

# AUSTRALIAN CAPITAL TERRITORY

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## Married Persons' Property Ordinance 1986

No. 18 of 1986

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 18 June 1986.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

LIONEL BOWEN  
Attorney-General

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An Ordinance relating to the rights and liabilities of married persons in respect of property

### Short title

1. This Ordinance may be cited as the *Married Persons' Property Ordinance 1986*.<sup>1</sup>

### Interpretation

2. In this Ordinance, unless the contrary intention appears, "court" means the Supreme Court or the Magistrates Court.

### Legal capacity of married women

3. (1) Except as otherwise provided by another law of the Territory, a married woman has, for all purposes, the same rights, privileges, powers, capacities, duties and liabilities as a married man, whether she is acting in a personal, official, representative or fiduciary capacity.

(2) Sub-section (1) applies in relation to any married woman, whether she was married before or after the commencement of this Ordinance, and whether or not her marriage took place in the Territory.

#### **Authority to pledge spouse's credit**

4. (1) A husband living with his wife has the same presumed or implied authority to pledge his wife's credit as a wife living with her husband has to pledge her husband's credit.

(2) A reference in sub-section (1) to the husband or wife of a person shall, where the person is living with another person of the opposite sex as the spouse of that other person on a *bona fide* domestic basis although not married to that other person, be read as including a reference to that other person.

#### **Agent of necessity**

5. Any rule of law or equity conferring on a married woman authority, as agent of necessity of her husband, to pledge his credit or to borrow money on his credit ceases to have any force or effect in the Territory.

#### **Restriction upon anticipation or alienation**

6. Any instrument executed after the commencement of this Ordinance is void to the extent that it purports to attach any restriction upon anticipation or alienation to the enjoyment by a woman of any property that could not have been attached to the enjoyment by a man of that property.

#### **Debts incurred before marriage**

7. A married person is not liable for any debt incurred by his or her spouse before their marriage.

#### **Crimes in respect of spouse's property**

8. An act that would, if done by a married man in respect of any property of his wife, make him liable to criminal proceedings shall, if done by a married woman in respect of any property of her husband, make her liable to criminal proceedings.

#### **Transfer of property to spouse or child**

9. (1) Where property or an interest in property paid for by a woman with her money, or owned by a woman—

- (a) is vested in or transferred to her husband, or her child or another person to whom she stands in loco parentis; or

- (b) is vested jointly in or transferred jointly to herself and her husband, or herself and her child or herself and another person to whom she stands in loco parentis,

then, unless the contrary intention appears, the same presumptions of gift or advancement shall be taken to arise in respect of the property or the interest in property, as the case may be, as would arise if the property or interest had been paid for by a man with his money, or owned by a man, and had respectively—

- (c) vested in or been transferred to his wife, or his child or another person to whom he stands in loco parentis; or
- (d) vested jointly in, or been transferred jointly to, himself and his wife, or himself and his child or himself and other person to whom he stands in loco parentis.

**(2) Where—**

- (a) a husband and his wife both contribute to the purchase of property or an interest in property; and
- (b) the property of the interest is vested in or transferred to one spouse (in this sub-section referred to as the “transferee”),

then, unless the contrary intention appears, the transferee shall be taken to hold the property or the interest, as the case may be, in trust for himself or herself and the other spouse as joint tenants.

**Purchase or transfer of property before marriage**

**10. (1)** Where property or an interest in property paid for by a person with his or her money or owned by the person (in this sub-section referred to as the “transferor”) is, in the transferor’s contemplation of his or her marriage to another person (in this sub-section referred to as the “transferee”) vested in or transferred to the transferee then, unless the contrary intention appears—

- (a) until the marriage takes place, the transferee shall be taken to hold the property, or the interest in property, as the case may be, in trust for the transferor; and
- (b) upon the marriage of the transferor to the transferee, the transferee shall be taken to hold the property or interest absolutely.

**(2)** Where property or an interest in property paid for by a person with his or her money or owned by the person (in this sub-section referred to as the “transferor”) is, in the transferor’s contemplation of his or her marriage to another person (in this sub-section referred to as the “transferee”), vested

jointly in or transferred jointly to the transferor and the transferee then, unless the contrary intention appears—

- (a) until the marriage takes place, the transferor and the transferee shall be taken to hold the property, or the interest in property, as the case may be, in trust for the transferor; and
- (b) upon the marriage of the transferor to the transferee, the transferor and the transferee shall be taken to hold the property or interest as joint tenants.

**(3) Where—**

- (a) 2 persons, in contemplation of their marriage to each other, both contribute to the purchase of property or an interest in property; and
- (b) the property or the interest in property, as the case may be, is vested in or transferred to one of the persons (in this sub-section referred to as the “transferee”),

then, unless the contrary intention appears—

- (c) until the marriage takes place, the property or the interest shall be taken to be held by the transferee in trust for himself or herself and the other person as tenants in common in shares proportionate to their respective contributions; and
- (d) upon the marriage of those persons, the property or the interest shall be taken to be held by the transferee in trust for himself or herself and the other person as joint tenants.

**Housekeeping allowances**

**11.** Where a married person makes a payment or allowance to his or her spouse to pay their joint household expenses or for similar purposes, any property bought with the payment or allowance and any money not spent from the payment or allowance shall, in the absence of any agreement to the contrary between the person and his or her spouse, be taken to belong to the person and his or her spouse as joint tenants.

**Married couple as beneficiaries**

**12.** For the purposes of the construction of a will, deed or other instrument in relation to a gift or other disposition of real or personal property to 2 or more persons as joint tenants or as tenants-in-common, any husband and his wife included among those persons shall, unless the contrary intention is shown, be

treated as 2 separate persons for the purpose of calculating the share of the property to which each of the persons is entitled.

### **Applications to determine property disputes**

**13.** Where any question arises between a husband and his wife in relation to the title to, or possession or disposition of, any property (including any question in relation to the investment by one spouse of money of the other spouse without the consent of the other) the husband or wife, or a third party on whom conflicting claims are being made by the husband and wife in relation to any property, may apply to the court to hear and determine the question.

### **Jurisdiction of Magistrates Court**

**14.** The jurisdiction of the Magistrates Court to hear and determine a question referred to in section 13 is—

- (a) subject to section 10 of the *Magistrates Court (Civil Jurisdiction) Ordinance 1982*; and
- (b) limited to a case where the question relates to property having a value not exceeding \$10,000.

### **Powers of the court**

**15. (1)** In proceedings instituted by an application under section 13 in respect of property the court may, on the application of a party to the proceedings, grant an injunction restraining any person from making any threatened or apprehended transfer, assignment, sale or other disposition of the property until the application under section 13 is heard and determined.

**(2)** On the hearing of an application under section 13 in respect of property the court may make such orders in relation to the title to, or the possession or disposition of, the property as it thinks fit, and may, in particular, make orders for the sale of the property and the division of the proceeds of sale, or for the partition or division of the property.

**(3)** For the purpose of giving effect to any order made in relation to property under sub-section (2), the court may set aside any transfer, assignment, sale or other disposition of the property that was made with a view to defeating an existing or apprehended order in respect of the property.

**(4)** When making an order in relation to property under sub-section (2), the court shall have regard to the interests of, and shall make any order proper for the protection of, a person who purchased the property in good faith or any other interested person.

(5) Where an application under section 13 relates to money of the spouse of a married person that was invested by the person without the spouse's consent, the court may order that an amount equal to the amount of the money and any interest, dividend or other profit derived from the money be paid to the spouse.

(6) Where a third party referred to in section 13 makes an application under that section, the third party shall, for the purposes of the proceedings in relation to the application, be treated as a stakeholder only.

(7) On the hearing of an application under section 13 or sub-section (1), the court may direct any inquiry touching the matters in question to be made in any manner the court thinks fit.

(8) Nothing in this Ordinance shall be taken to affect any power of the court conferred by any other law of the Territory.

***Married Women's Property Ordinance 1968—repeal***

16. The *Married Women's Property Ordinance 1968* is repealed.

***Married Women's Property Act 1901 (N.S.W.)—cessation of effect***

17. The Married Women's Property Act, 1901 of the State of New South Wales shall cease to be in force in the Territory.

***Amendment of Seat of Government (Administration) Ordinance 1930***

18. The Second Schedule to the *Seat of Government (Administration) Ordinance 1930* is amended by inserting in Part I—

“*Married Persons' Property Ordinance 1986*”

after—

“*Maintenance Ordinance 1968*”.

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 26 June 1986.