

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

ADMINISTRATION AND PROBATE (AMENDMENT) ORDINANCE 1989

ORDINANCE NO. 17 OF 1989

The Administration and Probate Ordinance 1929 (the Principal Ordinance) regulates the administration of intestate estates and the granting of probate.

The Administration and Probate (Amendment) Ordinance 1989 replaces the concept of bona vacantia whereby the Crown has the right to take property of an intestate estate where there is no heir with a provision that the Commonwealth becomes the ultimate heir of the property of a person who dies intestate.

The effect of the Ordinance is to overcome jurisdictional difficulties which arise when an ACT domiciled person dies intestate with property outside the ACT. Currently other jurisdictions will not recognise the claim of the Commonwealth when it takes moveable property under the concept of bona vacantia. The removal of the concept and provision instead for the Commonwealth to become the ultimate heir of the estate removes this difficulty.

The Ordinance places the Commonwealth on an equal footing with the States, which have legislated in similar terms to protect the estates of intestate persons who have died with property in other jurisdictions.

Details of the Ordinance are included in the Attachment.

**ISSUED BY AUTHORITY OF THE
MINISTER OF STATE FOR THE ARTS
AND TERRITORIES**

ATTACHMENT

Section 1 cites the Ordinance as the Administration and Probate (Amendment) Ordinance 1989.

Section 2 cites the Principal Ordinance as the Administration and Probate Ordinance 1929.

Section 3 inserts a new section 49CA into the Principal Ordinance which details how the Public Trustee is to deal with an intestate estate to which the Commonwealth becomes entitled as the ultimate heir.

Paragraph 49CA(a) provides that the Public Trustee shall hold the intestate estate on trust for the Commonwealth.

Paragraph 49CA(b) provides that at the expiration of the period of 6 years from the date of death of the intestate, the Public Trustee shall:

- (i) sell so much of the estate that is not money, and after deducting from the proceeds of the sale all costs and charges lawfully due to the Public Trustee or any other person, pay the balance of the proceeds to the Commonwealth; or
- (ii) in respect of so much of the estate as is money, pay the balance to the Commonwealth, after deducting all costs and charges lawfully due to the Public Trustee or any other person.

Section 4 repeals section 107 of the Principal Ordinance as a consequence of inserting section 49CA.

Section 5 omits item 4 from Part II of the Sixth Schedule of the Principal Ordinance and substitutes a new item 4 the effect of which is to provide that the Commonwealth is the ultimate heir where an intestate is not survived by issue, a parent or next of kin. This replaces the current item 4 which provides for the estate of an intestate to vest in the Crown as bona vacantia.

Section 6 deals with application and savings so that the Ordinance only deals with intestates who die after the commencement of the Ordinance. The Principal Ordinance continues to apply to intestates who die before the commencement of the Ordinance. Subsection 6(3) defines an "intestate" as having the same meaning as in Division 3A of Part III of the Principal Ordinance.