

# AUSTRALIAN CAPITAL TERRITORY.

No. 2 of 1954.

## AN ORDINANCE

### To amend the Administration and Probate Ordinance 1929-1950, as amended by the Administration and Probate Ordinance 1953.

**B**E it ordained by the Governor-General in and over the Commonwealth of Australia, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909-1938 and the *Seat of Government (Administration) Act* 1910-1947, as follows:—

1.—(1.) This Ordinance may be cited as the *Administration and Probate Ordinance (No. 2) 1953*.\*

Short title and citation.

(2.) The *Administration and Probate Ordinance* 1929-1950, as amended by the *Administration and Probate Ordinance* 1953, is in this Ordinance referred to as the Principal Ordinance.

(3.) Section one of the *Administration and Probate Ordinance* 1953 is amended by omitting sub-section (3.).

(4.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Administration and Probate Ordinance* 1929-1953.

2. Section forty-five of the Principal Ordinance is amended by omitting from paragraph (b) the words "Five hundred pounds" (wherever occurring) and inserting in their stead the words "One thousand pounds".

Husband's interest in wife's estate and vice versa.

3. Part VII. of the Principal Ordinance is repealed and the following Part inserted in its stead:—

#### "PART VII.—TESTATOR'S FAMILY MAINTENANCE.

"110.—(1.) Where a person disposes of his property, either wholly or partly, by will or codicil in such a manner that, upon his death, the widow, widower or children of that person, or any of them, are left without adequate provision for their proper maintenance, education or advancement in life, the Court may, in its discretion and taking into consideration all the circumstances of the case, on application by or on behalf of the widow, widower or children, or any of them, order that such provision as the Court thinks fit shall be made out of the estate of the deceased person for the proper maintenance, education and advancement in life of the widow, widower or children, or any of them.

Where no adequate provision made by deceased person, Court may make orders, &c.

\* Notified in the *Commonwealth Gazette* on 7th January, 1954.

“(2.) The applicant shall serve notice of an application made under the last preceding sub-section on the executor of the will or the administrator with the will annexed, as the case may be, of the deceased person and on such other persons as the Court directs.

“(3.) Where a person dies wholly intestate and, in consequence of the provisions of sections forty-five and forty-six of this Ordinance, his widow or her widower, as the case may be, is left without adequate provision for his or her proper maintenance, the Court may, in its discretion and taking into consideration all the circumstances of the case, on application by or on behalf of the widow or widower, order that such provision as the Court thinks fit shall be made out of the estate of the deceased person for the proper maintenance of the widow or widower, as the case may be.

“(4.) The applicant shall serve notice of an application made under the last preceding sub-section on such persons as the Court directs.

“(5.) The Court may attach such conditions to an order made under this section as it thinks fit or may refuse to make an order in favour of a person whose character or conduct is such as to disentitle him to the benefit of an order.

“(6.) In making an order the Court may, if it thinks fit, order that provision for the widow, widower or children of a deceased person, or any of them, made under this section, consist of a lump sum or a periodical or other payment.

Provision to  
operate as  
codicil.

“111.—(1.) Except as provided in the next succeeding sub-section, a provision made under this Part shall, subject to this Part, operate and take effect as if it had been made as a codicil to the will of the deceased person executed immediately before his or her death.

“(2.) An order made under sub-section (3.) of the last preceding section shall, subject to this Part, operate and take effect as a modification of the provisions of sections forty-five and forty-six of this Ordinance.

Time within  
which  
application  
must be made.

“112.—(1.) Except as provided in the next succeeding sub-section, an application under this Part by the widow or widower or a child of a deceased person shall not be heard by the Court unless the application is made within the period of six months after the date of the grant or resealing—

- (a) of probate of the will or letters of administration with the will annexed; or
- (b) of letters of administration of the estate of the deceased person.

“(2.) The widow or widower or a child of a deceased person may either before or after the expiration of the period specified in the last preceding sub-section, apply to the Court for an extension

of the time for making the application and the Court may, after hearing such persons as it thinks necessary, extend that time for such period as it thinks fit.

“(3.) An application under this Part shall be deemed to be made on the day on which the notice of motion or other process originating the application is filed.

“113.—(1.) An order under this Part making provision for the widow or widower or a child of a deceased person shall, *inter alia*— Contents of order.

- (a) specify the amount and nature of that provision;
- (b) specify the part or parts of the estate out of which the provision shall be raised or paid;
- (c) prescribe the manner of raising and paying the provision; and
- (d) state any conditions, restrictions or limitations imposed by the Court.

“(2.) Subject to the next succeeding sub-section, unless the Court otherwise orders, the burden of a provision referred to in the last preceding sub-section shall as between the persons beneficially entitled to the estate of the deceased person be borne by those persons in proportion to the values of their respective interests in the estate.

“(3.) The estates and interests of persons successively entitled to any property which is settled by a will or codicil shall not for the purposes of the last preceding sub-section be separately valued but the proportion of the provision made by an order under this Part to be borne by that property shall be raised or charged against the corpus of the property.

“(4.) The Court shall, in every case in which provision is made by an order under this Part, direct that a certified copy of the order be made upon the probate of the will or letters of administration with the will annexed or letters of administration of the estate of the deceased person, as the case may be, and for that purpose may require the production of the probate or letters.

“(5.) The Court may at any time and from time to time on the application by motion of the executor or the administrator with the will annexed of the testator's estate or of the administrator of the estate of the deceased person or of any person beneficially entitled to or interested in any part of the estate of the deceased person rescind or alter an order making provision under this Part.

“(6.) Notice of a motion made in pursuance of the last preceding sub-section shall be served on all persons taking any benefit under the order sought to be rescinded or altered.

“(7.) The Court may make such order as to the costs of a proceeding under this Part as it deems just.

Court may  
fix periodic  
payment or  
lump sum.

" 114. The Court may at any time fix a periodic payment or lump sum to be paid by a legatee, devisee or beneficiary to represent or in commutation of, such proportion of a sum ordered under this part to be paid as falls upon the portion of the estate to which he is entitled under a will or in consequence of an intestacy and may exonerate that portion from further liability and direct—

- (a) in what manner the periodic payment shall be secured ;
- (b) to whom the lump sum shall be paid ; and
- (c) in what manner it shall be invested for the benefit of the person to whom the commuted payment was payable.

Court may  
make  
subsequent  
inquiries and  
vary or  
discharge  
order.

" 115. Where the Court has ordered periodic payments or has ordered a lump sum to be invested for the benefit of a person, it may inquire whether at any subsequent date the party benefited by its order has become possessed of or entitled to provision for his proper maintenance or support and into the adequacy of that provision and may discharge, vary or suspend its order or make such other order as is just in the circumstances.

Permission of  
Court, &c.,  
necessary to  
mortgage.

" 116. A mortgage, charge or assignment of or over a provision made by an order under this Part, whether before or after the order is made, shall not be of any force, validity or effect unless made with the permission of the Court.

Distribution  
of assets.

" 117.—(1.) Before proceeding to a distribution of assets in accordance with section 64 of this Ordinance, the executor or administrator shall have regard to any applications under this Part of which the executor or administrator then has notice.

" (2.) An executor or administrator shall not be liable for the assets, or any of them, distributed in pursuance of section 64 of this Ordinance to a person of whose application under this Part he has not had notice at the time of the distribution.

" (3.) Nothing in this section prevents the Court from ordering that a provision in an order under this Part shall be made out of any assets so distributed."

Application to  
estate of a  
person dying  
before the  
commencement  
of this  
Ordinance.

4. The provisions of Part VII. of the Principal Ordinance, as amended by this Ordinance, apply to and in relation to the estate of a person who died before the date of commencement of this Ordinance as if that person had died after that date.

Dated this twenty-second day of December, 1953.

W. J. SLIM

Governor-General.

By His Excellency's Command,

J. A. SPICER

for and on behalf of the Minister of State  
for the Interior.

By Authority: L. F. JONSTON, Commonwealth Government Printer, Canberra.