



AUSTRALIAN CAPITAL TERRITORY

Family Provision (Amendment) Act 1996

No. 16 of 1996

An Act to amend the *Family Provision Act 1969*

[Notified in ACT Gazette S71: 1 May 1996]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Family Provision (Amendment) Act 1996*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

3. In this Act, “Principal Act” means the *Family Provision Act 1969*.¹

Application

4. (1) Subject to subsection (3), the Principal Act as amended by this Act applies in relation to the estates of all deceased persons, including the estates of persons who died before the commencement date.

(2) Subject to subsection (3), where, immediately before the commencement date—

- (a) an application for provision out of the estate of a deceased person under section 8 of the Principal Act had been made; and

- (b) the application had not yet been determined by the Court;

the application is to be taken to have been made under the Principal Act as amended by this Act, and shall be determined by the Court accordingly.

(3) The Principal Act as in force immediately before the commencement date continues to apply in relation to an application under section 8 of the Principal Act for provision out of the estate of a deceased person (whether made before or after the commencement date) where, before the commencement date—

- (a) probate or letters of administration had been granted in relation to the estate;
- (b) the Public Trustee had given notice of intention to administer the estate under subsection 87B (3) of the *Administration and Probate Act 1929*;
- (c) the Public Trustee had lodged for filing an election to administer the estate under subsection 87C (1) of the *Administration and Probate Act 1929*; or
- (d) the Public Trustee had been granted an order to collect and administer the estate under subsection 88 (1) or 92 (1) of the *Administration and Probate Act 1929*.

(4) In this section—

“commencement date” means the date of commencement of this Act.

Interpretation

5. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ ‘domestic partner’, in relation to a deceased person, means a person who lived with the deceased in a domestic relationship for 2 years continuously at any time during the life of the deceased;

‘domestic relationship’ means a personal relationship between 2 adults (other than a relationship between spouses) in which 1 provides personal or financial commitment and support of a domestic nature for the material benefit of the other;

‘eligible partner’, in relation to a deceased person, means a person other than the person’s legal spouse who—

- (a) whether or not of the same gender as the deceased—lived with the deceased at any time as a member of a couple on a genuine domestic basis; and
- (b) either—
 - (i) had lived with the deceased in that manner for 2 or more years continuously; or

(ii) is the parent of a child of the deceased;

‘legal spouse’, in relation to a deceased person, means a person who was the wife or husband of the deceased at any time during the life of the deceased;

‘spouse’, in relation to a deceased person, means—

- (a) a legal spouse of the deceased; or
- (b) an eligible partner of the deceased;”.

Eligibility

6. Section 7 of the Principal Act is amended—

(a) by omitting paragraphs (1) (a) and (b) and substituting the following paragraphs:

- “(a) a spouse of the deceased;
- (b) a domestic partner of the deceased;”;

(b) by omitting from paragraph (1) (e) “and”;

(c) by omitting from subsection (2) “person, being a former wife or former husband of a deceased person or a”;

(d) by omitting from subsection (2) “unless the person” and substituting “unless the stepchild”;

(e) by inserting in paragraph (4) (a) “or her” after “his”;

(f) by omitting from paragraph (4) (b) “his” and substituting “any”; and

(g) by inserting in subsection (7) “or her” after “his”.

Family provision orders

7. Section 8 of the Principal Act is amended—

(a) by omitting subsections (1), (2) and (3) and substituting the following subsections:

“(1) On application by a person entitled, under section 7, to apply for provision out of the estate of a deceased person, the Court may order that such provision as the Court thinks fit be made for the applicant out of the estate.

“(2) The Court shall only make an order under subsection (1) if satisfied, in consideration of the criteria set out in subsection (3), that as at the date of the order, adequate provision for the proper maintenance, education or advancement in life of the applicant is not available—

- (a) under the will of the deceased;
- (b) if the deceased died intestate—under the law applicable to that intestacy; or

(c) under that will and that law combined.

“(3) The criteria for the Court’s decision under subsection (2) in relation to the deceased and the applicant are as follows:

- (a) the character and conduct of the applicant;
 - (b) the nature and duration of the relationship between the applicant and the deceased;
 - (c) any financial and non-financial contributions made directly or indirectly by or on behalf of either or both the applicant and the deceased to the acquisition, conservation or improvement of any of the property or financial resources of either or both persons;
 - (d) any contributions (including any in the capacity of home-maker or parent) by either the applicant or the deceased to the welfare of the other, or of any child of either person;
 - (e) the income, property and financial resources of the applicant and the deceased;
 - (f) the physical and mental capacity of the applicant, and the deceased (during his or her life), for appropriate gainful employment;
 - (g) the financial needs and obligations of the applicant and the deceased (during the life of the deceased);
 - (h) the responsibilities of either the applicant or the deceased (during his or her life) to support any other person;
 - (i) the terms of any order made under section 15 of the *Domestic Relationships Act 1994* with respect to the property of the applicant or the deceased;
 - (j) any payments made to either the applicant or the deceased by the other, pursuant to an order of the Court or otherwise, in respect of the maintenance of the other person or any child of the other person;
 - (k) any other matter the Court considers relevant.”; and
- (b) by omitting from subsection (4) “one” and substituting “a single”.

Formal amendments

8. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 8

FORMAL AMENDMENTS

Subsection 4 (1) (definition of “administration”)—

Omit “the Curator of Estates of Deceased Persons or”.

Subsection 4 (1) (definition of “the Court”)—

Omit the definition.

Subsection 4 (1)—

Insert the following definition:

“ ‘Court’ means the Supreme Court;”.

Subsection 5 (1)—

Omit “the commencement of this Act”, substitute “1 September 1969”.

Subsection 5 (2)—

(a) Omit “the commencement of this Act”, substitute “1 September 1969”.

(b) Omit “he”, substitute “the person”.

Subsection 6 (1)—

Omit “the commencement of this Act”, substitute “1 September 1969”.

Subsection 6 (2)—

(a) Omit “the commencement of this Act”, substitute “1 September 1969”.

(b) Omit “the date of commencement of this Act”, substitute “that date”.

Subsection 6 (3)—

Omit “the commencement of this Act”, substitute “1 September 1969”.

Subsection 9 (1)—

Omit “twelve”, substitute “12”.

Subsection 9 (4)—

Omit “may” (last occurring), substitute “shall”.

Subsection 9A (4)—

Omit “his”, substitute “the”.

Subsection 9A (5)—

(a) Omit “this section”, substitute “subsection (2)”.

SCHEDULE—continued

- (b) Omit “such orders”, substitute “such further orders”.
- (c) Omit “first-mentioned order”, substitute “order under subsection (2)”.

Subsection 12 (1)—

Omit “two”, substitute “2”.

Subsection 12 (2)—

- (a) Omit “he does not apply”, substitute “is not applied”.
- (b) Omit “he” (last occurring), substitute “the trustee”.
- (c) Omit “one”, substitute “1”.

Subsection 12 (3)—

Omit “one”, substitute “1”.

Paragraph 13 (1) (b)—

- (a) Omit “his” (wherever occurring).
- (b) Insert “or herself” after “himself”.

Paragraph 13 (2) (a)—

Insert “or she” after “he”.

Paragraph 13 (2) (b)—

- (a) Omit “his will he”, substitute “will, the testator”.
- (b) Omit “his real property or of his real property”, substitute “his or her real property or of such property”.

Paragraph 13 (3) (a)—

Insert “or she” after “he”.

Paragraph 13 (3) (b)—

- (a) Omit “his will, he”, substitute “will, the testator”.
- (b) Omit “his” (last occurring).

Section 14—

Insert “or she” after “he” (first occurring).

Paragraph 14 (a)—

- (a) Insert “or she” after “he” (wherever occurring).
- (b) Insert “or her” after “his”.

SCHEDULE—continued

Paragraph 14 (b)—

- (a) Insert “or she” after “he”.
- (b) Insert “or her” after “him”.

Subsection 16 (1)—

Omit “his”.

Subsection 16 (2)—

Omit all the words after “modification”, substitute “of Part IIIA of the *Administration and Probate Act 1929* in its application to that property”.

Section 21—

Insert “or her” after “his”.

Subsection 22 (1)—

Omit “his”.

NOTE

Principal Act

1. Reprinted as at 31 July 1991.

[Presentation speech made in Assembly on 28 March 1996]