

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

ADMINISTRATION AND PROBATE (AMENDMENT) ORDINANCE
(NO. 2) 1989

No. 19 of 1989

The Administration and Probate Ordinance 1929 (the Principal Ordinance) provides for the distribution of intestate estates to illegitimate persons as well as legitimate persons. However, the Birth (Equality of Status) Ordinance 1989, requires illegitimacy to be disregarded for the purposes of distribution of an estate upon intestacy (including partial intestacy). The provisions of the Principal Ordinance relating to illegitimate persons will then be redundant, so those provisions are repealed by the Administration and Probate (Amendment) Ordinance (No. 2) 1989 (the Ordinance).

The Ordinance also inserts a provision in the Principal Ordinance requiring an executor or administrator to apply for a search of the Register of Births and the Register of Parentage Information.

The effect of each of the provisions of the Ordinance is as follows.

Section 1 cites the short title of the Ordinance as the Administration and Probate (Amendment) Ordinance (No. 2) 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 identifies the Administration and Probate Ordinance 1929 as the Principal Ordinance.

Section 4 repeals section 49E of the Principal Ordinance. It also inserts a new section 49E which provides that a presumption of parentage arising under Part III of the Birth (Equality of Status) Ordinance 1988 shall, for the purposes of Division 3A of Part III of the Principal Ordinance, be taken to operate only if the presumption arose before the intestate died. This is consistent with the principal implied in the Birth (Equality of Status) Ordinance 1988 that the alleged parent should have an opportunity to refute the presumption.

The former section 49E, which provides for the distribution of intestate estates to illegitimate persons, became redundant because of the provisions of the Birth (Equality of Status) Ordinance 1988.

Section 5 amends section 58 of the Principal Ordinance to make it clear, as the section already intends, that executors and administrators are only required to file accounts relating to the estate if the Supreme Court Rules so require or the court so orders.

Section 6 amends section 64 of the Principal Ordinance by inserting a new subclause (1A) providing that an executor or administrator shall not distribute the assets of the testator or intestate unless he or she has applied under the Registration of Births, Deaths and Marriages Ordinance 1963 for a search of the Register of Births and the Register of Parentage Information for information about the parents or any children of the deceased or any other person known by the executor or administrator to be relevant to the distribution of the assets, and has taken account of any information obtained.

Section 64 of the Principal Ordinance provides that if an executor or administrator has given all proper notices to persons seeking to claim against an estate then after distribution of the assets he or she will not be liable to any person of whose claim he or she was unaware at the time of distribution. Clause 6 amends this section so that only executors and trustees who have searched the two Registers are entitled to this indemnity.

Section 7 provides that the amendments made by the Ordinance will have no effect in relation to the estates of people who died before its commencement.

Authorised by the Minister
of State for the Arts and
Territories