

1996
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Administration and Probate (Amendment)
Bill 1996**

**A BILL
FOR**

**An Act to amend the *Administration and
Probate Act 1929***

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

Short title

- 5 1. This Act may be cited as the *Administration and Probate (Amendment) Act 1996*.

Commencement

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

Principal Act

- 10 3. In this Act, "Principal Act" means the *Administration and Probate Act 1929*.¹

86004 1992/129 (T4/96)

Application

4. The amendments effected by this Act apply only in relation to the distribution of the estates of persons who die on or after the date of commencement of this Act.

5 Substitution

5. Section 12 of the Principal Act is repealed and the following section substituted:

Eligible administrators

10 "12. (1) The Court may grant administration of an intestate estate to any of the following persons, subject to this section:

- (a) the spouse of the intestate;
- (b) 1 or more of the next of kin of the intestate;
- (c) if the intestate is survived by 2 spouses—either spouse, or both spouses conjointly;
- 15 (d) a spouse or spouses of the intestate conjointly with 1 or more of the next of kin of the intestate;
- (e) such other person (whether or not a creditor of the intestate) as the Court thinks fit.

20 "(2) The Court shall only grant administration of an intestate estate to a person who has attained the age of 18 years.

"(3) The Court shall not grant administration of an intestate estate to a person referred to in paragraph (1) (e) if there is any other person to whom administration may be granted under this section—

- (a) who is fit to be trusted, in the opinion of the Court; and
- 25 (b) who appears and prays for administration after being duly cited.

"(4) In this section—

'spouse', in relation to an intestate, has the same meaning as in Part IIIA."

Substitution

30 6. Section 22 of the Principal Act is repealed and the following section substituted:

Administration under power of attorney

"22. (1) Where a person entitled to probate or administration of a deceased estate is out of the jurisdiction, and has appointed a person within

the jurisdiction under a power of attorney to exercise that entitlement, the Court may grant administration to the attorney on behalf of the entitled person on such terms as the Court thinks fit.

- 5 “(2) The grant of administration under subsection (1) continues in force notwithstanding the death of the donor of the power of attorney, subject to the terms of the grant.”.

Substitution

7. The heading to Division 3A of Part III of the Principal Act is omitted and the following Part and Division headings are substituted:

10

“PART IIIA—INTESTACY

“Division 1—Preliminary”.

Interpretation

8. Section 44 of the Principal Act is amended—

- 15 (a) by omitting from subsection (1) “Division” and substituting “Part”;
(b) by inserting in subsection (1) the following definitions:

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

- 20 (a) whether or not of the same gender as the intestate—was living with the intestate immediately prior to the death of the intestate as a member of a couple on a genuine domestic basis; and
(b) either—
(i) had lived with the intestate in that manner for 2 or more years continuously prior to the death of the intestate; or
25 (ii) is the parent of a child of the intestate who had not attained the age of 18 years at the date of death of the intestate;”;

30 ‘legal spouse’, in relation to an intestate, means the husband or wife of the intestate immediately before the death of the intestate;

‘spouse’, in relation to an intestate, means—

- (a) the legal spouse of the intestate; or
(b) the eligible partner of the intestate.”; and

- (c) by omitting from subsection (2) "this Division" and substituting "Division 2".

Insertion

- 5 9. After section 44 of the Principal Act the following Division heading is inserted:

"Division 2—Distribution on intestacy".

Insertion

10. After section 45 of the Principal Act the following section is inserted:

10 **Distribution between legal spouse and eligible partner**

"45A. (1) Where an intestate is survived by both a legal spouse and an eligible partner, the entitlement to the spousal share of the intestate estate is to be determined as follows:

- 15 (a) if the eligible partner had lived as the eligible partner of the intestate continuously for a period of less than 5 years immediately before the intestate's death—the spousal share of the intestate estate shall be distributed equally between the eligible partner and the legal spouse;
- 20 (b) if the eligible partner had lived as the eligible partner of the intestate continuously for a period of 5 years or more immediately before the intestate's death—the eligible partner is exclusively entitled to the spousal share.

"(2) In this section—

- 25 'spousal share', in relation to an intestate estate, means the share of the estate to which the spouse of the intestate is entitled under this Division."

Gifts made before death of intestate

11. Section 49BA of the Principal Act is amended—

- 30 (a) by omitting from paragraph (1) (a) "his death, paid, transferred, assigned or settled (otherwise than for valuable consideration) any money or property," and substituting "death, given any money or property";
- (b) by omitting from paragraph (1) (a) "of the intestate";
- 35 (c) by omitting from paragraph (1) (a) "the spouse" and substituting "a spouse";

- (d) by omitting from paragraph (1) (b) "his intestate estate, or a part of his intestate estate," and substituting "the intestate estate, or a part of the intestate estate,";
- 5 (e) by omitting from subsection (1) "paid, transferred, assigned or settled, as the case requires," and substituting "given";
- (f) by inserting in subsection (1) "or she" after "he";
- (g) by omitting from paragraph (1) (d) "\$3,000" and substituting "\$10,000";
- 10 (h) by omitting from subsection (2) "paid, transferred, assigned or settled" and substituting "given";
- (i) by omitting from subsection (2) "his" and substituting "the person's";
- (j) by omitting from subsection (3) "paid, transferred, assigned or settled, as the case may be," and substituting "given";
- 15 (k) by omitting from paragraph (3) (a) "the spouse" and substituting "a spouse";
- (l) by omitting from paragraph (3) (b) "of the intestate"; and
- (m) by adding at the end the following subsection:
- "(4) In this section—
- 20 'given', in relation to money or property, means money or property paid, transferred, assigned or settled (otherwise than for valuable consideration);
- 'legal spouse', in relation to a person entitled to a share in an intestate estate, where the intestate has made a gift to which this section applies, means the husband or wife of the person at the time the gift was made;
- 25 'spouse', in relation to a person entitled to a share in an intestate estate, where the intestate has made a gift to which this section applies, includes a person other than the entitled person's legal spouse who—
- 30 (a) whether or not of the same gender as the entitled person—was living with that person on the date of the gift as a member of a couple on a genuine domestic basis; and
- 35 (b) either—

- (i) had lived with the entitled person in that manner for 2 or more years continuously prior to the date of the gift; or
- (ii) was the parent of a child of the entitled person who was less than 18 years old on the date of the gift.”.

Substitution

12. The heading to Division 3B of Part III of the Principal Act is omitted and the following heading substituted:

“Division 3—Rights of spouses to intestate dwelling-houses”.

Substitution

13. The heading to Division 3C of Part III of the Principal Act is omitted and the following heading substituted:

“PART IIIB—SIMULTANEOUS DEATHS”.

Substitution

14. The heading to Division 4 of Part III of the Principal Act is omitted and the following heading substituted:

“PART IIIC—FUNCTIONS OF EXECUTORS AND ADMINISTRATORS”.

Omission

15. The heading to Division 5 of Part III of the Principal Act is omitted.

Sixth Schedule

16. The Sixth Schedule to the Principal Act is amended by omitting from item 2 of Part I “\$100,000” (wherever occurring) and substituting “\$150,000”.

Consequential and formal amendments

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

SCHEDULE

Section 17

CONSEQUENTIAL AND FORMAL AMENDMENTS

Subsection 5 (1) (definitions of “the Court” and “the seal of the Court”)—

- 5 Omit the definitions.

Subsection 5 (1)—

Insert the following definitions:

“ ‘Court’ means the Supreme Court;

‘seal of the Court’ means the seal referred to in section 7B;”.

- 10 **Subsection 8C (1)—**

Omit “his”.

Paragraph 9B (1) (d)—

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

Subparagraph 9B (1) (d) (i)—

- 15 (a) Omit “he” (first occurring), substitute “the person”.

(b) Insert “or her” after “his”.

(c) Insert “or she” after “he” (last occurring).

Subparagraph 9B (1) (d) (ii)—

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

- 20 (b) Omit “by him”.

Paragraph 9B (1) (e)—

Omit “he distributes the estate”, substitute “the estate is distributed”.

Subsection 9B (2)—

- 25 Omit “that the Court has, under the last preceding subsection, directed him to give before distributing the estate,”, substitute “directed by the Court under paragraph (1) (e),”.

Paragraph 9B (2) (a)—

Omit “the next succeeding subsection”, substitute “subsection (3)”.

Paragraph 9B (2) (b)—

- 30 Insert “or she” after “he”.

SCHEDULE—continued

Subsection 9B (3)—

Omit “under subsection (1) of this section”, substitute “in accordance with a notice under paragraph (1) (e)”.

Paragraphs 9B (3) (a) and (b)—

- 5 Omit “the next succeeding subsection”, substitute “subsection (4)”.

Subsection 9B (4)—

(a) Omit “(b) of the last preceding subsection”, substitute “(3) (b)”.

(b) Omit “a caveat under subsection (1) of this section”, substitute “the caveat”.

10 **Subsection 9B (5)—**

Omit “the last preceding subsection”, substitute “subsection (4)”.

Subsection 10 (1)—

Omit “the provisions of”.

Paragraph 10A (b)—

- 15 Omit “fourteen”, substitute “14”.

Section 10B—

Omit “one”, substitute “1”.

Subsection 14 (3)—

Insert “or she” after “he”.

20 **Section 17—**

(a) Omit “, his executor or administrators”, substitute “(or his executor or administrator)”.

(b) Omit “their own name or names”, substitute “her own name”.

(c) Insert “or her” after “him”.

25 **Subsection 18 (2)—**

Insert “or her” after “him”.

Subsection 18A (3)—

(a) Omit “the last preceding subsection”, substitute “subsection (2)”.

(b) Insert “or her” after “his”.

SCHEDULE—continued

Subsection 18A (4)—

- (a) Omit “the last preceding subsection”, substitute “subsection (3)”.
- (b) Insert “or her” after “his” (wherever occurring).
- (c) Omit “contract, made”, substitute “contract made”.

5 Paragraph 20 (a)—

Insert “or she” after “he”.

Section 20—

Omit “his”, substitute “the”.

Subsection 20A (2)—

- 10** Omit “to him”.

Subsection 21 (1)—

Omit “the full age of eighteen”, substitute “the age of 18”.

Subsection 21 (2)—

- (a) Omit “vested in him”.
- 15** (b) Omit “to him”.

Section 24—

Omit “his”.

Paragraph 25 (1) (a)—

- (a) Omit “three”, substitute “3”.
- 20** (b) Omit “eighteen”, substitute “18”.

Paragraph 25 (1) (i)—

Omit “(i)”, substitute “(c)”.

Paragraph 25 (1) (iii)—

Omit “(iii)”, substitute “(d)”.

25 Section 26—

- (a) Omit “six”, substitute “6”.
- (b) Omit “twenty-nine of this Act”, substitute “29”.

SCHEDULE—continued

Section 27—

Omit “jurisdiction;”, substitute “jurisdiction.”.

Paragraph 27 (a)—

Insert “or she” after “he”.

5 Section 29—

Omit “all moneys received by him as such special administrator, and then remaining in his hands undisposed of.”, substitute “such moneys received by him or her as special administrator as are undisposed of”.

Section 30—

10 (a) Insert “or she” after “he”.

(b) Insert “or her” after “his” (wherever occurring).

Section 31—

Omit “him”, substitute “the new representative”.

Paragraph 32 (1) (a)—

15 Omit “two”, substitute “2”.

Subsection 32 (4)—

Omit “him”, substitute “the new administrator”.

Subsection 32A (1)—

Insert “or her” after “his” (wherever occurring).

20 Subsection 32A (2)—

Omit “the last preceding subsection”, substitute “subsection (1)”.

Paragraph 32B (1) (a)—

(a) Insert “or she” after “he”.

(b) Insert “or her” after “him”.

25 (c) Insert “or her” after “his”.

Paragraph 32B (1) (b)—

(a) Insert “or she” after “he” (wherever occurring).

(b) Omit “the provisions of section nine B of this Act in and”, substitute “section 9B”.

SCHEDULE—continued

Paragraph 32B (1) (ca)—

Omit “the next succeeding subsection”, substitute “subsection (2)”.

Paragraph 32B (1) (d)—

Omit “the provisions of”.

5 Subsection 32B (2)—

Omit “(ca) of the last preceding subsection”, substitute “(1) (ca)”.

Subsection 33 (2)—

Omit “City Area at which notices may be served on him”, substitute “Territory for the service of notices”.

10 Section 35—

Omit “his”, substitute “the”.

Section 38—

Omit “him”, substitute “the Public Trustee”.

Section 39—

15 Insert “or her” after “his”.

Section 40—

(a) Omit “the last preceding section”, substitute “section 39”.

(b) Insert “or her” after “his”.

Subsection 41 (1)—

20 Insert “or her” after “his” (wherever occurring).

Subsection 41 (2)—

(a) Omit “the provisions of sections fifty and fifty-one of this Act”, substitute “sections 50 and 51”.

(b) Insert “or her” after “his”.

25 Subsection 41A (1)—

(a) Omit “after the commencement of this section”, substitute “on or after 1 January 1966”.

(b) Insert “or her” after “his”.

SCHEDULE—continued

Paragraph 41A (2) (a)—

Omit “the last preceding subsection”, substitute “subsection (1)”.

Subsection 41A (2)—

(a) Insert “or her” after “him” (first occurring).

5 (b) Omit “by him”.

Subsection 41B (1)—

(a) Omit “after the commencement of this section”, substitute “on or after 1 January 1966”.

(b) Insert “or her” after “his” (wherever occurring).

10 (c) Insert “or she” after “he”.

Subsection 41B (2)—

(a) Omit “the first day of January, One thousand nine hundred and eleven, but before the commencement of this section”, substitute “1 January 1911 and before 1 January 1966”.

15 (b) Insert “or her” after “his” (wherever occurring).

(c) Insert “or she” after “he”.

Subsection 41B (3)—

Omit “The last preceding subsection”, substitute “Subsection (2)”.

Paragraph 41B (3) (a)—

20 Omit “, before the commencement of this section,”, substitute “before 1 January 1966”.

Paragraph 41B (3) (b)—

Omit “thirty-nine of this Act”, substitute “39”.

Subsection 41C (1)—

25 (a) Omit “after the commencement of this section”, substitute “on or after 1 January 1966”.

(b) Omit “his” (wherever occurring), substitute “the person’s”.

(c) Omit “to this Act”.

Subsection 41C (2)—

30 (a) Omit “after the commencement of this section”, substitute “on or after 1 January 1966”.

SCHEDULE—continued

(b) Omit “his”, substitute “the person’s”.

(c) Omit “1924-1965”, substitute “1966”.

Subsection 41D (1)—

5 Omit “after the commencement of this section”, substitute “on or after 1 January 1966”.

Subsection 41D (4)—

Omit “the last preceding subsection”, substitute “subsection (3)”.

Paragraph 41D (5) (a)—

Omit “of this section”.

10 **Section 42—**

(a) Omit “the provisions of”.

(b) Omit “his will,”, substitute “will”.

(c) Omit “his” (last occurring), substitute “the”.

Section 43—

15 Omit all the words after “estate”, substitute “of the testator, as executors had or were subject to in relation to personal assets under the law in force in New South Wales as in force immediately before 21 October 1929”.

Subsection 44 (1) (definition of “intestate”)—

20 (a) Omit “after the commencement of this section”, substitute “on or after 1 July 1967”.

(b) Insert “or her” after “his”.

Paragraph 44 (2) (a)—

Omit “two”, substitute “2”.

Section 45—

25 (a) Insert “or her” after “his”.

(b) Omit “the succeeding provisions of”.

Subsection 46 (1)—

(a) Omit “the provisions of”.

30 (b) Omit “the intestate estate of an intestate”, substitute “an intestate estate”.

SCHEDULE—continued

(c) Omit “eighteen” (wherever occurring), substitute “18”.

(d) Omit “his”.

Subsection 46 (2)—

(a) Omit “the last preceding subsection”, substitute “subsection (1)”.

5 (b) Omit “eighteen”, substitute “18”.

(c) Omit “of the intestate”.

Subsection 46 (3)—

(a) Omit “a law”, substitute “any law”.

(b) Omit “eighteen”, substitute “18”.

10 **Subsection 49 (1)—**

Omit “the intestate estate of an intestate”, substitute “an intestate estate”.

Subsection 49 (2)—

(a) Omit “his spouse, his”, substitute “his or her spouse, the”.

15 (b) Omit “the next succeeding subsection”, substitute “subsection (3)”.

Subsections 49 (3) and (4)—

Omit “the intestate estate of an intestate”, substitute “an intestate estate”.

Section 49A—

Insert “or her” after “his”.

20 **Paragraph 49AA (1) (a)—**

Omit “his”.

Paragraph 49AA (1) (b)—

Omit “of the intestate” (last occurring).

Paragraph 49AA (1) (c)—

25 Omit “his”, substitute “a”.

Paragraph 49AA (1) (d)—

Omit “of the intestate”.

Subsection 49AA (1)—

Omit “of the intestate” (last occurring).

SCHEDULE—continued

- Paragraph 49AA (2) (a)—**
Omit “his”.
- Paragraph 49AA (2) (b)—**
Omit “his”, substitute “a”.
- 5 **Paragraph 49AA (2) (d)—**
Omit “of the intestate” (first occurring).
- Subsection 49AA (2)—**
Omit “of the intestate” (last occurring).
- Subsection 49AA (3)—**
10 Omit “\$100,000” (wherever occurring), substitute “\$150,000”.
- Subsection 49B (1)—**
Omit “his” (first occurring), substitute “the”.
- Paragraph 49B (1) (a)—**
Omit “one”, substitute “1”.
- 15 **Paragraph 49B (1) (b)—**
(a) Insert “or her” after “his” (wherever occurring).
(b) Omit “one” (wherever occurring), substitute “1”.
- Paragraph 49B (1) (c)—**
Omit “the next succeeding subsection”, substitute “subsection (2)”.
- 20 **Subparagraphs 49B (1) (c) (i) and (ii)—**
(a) Omit “each child (if any)”, substitute “any child”.
(b) Omit “one” (wherever occurring), substitute “1”.
- Subsection 49B (2)—**
Omit “(c) of the last preceding subsection”, substitute “(1) (c)”.
- 25 **Subsection 49C (1)—**
(a) Omit “his” (first occurring), substitute “the”.
(b) Omit “in accordance with the following paragraphs—”, substitute “as follows:”.

SCHEDULE—continued

Paragraph 49C (1) (b)—

- (a) Omit “the last preceding paragraph”, substitute “paragraph (a)”.
- (b) Omit “one or more of his”, substitute “1 or more”.
- (c) Omit “and”.

5 Paragraph 49C (1) (c)—

Omit “the last two preceding paragraphs”, substitute “paragraph (a) or (b)”.

Subsection 49C (2)—

10 Omit “The intestate estate of an intestate”, substitute “An intestate estate”.

Subsection 49D (1)—

- (a) Omit “a succeeding subsection of”.
- (b) Omit “by reference to the succeeding subsections of”, substitute “in accordance with”.

15 Subsections 49D (2) and (3)—

Insert “or her” after “his”.

Paragraph 49D (3) (a) and (b)—

Omit “\$100,000” (wherever occurring), substitute “\$150,000”.

Subparagraph 49D (3) (b) (i)—

20 Omit “one” (wherever occurring), substitute “1”.

Subparagraph 49D (3) (b) (ii)—

Omit “the last preceding subparagraph”, substitute “subparagraph (i)”.

Subsection 49D (6)—

Omit “his”, substitute “the”.

25 Section 49F (definitions of “intestate”, “intestate estate” and “personal representative”)—

Omit the definitions.

Subsection 49G (1)—

- (a) Omit “the provisions of”.
- 30** (b) Omit “his”, substitute “a”.

SCHEDULE—continued

(c) Omit “of the intestate”.

(d) Omit “forty-six”, substitute “46”.

Subsection 49G (2)—

Omit “one”, substitute “1”.

5 Subsection 49G (3)—

Omit “the last preceding subsection”, substitute “subsection (2)”.

Paragraph 49G (4) (b)—

Omit “one”, substitute “1”.

Subsection 49G (6)—

10 Omit “him”, substitute “the spouse”.

Paragraph 49J (a)—

Omit “two”, substitute “2”.

Paragraphs 49K (a) and (b)—

Omit “the intestate estate of an intestate”, substitute “an intestate estate”.

15 Section 49K—

(a) Omit “the spouse” (first occurring), substitute “a spouse”.

(b) Insert “so orders” after “the Court”.

(c) Omit all the words after paragraph (f).

Subsections 49L (1)—

20 (a) Omit “the spouse” (first occurring), substitute “a spouse”.

(b) Omit “one”, substitute “1”.

Subsection 49L (2)—

(a) Omit “forty-nine K of this Act made by the spouse”, substitute “49K made by a spouse”.

25 (b) Omit “forty-nine G of this Act”, substitute “49G”.

(c) Omit “surviving”.

(d) Omit “one”, substitute “1”.

(e) Omit “the last preceding subsection”, substitute “subsection (1)”.

SCHEDULE—continued

Subsection 49L (3)—

Omit “one of two”, substitute “1 of 2”.

Section 49M—

- (a) Omit “the spouse”, substitute “a spouse”.
- 5 (b) Omit “one of two”, substitute “1 of 2”.
- (c) Omit “he” (first occurring), substitute “the spouse”.
- (d) Insert “or she” after “he” (last occurring).
- (e) Omit “Division,”, substitute “Division”.

Subsection 49N (1)—

- 10 (a) Omit “the spouse”, substitute “a spouse”.
- (b) Omit “his behalf by his”, substitute “the spouse’s behalf by his or her”.

Subsection 49N (2)—

- (a) Insert “or she” after “he”.
- 15 (b) Omit “eighteen”, substitute “18”.

Subsection 49P (1)—

- (a) Omit “1898, N.S.W. in its application to”, substitute “1898 of the State of New South Wales in its application in”.
- (b) Insert “or her” after “his”.
- 20 (c) Omit “he”, substitute “the benefactor”.

Subsection 49P (2)—

Omit “two”, substitute “2”.

Subsection 50 (1)—

- 25 Omit “executors and administrators”, substitute “an executor or an administrator”.

Paragraph 50 (1) (b)—

Insert “or she” after “he”.

Paragraph 50 (1) (c)—

Omit “three”, substitute “3”.

SCHEDULE—continued

Paragraph 50 (1) (d)—

- (a) Omit “subject to subsection (2C) of this section.”.
- (b) Omit “the spouse” (first occurring), substitute “a spouse”.

Subsection 50 (2A)—

- 5 (a) Omit “the commencement of this subsection” (first occurring), substitute “1 January 1966”.
- (b) Omit “on him”.
- (c) Omit “after the commencement of this subsection”, substitute “on or after that date”.

10 **Subsection 50 (2B)—**

- (a) Omit “the letters of administration, and on any copy of the letters of administration issued by him”, substitute “letters of administration issued by him or her, and on any copy of such letters of administration,”.

- 15 (b) Omit “of this section”.

Subsections 50 (2C) and (2D)—

Omit the subsections.

Subsection 50 (3)—

Omit “of this section”.

20 **Subsection 50 (4)—**

Omit “one”, substitute “1”.

Section 50—

Add at the end the following subsection:

“(5) In this section—

- 25 ‘intestate’ has the same meaning as in Part IIIA;
- ‘intestate estate’ has the same meaning as in Part IIIA;
- ‘spouse’, in relation to an intestate, has the same meaning as in Part IIIA.”.

Subsection 51A (3)—

- 30 Omit the subsection.

SCHEDULE—continued

Subsection 52 (1)—

Omit “one”, substitute “1”.

Subsection 52 (2)—

(a) Omit “so allotted to him”, substitute “allotted to the party”.

5 (b) Omit “lands allotted to him”, substitute “land allotted to the party”.

Subsection 52 (3)—

(a) Omit “have issued to him”, substitute “the issue of”.

(b) Omit “so allotted to him”, substitute “allotted to the party”.

Section 53—

10 (a) Omit “own”, substitute “or her”.

(b) Insert “or her” after “his” (last occurring).

Section 54—

(a) Omit “his” (wherever occurring), substitute “the”.

(b) Omit “him”, substitute “the executor or administrator”.

15 **Subsection 55 (1)—**

Omit “the commencement of this Act”, substitute “21 October 1929”.

Subsection 55 (3)—

Omit “his”, substitute “a”.

Subsection 56 (1)—

20 (a) Omit “the provisions of”.

(b) Insert “or her” after “him”.

Subsection 56 (2)—

Insert “or her” after “him”.

Section 57—

25 Insert “or she” after “he”.

Paragraph 58 (1) (b)—

Omit “his”, substitute “the person’s”.

SCHEDULE—continued

Subsection 58 (2)—

Insert “or her” after “his”.

Subsection 58 (3)—

Omit “three”, substitute “3”.

5 Subsection 59 (1)—

Omit “one”, substitute “1”.

Subsection 59 (2)—

(a) Omit “one”, substitute “1”.

(b) Insert “or she” after “he”.

10 Subsection 59 (3)—

(a) Omit “him”.

(b) Omit “he”, substitute “the executor or administrator”.

Section 60—

Omit “the last preceding section”, substitute “section 59”.

15 Subsection 61 (1)—

Omit “, as it thinks fit,”, substitute “as it thinks fit”.

Subsection 62 (2)—

(a) Insert “or herself” after “himself”.

(b) Insert “or her” after “him”.

20 (c) Omit “person,”, substitute “person”.

(d) Omit “granted,”, substitute “, granted”.

Subsection 65 (1)—

Omit the subsection, substitute the following subsection:

25 “(1) Where an executor or administrator has given notices under section 64 and a claim against the estate is sent to him or her, the executor or administrator may serve a notice on the claimant calling the claimant to take proceedings to enforce the claim within a period of 6 months, and to duly prosecute the claim.”.

Subsection 65 (2)—

30 (a) Omit “six”, substitute “6”.

SCHEDULE—continued

(b) Insert “or she” after “he”.

(c) Omit “his”, substitute “the”.

Subsection 66 (1)—

Omit “lease,” (first occurring), substitute “lease”.

5 **Paragraph 66 (1) (a)—**

Omit “of this subsection”.

Subsection 66 (1)—

(a) Omit “he”, substitute “the executor or administrator”.

(b) Insert “or her” after “his”.

10 (c) Omit “part,”, substitute “part”.

Subsection 66 (3)—

Omit “fifty-six of this Act”, substitute “56”.

Section 67—

15 Omit “the last three preceding sections contained”, substitute “section 64, 65 or 66”.

Paragraphs 68 (a), (c) and (e)—

Insert “or she” after “he”.

Paragraph 69 (1) (a)—

Omit “the provisions of”.

20 **Subsection 69 (2)—**

Omit the subsection, substitute the following subsections:

25 “(2) If an executor or administrator is not actually resident in the Territory, he or she shall lodge with the Registrar for filing an address for service within 20 kilometres of the Registrar’s office before the issue or sealing of any probate or administration.

“(3) Any document served on an executor or administrator referred to in subsection (2) at the address referred to in that subsection is to be taken to have been served personally on the executor or administrator.”.

Subsections 70 (1) and (2)—

30 Insert “or her” after “his” (wherever occurring).

SCHEDULE—continued

Subsection 71 (2)—

Omit “of this section”.

Subsection 71 (3)—

Omit “Four thousand dollars”, substitute “\$4,000”.

5 Subsection 71 (4)—

(a) Omit “Four thousand dollars”, substitute “\$4,000”.

(b) Insert “or her” after “his”.

Subsection 71 (5)—

Omit “the last preceding subsection”, substitute “subsection (4)”.

10 Subsection 71 (6)—

(a) Omit “subsection (4) of this section”, substitute “(4)”.

(b) Omit “of this section” (second and last occurring).

Section 73—

Omit “seventy-one of this Act”, substitute “71”.

15 Subsection 76 (1)—

(a) Omit “him” (first occurring), substitute “the applicant”.

(b) Insert “or her” after “him” (last occurring).

Section 78—

20 (a) Omit “the last preceding section, he”, substitute “section 77, the Registrar”.

(b) Insert “or she” after “he” (last occurring).

Section 79—

(a) Omit “of this Act”.

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

25 Paragraph 80 (2) (b)—

Insert “or she” after “he”.

Subsection 80 (3)—

Insert “or she” after “he”.

SCHEDULE—continued

Subsection 80 (4)—

Omit “of this section”.

Subsection 82 (1)—

5 Omit “other duties (if any) but not including estate duty”, substitute
“any other duties (excluding estate duty)”.

Subsection 82 (2)—

Omit “the next succeeding subsection”, substitute “subsection (3)”.

Subsection 82 (3)—

Omit “fourteen”, substitute “14”.

10 **Paragraphs 83B (1) (a) and (b)—**

Omit “his”.

Subsection 83B (1)—

Insert “or her” after “him”.

Subsection 87B (1)—

15 (a) Insert “or she” after “he”.

(b) Insert “or her” after “him”.

Subsection 87B (2)—

Insert “or she” after “he”.

Paragraphs 87B (2) (a) and (b)—

20 Insert “or her” after “him”.

Subsection 87B (3)—

Omit “he has given notice of his intention so to do,”, substitute “notice of intention to do so has been given”.

Subsection 87B (4)—

25 Omit “he is administering or has”, substitute “is being administered or has been”.

Paragraph 87C (2) (b)—

Omit “his”.

SCHEDULE—continued

- Subsection 87C (4)—**
Insert “or she” after “he”.
- Subsection 87C (5)—**
Omit “by him”.
- 5 **Subsection 87C (6)—**
Insert “or her” after “his”.
- Subsection 87C (7)—**
Omit “on him”.
- 10 **Subsection 87C (8)—**
Insert “or her” after “his”.
- Subsection 87C (9)—**
Omit “on him”.
- Paragraph 88 (1) (a)—**
Omit “widow, husband,”, substitute “spouse”.
- 15 **Paragraph 88 (1) (c)—**
Omit “three”, substitute “3”.
- Paragraph 88 (1) (d)—**
(a) Omit “thirty”, substitute “30”.
(b) Omit “three”, substitute “3”.
- 20 **Paragraph 88 (1) (e)—**
Omit “or widow or next”, substitute “, any spouse or the next”.
- Paragraph 88 (1) (g)—**
Omit “and”.
- Subsection 88 (4)—**
- 25 **Subsection 88 (5)—**
Omit “the last mentioned subsection”, substitute “subsection (2)”.
- Subsection 88 (5)—**
Insert “or her” after “him”.

SCHEDULE—continued

Section 88—

Add at the end the following subsection:

“(6) In this section—

- 5 ‘spouse’, in relation to a deceased person, has the same meaning as it has in Part IIIA in relation to an intestate.”.

Subsection 89 (1)—

- (a) Omit “he”, substitute “the Public Trustee”.
- (b) Insert “or her” after “him” (first occurring).
- (c) Omit “him” (last occurring), substitute “the Public Trustee”.

10 **Subsection 89 (1A)—**

- (a) Omit “he” (first occurring), substitute “the deceased”.
- (b) Omit “he died”, substitute “death”.

Subsection 91 (1)—

Omit “by him”.

15 **Paragraph 91 (3) (b)—**

Omit “; including”, substitute “, including all costs in relation to appearing on the application for the probate or administration.”.

Paragraph 91 (3) (c)—

Omit the paragraph.

20 **Subsection 91 (4)—**

Omit “his”, substitute “the”.

Subsection 92 (2)—

- (a) Insert “or she” after “he”.
 - (b) Omit “the preceding provisions of this Part”, substitute “section 88”.
- 25

Subsection 92 (3)—

Omit “him”, substitute “the Public Trustee”.

Section 95—

Repeal the section, substitute the following section:

SCHEDULE—continued

Court orders against Public Trustee

“95. (1) This section applies where—

- (a) the Public Trustee has the responsibility of collecting and administering a deceased estate; and
- 5 (b) the Public Trustee or the Curator of Estates of Deceased Persons has—
 - (i) neglected or refused to do any act in relation to the administration of the estate; or
 - 10 (ii) acted, or threatened to act, in breach of his or her duty in relation to the administration of the estate.

“(2) Where this section applies, a person interested in an estate referred to in subsection (1) may apply to the Court on affidavit—

- 15 (a) for an order calling on the Public Trustee to show cause before the Court, within 2 days after the date of service of the order, why the Public Trustee should act, or fail to act, in the manner complained of; or
- (b) for an interim injunction.

20 “(3) On application under subsection (2), the Court may grant an order or interim injunction subject to such conditions as to giving security for costs as the Court thinks fit.”.

Subsection 97A (1)—

Insert “or her” after “his”.

Subsection 97A (4)—

Omit “him”, substitute “the person”.

25 **Paragraph 101 (1) (a)—**

- (a) Omit “he”, substitute “the Public Trustee”.
- (b) Insert “or her” after “his”.

Paragraph 101 (1) (c)—

Omit “him”, substitute “the Public Trustee”.

30 **Section 102—**

Omit “him”, substitute “the Public Trustee”.

SCHEDULE—continued

Subsection 124 (2)—

- (a) Omit “he”, substitute “the person”.
- (b) Insert “or her” after “him”.

Subsection 124 (3)—

- 5 (a) Omit “he” (first occurring), substitute “the person”.
- (b) Insert “or she” after “he” (last occurring).

Paragraph 125A (d)—

Omit “eighty-seven B of this Act”, substitute “87B”.

Paragraph 125A (e)—

- 10 Omit “eighty-seven C of this Act”, substitute “87C”.

Paragraph 125A (f)—

Omit “eighty-eight of this Act”, substitute “88”.

NOTES

Principal Act

1. Reprinted as at 31 January 1995. See also Act No. 54 1996.

Section headings

On the day on which the *Administration and Probate Act 1929* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, headings to sections of the Principal Act are altered as set out in the following table:

Section	Alteration
10B	Omit "one", substitute "single".
20	Omit all the words after "executor".
49AA	Omit the heading, substitute the following heading: Immovable property where intestate domiciled elsewhere
49B	Add at the end "to issue".
49G	Omit "appropriate right to matrimonial home", substitute "dwelling-house".
49H	Omit the heading, substitute the following heading: Valuation
60	Omit "last section", substitute "section 59".
87B	Omit "\$5,000", substitute "\$10,000".

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