

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
WILLS (AMENDMENT) ORDINANCE 1989

No. 16 of 1989

The Birth (Equality of Status) Ordinance 1988 makes illegitimacy irrelevant for most legal purposes in the Territory. Wills and codicils were expressly excluded from the main part of the Birth (Equality of Status) Ordinance 1988 as it is more appropriate for the law relating to the construction of a will to be included in the Wills Ordinance 1968 (the principal Ordinance).

The Wills (Amendment) Ordinance 1989 inserts a provision in the principal Ordinance which will provide that all references in a will to "issue" are to be construed as referring to all issue, whether legitimate or illegitimate. However this is subject to a contrary intention being expressed in the will. A consequence of the amendment is to abolish the rule of construction laid down in Hill v Crook (1873) LR CHL 265, that a gift of property under a will to "children" prima facie is a gift only to legitimate children.

Details of the Ordinance are as follows.

Section 1 provides that the Ordinance may be cited as the Wills (Amendment) Ordinance 1989.

Section 2 provides that the Ordinance shall come into operation on a date fixed by the Minister and notified in the Gazette.

Section 3 inserts after section 31 of the principal Ordinance a new section 31A. This new section provides that a reference in a will to the issue of a person shall, unless a contrary intention is apparent from the will, be construed as referring to all issue whether legitimate or illegitimate.

Section 4 provides that the amendment made by section 3 applies only to wills made or republished after the commencement date of the Ordinance.

Authorised by the
Minister of State for
the Arts and Territories