- (3) With respect to the revocation of any disposition, appointment or grant by this section, the will is to take effect as if the testator's spouse had died before the testator.



- (4) Subsection (1) does not apply if a contrary intention appears in the will or can otherwise be established.
- (5) For the purposes of this section, a marriage ends:
  - (a) when a decree of dissolution of the marriage becomes absolute under the *Family Law Act 1975* of the Commonwealth, or
  - (b) on the granting of a decree of nullity in respect of the marriage by the Family Court of Australia, or
  - (c) on the dissolution or annulment of the marriage in accordance with the law of a place outside Australia, but only if that dissolution or annulment is recognised in Australia under the *Family Law Act 1975* of the Commonwealth.
- (6) In this section:  
*testator's spouse* means the person who was the testator's spouse immediately before the marriage ended and includes a party to a purported or void marriage.

#### **16 How a will may be altered**

- (1) An alteration to a will after it has been executed is not effective unless the alteration is executed in the manner in which a will is required to be executed by this Act or occurs under Division 1 or 2 of Part 3.
- (2) Subsection (1) does not apply to an alteration to a will if the words or effect of the will are no longer apparent because of the alteration.
- (3) If a will is altered, it is sufficient compliance with the requirements for execution if the signatures of the testator and of the witnesses to the alteration are made:
  - (a) in the margin, or on some other part of the will beside, near or otherwise relating to the alteration, or
  - (b) as authentication of a memorandum referring to the alteration and written on the will.

#### **17 How a revoked will may be revived**

- (1) A will or part of a will that has been revoked is revived by re-execution or by execution of a will showing an intention to revive the will or part.
- (2) A revival of a will that was partly revoked and later revoked as to the balance only revives that part of the will most recently revoked.
- (3) Subsection (2) does not apply if a contrary intention appears in the reviving will.
- (4) A will that has been revoked and later revived, either wholly or partly, is taken to have been executed on the date on which the will is revived.

### **Part 3 Wills made or rectified under Court authorisation**

#### **Division 1 Wills by minors**

##### **18 Court may authorise wills by minors**

- (1) The Court may, on application by or on behalf of a minor, make an order authorising the minor to make or alter a will in specific terms approved by the Court, or to revoke the whole or any part of a will of the minor.
- (2) An authorisation under this section may be granted on such conditions as the Court thinks fit.

- (3) Before making an order under this section, the Court must be satisfied that:
  - (a) the minor understands the nature and effect of the proposed will, alteration or revocation and the extent of the property disposed of by it, and
  - (b) the proposed will, alteration or revocation accurately reflects the intentions of the minor, and
  - (c) it is reasonable in all the circumstances that the order should be made.
- (4) A will or instrument making or altering, or revoking the whole or any part of, a will made pursuant to an order under this section:
  - (a) must be executed as required by law and one of the attesting witnesses must be the Registrar, and
  - (b) must be retained by the Registrar and, in any such case, is taken to have been deposited with the Registrar in accordance with Part 6, and
  - (c) is not valid if it is made in breach of any condition subject to which an authorisation under this section is granted.
- (5) A will made by a deceased minor according to the law relating to wills of minors of the place where the deceased was resident at the time of execution is a valid will of the deceased.

## **Division 2 Wills for persons without testamentary capacity**

### **19 Court may make certain orders**

- (1) The Court may, on application by any person, make an order authorising the making or alteration of a will in specific terms approved by the Court, or the revocation of the whole or any part of a will, on behalf of a person who lacks testamentary capacity.
- (2) The Court may authorise the making or alteration of a will that deals with the whole of the property of a person, the making or alteration of a will that deals with part only of the property of a person or the alteration of part only of any will.
- (3) The Court is not to make an order under this Division unless the person on whose behalf approval for the making of a will is sought is alive when the order is made.
- (4) The Court may make an order under this Division in respect of a minor.

### **20 Leave of Court is required to make an application**

- (1) The leave of the Court must be obtained before an application for an order under this Division is made.
- (2) In applying for leave to make an application for an order under this Division the applicant for leave must, subject to the Court's discretion, furnish to the Court:
  - (a) a written statement of the general nature of the application and the reasons for making it, and
  - (b) an estimate, so far as the applicant is aware of it, of the size and character of the estate of the person on whose behalf approval for the making of a will or of any alteration or revocation is sought (the *proposed testator*), and
  - (c) an initial draft of the proposed will, alteration or revocation for which the applicant is seeking the Court's approval, and
  - (d) any evidence, so far as it is available, relating to the wishes of the proposed testator, and
  - (e) evidence of the likelihood of the proposed testator acquiring or regaining capacity to make a will at any future time, and

- (f) any will, or any copy of any will, in the possession of the applicant, or details known to the applicant of any will, of the proposed testator, and
- (g) any evidence of the interests, so far as they are known to the applicant, or can be discovered with reasonable diligence, of any person who would be entitled to receive any part of the estate of the proposed testator if the proposed testator were to die intestate, and
- (h) any evidence of any facts indicating the likelihood, so far as they are known to the applicant, or can be discovered with reasonable diligence, of an application being made, under *the Family Provisions Act*, and
- (i) any evidence of the circumstances, so far as they are known to the applicant, or can be discovered with reasonable diligence, of any person for whom the proposed testator might reasonably be expected to make provision under a will, and
- (j) a reference to any gift for a body, whether charitable or not, or for a charitable purpose that the proposed testator might reasonably be expected to give or make by will, and
- (k) any other facts that the applicant considers to be relevant to the application.

## **21 Court must be satisfied as to certain matters**

The Court must refuse leave to make an application for an order under this Division unless the Court is satisfied that:

- (a) there is reason to believe that the proposed testator is or may be incapable of making a will, and
- (b) the proposed will, alteration or revocation is or might be one that would have been made by the proposed testator if he or she had testamentary capacity, and
- (c) it is or may be appropriate for an order authorising the making, alteration or revocation of a will to be made for the proposed testator, and
- (d) the applicant is an appropriate person to make an application, and
- (e) adequate steps have been taken to allow representation of all persons with a legitimate interest in the application, including persons who have reason to expect a gift or benefit from the estate of the proposed testator.

## **22 Application for leave: the orders of the Court**

On hearing an application for leave, the Court may:

- (a) refuse the application, or
- (b) adjourn the application, or
- (c) give directions, including directions about the attendance of any person as a witness and, if it thinks fit, the attendance of the proposed testator, or
- (d) revise the terms of any initial draft of the proposed will, alteration or revocation for which the Court's approval is sought, or
- (e) grant the application on such terms as it thinks fit, or
- (f) if it is satisfied of the propriety of the application, allow the application for leave to proceed as an application to authorise the making, alteration or revocation of a will, and allow the application.

**23 Application for authorisation of making, alteration or revocation of a will**

- (1) In considering an application for an order authorising the making, alteration or revocation of a will, the Court:
  - (a) may have regard to any information given to the Court in support of an application for leave, and
  - (b) may inform itself of any other matter in any manner it sees fit, and
  - (c) is not bound by the rules of evidence.
- (2) On hearing an application for an order authorising the making, alteration or revocation of a will in specific terms, the Court may, after considering the course of the application for leave to make the application, and any further material or evidence it requires:
  - (a) refuse the application, or
  - (b) grant the application on such terms and conditions, if any, as it thinks fit.

**24 Execution of a will**

A will, or instrument altering or revoking a will, made pursuant to an order under this Division, must be signed by the Registrar and must be sealed with the seal of the Court.

**25 Retention of a will or instrument**

- (1) A will, or instrument altering or revoking a will, made pursuant to an order under this Division, must be retained by the Registrar and, when so retained, is taken to have been deposited with the Registrar in accordance with Part 6.
- (2) Despite section 50, the will may not be withdrawn from deposit with the Registrar by or on behalf of the person on whose behalf it was made unless the Court has made an order under this Division authorising the revocation of the will (in which case the Registrar must withdraw it on presentation of a copy of the order) or the person has acquired or regained testamentary capacity.

**26 Recognition of statutory wills**

- (1) A statutory will made according to the law of the place where the deceased was resident at the time of execution is to be regarded as a valid will of the deceased.
- (2) In this section:  
*statutory will* means a will executed by virtue of a statutory provision on behalf of a person who, at the time of execution, lacked testamentary capacity.

**Division 3 Rectification of wills by Court**

**27 Court may rectify a will**

- (1) The Court may make an order to rectify a will to carry out the intentions of the testator if the Court is satisfied that the will does not carry out the testator's intentions because:
  - (a) a clerical error was made, or
  - (b) the will does not give effect to the testator's instructions.
- (2) A person who wishes to make an application for an order under this section must apply to the Court within 6 months after the date of the death of the testator.
- (3) The Court may extend the period of time for making the application if the Court thinks this is necessary, even if the original period of time has expired, but not if the final distribution of

the estate has been made.

- (4) A personal representative who makes a distribution to a beneficiary is not liable if:
- (a) the distribution is made under section 53, or
  - (b) the distribution is made:
    - (i) at a time when the personal representative was not aware of any application for rectification or any application having been made under the [insert the name of the Act of the jurisdiction that deals with family provision], and
    - (ii) at least 6 months after the death of the testator.
- (5) The Court may direct that a certified copy of an order made under this section be attached to a will to which it applies and must, if it so directs, retain the will until the copy of the order is attached.

#### **Part 4 Construction of wills**

##### **28 What interest in property does a will dispose of?**

If:

- (a) a testator has made a will disposing of property, and
  - (b) after the making of the will and before his or her death, the testator disposes of an interest in that property,
- the will operates to dispose of any remaining interest the testator has in that property.

##### **29 When a will takes effect**

- (1) A will takes effect, with respect to the property disposed of by the will, as if it had been executed immediately before the death of the testator.
- (2) This section does not apply if a contrary intention appears (whether in the will or elsewhere).

##### **30 Effect of failure of a disposition**

- (1) To the extent that any disposition of property, other than the exercise of a power of appointment, is ineffective wholly or in part, the will takes effect as if the property or the undisposed part of the property were part of the residuary estate of the testator.
- (2) This section does not apply if a contrary intention appears (whether in the will or elsewhere).

##### **31 Use of extrinsic evidence to clarify a will**

- (1) In proceedings to construe a will, evidence, including evidence of the testator's intention, is admissible to the extent that the language used in the will renders the will, or any part of the will:
  - (a) meaningless, or
  - (b) ambiguous on the face of the will, or
  - (c) ambiguous in the light of the surrounding circumstances.
- (2) Evidence of a testator's intention is not admissible to establish any of the circumstances referred to in subsection (1) (c).
- (3) Nothing in this section prevents evidence that is otherwise admissible at law from being admissible in proceedings to construe a will.

##### **32 Effect of a change in testator's domicile**

The construction of a will is not altered because of any change in the testator's domicile after executing the will.

**33 Income on contingent, future or deferred dispositions**

A contingent, future or deferred disposition of property, whether specific or residuary, includes any intermediate income of the property that has not been disposed of by the will.

**34 Beneficiaries must survive testator by 30 days**

- (1) If a disposition is made to a person who dies within 30 days after the death of the testator, the will is to take effect as if the person had died immediately before the testator.
- (2) This section does not apply if a contrary intention appears in the will.
- (3) A general requirement or condition that a beneficiary survive the testator does not indicate a contrary intention for the purpose of this section.

**35 What does a general disposition of property include?**

- (1) A general disposition of all or the residue of the testator's property, or of all or the residue of his or her property of a particular description, includes all the property of the relevant description over which he or she has a general power of appointment exercisable by will and operates as an exercise of the power.
- (2) This section does not apply if a contrary intention appears (whether in the will or elsewhere).

**36 What does a general disposition of land include?**

- (1) A general disposition of land or of land in a particular area includes leasehold land whether or not the testator owns freehold land.
- (2) This section does not apply if a contrary intention appears (whether in the will or elsewhere).

**37 Effect of devise of real property without words of limitation**

- (1) A disposition of real property to a person without words of limitation is to be construed as passing the whole estate or interest of the testator in that property to that person.
- (2) This section does not apply if a contrary intention appears (whether in the will or elsewhere).

**38 How dispositions to issue operate**

- (1) A disposition to a person's issue without limitation as to remoteness must be distributed to that person's issue in the same way as that person's estate would be distributed if that person had died intestate leaving only issue surviving.
- (2) This section does not apply if a contrary intention appears in the will.

**39 How requirements to survive with issue are construed**

- (1) If there is a disposition to a person in a will that is expressed to fail if there is either:
  - (a) a want or a failure of issue of that person either in his or her lifetime or at his or her death, or
  - (b) an indefinite failure of issue of that person,those words must be construed to mean a want or failure of issue in the person's lifetime or at the person's death and not an indefinite failure of his or her issue.
- (2) This section does not apply if a contrary intention appears in the will except where the result would be to cause a failure of the disposition.

**40 Dispositions not to fail because issue have died before testator**

- (1) If a person makes a disposition to any of his or her issue and:
  - (a) the disposition is not a disposition to which section 38 applies, and
  - (b) the interest in the property disposed is not determinable at or before the death of the issue, and
  - (c) the issue does not survive the testator for 30 days,
 the disposition is held on trust for the issue of that issue who survive the testator for 30 days in the shares they would have taken of the residuary estate of the testator if the testator had died intestate leaving only issue surviving.
- (2) Subsection (1) applies to dispositions to issue either as individuals or as members of a class.
- (3) This section does not apply if a contrary intention appears in the will.
- (4) A general requirement or condition that issue survive the testator or attain a specified age does not indicate a contrary intention for the purposes of this section and a gift of a joint tenancy will not on its own indicate a contrary intention.
- (5) If a condition is imposed on an original beneficiary and that beneficiary fails to survive the testator for 30 days, the issue of that beneficiary may not take under this section unless the original beneficiary has fulfilled the condition.

#### **41 Construction of dispositions**

- (1) A disposition of the residue of the estate of a testator, or of the whole of the estate of a testator, that refers only to the real estate of the testator, or only to the personal estate of the testator, is to be construed to include both the real and personal estate of the testator.
- (2) If any part of a disposition in fractional parts of the whole or of the residue of the estate of a testator fails, the part that fails passes to the part that does not fail, and, if there is more than one part that does not fail, to all those parts proportionately.
- (3) This section does not apply if a contrary intention appears in the will.

#### **42 Legacies to unincorporated associations of persons**

- (1) A disposition:
  - (a) to an unincorporated association of persons, that is not a charity, or
  - (b) to or on trust for the aims, objects or purposes of an unincorporated association of persons, that is not a charity, or
  - (c) to or on trust for the present and future members of an unincorporated association of persons, that is not a charity,
 has effect as a legacy or devise in augmentation of the general funds of the association.
- (2) Property that is or that is to be taken to be a disposition in augmentation of the general funds of an unincorporated association must be:
  - (a) paid into the general fund of the association, or
  - (b) transferred to the association, or
  - (c) sold or otherwise disposed of on behalf of the association and the proceeds paid into the general fund of the association.
- (3) If the personal representative pays money to an association under a disposition, the receipt of the Treasurer or a like officer, if the officer is not so named, of the association is an absolute discharge for that payment.
- (4) If the personal representative transfers property to an association under a disposition, the transfer of that property to a person or persons designated in writing by any two persons

holding the offices of President, Chairperson, Treasurer or Secretary or like officers, if those officers are not so named, is an absolute discharge to the personal representative for the transfer of that property.

- (5) Subsections (3) and (4) do not apply if a contrary intention appears in the will.
- (6) It is not an objection to the validity of a disposition to an unincorporated association of persons that a list of persons who were members of the association at the time the testator died cannot be compiled, or that the members of the association have no power to divide assets of the association beneficially among themselves.

**43 Can a person, by will, delegate the power to dispose of property?**

A power or a trust to dispose of property, created by will, is not void on the ground that it is a delegation of the testator's power to make a will, if the same power or trust would be valid if made by the testator by instrument during his or her lifetime.

**44 Effect of referring to valuation in a will**

- (1) Except to the extent that a method of valuation is at the relevant time required under a law of the Territory or any other place, or is provided for in the will, an express or implied requirement in a will that a valuation of property be made or accepted for any purpose is to be construed as if it were a reference to a valuation of the property as at the date of the testator's death made by a competent valuer.
- (2) This section does not apply if a contrary intention appears in the will.

**Part 5 Wills under foreign law**

**45 Definition of "internal law"**

In this Part:

*internal law*, in relation to a place, means the law that would apply in a case where no question of the law in force in any other place arose.

**46 General rule as to formal validity**

- (1) A will is taken to be properly executed if its execution conforms to the internal law in force in the place:
  - (a) where it was executed, or
  - (b) that was the testator's domicile or habitual residence, either at the time the will was executed, or at the testator's death, or
  - (c) of which the testator was a national, either at the date of execution of the will, or at the testator's death.
- (2) The following wills are also taken to be properly executed:
  - (a) a will executed on board a vessel or aircraft, if the will has been executed in conformity with the internal law in force in the place with which the vessel or aircraft may be taken to have been most closely connected having regard to its registration and other relevant circumstances,
  - (b) a will, so far as it disposes of immovable property, if it has been executed in conformity with the internal law in force in the place where the property is situated,



- (c) a will, so far as it revokes a will or a provision of a will that has been executed in accordance with this Act, or that is taken to have been properly executed by this Act, if the later will has been executed in conformity with any law by which the earlier will or provision would be taken to have been validly executed,
  - (d) a will, so far as it exercises a power of appointment, if the will has been executed in conformity with the law governing the essential validity of the power.
- (3) A will to which this section applies, so far as it exercises a power of appointment, is not taken to have been improperly executed because it has not been executed in accordance with the formalities required by the instrument creating the power.

#### **47 Ascertainment of system of internal law**

If the internal law in force in a place is to be applied to a will, but there is more than one system of internal law in force in the place that relates to the formal validity of wills, the system to be applied is determined as follows:

- (a) if there is a rule in force throughout the place that indicates which system of internal law applies to the will, that rule must be followed,
- (b) if there is no rule, the system of internal law is that with which the testator was most closely connected either:
  - (i) at the time of his or her death, if the matter is to be determined by reference to circumstances prevailing at his or her death, or
  - (ii) in any other case, at the time of execution of the will.

#### **48 Construction of the law applying to wills under foreign law**

- (1) In determining whether a will has been executed in conformity with a particular law, regard must be had to the formal requirements of that law at the time of execution, but account may be taken of a later alteration of the law affecting wills executed at that time, if the alteration enables the will to be treated as properly executed.
- (2) If a law in force outside the Territory] is applied to a will, a requirement of that law that special formalities must be observed by testators of a particular description or that the witnesses to the execution of a will must have certain qualifications, is to be taken to be a formal requirement only, despite any rule of that law to the contrary.

### **Part 6 Deposit of wills with Registrar**

#### **49 Will may be deposited with Registrar**

- (1) Any person may deposit a will in the office of the Registrar.
- (2) Any will deposited in the office of the Registrar under this Act must be in a sealed envelope that has written on it:
  - (a) the testator's name and address (as they appear in the will), and
  - (b) the name and address (as they appear in the will) of any executor, and
  - (c) the date of the will, and
  - (d) the name of the person depositing the will,
 and must be accompanied by the fee prescribed by the regulations.
- (3) A fee is not payable in respect of any will deposited with the Registrar if the deposit is made:
  - (a) in accordance with Part 3, or
  - (b) because a legal practitioner has died, or has ceased, or is about to cease, practising

in the Territory.

- (4) The regulations may prescribe fees for the purposes of this section.
- (5) Any regulations made under this section:
  - (a) may prescribe fees in respect of a particular class or classes of wills or will makers, and
  - (b) may prescribe different fees in respect of different classes of wills or will makers, and
  - (c) may authorise the Registrar to waive fees in particular cases or classes of cases.

#### **50 Delivery of wills by Registrar**

- (1) If a will has been deposited with the Registrar under this Act, the testator may at any time apply in writing to the Registrar to be given the will or to have the will given to a person as directed by the testator.
- (2) On receiving the application, the Registrar must give the will to the testator or to any person nominated by the testator, but only if the testator is, at the time of making the application, not a minor and not a person who lacks testamentary capacity.
- (3) If a will has been deposited with the Registrar under this Act and the testator has died, any executor named in the will or any person entitled to apply for letters of administration with the will annexed may apply in writing to the Registrar to be given the will.
- (4) On receiving the application, the Registrar must give the will to the executor or other person or to any legal practitioner or trustee company nominated by that executor or person.
- (5) The Registrar may examine any will to enable the Registrar to comply with this Part.
- (6) The Registrar must ensure that an accurate copy of every will given to a person under this section is made and retained by the Registrar.
- (7) If there is any doubt as to whom a will should be given, the Registrar, or any other person, may apply to the Court for directions as to whom the Registrar should give the will.

#### **51 Retention of wills**

Any failure by the Registrar to retain a will as required by this Act does not affect the validity of the will.

### **Part 7 Miscellaneous**

#### **52 Persons entitled to see will**

- (1) Any person having the possession or control of a will including a revoked will, or a copy of any such will and any part of such a will (including a purported will) of a deceased person must allow any or all of the following persons to inspect and, at their own expense, take copies of it:
  - (a) any person named or referred to in it, whether as beneficiary or not,
  - (b) the surviving spouse, any parent or guardian and any issue of the testator,
  - (c) any person who would be entitled to a share of the estate of the testator if the testator had died intestate,
  - (d) any creditor or other person having any claim at law or in equity against the estate of the deceased,
  - (e) any beneficiaries of prior wills of the deceased,
  - (f) a parent or guardian of a minor referred to in the will or who would be entitled to a

share of the estate of the testator if the testator had died intestate.

- (2) Any person having the possession or control of a will, including a revoked will, or a copy of any such will and any part of such a will (including a purported will), of a deceased person must produce it in Court if required to do so.

**53 Personal representatives may make maintenance distributions within 30 days**

- (1) If a surviving person who is wholly or substantially dependent on the testator has an entitlement under a will that does not become absolute until 30 days after the testator's death, the personal representative may make a distribution for the maintenance, support or education of that person within that 30 day period.
- (2) The personal representative is not liable for any such distribution that is made in good faith.
- (3) The personal representative may make such a distribution even though the personal representative knew at the time the distribution was made of a pending application under the Family Provisions Act.
- (4) Any sum distributed is to be deducted from any share of the estate to which the person receiving the distribution becomes entitled, but if any person to whom any distribution has been made does not survive the testator for 30 days any such distribution is to be treated as an administration expense.

**54 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**55 Amendment of [insert name of appropriate Act of jurisdiction]**

The [insert name of appropriate Act of jurisdiction] is amended as set out in Schedule 1.

**Schedule 1 Amendment of [insert name of appropriate Act of jurisdiction]**

(Section 55)

[Amendments to be inserted here]

NORTHERN TERRITORY OF AUSTRALIA

*WILLS ACT*

As in force at 6 March 1990

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NORTHERN TERRITORY OF AUSTRALIA

*WILLS ACT*

NOTE - THIS REPRINT SHOWS THE ACT AS IN FORCE AT 6 MARCH 1990. ANY DOCUMENTS THAT MAY COME INTO OPERATION AFTER THAT DATE ARE NOT INCLUDED.

An Act relating to wills

1. SHORT TITLE

This Act may be cited as the *Wills Act*. (See back note 1)

2. REPEAL

(1) The Acts of South Australia specified in the Schedule shall cease to apply to the Northern Territory.

(2) Unless otherwise prescribed, the repeal of the Acts mentioned in subsection (1) shall not affect any will made or any proceeding pending or any right acquired or anything done or made valid under or by any of those Acts before the commencement of this Act.

3. DEFINITIONS

(1) In this Act, unless the contrary intention appears -

"personal estate" means leasehold estates and other chattels real and money, shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods and all other property whatsoever which, prior to the coming into operation of "The Intestate Real Estates Distribution Act, 1867" of the State of South Australia, devolved by law upon the executor or administrator and any share or interest in any such personal estate;

"real estate" includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal or personal, and any estate, right or interest (other than a chattel interest) therein;

"the Registrar" means the Registrar of Probates holding office under the *Administration and Probate Act*;

"will" includes testament, codicil, appointment by will or by writing in the nature of a will in exercise of a power and a disposition by will and testament or devise of the custody and tuition of any child by virtue of the Imperial Act passed in the twelfth year of the reign of King Charles the Second, Chapter 24, and any other testamentary disposition.

(2) In the application to the Territory of the Imperial Act passed in the twelfth year of the reign of King Charles the Second, Chapter 24, section 8 thereof shall be construed as if the words ", other than popish recusants" were omitted.

4. RE-EXECUTION, REPUBLICATION AND REVIVAL OF WILLS

Every will re-executed or republished or revived by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the will or codicil was so re-executed, republished or revived.

5. DISPOSITION OF PROPERTY BY WILL

(1) Every person may devise, bequeath or dispose of by his will executed in the prescribed manner all real estate and all personal estate to which he is entitled either at law or in equity at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon the heir-at-law of him or, if he became entitled by descent, of his ancestor or upon his executor or administrator.

(2) The power given by this section shall extend to -

- (a) any estate pur autre vie whether there is or is not any special occupant thereof and whether the estate is freehold or of any other tenure and whether it is a corporeal or incorporeal hereditament;
- (b) every contingent, executory or other future interest in any real or personal estate whether the testator is or is not ascertained as the person or one of the persons in whom that interest may become vested, and, whether he is entitled to that interest under the instrument by which it was created or under any disposition thereof by deed or will;
- (c) every right of entry for condition broken and every other right of entry; and
- (d) any such estate, interest, right or other real or personal estate as is mentioned in this section to which the testator is entitled at the time of his death, notwithstanding that he became so entitled subsequently to the execution of his will.

6. PERSON UNDER 18 CANNOT MAKE WILL

(1) Subject to subsection (2), a will is not valid unless it is made by a person who has attained the age of 18 years.

(2) Nothing in subsection (1) shall be taken to affect the operation of section 7A.

7. EXTENSION OF TESTAMENTARY CAPACITY TO PERSONS IN NAVAL AND MILITARY FORCES

(1) A will made by any person who, at the time when it was made, was not under 18 years of age, and who -

- (a) was or had been, during the war which commenced on 4 August, 1914, a member of the Australian Imperial Forces or of any other naval or military force raised in Australia under the provisions of the *Defence Act* 1903-1918 of the Commonwealth for service in that war; or
- (b) during that war, was or had been a member of any of the Naval or Military Forces of the Commonwealth and was, under the provisions of any Act, liable to be required to serve as such member beyond the limits of the Commonwealth and those of the Territories under the authority of the Commonwealth,

shall, notwithstanding any other provision of this Act, or of any other Act of South Australia in its application to the Territory or of any Act, and whether the will was made during that war or after its termination, be as valid as if that person were not under the age of 21 years.

(2) This section shall apply to every such will made on or after 4 August, 1914.

#### 7A. WILLS OF SOLDIERS, &c.

(1) A testamentary disposition of real or personal property made by a person included in a class of persons specified in subsection (6), that is to say, a declaration, either oral or in writing, of such a person's intention with respect to the disposal of property upon or after his death, is as valid and effectual as it would have been if it had been made in a will executed in accordance with the provisions of this Act.

(2) An appointment made, either orally or in writing, by a person included in a class or persons specified in subsection (6) of another person to be the guardian of his infant children after his death is as valid and effectual as it would have been if it had been made in a will executed in accordance with the provisions of this Act.

(3) In any proceedings, evidence of a matter specified in subsection (4) that relates to a declaration referred to in subsection (1) or an appointment referred to in subsection (2) that has been made by a person is admissible for the purpose of proving that the person intended the declaration or appointment to have effect upon or after the person's death.

(4) The following matters are specified for the purpose of subsection (3) -

- (a) any statement made by the person, either orally or in writing, at or about the time when he made the declaration or appointment;
- (b) the circumstances in which the person made the declaration or appointment;
- (c) if the person made the declaration or appointment orally - the relationship between the person and the other person to whom the declaration or appointment was made; and
- (d) if the person made the declaration or appointment in writing - the relationship between the person and any other person -
  - (i) to whom the person gave that writing;
  - (ii) in whose presence the person wrote or signed that writing; or
  - (iii) who wrote that writing at the request or by the direction of the person.

(5) Subsection (3) is in addition to and not in substitution for any rules of law or procedure concerning evidence that is admissible in proceedings.

(6) Each of the following classes of persons is specified for the purposes of this section -

- (a) members of the Military Forces of the Commonwealth who are in actual military service;
- (b) members of the Naval Forces of the Commonwealth or of the Air Force of the Commonwealth who are so circumstanced that, if they were members of the Military Forces of the Commonwealth, they would be in actual military service;

- (c) persons subject to the *Defence Act* 1903 of the Commonwealth, or that Act as amended, by virtue of section 117A of that Act or of that Act as amended who are so circumstanced that, if they were members of the Military Forces of the Commonwealth, they would be in actual military service;
- (d) persons employed outside Australia as representatives of organizations rendering philanthropic, welfare or medical service to members of the Defence Force; and
- (e) prisoners of war or persons interned in a country under the sovereignty, or in the occupation, of the enemy or in a neutral country who became prisoners of war or were so interned as a result of war or war-like operations and were, immediately before their capture or internment, persons included in a class of persons specified in a preceding paragraph of this subsection.

#### 8. REQUIREMENTS AS TO WRITING AND EXECUTION OF WILL

Subject to section 12(2), a will shall not be valid unless it is in writing and executed in the following manner:

- (a) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction;
- (b) the signature shall be made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time; and
- (c) the witnesses shall attest and subscribe the will in the presence of the testator, but a form of attestation shall not be necessary.

#### 9. WHEN SIGNATURE TO A WILL TO BE DEEMED VALID

- (1) Every will shall, so far only as regards the position of the signature of the testator or of the person signing for him as mentioned in section 8, be deemed to be valid within the meaning of this Act, if the signature is so placed at, after, following, under, beside or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by his signature to the writing signed as his will.
- (2) Any such will shall not be affected by the circumstance -
  - (a) that the signature does not follow, or is not immediately after the foot or end of the will; or
  - (b) that a blank space intervenes between the concluding word of the will and the signature;
  - (c) that the signature is placed among the words of the testimonium clause, or of the clause of attestation, or follows or is after or under the clause of attestation, either with or without a blank space intervening, or follows, or is after, or under, or beside the names, or one of the names of the subscribing witnesses;
  - (d) that the signature is on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature; or
  - (e) that there appears to be sufficient space on or at the bottom of the preceding side or page, or other portion of the same paper on which the will is written, to contain the signature.



(3) The provisions of subsection (2) shall not restrict the generality of subsection (1), but, subject to section 12(2), a signature under this Act shall not be operative to give effect to any disposition or direction -

(a) which is underneath or which follows it; or

(b) which is inserted after the signature was made.

#### 10. EXERCISE OF POWER OF APPOINTMENT BY WILL

Where a person holds a power of appointment that is exercisable by will -

(a) the provisions of this Act relating to the formalities with which the will shall be executed apply in relation to the will notwithstanding that the power has been conferred on condition that a will made in exercise of the power should be executed with some other or lesser formality; and

(b) the power may be exercised by a will executed in accordance with this Act notwithstanding that the power has been conferred on condition that a will made in exercise of the power should be executed with some other or additional formality.

#### 11. [Repealed]

#### 12. VALIDITY OF WILL

(1) A will is valid where it is executed in accordance with this Act, notwithstanding that the will is not otherwise published.

(2) A document purporting to embody the testamentary intentions of a deceased person, notwithstanding that it has not been executed with the formalities required by this Act, is deemed to be a will of the deceased person where the Supreme Court, upon application for admission of the document to probate as the last will of the deceased person, is satisfied that there can be no reasonable doubt that the deceased person intended the document to constitute his will.

#### 13. WILLS MADE OUT OF THE TERRITORY

Every will made out of the Territory by a testator who died before the commencement of the *Wills Amendment Act 1985* (whatever the domicile of the testator at the time of making the will or at the time of his death) shall, as regards his personal estate, be held to be well executed for the purpose of being admitted in the Territory to probate, if it is made according to the forms required either -

(a) by the law of the place where it was made;

(b) by the law of the place where the testator was domiciled when it was made; or

(c) by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin.

#### 14. WILLS MADE IN THE TERRITORY

Every will made within the Territory by a testator who died before the commencement of the *Wills Amendment Act 1985* (whatever the domicile of the testator at the time of making it or at the time of his death) shall, as regards his personal estate be held to be well executed, and shall be admitted in the Territory to probate if it is executed according to the forms required by the laws for the time being in force in the Territory.

15. WILL VALIDLY EXECUTED IN FOREIGN COUNTRY

(1) A will executed in a foreign country and valid according to the law of that country for the purpose of passing either real estate or personal estate shall, where the testator died before the commencement of the *Wills Amendment Act 1985*, be valid for all purposes in the Territory as if duly executed according to the law of the Territory.

(2) Nothing contained in section 13 or 14 restricts the operation of subsection (1).

15A. INTERPRETATION AND APPLICATION

(1) In this section and sections 15B and 15C -

"country" means a place or group of places having its own law of nationality or citizenship (including the Commonwealth and its Territories);

"internal law", in relation to a country or place, means the law which would apply in a case where no question of the law in force in any other country or place arose;

"place" includes a State or Territory.

(2) For the purposes of subsection (1), "Common-wealth", "State" and "Territory" mean "Commonwealth", "State" and "Territory" respectively within the meaning of the *Acts Interpretation Act 1901* of the Commonwealth.

(3) Where under this Act the internal law in force in a country or place is to be applied in the case of a will, but there are in force in that country or place 2 or more systems of internal law relating to the formal validity of wills, there shall be applied -

(a) where there is in force throughout the country or place a rule indicating which of those systems can properly be applied in the case in question - the system to be applied according to that rule; or

(b) where there is no such rule, the system with which the testator was most closely connected at the relevant time and for this purpose the relevant time is the time of the testator's death, where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case.

(4) In determining for the purposes of this Act whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time where the alteration enables the will to be treated as properly executed.

(5) This section and sections 15B and 15C shall apply to a will of a testator who dies after the commencement of the *Wills Amendment Act 1985* whether the will was executed before or after that commencement.

(6) Where (whether in pursuance of this Act or not) a law in force outside the Territory is to be applied in relation to a will, a requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding a rule of that law to the contrary, as a formal requirement only.

## 15B. GENERAL RULE AS TO FORMAL VALIDITY

Notwithstanding any other provision of this Act, a will shall be treated as properly executed for all purposes where its execution conformed to the internal law in force -

- (a) in the place where the will was executed;
- (b) in the place where the testator was domiciled at the time -
  - (i) when he executed the will; or
  - (ii) of his death;
- (c) in the place where the testator habitually resided at a time referred to in paragraph (b); or
- (d) in the country of which the testator was a national or citizen at a time referred to in paragraph (b).

## 15C. ADDITIONAL RULES

Without limiting the generality of section 15B -

- (a) a will executed on board a vessel or aircraft of any description, where the execution of the will at that time conformed to the internal law in force in the country or place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will, so far as it disposes of immovable property, where at the time its execution conformed to the internal law in force in the country or place where the property was situated;
- (c) a will so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will where the execution of the later will at that time conformed to a law by reference to which the revoked will or provision would be so treated; and
- (d) a will so far as it exercises a power of appointment where the execution of the will at that time conformed to the law governing the essential validity of the power,

shall be treated as properly executed.

## 16. INCOMPETENCY OF WITNESS NOT TO INVALIDATE WILL

Where any person who attests the execution of a will is at the time of the execution thereof or at any time thereafter incompetent to be admitted as a witness to prove the execution the will shall not on that account be invalid.

## 17. GIFTS TO AN ATTESTING WITNESS TO BE VOID

(1) Where any person, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate (other than a charge or direction for the payment of any debts) is given or made by a will, attests the execution

of the will, the devise, legacy, estate, interest, gift or appointment shall, so far only as concerns the person so attesting the execution of the will or the wife or husband of that person or any person claiming under that person or wife or husband, be void.

(2) Notwithstanding any such devise, legacy, estate, interest, gift or appointment, the person so attesting shall be admitted as a witness to prove the execution of the will or the validity or invalidity thereof.

18. CREDITOR ATTESTING TO BE ADMITTED AS WITNESS

Where, by any will any real or personal estate is charged with any debt and any creditor whose debt is so charged or the wife or husband of that creditor attests the execution of the will, the creditor shall, notwithstanding the charge, be admitted as a witness to prove the execution of the will or the validity or invalidity thereof.

19. EXECUTOR TO BE ADMITTED AS WITNESS

An executor of a will shall not be incompetent to be admitted as a witness to prove the execution of the will or the validity or invalidity thereof.

20. WILL TO BE REVOKED BY MARRIAGE OF TESTATOR

(1) Subject to subsection (2), where a person marries after having made a will, the will is revoked by the marriage unless the will was expressed to have been made in contemplation of that marriage.

(2) Where a testator marries after he has made a will by which he has exercised a power of appointing real property or personal property by will, the marriage does not revoke the will insofar as it constitutes an exercise of that power if the property so appointed would not, in default of the testator exercising that power, pass to an executor under any other will of the testator or to an administrator of any estate of the testator.

21. NO WILL TO BE REVOKED BY PRESUMPTION

A will shall not be revoked by any presumption of an intention on the ground of an alteration in circumstances.

22. IN WHAT CASE WILLS MAY BE REVOKED

A will or codicil or any part thereof shall not be revoked otherwise than -

- (a) by marriage as provided by this Act;
- (b) by another will or codicil executed in the prescribed manner;
- (c) by some writing declaring an intention to revoke the will, codicil or part and executed in the manner in which a will is required by this Act to be executed; or
- (d) by the testator or some person in his presence and by his direction, with the intention of revoking the will, codicil or part, burning, tearing or otherwise destroying the will, codicil or part.

23. CHANGE OF DOMICILE NOT TO INVALIDATE WILL

A will shall not be deemed to be revoked or to have become invalid, and the construction thereof shall not be altered by reason of any subsequent change of domicile of the testator.

24. ALTERATIONS IN A WILL TO BE EXECUTED AS A WILL

(1) Any obliteration, interlineation or other alteration made in any will after the execution thereof shall not, except so far as the words or effect of the will before any such alteration are not apparent, be valid or have any effect, unless, subject to section 12(2), the alteration is executed in the manner in which a will is required by this Act to be executed.

(2) The will with the alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of witnesses are made in the margin or on some other part of the will opposite or near to the alteration or at the foot or end of or opposite to a memorandum referring to the alteration and written at the end or some other part of the will.

25. REVIVAL OF REVOKED WILLS

(1) A will or codicil or any part thereof which has been in any manner revoked shall not be revived otherwise than by the re-execution thereof or by a codicil executed in the prescribed manner and showing an intention to revive the will, codicil or part.

(2) When any will or codicil which has been partly revoked and afterwards wholly revoked is revived, the revival shall not, unless the contrary intention appears by the will, extend to so much of the will or codicil as was revoked before it was wholly revoked.

26. WHEN A DEVISE NOT TO BE RENDERED INOPERATIVE, &c.

A conveyance or other act (other than an act by which the will is revoked in the prescribed manner) made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised shall not prevent the operation of the will with respect to such estate or interest in that real or personal estate as the testator had power to dispose of by will at the time of his death.

27. A WILL TO SPEAK FROM THE DEATH OF THE TESTATOR

Every will shall, unless the contrary intention appears by the will, be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator.

28. WHAT A RESIDUARY DEVISE SHALL INCLUDE

Where any devise of real estate or interest in real estate fails or is void by reason of the death of the devisee in the lifetime of the testator or by reason of the devise being contrary to law or otherwise incapable of taking effect, the devise shall, unless the contrary intention appears by the will, be included in the residuary devise (if any) contained in the will.

29. ESTATES INCLUDED IN A GENERAL DEVISE

A devise of the land of the testator or of the land of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner, and any other general devise which would describe a leasehold estate if the testator had no free-hold estate which could be described by it, shall, unless the contrary intention appears by the will, be construed to include the leasehold estates of the testator or his leasehold estates or any of them to which such description extends, as the case may be, as well as freehold estates.

30. GENERAL DEVISES AND BEQUESTS OF PROPERTY SUBJECT TO A POWER OF APPOINTMENT

(1) A general devise of the real estate of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner shall, unless the contrary intention appears by the will -

- (a) be construed to include any real estate or any real estate to which the description extends, as the case may be, which he has power to appoint in any manner he thinks proper; and
- (b) operate as an execution of that power.

(2) A bequest of the personal estate of the testator or of personal property described in a general manner shall, unless the contrary intention appears by the will -

- (a) be construed to include any personal estate or any personal estate to which the description extends, as the case may be, which he has power to appoint in any manner he thinks proper; and
- (b) operate as an execution of that power.

### 31. DEVICES WITHOUT WORDS OF LIMITATION

Where any real estate is devised to any person without any words of limitation, that devise shall, unless the contrary intention appears by the will, be construed to pass the whole estate or interest, whether the fee simple or any other estate or interest, which the testator had power to dispose of by will in that real estate.

### 32. CONSTRUCTION OF THE WORDS "DIE WITHOUT ISSUE", &c.

(1) In any devise or bequest of real or personal estate the words "die without issue" or "die without leaving issue" or "have no issue" or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want of failure of issue in the lifetime or at the time of the death of that person and not an indefinite failure of his issue, unless a contrary intention appears by the will by reason of that person having a prior estate tail or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to that person or issue or otherwise.

(2) This section shall not extend to cases where the words mentioned in subsection (1) import if no issue described in a preceding gift is born or if there is no issue who lives to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

### 33. DEVICES TO TRUSTEES OR EXECUTORS, &c., NOT TO PASS A CHATTEL INTEREST

Where any real estate is devised to any trustee or executor, the devise shall be construed to pass the whole estate or interest, whether the fee simple or any other estate or interest, which the testator had power to dispose of by will in that real estate unless a definite term of years absolute or determinable or an estate of freehold is thereby given to the trustee or executor expressly or by implication.

### 34. TRUSTEES, UNDER AN UNLIMITED DEVISE, &c., TO TAKE THE FEE

Where any real estate is devised to a trustee without any express limitation of the estate to be taken by the trustee and the beneficial interest in the real estate or in the surplus rents and profits thereof is not given to any person for life or that beneficial interest is given to any person for life

but the purposes of the trust may continue beyond the life of that person, the devise shall be construed to vest in the trustee the whole legal estate, whether the fee simple or any other estate, which the testator had power to dispose of by will in that real estate and not an estate determinable when the purposes of the trust are satisfied.

### 35. DEVICES OF ESTATES TAIL NOT TO LAPSE

Where any person to whom any real estate is devised for an estate tail or an estate in quasi entail, dies in the lifetime of the testator leaving issue who would be heritable under such entail and any such issue is living at the time of the death of the testator, the devise shall not, unless the contrary intention appears by the will, lapse but shall take effect as if the death of that person has happened immediately after the death of the testator.

### 36. GIFTS TO CHILDREN OR OTHER ISSUE WHO LEAVE ISSUE

Where any person being a child or other issue of the testator to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of that person dies in the lifetime of the testator leaving issue and any such issue of that person is living at the time of the death of the testator, the devise or bequest shall not, unless the contrary intention appears by the will, lapse but shall take effect as if the death of that person had happened immediately after the death of the testator.

### 37. VALIDITY OF CERTAIN WILLS

Nothing contained in sections 13, 14 and 23 shall, with respect to any personal estate mentioned therein, invalidate any will or other testamentary instrument which would have been valid if those sections had not been enacted, except in so far as the will or other testamentary instrument may be revoked or altered by any subsequent will or testamentary instrument made valid by those sections.

## THE SCHEDULE

### Section 2

An Act for adopting a certain Act of Parliament intituled "An Act for the Amendment of the Laws with respect to Wills" in the administration of justice in South Australia in like manner as other laws of England are applied therein (Act No. 16 of 1842)

"Wills Amendment Act, 1862" (No. 15 of 1862)

An Act to amend the Law with respect to Wills (No. 620 of 1895)

### Notes

1. The *Wills Act* comprises the *Wills Ordinance* 1938 as amended by the other Ordinances and Acts specified in the following table:

Ordinance	Number and year	Date notified in	Date of commencement
<p>Northern Territory Law Reform Committee - Report on proposals for the reform for the law of wills</p>			

<i>Commonwealth Gazette</i>			
<i>Wills Ordinance</i> 1938	No. 4, 1938	21 April 1938	21 April 1938
		<hr/>	
		Date of assent by Administrator	
		<hr/>	
<i>Wills Ordinance</i> 1969	No. 16, 1969	26 June 1969	8 Feb 1971 (a)
<i>Ordinances Revision Ordinance 1973</i> as amended (b)	No. 87, 1973	11 Dec 1973	11 Dec 1973, but <i>see</i> s. 12(2)
	No. 34, 1974	26 Aug 1974	11 Dec 1973, but <i>see</i> s. 3(2)
	No. 69, 1974	24 Oct 1974	11 Dec 1973, but <i>see</i> s. 3
	No. 27, 1976	28 June 1976	Ss 1, 2 and 6: 28 June 1976, but <i>see</i> s. 6(2) Ss 3 and 4: 11 Dec 1973 S. 5: 24 Oct 1974
<i>Statute Law Revision Act</i> (No. 2) 1982	No. 54, 1982	8 Oct 1982	8 Oct 1982
<i>Wills Amendment Act 1984</i>	No. 43, 1984	25 Sept 1984	24 Oct 1984
<i>Wills Amendment Act 1985</i>	No. 16, 1985	23 May 1985	19 June 1985
<i>Statute Law Revision Act 1986</i>	No. 64, 1986	19 Dec 1986	19 Dec 1986
<i>Wills Amendment Act 1987 (c)</i>	No. 13, 1987	25 June 1987	25 June 1987

(a) - Section 2 of the *Wills Ordinance* 1969 provides as follows:

"(2) This Ordinance shall come into operation on the date on which the *Administration and Probate Ordinance* 1969 comes into operation."

Section 10 of the *Wills Ordinance* 1969 provides as follows:



"10. The amendments effected by sections 3 to 9 inclusive of this Ordinance apply to and in relation to a will or testamentary disposition of a person who dies after the commencement of this Ordinance, whether the will or testamentary disposition was made before or after the commencement of this Ordinance."

(b) General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance* 1973 (as amended) to the following provisions: ss. 2, 3, 6, 7, 7A, 8, 9, 13, 15, 20, 32, 37, 38, 39, 40 and 41.

(c) Section 2 of the *Wills Amendment Act 1987* repealed sections 38, 39, 40 and 41. Section 3 of that Act provides as follows:

"3. REGISTRAR OF PROBATES TO DEPOSIT WILLS AND INDEX WITH PUBLIC TRUSTEE

"(1) As soon as practicable after the commencement of this Act, the Registrar of Probates holding office under the *Administration and Probate Act* shall deposit with the Public Trustee all wills deposited in the office of the Registrar of Probates under section 38, or which shall be deemed to have been so deposited under section 41, of the *Wills Act* as in force immediately before that commencement and then in his possession.

"(2) On the wills referred to in subsection (1) being deposited with him, the Public Trustee shall give to the Registrar of Probates a receipt for the wills and treat them as if they were wills deposited with the Public Trustee under section 88A(1) of the *Public Trustee Act*.

"(3) A receipt under subsection (2) is a full and sufficient discharge of the duties and responsibilities of the Registrar of Probates under the sections repealed by section 3 in respect of the wills to which the receipt relates."

2. The *Administration and Probate Ordinance* commenced on 8 Feb 1971 (see *Northern Territory Government Gazette* No. 51 - 23 December 1970; p. 371).

3. Section 7 of the *Wills Amendment Act 1984* provided as follows:

"7. TRANSITIONAL

"The Principal Act as amended by this Act applies to all wills, whenever made, where the testator dies after the commencement of this Act."

*Table of Amendments*

Section

Long title

Amended by No. 54, 1982, s. 2

- |       |  |
|-------|--|
| 1.    | Amended by No. 58, 1978, s. 4; No. 54, 1982, s. 2  |
| 2.(2) | Amended by No. 54, 1982, s. 2                      |
| 3.(1) | Amended by No. 16, 1969, s. 3; No. 54, 1982, s. 2  |
| 4.    | Amended by No. 54, 1982, s. 2                      |
| 6.    | Substituted by No. 16, 1969, s. 4                  |
| 7.(1) | Amended by No. 87, 1973, s. 12; No. 54, 1982, s. 2 |
| 7A.   | Inserted by No. 16, 1969, s. 5                     |

- 7A.(1) Amended by No. 54, 1982, s. 2
  - 7A.(2) Amended by No. 54, 1982, s. 2
  - 7A.(6) Amended by No. 54, 1982, s. 2
  - 8. Amended by No. 43, 1984, s. 6
  - 9.(1) Amended by No. 54, 1982, s. 2
  - 9.(3) Amended by No. 54, 1982, s. 2; No. 43, 1984, s. 6
  - 10. Substituted by No. 43, 1984, s. 4
  - 11. Repealed by No. 16, 1969, s. 6
  - 12. Substituted by No. 43, 1984, s. 4
  - 13. Amended by No. 87, 1973, s. 12; No. 16, 1985, s. 4
  - 14. Amended by No. 16, 1985, s. 5
  - 15. Substituted by No. 16, 1969, s. 7
  - 15.(1) Amended by No. 54, 1982, s. 2; No. 16, 1985, s. 6
  - 15.(2) Amended by No. 87, 1973, s. 12
  - 15A. Inserted by No. 16, 1985, s. 7
  - 15B. Inserted by No. 16, 1985, s. 7; amended by No. 64, 1986, s. 4
  - 15C. Inserted by No. 16, 1985, s. 7
  - 20. Substituted by No. 16, 1969, s. 9
  - 22. Amended by No. 54, 1982, s. 2
  - 24.(1) Amended by No. 54, 1982, s. 2; No. 43, 1984, s. 6
  - 38. Added by No. 16, 1969, s. 9; repealed by No. 13, 1987, s. 2
  - 39. Added by No. 16, 1969, s. 9; repealed by No. 13, 1987, s. 2
  - 40.
  - 39.(2) Amended by No. 54, 1982, s. 2
  - 40. Added by No. 16, 1969, s. 9; repealed by No. 13, 1987, s. 2
  - 41. Added by No. 16, 1969, s. 9; amended by No. 54, 1982, s. 2; repealed by No. 13, 1987, s. 2
-