

AUSTRALIAN CAPITAL TERRITORY

FAMILY PROVISION ORDINANCE 1969

EXPLANATORY MEMORANDUM

No. 15 of 1969

This Ordinance repeals Part VII of the Administration and Probate Ordinance 1929-1967, which deals with Testator's Family Maintenance, and replaces it by a separate Ordinance containing up to date provisions, whilst retaining the basic principles of the present legislation.

Scope of Ordinance

Under the present Ordinance, the only persons entitled to make an application are, where the deceased has left a will, the widow, widower or children and, where the deceased died intestate, the widow or widower. Under the new Ordinance, there will be no distinction between the classes of persons entitled to make an application whether the deceased died testate or intestate.

Persons entitled to apply

The persons entitled to make application under the new Ordinance will be:—

- (a) The widow, widower, and children;
- (b) A former wife or husband receiving, or entitled to receive, maintenance;
- (c) A step-child who was being maintained;
- (d) A grandchild whose parent (being a child of the deceased) is dead or who is not being maintained by a parent;
- (e) A parent, if being maintained or there is no surviving spouse of child.

In the case of an illegitimate child, all relationships are to be determined as though he were the legitimate child of his parents.

Time for making application and effect on distribution

The time within which an application may be made has been extended to twelve months from the date on which probate or letters of administration were granted (with power for the court to grant an extension). However, provision may not be made out of distributed assets unless the application is made within that twelve months period.

Property over which power of appointment has been exercised

The new Ordinance provides that the court may, if reasonable provision cannot be raised out of the general estate of the deceased, order provision out of property over which the deceased exercised a power of appointment of his will if he could have appointed the property to himself.

Class Fund

Under the present law, the position of each applicant has to be considered separately. A section has been included empowering the court to make provision for a class, e.g., it could order that one fund be set up to provide for all children.

Evidence

A section has been included to clarify the admissibility of statements of intention made by the deceased.