

**1991**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**ADMINISTRATION AND PROBATE (AMENDMENT) BILL (No. 2) 1991**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of the Attorney General**

**Mr Terry Connolly MLA**

## ADMINISTRATION AND PROBATE (AMENDMENT) BILL (No. 2) 1991

### OUTLINE

This Bill amends the *Administration and Probate Act 1929*. The Bill enables the Minister to set a rate of interest payable on a legacy, where the will does not specify the rate of interest payable, and the courts do not determine it. The Bill will ordinarily apply to general legacies paid more than a year after the testator's death, except in special cases or where the testator has otherwise provided.

### FINANCIAL IMPACT STATEMENT

The Bill will have no effect on government income or expenditure.

### NOTES ON CLAUSES

#### Clause 1: Short Title

This clause cites the short title of the Act.

#### Clause 2: Principal Act

The term 'Principal Act' refers to the *Administration and Probate Act 1929*.

#### Clause 3: Insertion

Clause 3 inserts new section 55A into the Principal Act. The section consists of three subsections:

- . New subsection 55A(1) provides that where the will, an enactment, or a rule of law requires that interest be paid on a legacy, the rate of interest is that determined by the Minister administering the Principal

Act unless the will, or the court, provide otherwise. This subsection operates subject to new subsection 55A(2).

. New subsection 55A(2) provides that where an executor or administrator appropriates property with the aim of satisfying a legacy under a will, the person receiving the legacy is entitled to the income from the property, and interest shall not be paid out of the rest of the estate for the part of the legacy satisfied by the property appropriated.

. New subsection 55A(3) provides that the Minister's determination of the rate of interest is an instrument to which section 10 of the *Subordinate Laws Act 1989* applies. This means that the determination must be laid before the Legislative Assembly within fifteen sitting days of notification in the Gazette, and may in that time be disallowed by an appropriate resolution of the Assembly.