



Australian Capital Territory

## **Wills Act 1968**

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## **About this republication**

### **The republished law**

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## AUSTRALIAN CAPITAL TERRITORY

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### **WILLS ACT 1968**

*Reprinted as at 31 October 1992*

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## AUSTRALIAN CAPITAL TERRITORY

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### **WILLS ACT 1968**

An Act to make Provisions in relation to the Execution and Interpretation of Wills, and for other Purposes

#### **PART I—PRELIMINARY**

##### **Short title**

1. This Act may be cited as the *Wills Act 1968*.<sup>1</sup>

##### **Repeal and saving**

**3. (1)** The Wills, Probate and Administration Act, 1898, of the State of New South Wales, to the extent to which it applied to the Territory immediately before the commencement of this Act, ceases to apply to the Territory as a law of the Territory.

- (2)** The *Wills (War Service) Ordinance 1942* is repealed.

**(3)** Notwithstanding the preceding provisions of this section, the Wills, Probate and Administration Act, 1898, of the State of New South Wales, to the extent referred to in subsection (1) of this section, and the *Wills (War Service) Ordinance 1942*, continue to apply to and in relation to a will or testamentary disposition of a person who died before the commencement of this Act.

**Interpretation**

4. In this Act, unless the contrary intention appears—

“personal property” includes leasehold property, and a share or interest in personal property;

“real property” includes an estate, right or interest in real property;

“the Registrar” means the Registrar of Probates holding office under the *Administration and Probate Act 1929-1967*;

“will” includes a codicil.

**Application of Act**

5. Except as otherwise provided by this Act, this Act applies to and in relation to a will or testamentary disposition of a person who dies after the commencement of this Act, whether the will or testamentary disposition was made before or after the commencement of this Act.

**PART II—WILLS****Person may dispose of all his property by will**

7. (1) A person may, by his will, devise, bequeath or dispose of any real property or personal property to which he is entitled at the time of his death, whether he became entitled to the property before or after the execution of his will.

(2) Without limiting the generality of the last preceding subsection, a person may, by his will, dispose of—

- (a) property that, if not disposed of by his will, would devolve on the executor of his will or the administrator of his estate;
- (b) an estate *pur autre vie*, whether there is or is not a special occupant of the estate, whether the estate is freehold or of any other tenure and whether the estate is a corporeal or incorporeal hereditament;
- (c) a contingent, executory or future interest in real property or personal property, whether he becomes entitled to the interest by virtue of the instrument by which the interest was created or by virtue of a disposition of the interest by deed or will and whether he has or has not been ascertained as the person or one of the persons in whom the interest may become vested; and

- (d) a right of entry for conditions broken and any other right of entry.

**Minors—testamentary capacity**

**8. (1)** Subject to this section and section 16, a will made by a minor is not valid.

**(2)** A minor who is or has been married may make a valid will and may revoke a will, or a part of a will, which he or she has made.

**(3)** A will made by a minor who may marry and which is made in contemplation of a marriage is, on the solemnisation of the marriage contemplated, valid.

**(4)** Where the Supreme Court, on an application by a minor under section 8A, makes an order in accordance with that section enabling the minor to make a will in the specific terms of a proposed will attached to the application, the minor may make a valid will in those terms.

**(5)** Where the Supreme Court, on an application by a minor under section 8B, makes an order in accordance with that section enabling the minor to revoke a will, or a part of a will, the minor may revoke the will, or the part of the will, in accordance with that order.

**(6)** A minor who has made a will in accordance with an order of the Supreme Court under section 8A and who has not at any time been married may not revoke the will, or a part of the will, otherwise than in accordance with an order of the Supreme Court under section 8B.

**(7)** This section has effect subject to section 9.

**Supreme Court enabling will by minor**

**8A. (1)** A minor may apply to the Supreme Court for an order declaring that the minor is entitled to make a will in the terms of a proposed will attached to the application.

**(2)** On an application made by a minor under subsection (1), the Supreme Court may, if it is satisfied that—

- (a) the minor understands the nature and effect of the proposed will;
- (b) the proposed will accurately reflects the intentions of the minor; and

- (c) it is reasonable in all the circumstances that the minor should be able to make the proposed will;

make an order declaring that the minor is entitled to make a valid will in the specific terms of the proposed will attached to the application.

### **Supreme Court enabling revocation of will by minor**

**8B. (1)** A minor who has made a valid will and has not at any time been married may apply to the Supreme Court for an order declaring that the minor is entitled to revoke the will, or a part of the will, by an instrument in the terms of a proposed instrument attached to the application.

**(2)** On an application made by a minor under subsection (1), the Supreme Court may, if it is satisfied that—

- (a) the minor understands the nature and effect of the proposed instrument;
- (b) the proposed instrument accurately reflects the intentions of the minor; and
- (c) it is reasonable in all the circumstances that the minor should be able to revoke the will, or the part of the will, by the proposed instrument;

make an order declaring that the minor is entitled to revoke the will, or the part of the will, by executing an instrument in the specific terms of the proposed instrument attached to the application.

### **Will to be in writing and signed before 2 witnesses**

**9. (1)** Subject to this Act, a will is not valid unless—

- (a) it is in writing;
- (b) it is signed at the foot or end by the testator, or by another person in the presence of and by the direction of the testator;
- (c) the signature of the testator is made or acknowledged, or the signature of the person who signs the will by the direction of the testator is acknowledged, by the testator in the presence of two or more witnesses present at the same time; and
- (d) two or more of those witnesses each attest that signing of the will or that acknowledgment of the signing of the will and subscribe the will in the presence of the testator and of the other witness or witnesses.

**(2)** The last preceding subsection shall not be taken to require any form of attestation on a will.



**When signature to a will shall be deemed valid**

**10. (1)** A will, so far only as regards the position of the signature of the testator on the will, is not invalid 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 that signature to the writing signed as his will.

**(2)** Without limiting the generality of the last preceding subsection, the validity of a will is not affected by reason of the fact—

- (a) that the signature of the testator does not follow, or is not immediately after, the foot or end of the will;
- (b) that a blank space intervenes between the concluding word of the will and the signature;
- (c) that the signature—
  - (i) is placed among the words of the testimonium clause or of the clause of attestation;
  - (ii) follows, or is after or under, the clause of attestation, whether or not a blank space intervenes between the concluding word of that clause and the signature; or
  - (iii) follows, or is after, under or beside, the names, or one of the names, of the subscribing witnesses;
- (d) that the signature is on a side, page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the will is written above the signature; or
- (e) that there appears to be sufficient space for the signature on or at the bottom of the preceding side, page or other portion of the paper on which the will is written.

**(3)** The signature of the testator on a will does not operate to give effect to a disposition or direction that is underneath or follows that signature, or that is inserted in the will after that signature is made.

**(4)** In this section, references to the signature of the testator shall, in relation to a will signed by a person by the direction of the testator, be read as references to the signature of that person.

**Appointments by will**

**11. (1)** Where a testator purports to make an appointment by his or her will in exercise of a power of appointment, the appointment is not valid unless the will is—

- (a) executed in accordance with this Part; or
- (b) pursuant to Part IIA, to be taken to have been properly made.

**(2)** Where power is conferred on a person to make an appointment by a will that is 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 Part but is not executed in that manner or with that solemnity.

**Validity of will etc. not executed with required formalities**

**11A. (1)** A document, or a part of a document, purporting to embody testamentary intentions of a deceased person shall, notwithstanding that it has not been executed in accordance with the formal requirements of this Act, constitute a will of the deceased person, an amendment of the will of the deceased person or a revocation of the will of the deceased person if the Supreme Court is satisfied that the deceased person intended the document or part of the document to constitute his or her will, an amendment of his or her will or the revocation of his or her will respectively.

**(2)** In forming a view of whether a deceased person intended a document or a part of a document to constitute his or her will, an amendment of his or her will or a revocation of his or her will, the Supreme Court may, in addition to having regard to the document, have regard to—

- (a) any evidence relating to the manner of execution of the document; or
- (b) any evidence of the testamentary intentions of the deceased person, including evidence (whether admissible before the commencement of this section or not) of statements made by the deceased person.

**Alteration in will**

**12. (1)** An obliteration, interlineation, or other alteration made in a will after the execution of the will is not valid or effectual for any purpose, except so far as a word in the will or the effect of the will before the alteration is not apparent, unless—

- (a) the obliteration, interlineation or alteration is signed by the testator or by another person in the presence of and by the direction of the testator;

- (b) the signature of the testator is made or acknowledged, or the signature of the person who signs the will by the direction of the testator is acknowledged, by the testator in the presence of two or more witnesses present at the same time; and
- (c) two or more of those witnesses each attest that signing or that acknowledgment of that signing and subscribe the obliteration, interlineation or alteration in the presence of the testator and of the other witness or witnesses.

(2) An obliteration, interlineation or other alteration made in a will after the execution of the will shall be deemed to comply with the provisions of the last preceding subsection if the signature of the testator or of the person who signs on behalf of the testator and the subscription of the witnesses, in relation to the obliteration, interlineation or other alteration, are made—

- (a) in the margin, or on some other part of the will, opposite or near to the obliteration, interlineation or other alteration; or
- (b) at the foot or end of, or opposite to, a memorandum that refers to the obliteration, interlineation or other alteration and is written at the end, or at another part, of the will.

### **Rectification**

**12A. (1)** If the court is satisfied that the probate copy of the will of a testator is so expressed that it fails to carry out his or her intentions, it may order that the will be rectified so as to carry out the testator's intentions.

(2) If the court is satisfied that circumstances or events existed or occurred before, at or after the execution by a testator of his or her last will, being circumstances or events—

- (a) that were not known to, or anticipated by, the testator;
- (b) the effects of which were not fully appreciated by the testator; or
- (c) that occurred at or after the death of the testator;

in consequence of which the provisions of the will applied according to their tenor would fail to accord with the probable intention of the testator had he or she known of, anticipated or fully appreciated the effects of those circumstances or events, the court may, if it is satisfied that it is desirable in all the circumstances to do so, order that the probate copy of the will be rectified so as to give effect to that probable intention.

(3) Except with the leave of the court, an application to the court for an order for rectification shall not be made after the expiration of the period of 6 months commencing—

- (a) where the Public Trustee is administering the estate of the testator under section 87B or 87C of the *Administration and Probate Act 1929*—on the day on which notice was given under subsection 87B (3) or 87C (5), as the case requires, of that Act;
- (b) where an order has been granted under subsection 88 (1) or (3) of that Act in respect of the estate of the testator—on the day on which the order was granted; or
- (c) in any other case—on the day of the grant of probate of the will or letters of administration of the relevant estate with will annexed.

(4) A personal representative of a deceased person may, within the period of 4 months commencing on the day referred to in paragraph 3 (a), (b) or (c) (whichever is applicable), by advertisement published in a daily newspaper circulating in the Territory, give notice of his or her intention to distribute all or part of the estate of the deceased person after the expiration of the period of 2 months commencing on the day on which the advertisement was so published and requiring any person wishing to make an application for an order for rectification to do so within that period of 2 months.

(5) A personal representative of a deceased person is not liable for having distributed any part of the estate of the deceased person otherwise than in accordance with the provisions of the will of that deceased person as altered by an order for rectification where the distribution was made prior to the making of that order in accordance with the provisions of the will before it was so altered and, at the time of the distribution—

- (a) a period of 2 months had elapsed since an advertisement was published in accordance with subsection (4) and the personal representative had not received notice that an application had been made to the court for an order for rectification; or

- (b) the period of 6 months commencing on the day referred to in paragraph 3 (a), (b) or (c) (whichever is applicable) had expired and—
- (i) the personal representative had not received notice that an application had been made to the court for an order for rectification, that the court had granted leave to apply for such an order or that an application had been made to the court for leave to apply for such an order; or
  - (ii) the court had granted leave to apply for an order for rectification but a period of 7 days had elapsed since the day on which that leave was granted without any application for such an order having been made.

(6) Nothing in this section shall be taken to affect the right of a person, arising by reason of the making of an order for rectification, to recover any part of the estate of a deceased person that had been distributed before that order was made.

(7) In this section, unless the contrary intention appears—

“court” means the Supreme Court;

“order for rectification” means an order inserting material in, or omitting material from, the probate copy of a will;

“personal representative”, in relation to a deceased person, means the executor of the will of the deceased person or the administrator of the estate of the deceased person (including the Public Trustee when administering the estate of the deceased person under section 87B, 87C or 88 of the *Administration and Probate Act 1929*);

“probate copy”, in relation to a will of a deceased person, includes the copy of the will—

- (a) annexed to letters of administration of the estate of the deceased person;
- (b) used in administering the estate of the deceased person under section 87B of the *Administration and Probate Act 1929*;
- (c) annexed to an election to administer the estate of the deceased person under section 87C of that Act; or
- (d) annexed to an order granted to collect and administer the estate of the deceased person under section 88 of that Act.

**Extrinsic evidence**

**12B.** In proceedings to construe a will, evidence, including evidence of the testator's dispositive intention, is admissible to the extent that the language used in the will renders the will, or any part of the will—

- (a) meaningless;
- (b) ambiguous or uncertain on the face of the will; or
- (c) ambiguous or uncertain in the light of the surrounding circumstances;

but evidence of a testator's dispositive intention is not admissible to establish any of the circumstances referred to in paragraph (c).

**Publication of will unnecessary**

**13.** The validity of a will that has been executed in accordance with the provisions of this Part is not affected by reason that a person who subscribed the will as a witness was unaware that the document was a will.

**Will not voided by incompetence of witness**

**14.** The validity of a will that has been executed in accordance with the provisions of this Part is not affected by reason that a person who subscribed the will as a witness was, at the time of the execution of the will, incompetent to be admitted as a witness to prove the execution of the will or became so incompetent at any time after the execution of the will.

**Certain appointments and trusts not void**

**14A.** Where a testator, by his or her will—

- (a) confers on a person a power to appoint property; or
- (b) appoints a person to be trustee of any property with power to distribute the property as the trustee thinks fit;

the conferral of that power, or the creation of that trust, by the will shall not be void if the same power could have been conferred, or the same trust created, by an instrument *inter vivos*.

**Will attested by beneficiary or spouse of beneficiary**

**15.** No will or testamentary provision of a will shall be void by reason only of the execution of the will having been attested by a person, or the spouse of a person, who has or may acquire, under the will or provision, any interest in property subject to the will.

## PART IIA—FORMAL VALIDITY OF WILLS

### Interpretation

**15A.** In this Part, unless the contrary intention appears—

“country” means any place or group of places having its own law of nationality or citizenship;

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

“made”, in relation to a will, means executed or otherwise made;

“place” includes a State or Territory;

“testator” means a person who made a will;

“will” includes any testamentary instrument or act.

### System of law to be applied

**15B. (1)** Where—

- (a) there are in force in any country or place 2 or more systems of internal law relating to the formal validity of wills; and
- (b) the internal law of that country or place is to be applied in the case of a will,

the system to be applied in that case shall be ascertained as follows:

- (c) where there is in force throughout the country or place a rule indicating which of those systems should apply—that rule shall be followed; or
- (d) where there is no such rule—the system shall be that with which the testator was most closely connected at the relevant time.

**(2)** For the purposes of paragraph (1) (d), the relevant time is—

- (a) where the matter is to be determined by reference to circumstances prevailing at the time of the testator’s death—the time of that death; or
- (b) in any other case—the time of the making of the will.

**General rule as to formal validity**

**15C.** A will shall be taken to have been properly made if it has been made in accordance with the internal law in force—

- (a) in the place where the will was made;
- (b) in the place where the testator was domiciled at the time—
  - (i) when he made 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).

**Additional rules as to formal validity**

**15D. (1)** Without limiting the generality of section 15C, the following wills shall be taken to have been properly made:

- (a) a will made on board any vessel or aircraft where the making of the will was in accordance with 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 the will was made in accordance with the internal law in force in the country or place where the property is situated;
- (c) a will, so far as it revokes—
  - (i) a will; or
  - (ii) a provision of a will,

that under this Act would be taken to have been properly made, where the later will was made in accordance with any law by reference to which the revoked will or the will containing the revoked provision, as the case may be, would be so taken to have been properly made.

**(2)** A will, so far as it exercises a power of appointment, shall not be taken to have been improperly made by reason only that it was not made in accordance with any formal requirements contained in the instrument creating the power.



### **Relevance of formal requirements for making**

**15E. (1)** In determining for the purposes of this Part whether or not a will was made in accordance with a particular law, regard shall be had to the formal requirements of that law at the time when the will was made.

**(2)** Subsection (1) does not prevent account being taken of an alteration of law affecting wills that were made in the relevant country or place at the time when the relevant will was made if the alteration enables that will to be taken to have been properly made.

### **Certain requirements to be treated as formal**

**15F.** Where a law in force outside the Territory is to be applied in relation to a will, any requirement under that law that certain formalities are to be observed only by testators included in a particular class of testators, or that certain qualifications are to be possessed by witnesses to the making of a will, shall, for the purposes of this Part, be taken to be a formal requirement only.

### **Construction of will not affected by later change of domicile**

**15G.** The construction of a will shall not be affected by reason of any change in the testator's domicile after the making of the will.

### **Application**

**15H.** This Part applies only in relation to a will of a testator who dies after the date of commencement of this Part, whether the will was made before or after that date.

## **PART III—TESTAMENTARY DISPOSITIONS BY MEMBERS OF THE DEFENCE FORCE**

### **Wills of soldiers etc.**

**16. (1)** A testamentary disposition of real or personal property made by a person included in a class of persons specified in subsection (6) of this section, 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 Part II of this Act.

(2) An appointment made, either orally or in writing, by a person included in a class of persons specified in subsection (6) of this section 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 Part II of this Act.

(3) In any proceedings, evidence of a matter specified in the next succeeding subsection that relates to a declaration referred to in subsection (1) of this section or an appointment referred to in the last preceding subsection 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 the last preceding subsection:

- (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) of this section 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 1903-1917* 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.

(7) A person is not excluded from a class of persons specified in the last preceding subsection by reason only of the fact that he has not attained the age of eighteen years.

#### **PART IV—MISCELLANEOUS**

##### **Meaning of “will”**

17. In this Part, “will” includes a testamentary disposition made by a person to whom section 16 of this Act applies.

##### **Creditor to be admitted as witness**

18. Where a testator, by will, charges real property or personal property with payment of a debt due to a creditor and the creditor, or the spouse of the creditor, attests the signing of the will or the acknowledgment of the signing of the will, the creditor or spouse, as the case may be, is not, by reason of that charge, disqualified from being admitted as a witness to prove the execution, or the validity or invalidity, of the will.

**Executor to be admitted as witness**

**19.** A person who is an executor of a will is not, by reason of being such an executor, disqualified from being admitted as a witness to prove the execution, or the validity or invalidity, of the will.

**Revocation of will by testator's marriage**

**20. (1)** Subject to subsections (2) and (3), 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 in so far 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.

**(3)** Where a will contains a devise or bequest to, an appointment of property in favour of, or a conferral of a power of appointment on, a person, being a devise, bequest, appointment or conferral expressed to be in contemplation of the marriage of the testator to that person—

- (a) the devise, bequest, appointment or conferral is not revoked by the marriage; and
- (b) the remaining provisions of the will are not revoked by the marriage unless a contrary intention appears from the will or from evidence admitted pursuant to section 12B.

**Effect of termination of marriage**

**20A. (1)** Subject to subsection (2), if, after a testator has made a will, the testator's marriage is terminated—

- (a) any beneficial gift (including any devise, legacy, estate, interest or appointment of or affecting any real or personal estate, but not including any charge or direction for the payment of any debt) in favour of the former spouse of the testator and any power of appointment conferred on the former spouse is revoked;
- (b) any appointment under the will of the former spouse of the testator as executor, trustee or guardian shall be taken to be omitted from the will; and

- (c) any property which would, but for this subsection, have passed to the former spouse of the testator pursuant to a beneficial gift referred to in paragraph (a) shall pass as if the former spouse had predeceased the testator, but no class of beneficiaries under the will shall close earlier than it would have closed if the beneficial gift had not been revoked.
- (2)** A beneficial gift or power of appointment is not revoked by paragraph (1) (a), and an appointment shall not be taken to be omitted from a will pursuant to paragraph (1) (b), if—
- (a) the Supreme Court is satisfied by any evidence, including evidence (whether admissible before the commencement of this section or not) of statements made by the testator, that the testator did not, at the time of termination of the marriage, intend to revoke the gift, power of appointment or appointment; or
  - (b) the gift, power of appointment or appointment is contained in a will which was republished after the termination of the marriage by a will or codicil which evidences no intention of the testator to revoke the gift, power of appointment or appointment.
- (3)** Nothing in this section affects—
- (a) any right of the former spouse of a testator to make an application under the *Family Provision Act 1969*; or
  - (b) any direction, charge, trust or provision in the will of a testator for the payment of an amount in respect of a debt or liability of the testator to the former spouse of the testator or to the executor of the will, or administrator of the estate, of the former spouse.
- (4)** For the purposes of this section, the termination of a marriage occurs, or shall be taken to occur—
- (a) when a decree of dissolution of marriage under the Family Law Act becomes absolute;
  - (b) on the making of a decree of nullity under the Family Law Act in respect of a purported marriage which is void; or
  - (c) on the annulment of the marriage in accordance with the law of a place outside Australia if the annulment is recognised in Australia pursuant to the Family Law Act.

(5) In this section—

“Family Law Act” means the *Family Law Act 1975* of the Commonwealth;

“former spouse”, in relation to a testator, means the person who, immediately before the termination of the testator’s marriage, was the testator’s spouse, or, in the case of a purported marriage of the testator which is void, was the other party to the purported marriage.

### Revocation of will

21. Subject to sections 8B, 20 and 20A, a will or part of a will is not revoked except—

- (a) where the testator is a person to whom section 16 of this Act applies, by the testator expressing his intention to revoke the will or part of the will in a manner in which he is entitled to dispose of his property under that section; and
- (b) whether or not the testator is a person to whom section 16 of this Act applies—
  - (i) by a subsequent valid will of the testator;
  - (ii) by the testator executing a document in like manner as a will is required by Part II of this Act to be executed that shows his intention to revoke the will or part; or
  - (iii) by the burning, tearing or otherwise destroying of the will or part by the testator, or by a person acting in the presence of and by the direction of the testator, with the intention of revoking the will or part.

### Revival of revoked will

22. (1) A will, or a part of a will, that has been revoked is not revived unless—

- (a) the testator re-executes it in the manner in which a valid will is required by Part II of this Act to be executed; or
- (b) the testator executes, in the manner in which a valid will is required by Part II of this Act to be executed, a valid codicil that shows the intention of the testator to revive the will.

(2) Where a testator who has revoked the remainder of a will after having previously revoked part of the will revives the will, the revival operates, unless the contrary intention appears, to revive only so much of the will as was last revoked.

(3) A will that is revoked and subsequently revived shall, for the purposes of this Act, be deemed to have been made at the time when it is revived.

### **Will disposes of balance of property of testator at his death**

23. Where, after a testator has made a will containing a disposition of real property or personal property, the testator conveys the property or does any other act relating to the property (not being an act that revokes the will), the operation of the will with respect to any estate or interest in the property that the testator has power to dispose of by will at the time of his death is not affected by the conveyance or other act.

### **Will speaks from death of the testator**

24. A will shall, unless a contrary intention appears in it, be construed as speaking and taking effect so far as the real property and personal property referred to in it are concerned as if it had been executed immediately before the death of the testator.

### **What a residuary devise includes**

25. Where a devise of real property in a will fails 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 real property shall, unless a contrary intention appears in the will, be taken to be included in the residuary devise (if any) contained in the will.

### **What a general devise or bequest includes**

26. (1) Unless a contrary intention appears in the will—

(a) a devise in the will—

- (i) of all the land of the testator;
- (ii) of the land of the testator at a particular place or in the occupation of a particular person; or
- (iii) of the land of the testator described in the will in some other general manner; or

- (b) any other general devise in the will that would be apt to describe leasehold property of the testator if the testator does not have any real property that the devise is apt to describe,

shall be construed as if the leasehold estates of the testator, or the leasehold estates of the testator that the devise is apt to describe, as the case may be, as well as freehold estates, were land of the testator.

(2) Unless the contrary intention appears in the will, where a testator has power to appoint, by will, any real property in such manner as he thinks fit, a general devise of the real property of the testator or of the real property of the testator at a particular place, in the occupation of a particular person or otherwise described in a general manner, in the will of the testator—

- (a) shall be construed as including the real property over which the testator had that power of appointment, or so much of that real property as the description is apt to describe, as the case may be; and
- (b) operates as the appointment of that real property or so much of that real property as the description is apt to describe, as the case may be, in pursuance of that power.

(3) Unless the contrary intention appears in the will, where a testator has power to appoint, by will, any personal property in such manner as he thinks fit, a bequest of the personal property of the testator, or of any class of personal property of the testator described in a general manner, in the will of the testator—

- (a) shall be construed as including the personal property over which the testator had that power of appointment, or so much of that personal property as is included in that class, as the case may be; and
- (b) operates as the appointment of that personal property or so much of that personal property as is included in the class of personal property so described, as the case may be, in pursuance of that power.

### **How a devise without words of limitation shall be construed**

27. Where real property is devised to a person without words of limitation, the devise shall, unless a contrary intention appears in the will, be construed as passing the fee simple or other the whole estate or interest in the real property that the testator has power to dispose of by will.



**How the words “die without issue” or “die without leaving issue” or “have no issue” shall be construed**

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

**(2)** The last preceding subsection does not apply where, in a will, words referred to in that subsection refer to no issue described in a preceding gift being born, or no issue living to attain the age or otherwise to answer the description, required for obtaining a vested estate by a preceding gift to that issue.

**Devises to trustees or executors**

**29.** Where real property is devised to a trustee or executor, the devise shall be construed as passing the fee simple or other the whole estate or interest that the testator had power to dispose of by will in the real property, unless a definite term of years (whether or not provision is made for determining the estate before the expiration of that term) or an estate of freehold is given to him expressly or by implication.

**Trustees under an unlimited devise etc. to take the fee**

**30.** Where real property is devised to a trustee without an express limitation of the estate to be taken by the trustee and the beneficial interest in the real property, or in the surplus rents and profits of the real property—

- (a) is not given to any person for life; or
- (b) is given to some person for life but the purposes of the trust may continue beyond the life of that person,

the devise shall be construed as vesting the real property in the trustee in fee simple or as vesting the legal estate in the real property which the testator had power to dispose of by will, as the case may be, and not as vesting an estate determinable when the purposes of the trust are satisfied.

**Intermediate income on future and contingent bequests and devises**

**30A.** A contingent, future or deferred bequest or devise of property, whether specific or residuary, carries the intermediate income of that property except so far as that income or any part of it is otherwise disposed of by the will.

**Gifts to issue**

**31. (1)** Where—

- (a) a testator by will devises or bequeaths property to, or appoints property in favour of, a person (in this section referred to as “the original beneficiary”) (whether individually or as a member of a class) who is a child or other issue of the testator for an estate or interest not determinable before or upon the death of the original beneficiary;
- (b) the original beneficiary dies in the lifetime of the testator and is survived by issue; and
- (c) any such issue survive the testator for a period of 30 days (in this section referred to as “the specified period”);

then, unless a contrary intention appears from the will or from evidence admitted pursuant to section 12B, the will has force and effect as if the devise or bequest were to, or the appointment were in favour of, any issue of the original beneficiary who survive the testator for the specified period, to be distributed—

- (d) where only 1 issue of the original beneficiary survives for that period—to that issue; or
- (e) where 2 or more issue of the original beneficiary survive for that period—in accordance with subsection (2).

**(2)** Where 2 or more issue of an original beneficiary survive the testator for the specified period, the property the subject of the devise, bequest or appointment shall be divided into a number of equal shares equivalent to the total number of the nearest issue of the original beneficiary who—

- (a) survive the testator for the specified period; or
- (b) die before the end of that period leaving issue (in this subsection referred to as “surviving issue”) who survive the testator for the specified period;

and those equal shares shall be distributed as follows:

- (c) each of the nearest issue of the original beneficiary who survives the testator for the specified period is entitled to 1 share;

- (d) any sole surviving issue of a nearest issue who fails to survive the testator for the specified period is entitled to 1 share;
- (e) where there are 2 or more surviving issue of a nearest issue who fails to survive the testator for the specified period—those surviving issue are entitled, in equal shares, to 1 share.

(3) Notwithstanding subsection (2), where a share is distributed in accordance with paragraph (2) (e), no surviving issue remoter than children of the nearest issue of the original beneficiary shall form part of the class of surviving issue entitled to take, unless a parent, who would have taken had he or she survived the testator for the specified period, dies before the end of that period, and then any remoter issue is or are entitled to take, if more than 1 in equal shares, the share which that parent would have taken.

(4) A general requirement or condition in a will that an original beneficiary survive the testator or attain a specified age shall not be taken to be an expression of a contrary intention for the purposes of this section.

(5) This section does not apply where an original beneficiary has not fulfilled a contingency required by the will as a condition of attaining the vested estate or interest, being a contingency other than surviving the testator or attaining a specified age.

#### **Legitimacy of issue**

**31A.** A reference in a will to issue (however described) of a person shall, unless a contrary intention appears from the will, be construed as referring to all such issue, whether legitimate or illegitimate.

#### **Distribution to issue**

**31B. (1)** Where a testator by will devises or bequeaths property to, or appoints property in favour of, his or her issue then, unless a contrary intention appears from the will or from evidence admitted pursuant to section 12B, the testator is presumed to have intended that, subject to subsection (2), the devise, bequest or appointment is to be distributed in equal shares between only those issue of the testator who—

- (a) are his or her nearest issue; and
- (b) survive the testator for a period of 30 days (in this section referred to as “the specified period”).

(2) If a person who is one of the nearest issue of the testator dies before the end of the specified period, leaving issue who survive the testator for the specified period (in this section referred to as “surviving issue”), the testator shall be presumed to have intended that any surviving issue of that deceased nearest issue take, if more than 1 in equal shares, the share in the testator’s estate which that deceased nearest issue would have taken had he or she survived the testator for the specified period.

(3) Subsection (2) does not operate to entitle any surviving issue remoter than the children of any deceased nearest issue to take unless the death of a parent who would have taken as surviving issue occurred before the end of the specified period, and then the testator shall be presumed to have intended that the remoter issue take, if more than 1 in equal shares, the share which that parent would have taken.

#### **Beneficiary not surviving testator**

**31C. (1)** Subject to section 31, where—

- (a) a testator by will devises or bequeaths property to, appoints property in favour of, or confers the power to appoint property on, any person; and
- (b) that person does not survive the testator by 30 days;

then unless the contrary intention appears from the will, or from evidence admitted pursuant to section 12B, that person shall be deemed to have predeceased the testator and the devise, bequest, appointment or power shall lapse.

(2) A general requirement or condition in a will that a beneficiary survive the testator shall not be taken to be an expression of a contrary intention for the purposes of this section.

#### **Wills may be deposited with Registrar**

**32. (1)** Subject to the next succeeding subsection, a person may deposit his will in the office of the Registrar.

(2) The Registrar may refuse to allow a will to be deposited under the last preceding subsection unless—

- (a) the will is enclosed in a sealed envelope or cover; and
- (b) the envelope or cover has written on it—
  - (i) the full name, occupation (if any) and address of the testator, or some other means of readily identifying the testator; and

- (ii) the full name, occupation and address of the executor, or of each executor, named in the will.

(3) The Registrar shall cause a will deposited under subsection (1) of this section to be kept safely at that office until it is dealt with in accordance with the succeeding provisions of this section.

(4) Where a person whose will is deposited in the office of the Registrar under subsection (1) of this section requests the Registrar to do so, the Registrar shall cause the will to be delivered to that person.

(5) Where the Registrar is satisfied that a person whose will is deposited in the office of the Registrar under subsection (1) of this section is dead, the Registrar shall—

- (a) cause the will to be delivered to the executor or one of the executors named on the envelope or cover in which the will is sealed or, if such an executor cannot be found or refuses to accept the will, to such person (if any) as a Judge of the Supreme Court directs; or
- (b) with the permission of a Judge of the Supreme Court, cause the will to be destroyed.

### **Register of wills deposited with the Registrar**

**33. (1)** The Registrar shall keep an index of wills deposited in his office under the last preceding section.

(2) Where such a will is delivered to a person or destroyed in pursuance of subsection (4) or (5) of the last preceding section, the Registrar shall enter in the index particulars of the date on which, and the person to whom, the will was delivered or the date on which the will was destroyed, as the case may be.

### **Searches**

**34.** A person may search in the index kept by the Registrar under the last preceding section.

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**NOTE**

1. The *Wills Act 1968* as shown in this reprint comprises Act No. 11, 1968 amended as indicated in the Tables below.

**Citation of Laws**—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

**Table of Ordinances**

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Wills Ordinance 1968</i>	11, 1968	13 June 1968	13 June 1968	
<i>Ordinances Revision Ordinance 1977</i>	65, 1977	22 Dec 1977	22 Dec 1977	—
<i>Ordinances Revision Ordinance 1978</i>	46, 1978	28 Dec 1978	28 Dec 1978	—
<i>Wills (Amendment) Ordinance 1983</i>	46, 1983	6 Oct 1983	6 Oct 1983	—
<i>Wills (Amendment) Ordinance 1989</i>	16, 1989	22 Mar 1989	24 Mar 1989 (see <i>Gazette</i> 1989, No. S101)	S. 4

**Self-Government day 11 May 1989**

Table 2

**Table of Acts**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Wills (Amendment) Act 1991</i>	67, 1991	7 Nov 1991	7 Nov 1991	S. 17

**NOTE—continued**

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 2 .....	rep. No. 65, 1977
S. 6 .....	rep. No. 46, 1978
S. 8 .....	rs. Act No. 67, 1991
Ss. 8A, 8B .....	ad. Act No. 67, 1991
S. 9 .....	am. Act No. 67, 1991
S. 11 .....	am. Act No. 67, 1991
S. 11A .....	ad. Act No. 67, 1991
S. 12 .....	am. Act No. 67, 1991
Ss. 12A, 12B .....	ad. Act No. 67, 1991
S. 14A .....	ad. Act No. 67, 1991
S. 15 .....	rs. Act No. 67, 1991
Part IIA (ss. 15A-15H) .....	ad. No. 46, 1983
Ss. 15A-15H .....	ad. No. 46, 1983
S. 20 .....	am. Act No. 67, 1991
S. 20A .....	ad. Act No. 67, 1991
S. 21 .....	am. Act No. 67, 1991
S. 30A .....	ad. Act No. 67, 1991
S. 31 .....	rs. Act No. 67, 1991
S. 31A .....	ad. No. 16, 1989
Ss. 31B, 31C .....	ad. Act No. 67, 1991