



Australian Capital Territory

# Administration and Probate Act 1929

A1929-18

**Republication No 29**

**Effective: 12 December 2023**

Republication date: 12 December 2023

Last amendment made by [A2023-57](#)

## About this republication

### The republished law

This is a republication of the *Administration and Probate Act 1929* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 12 December 2023. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 12 December 2023.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Administration and Probate Act 1929

## Contents

---

	Page	
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
2	Dictionary	2
3	Notes	2
<b>Part 3</b>	<b>Grant of representation</b>	
<b>Division 3.1</b>	<b>Jurisdiction of the Supreme Court</b>	
8C	Supreme Court to make finding about domicile of deceased person	3
9	Probate or administration may be granted	3
9A	Evidence of death	4
9B	Grant on presumption of death	4
9C	Evidentiary effect of probate and letters of administration	6
10B	Grant to single executor reserving leave to others to apply	7
10C	Grant of probate to public trustee and guardian etc	7

---

R29  
12/12/23

Administration and Probate Act 1929  
Effective: 12/12/23

contents 1

## Contents

---

	Page	
11	Practice about granting administration of real and personal estate	7
12	Eligible administrators	7
13	Rights and duties of administrator	8
20	Renunciation or non-appearance by executor	9
20A	Renunciation etc by person appointed both executor and trustee of will	10
21	Administration to guardian of child sole executor	10
22	Administration under power of attorney	11
23	Administration pendente lite and receiver	11
24	Power to appoint administrator	11
25	Failure of executor to prove will	12
26	Issue of special letters of administration	12
27	Special administrator to make certain affidavits	13
28	On return of original executor or administrator special administration to be revoked	13
29	Accounting by special administrator	13
30	Liability of executor or administrator neglecting to apply for revocation of special administration	14
31	Revocation of grants not to prejudice actions or suits	14
32	Discharge or removal of executors and administrators	14
32A	Revocation of grant if person living at date of grant	16
32B	Effect of revocation of grant	17
<b>Division 3.3                    Effect of grant of representation</b>		
38A	Estate to vest in public trustee and guardian until grant	18
39	Real and personal estate to vest in executor or administrator	19
40	Real estate held in trust	19
41	Property of deceased to be assets	20
41A	Property of deceased liable for debts	20
41B	Appointments by will under general power	21
41C	Administration of assets	21
41D	Application of income of settled residuary estate	21
42	Real estate to be held on trusts of will	23
43	Rights of executor in relation to real estate	23
<b>Division 3.4                    Position of executor of an executor</b>		
43A	Executor of executor	24
43B	When ceases to represent deceased	25

43C	Rights and liabilities of executor of executor	Page 25
<b>Part 3A Intestacy</b>		
<b>Division 3A.1 Preliminary</b>		
44	Interpretation for pt 3A	26
<b>Division 3A.2 Distribution on intestacy</b>		
44A	Whole blood or half-blood relationships	27
45	Executor or administrator to hold property of intestate on trust for persons entitled	27
45A	Distribution between spouse, civil union partner or civil partner and eligible partner	28
46	Entitlement of children	28
48	Estate by courtesy or right of dower not to arise	28
49	Distribution of intestate estate	29
49A	Interest of partner on intestacy in personal chattels	30
49AA	Immovable property if intestate domiciled elsewhere	30
49B	How distribution to issue is made	31
49BA	Gifts made before death of intestate	32
49C	How distribution to next of kin is made	34
49CA	How distribution to the Territory is made	35
49D	Partial intestacies	36
49DA	Effect of disclaimer or forfeiture	37
49E	Presumptions of parentage	37
<b>Division 3A.3 Rights of partners to intestate dwelling houses</b>		
49F	Definitions for div 3A.3	38
49G	Claim by partner to dwelling house	38
49H	Valuation	39
49J	Right not exercisable for certain tenancies	40
49K	Right not exercisable in certain other cases	40
49L	Personal representative not to sell or dispose of interest without consent	41
49M	Rule that trustee not to purchase trust property	41
49N	If surviving partner is under legal disability	42

	Page
<b>Part 3B</b>	<b>Simultaneous deaths</b>
49P	Simultaneous deaths—devolution of property generally 43
49Q	Simultaneous deaths—devolution of jointly owned property 43
<b>Part 3C</b>	<b>Functions of executors and administrators</b>
50	Powers of executors and administrators to sell, mortgage or lease real estate 44
51	Supreme Court may make special order 45
51A	Supreme Court may authorise postponement of realisation and carrying on of business 46
52	Supreme Court may order partition in summary way 46
53	Personal representative not required to continue to act against own consent 47
54	In suits executor or administrator to represent real estate 48
55	All debts to stand in equal degree 48
55A	Interest on legacies 48
56	Executor may sign acknowledgment instead of conveyance 49
57	Summary application for legacy etc 49
58	Examination and passing of accounts etc 50
61	Supreme Court may make order about disposal of money in hands of executor etc 51
62	Payments under revoked probates or administrations valid 51
63	Persons etc making payments on probate granted for estate of deceased person to be indemnified 51
64	Notice before distribution of assets 52
65	Claims barred against executor or administrator in certain cases 53
66	Distribution of estate by executors and administrators 53
67	Right to follow assets 54
68	Executors may compound etc 54
69	Every executor etc taken to be resident in ACT 55
70	Executors etc may be allowed commission 55
<b>Part 3D</b>	<b>Liability of certain persons in relation to deceased estates</b>
74A	Fraudulently obtaining or keeping property 56
74B	Persons liable for waste of deceased estate 57

	Page
<b>Part 5</b>	<b>Recognition of foreign grants</b>
79A	Orders to collect and administer estates for pt 5 58
79B	Inclusion of orders to collect and Scottish confirmation 58
80	Reseal of grant made in reciprocating jurisdiction 58
80B	Supreme Court may require security 59
80C	Effect of sealing 59
<b>Part 6</b>	<b>Public trustee and guardian</b>
87B	Estates valued at \$30 000 or less 61
87C	Estates valued at \$150 000 or less 62
88	Orders to public trustee and guardian to collect and administer 64
89	Effect of order 66
90	Grant of probate or administration despite appointment of public trustee and guardian 66
91	Cessation of rights and liabilities of public trustee and guardian 67
92	Order to public trustee and guardian to collect and administer in special circumstances 68
93	Notice of order to be published 69
95	Supreme Court orders against public trustee and guardian 69
96	Orders on complaints under s 95 70
97	Public trustee and guardian to act as Supreme Court directs 70
97A	Public trustee and guardian may obtain directions of Supreme Court 70
98	Proceedings for estates administered by the public trustee and guardian 71
101	Accounts to be kept etc 71
102	Receipt of public trustee and guardian sufficient discharge 71
<b>Part 9</b>	<b>Miscellaneous</b>
126	People entitled to inspect will of deceased person 72
127	Person fraudulently disposing of will liable for damages 73
128	Application of amendments made by Administration and Probate (Amendment) Act 1996 73
129	Regulation-making power 74

## Contents

---

	Page
<b>Schedule 4</b>	75
Part 4.1 <b>Order of application of assets if estate solvent</b>	75
Part 4.2 <b>Rules about payment of debts and liabilities if estate insolvent</b>	76
<b>Schedule 6</b>	77
Part 6.1 <b>Distribution of estate if intestate survived by partner</b>	77
Part 6.2 <b>Distribution of estate if intestate not survived by partner</b>	79
<b>Dictionary</b>	80
<b>Endnotes</b>	
1            About the endnotes	83
2            Abbreviation key	83
3            Legislation history	84
4            Amendment history	94
5            Earlier republications	116





Australian Capital Territory

# Administration and Probate Act 1929

---

An Act relating to the administration of the estates of deceased persons

---

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Administration and Probate Act 1929*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## **Part 3**                      **Grant of representation**

### **Division 3.1**                **Jurisdiction of the Supreme Court**

#### **8C**                      **Supreme Court to make finding about domicile of deceased person**

On an application made under this Act—

- (a) for the grant of probate of the will, or administration of the estate, of a deceased person; or
- (b) to have probate of the will, administration of the estate, or an order to collect and administer the estate, of a deceased person granted by a court of competent jurisdiction in a State or other Territory sealed with the seal of the Supreme Court; or
- (c) by the public trustee and guardian for an order to collect and administer the estate of a deceased person;

the Supreme Court must not grant the relief sought unless it has made a finding about the domicile of the deceased person at the time of death.

#### **9**                      **Probate or administration may be granted**

- (1) The Supreme Court has jurisdiction to grant probate of the will or administration of the estate of any deceased person leaving property, whether real or personal, within the ACT.
- (2) The Supreme Court has jurisdiction to grant probate of the will, or administration of the estate, of a deceased person who did not leave property, whether real or personal, within the ACT, if the court is satisfied that the grant of probate or administration is necessary.

**9A Evidence of death**

- (1) Probate of the will, or administration of the estate, of a person may be granted by the Supreme Court if it is satisfied, by direct evidence or by evidence supporting a presumption of death, that the person is, or may be presumed to be, dead.
- (2) A grant of probate of the will, or administration of the estate, of a person made on direct evidence of the death of the person or on evidence supporting a presumption of the death of the person is valid even if the person is, after the day the grant was made, found to have been alive on that day.

**9B Grant on presumption of death**

- (1) If the Supreme Court makes a grant of probate of the will, or administration of the estate, of a person on evidence supporting a presumption of the death of the person—
  - (a) the grant must be expressed to be made on presumption of the death of the person; and
  - (b) the estate of the person must not be distributed without the leave of the court; and
  - (c) the court may, in the probate or administration or by an order made at any time, give leave to distribute the estate; and
  - (d) the court may, in giving leave to distribute the estate of the person, direct that the distribution must not be made unless each person who is to take under the distribution gives an undertaking or security that he or she will, if the probate or administration is revoked—
    - (i) if the person has received property other than money under the order—restore the property or, at his or her option, pay an amount equal to the value of the property at the time he or she received the property to the person whose death was

presumed or, if that person has subsequently died, to the administrator of the estate of that person; or

- (ii) if the person has received money under the order—pay an amount equal to the amount of the money received under the order to the person whose death was presumed or, if that person has subsequently died, to the administrator of the estate of that person; and
  - (e) the court may direct the executor or the administrator to give, before the estate is distributed, the notices (including a notice stating a date before which a caveat against the distribution of the estate may be filed in the Supreme Court under the rules) that the court considers appropriate.
- (2) If an executor or administrator of an estate has given the notices directed by the Supreme Court under subsection (1) (e), the executor or administrator—
- (a) may, subject to subsection (3), after the end of the period stated in the notices, distribute the estate among the persons entitled to it, having regard only to the claims of which the executor or administrator has notice at the time of the distribution; and
  - (b) is not liable, in relation to any part of the estate so distributed, to a person entitled to that part of whose claim he or she did not have notice at the time of the distribution.
- (3) If a caveat against the distribution of an estate has been filed in the Supreme Court in accordance with a notice under subsection (1) (e) and the caveat is in force under the rules—
- (a) the executor or administrator must not distribute the estate among the persons entitled to it except under an order of the Supreme Court under subsection (4); and

- (b) the executor or administrator, the person who filed the caveat or a person interested in the distribution of the estate may make application to the Supreme Court for an order under subsection (4).
- (4) Despite the filing of a caveat in the Supreme Court in accordance with subsection (1) (e), the court may, on application under subsection (3) (b), make an order authorising the executor or administrator of an estate to distribute the estate among the people entitled to it.
- (5) An order under subsection (4) may authorise the distribution of the estate subject to the conditions the Supreme Court considers appropriate.

### **9C Evidentiary effect of probate and letters of administration**

- (1) The probate of a will or letters of administration with a will annexed are evidence of the execution of the will.
- (2) The copy of a will annexed to a probate or to letters of administration is evidence of the contents of the will.
- (3) The probate of a will is evidence of the death of the testator and, if the probate states the date of death of the testator, of the date of death.
- (4) Letters of administration of the estate of a deceased person are evidence of the death of the person and, if the letters of administration state the date of death of the person, of the date of death.

*Note* The *Evidence Act 2011*, s 92 (1) deals with the admission or use of the grant of probate or letters of administration to prove the death, or date of death, of a person or the execution of a testamentary document.

**10B Grant to single executor reserving leave to others to apply**

The Supreme Court may, if it considers appropriate, grant probate to 1 or more of the executors named in a will reserving leave to the executor who has not renounced, or the executors who have not renounced, to come in and apply for a grant of probate at a future time.

**10C Grant of probate to public trustee and guardian etc**

If a deceased person has named as an executor of the person's will the public trustee and guardian, or the public trustee of a State, the Supreme Court may grant probate of the will to that public trustee.

*Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

**11 Practice about granting administration of real and personal estate**

Subject to this Act and the rules, the practice and procedure in relation to the granting of administration of the personal estate of an intestate are applicable so far as may be, to administration of real estate, and administration of both real and personal estate may be granted in and by the same letters.

**12 Eligible administrators**

- (1) The Supreme Court may grant administration of an intestate estate to any of the following persons, subject to this section:
  - (a) the partner of the intestate;
  - (b) 1 or more of the next of kin of the intestate;

- (c) if the intestate is survived by 2 partners—either partner, or both partners conjointly;
  - (d) a partner or partners of the intestate conjointly with 1 or more of the next of kin of the intestate;
  - (e) any other person (whether or not a creditor of the intestate) the court considers appropriate.
- (2) The Supreme Court must only grant administration of an intestate estate to a person who is at least 18 years old.
- (3) The Supreme Court must not grant administration of an intestate estate to a person mentioned in subsection (1) (e) if there is anyone else to whom administration may be granted under this section who—
- (a) in the court’s opinion, can be trusted with administration of the estate; and
  - (b) applies to be granted administration of the estate.
- (4) In this section:
- partner*, in relation to an intestate—see section 44.

### **13 Rights and duties of administrator**

A person to whom administration of the estate of a deceased person is granted—

- (a) has, subject to any limitations in the grant, the same rights and liabilities as the person would have if the person were the executor of the deceased person; and



- (b) is accountable in the same way as the person would be accountable if the person were the executor of the deceased person.

*Note* This section was relocated from the *Imperial Acts (Substituted Provisions) Act 1986*, sch 2, pt 4 (for the effect of a relocation, see *Legislation Act 2001*, s 96). The 1986 Act substituted provisions for certain UK Acts that applied (or may have applied) in the ACT and repealed those Acts. The provisions of sch 2, pt 4 were substituted for 31 Edw. 3, St. 1, c 11 (1357) and 1 Jas. 2 c 17, s 6 (1685). The 1986 Act, s 4 (1) provided, in effect, that the rules of law about the interpretation of consolidating Acts apply to the interpretation of the provisions of a law set out in sch 2. These rules of law continue to apply to this section (see *Legislation Act 2001*, s 96 (3)).

## **20 Renunciation or non-appearance by executor**

- (1) This section applies if—
- (a) the person appointed executor by a will renounces probate of the will; or
  - (b) the person appointed executor by a will survives the testator but dies without having taken out probate of the will; or
  - (c) an application is made in the Supreme Court under section 25 (Failure of executor to prove will) in relation to the person appointed executor by a will and the person does not file in the court a notice of intention to respond or defence within the time required by the rules.
- (2) The person's rights as executor of the will cease, and the representation of the testator and the administration of the testator's estate are taken, without further renunciation, to devolve as if the person had not been appointed executor.

**20A Renunciation etc by person appointed both executor and trustee of will**

- (1) If section 20 (1) (a) or (c) applies to a person who is appointed by a will both executor and trustee, the person is taken to have disclaimed the trust contained in the will.
- (2) If—
  - (a) section 20 (1) (a), (b) or (c) applies to a person who is appointed by a will both executor and trustee, and administration with the will annexed is granted to a trustee company; or
  - (b) a person appointed by a will both executor and trustee authorises a trustee company to apply for administration with the will annexed, and administration with the will annexed is granted to the trustee company;

the trustee company is taken, because of the grant of administration and without any further appointment, to be appointed trustee of the will in the person's place.

- (3) In this section:  
*trustee company*—see the *Trustee Companies Act 1947*, dictionary.

**21 Administration to guardian of child sole executor**

- (1) If a child is sole executor, administration with the will annexed may be granted to—
  - (a) the guardian of the child; or
  - (b) any other person the Supreme Court considers appropriate;

until the child is 18 years old, with full or limited powers to act in the premises until probate has been granted to the executor or administration has been granted to some other person.

- (2) The person to whom that administration is granted has the same powers as an administrator under an administration granted during the minority of the child.

## **22 Administration under power of attorney**

- (1) If a person entitled to probate or administration of a deceased estate is out of the jurisdiction, and has appointed a person within the jurisdiction under a power of attorney to exercise that entitlement, the Supreme Court may grant administration to the attorney on behalf of the entitled person on the terms the court considers appropriate.
- (2) The grant of administration under subsection (1) continues in force despite the death of the donor of the power of attorney, subject to the terms of the grant.

## **23 Administration pendente lite and receiver**

- (1) The Supreme Court may—
- (a) pending any suit touching the validity of the will of any deceased person, or for obtaining recalling, or revoking any probate or any grant of administration; or
  - (b) during a contested right of administration;
- appoint an administrator of the personal estate and the same or any other person to be receiver of the real estate of any deceased person, with the full or limited powers that the court considers appropriate.
- (2) The Supreme Court may make the orders for the remuneration of the administrator or receiver out of the personal and real estate of the deceased person it considers right.

## **24 Power to appoint administrator**

The Supreme Court may, if a person dies—

- (a) intestate; or
- (b) leaving a will, but without having appointed an executor; or

- (c) leaving a will and having appointed an executor, who—
  - (i) is not willing and competent to take probate; or
  - (ii) is resident out of the ACT;

if it considers it necessary or convenient, appoint some person to be the administrator of the estate of the deceased person or of any part of the estate, on giving the security (if any) that the court directs, and may limit the administration as the court considers appropriate.

## **25 Failure of executor to prove will**

- (1) This section applies if the person named as executor in a will—
  - (a) fails to prove the will or renounce probate within 6 months after the later of the following:
    - (i) the date of the testator's death;
    - (ii) the date the executor turns 18 years old; or
  - (b) is unknown or cannot be found.
- (2) The Supreme Court may, on application under the rules, make an order for administration of the estate, and any other orders, the court considers appropriate.

## **26 Issue of special letters of administration**

If, at the end of 6 months from the death of any person, the executor to whom probate has been granted or the administrator is then residing out of the jurisdiction, the Supreme Court may, on the application of any creditor, legatee, or next of kin, grant to the creditor, legatee or next of kin so applying special letters of administration of the estate of the deceased person, nevertheless to cease on an order being made for the revocation of the grant of the special letters of administration as mentioned in section 29.

**27 Special administrator to make certain affidavits**

The person applying for grant of special letters of administration must, in addition to the oath usually taken by administrators, satisfy the Supreme Court by affidavit that the executor or administrator of the estate of the deceased person is resident out of the jurisdiction, and that—

- (a) the applicant is thereby delayed in recovering or obtaining payment of money or the possession of goods and chattels, or real estate, to which he or she is by law entitled; or
- (b) the estate is liable to loss or waste.

**28 On return of original executor or administrator special administration to be revoked**

- (1) On the return within the jurisdiction of the executor to whom probate has originally been granted, or the administrator, the executor or administrator may apply to the Supreme Court to revoke the special grant of administration.
- (2) The Supreme Court, on the hearing of the application, may make an order to revoke the special grant of administration on the terms and conditions about security, costs, or otherwise that the court appear reasonable, and the original probate or administration are and remain as valid and effectual as if the special grant of administration had not been made.

**29 Accounting by special administrator**

On any order being made by the Supreme Court for the revocation of any grant of special administration the special administrator is bound duly to account to the original executor or administrator, and to pay over any money received by him or her as special administrator that is undisposed of as the court may order.

**30 Liability of executor or administrator neglecting to apply for revocation of special administration**

If the executor or administrator neglects to apply for an order for the revocation of the special administration, he or she is, even though the special administration remains unrevoked, liable to answer and make good all claims and demands against the estate of the deceased person to the extent of the assets that have come to his or her hands or that might have come to his or her hands apart from his or her wilful neglect, or default, including the neglect mentioned in this section.

**31 Revocation of grants not to prejudice actions or suits**

If, while any legal proceeding is pending in any court by or against any executor or administrator lawfully acting as such, the grant of probate or administration is revoked, that court may order that the proceeding be continued by or against the new personal representative in like way, as if the proceeding had been originally begun by or against the new representative, but subject to the conditions and variations (if any) as that court directs.

**32 Discharge or removal of executors and administrators**

- (1) In this section:

*administrator* includes an administrator appointed under this section.

*Note* *Administrator* includes any person to whom administration is granted (see dict).

*executor* means an executor who has been granted representation.

- (2) This section applies if an executor or administrator—
- (a) remains out of the ACT for more than 2 years; or
  - (b) wants to be discharged from the office of executor or administrator; or

- (c) after the grant of representation or appointment—
  - (i) refuses to act in the office; or
  - (ii) is unfit to act in the office; or
  - (iii) is incapable of acting in the office.
- (3) The Supreme Court may order, on the terms and conditions it considers appropriate—
  - (a) the discharge or removal of the executor or administrator (the *old executor or administrator*); and
  - (b) the appointment of someone else as administrator (the *new administrator*) in place of the old executor or administrator.
- (4) For subsection (3), the Supreme Court may make—
  - (a) orders for vesting the estate in the new administrator; or
  - (b) orders about accounts; or
  - (c) any order about costs.
- (5) The old executor or administrator is not liable for an act done or omission made after the date of the order.
- (6) On appointment of a new administrator—
  - (a) the property and rights of the estate vested in the old executor or administrator vest in the new administrator; and
  - (b) the liabilities properly incurred in the administration of the estate by the old executor or administrator vest in the new administrator; and
  - (c) the new administrator has the same functions as if probate of the estate had originally been granted to the new administrator.
- (7) If the Supreme Court considers it necessary, notice of an application for the discharge or removal of the old executor or administrator may be served on anyone the Supreme Court directs.

**32A Revocation of grant if person living at date of grant**

- (1) If the Supreme Court is satisfied that a person was living at the time when probate of his or her will, or administration of his or her estate, was granted by the court, the court—
  - (a) must revoke the grant on the terms (if any) the court considers appropriate in relation to proceedings that have been begun by or against the executor or administrator or in relation to costs or any other matter; and
  - (b) may at any time, whether before or after the revocation of the grant, make the orders the court considers appropriate for the protection of the estate, including an order for an injunction against the executor or administrator or another person and an order for the appointment of a receiver.
- (2) An application to the Supreme Court for the revocation, under subsection (1), of a grant of probate of the will, or administration of the estate, of a person may be made—
  - (a) by the person; or
  - (b) if the person has died since the grant—by any person entitled to apply for a grant of probate of the will, or administration of the estate, of the person or by a person interested in the estate of the person.



**32B Effect of revocation of grant**

- (1) If a grant of probate or administration has been revoked under this Act—
- (a) the executor or administrator to whom the grant was made must account to the Supreme Court for the property that he or she has received, or that has vested in him or her, as the executor or administrator, and the court may make the orders it considers appropriate in relation to the disposal by the executor or administrator of so much of that property as remains in his or her hands; and
  - (b) the executor or administrator is not liable in relation to property that he or she has disposed of under the grant in good faith before the revocation of the grant if he or she complied with section 9B in relation to the disposing of that property; and
  - (c) the revocation of the grant does not, of its own force, invalidate a disposal of property made by, or to, the executor or administrator before the revocation of the grant; and
  - (d) a person entitled to any property that has been distributed by the executor or administrator to whom the grant was made may apply to the court for an order under subsection (2); and
  - (e) an action does not lie against the registrar-general for loss suffered by any person in consequence of the registration of a dealing with land under the *Land Titles Act 1925*, being a dealing lawfully made by the executor or administrator before the revocation of the grant; and
  - (f) the court may make the vesting orders it considers appropriate.

- (2) If the Supreme Court, on application made under subsection (1) (d) in relation to property, is satisfied that the applicant is the person entitled to the property and that the respondent to the application is the appropriate person in relation to the property, the court may make an order directing the respondent—
- (a) if the respondent is in possession of the property—to return the property to the applicant or pay to the applicant the sum the court considers reasonable in the circumstances; or
  - (b) in any other case—to pay to the applicant the sum the court considers reasonable in the circumstances.
- (3) For this section, the *appropriate person*, in relation to property distributed under a probate or administration that has been revoked, is—
- (a) if the person to whom the property was so distributed is alive—that person; or
  - (b) if the person to whom the property was so distributed is dead—the executor of the will or administrator of the will or estate of that person or a person who has benefited as a result of the property having been distributed to that person.
- (4) This section does not affect any entitlement of an executor or administrator to commission, or to any protection, indemnity, reimbursement or right under any other section of this Act.

### **Division 3.3 Effect of grant of representation**

#### **38A Estate to vest in public trustee and guardian until grant**

- (1) This section applies if—
- (a) a person dies; and
  - (b) representation has not been granted.

- (2) The person's real and personal estate vests in the public trustee and guardian.
- (3) The public trustee and guardian may undertake the administration of the person's estate while the person's property is vested in the public trustee and guardian.
- (4) However, subsection (3) does not require the public trustee and guardian—
  - (a) to administer the estate; or
  - (b) act as trustee of any trust created by the person's will; or
  - (c) exercise any discretion, power or authority of a personal representative, trustee or devisee.

### **39 Real and personal estate to vest in executor or administrator**

On the grant of representation of the estate of any deceased person, all real and personal estate of which the person dies seised or possessed of, or entitled to, in the ACT, and that is unadministered at the date of the grant, passes to and becomes vested in the executor to whom probate has been granted or the administrator for all his or her estate and interest therein in the following way:

- (a) on testacy in the executor or administrator with the will annexed;
- (b) on intestacy in the administrator;
- (c) on partial intestacy in the executor or administrator with the will annexed.

### **40 Real estate held in trust**

All real estate held by any person in trust or by way of mortgage, and vesting under section 39, vests in his or her executor or administrator, subject to the trusts and equities affecting the estate.

#### **41 Property of deceased to be assets**

- (1) The real, as well as the personal, estate of every deceased person are assets in the hands of his or her executor to whom probate has been granted, or his or her administrator, for the payment of all duties and fees, and for the payment of his or her debts in the ordinary course of administration.
- (2) The executor or administrator for purposes of administration, may, subject to sections 50 and 51, sell that real estate, or mortgage it with or without a power of sale, and convey it to a purchaser or mortgagee in as full and effectual a way in law as the deceased person could have done in his or her lifetime.

#### **41A Property of deceased liable for debts**

- (1) The following are assets for the payment of the funeral, testamentary and administrative expenses and the debts and other liabilities of a deceased person:
  - (a) the real and personal property of the person, to the extent of the person's beneficial interest in it;
  - (b) any real and personal property disposed of by the person's will in exercise of a general power.
- (2) If a person—
  - (a) on whom a beneficial interest in any property referred to in subsection (1) devolves; or
  - (b) to whom such an interest is given; or
  - (c) in whom such an interest vests;disposes of the interest or of a part of the interest in good faith before a proceeding is taken or process is sued out against him or her, the person is personally liable for the value of the interest or part so disposed of, but the interest or part is not liable to be taken in execution in the proceeding or under the process.

#### **41B Appointments by will under general power**

If a provision contained in the will of a deceased person operates as an appointment under a general power to appoint by will, the property, whether real or personal, that passes because of the provision vests in the executor or administrator as if the testator had been entitled to the property at his or her death, whether or not he or she was so entitled for an estate or interest determining on his or her death or for any other estate or interest.

#### **41C Administration of assets**

- (1) If the estate of a deceased person is sufficient for the payment in full of all the expenses, debts and liabilities payable from the estate, the person's real and personal property is, subject to the provisions of the person's will (if any) and to any law in force in the ACT about charges on property, applicable in the order set out in schedule 4, part 4.1 for the payment of the expenses, debts and liabilities payable from the estate.
- (2) If the estate of a deceased person is insufficient for the payment in full of all the expenses, debts and liabilities payable from the estate, the person's real and personal property must, subject to the [Bankruptcy Act 1966](#) (Cwlth), be administered in accordance with the rules set out in schedule 4, part 4.2.

#### **41D Application of income of settled residuary estate**

- (1) If a deceased person leaves a will containing a residuary gift because of which real or personal property is settled by way of succession, this section applies to and in relation to the income derived from that property.
- (2) The income to which this section applies is not applicable in payment of—
  - (a) the funeral, testamentary or administrative expenses payable from the estate of the person; or

- (b) the debts or liabilities of the person; or
  - (c) any interest that accrued on any such debts or liabilities before the death of the person; or
  - (d) any legacies bequeathed by the will of the person.
- (3) The income to which this section applies is applicable in payment of the interest (if any) that accrues—
- (a) on the funeral, testamentary or administrative expenses payable from the estate of the person; or
  - (b) after the death of the person, on the debts or liabilities of the person; or
  - (c) on any legacies bequeathed by the will of the person;
- before payment, and the income is so applicable in priority to any other assets in the estate of the person.
- (4) Subject to subsection (3), the income to which this section applies is payable to the person for the time being entitled to the income from the settled property.
- (5) If, in the final adjustment of the estate of a deceased person among the persons entitled to share in the distribution of the estate—
- (a) property (other than property referred to in subsection (1)) is treated as if it had been used in the proper order in payment of the funeral, testamentary and administrative expenses, the debts and the liabilities of the estate or of any legacies bequeathed by the will of the deceased person although it was not in fact so used; and
  - (b) income was earned by that property after the death of the person but before the property was so used or was treated as having been so used;
- that income is, for this section, taken to be income to which this section applies.

- (6) This section—
- (a) does not affect the rights of a creditor of the estate; and
  - (b) applies subject to the provisions of the will of the deceased person and of any law in force in the ACT in relation to charges on the property of a deceased person.

**42 Real estate to be held on trusts of will**

Subject to this part, the real estate of every deceased person devising that estate by will must be held by the executor to whom probate has been granted, or the administrator with the will annexed, according to the trusts and dispositions of the will.

**43 Rights of executor in relation to real estate**

The executor to whom probate has been granted has the same rights, and is subject to the same duties, in relation to the real estate of the testator, as executors had or were subject to in relation to personal assets under the law in force in New South Wales as in force immediately before 21 October 1929.

## Division 3.4 Position of executor of an executor

*Note* The provisions of this division were relocated from the *Imperial Acts (Substituted Provisions) Act 1986*, sch 2, pt 3 (for the effect of a relocation, see *Legislation Act 2001*, s 96). The 1986 Act substituted provisions for certain UK Acts that applied (or may have applied) in the ACT and repealed those Acts. The provisions of sch 2, pt 3 were substituted for 25 Edw. 3, St. 5, c 5 (1351). The 1986 Act, s 4 (1) provided, in effect, that the rules of law about the interpretation of consolidating Acts apply to the interpretation of the provisions of a law set out in sch 2. These rules of law continue to apply to this division (see *Legislation Act 2001*, s 96 (3)).

### 43A Executor of executor

If—

- (a) probate of the will of a testator has been granted to a person (in this division called the *original executor*) as the sole executor, or as 1 of the executors, of the will of the testator; and
- (b) the original executor was, immediately before his or her death, the sole, or the last surviving, executor of the will of the testator; and
- (c) probate of the will of the original executor is granted to the executor, or 1 of the executors, (the *succeeding executor*) of the will of the original executor;

the succeeding executor becomes, on the grant of probate of the will of the original executor—

- (d) the executor of the will of the testator; and
- (e) the executor of the will of any other testator of whose will the testator was, immediately before his or her death, the executor under the application, or successive applications, of this section.



**43B      When ceases to represent deceased**

If, after a person has become the executor of the will of a testator under the application, or of successive applications, of section 43A, another person who was appointed an executor of the will of that testator is granted probate of that will, the firstmentioned person ceases, on the grant of that probate, to be the executor of the will of that testator.

**43C      Rights and liabilities of executor of executor**

While a person who has become the executor of the will of a testator under the application, or of successive applications, of section 43A, continues to be the executor of the will of the testator—

- (a) the person has the same rights in relation to the estate of that testator as the original executor, or the original executors, would have if living; and
- (b) the person is, to the extent to which the estate of the testator has come to his or her hands, answerable as if the person were the original executor, or 1 of the original executors of the will of the testator.

## Part 3A Intestacy

### Division 3A.1 Preliminary

#### 44 Interpretation for pt 3A

In this part:

*eligible partner*, of an intestate, means someone, other than the spouse, civil union partner or civil partner of the intestate, who—

- (a) was the intestate's domestic partner when the intestate died; and
- (b) either—
  - (i) had been the intestate's domestic partner continuously for 2 or more years when the intestate died; or
  - (ii) is the parent of the intestate's child, if the child was under 18 years old when the intestate died.

*Note* For the meaning of *domestic partner*, see [Legislation Act](#), s 169.

*intestate* means a person who dies on or after 1 July 1967 and either does not leave a will or leaves a will but does not dispose effectively, by the will, of the whole or part of his or her real or personal property.

*intestate estate*, in relation to an intestate, means—

- (a) for an intestate who leaves a will—the real and personal property of the intestate that is not effectively disposed of by the will; or
- (b) in any other case—the real and personal property of the intestate.

*partner*—an intestate's *partner* is either of the following:

- (a) the spouse, civil union partner or civil partner of the intestate when the intestate died;
- (b) the eligible partner of the intestate.

*personal chattels*, in relation to an intestate, means the tangible personal property of the intestate, other than the following:

- (a) property used exclusively for a business purpose;
- (b) banknotes or coins, unless they are part of a collection made in pursuit of a hobby or another non-commercial purpose;
- (c) property held as a security;
- (d) property in which the intestate invested as a hedge against inflation or adverse currency movements, such as gold bullion or uncut diamonds;
- (e) an interest in land.

*personal representative*, in relation to an intestate, means the executor of the will, or the administrator of the estate, of the intestate.

## **Division 3A.2                      Distribution on intestacy**

### **44A                      Whole blood or half-blood relationships**

For this division, a relationship may be of the whole blood or the half-blood.

### **45                      Executor or administrator to hold property of intestate on trust for persons entitled**

The personal representative of an intestate holds, subject to his or her rights, powers and duties for the purposes of administration, the intestate estate on trust for the persons entitled to it in accordance with this division.

#### **45A Distribution between spouse, civil union partner or civil partner and eligible partner**

- (1) If an intestate is survived by both a spouse, civil union partner or civil partner and an eligible partner, the entitlement of each to the partnership share of the intestate estate must be worked out as follows:
  - (a) if the eligible partner and the intestate had been domestic partners continuously for less than 5 years when the intestate died—the partnership share of the intestate estate must be distributed equally between the spouse, civil union partner or civil partner and the eligible partner;
  - (b) if the eligible partner and the intestate had been domestic partners continuously for 5 years or more when the intestate died—the eligible partner is exclusively entitled to the partnership share.
- (2) In this section:

*partnership share*, in relation to an intestate, means the share of the estate to which the intestate's partner is entitled under this division.

#### **46 Entitlement of children**

- (1) This section applies to a person entitled under this division to the whole of, or a share in, an intestate estate (the *relevant interest*) who, at the time of the death of the intestate, is a child.
- (2) The child is entitled to take the relevant interest in the estate immediately.

#### **48 Estate by courtesy or right of dower not to arise**

An estate by courtesy or right of dower or an equivalent estate does not arise out of the real property in relation to which a person dies intestate.

## **49                      Distribution of intestate estate**

- (1) The person or persons entitled to take an interest in an intestate estate, and the interest in that estate that that person or those persons are entitled to take must, subject to this division, be ascertained by reference to schedule 6 according to the facts and circumstances existing in relation to the intestate.
- (2) If an intestate is survived by his or her partner, the intestate estate is taken, for schedule 6 and subsection (3), not to include any personal chattels of the intestate.
- (3) For schedule 6, the value of an intestate estate must be ascertained by deducting from the gross value of that intestate estate an amount equal to such of the debts and liabilities of the estate, the funeral and testamentary expenses, the costs and expenses of administering the estate and the estate duties, probate duties and death duties payable in relation to the estate as are payable out of that intestate estate.
- (4) If an item of schedule 6 provides for the payment of a sum and interest on that sum out of an intestate estate and then provides for the payment of an additional sum equal to a particular proportion of the value of the balance of the intestate estate, the value of the balance of the intestate estate must be ascertained for that item by ascertaining the value of the intestate estate in the way provided by subsection (3) and deducting from that value the firstmentioned sum and the interest payable on that sum.
- (5) For schedule 6—
  - (a) the brothers and sisters of an intestate; and
  - (b) the grandparents of an intestate; and
  - (c) the brothers and sisters of a parent of an intestate; and
  - (d) the issue of any of those brothers or sisters who predeceased the intestate;are the next of kin of the intestate.

**49A Interest of partner on intestacy in personal chattels**

If an intestate is survived by his or her partner, the partner is entitled to take, absolutely, any personal chattels of the intestate that are not effectively disposed of by the will (if any) of the intestate.

**49AA Immovable property if intestate domiciled elsewhere**

(1) If—

- (a) an intestate was, at the time of death, domiciled in the ACT; and
- (b) immovable property situated in a place outside the ACT forms part of the intestate estate; and
- (c) the intestate is survived both by a partner and by issue; and
- (d) the partner is, under a law of that place, entitled to part or all of that property, or to a sum of money calculated by reference to the value of part or all of that property;

the property or part of the property, or the sum of money, to which, under that law, the partner is entitled, is taken to form part of the intestate estate for section 49 (3).

(2) Subject to subsection (4), if—

- (a) an intestate was, at the time of death, domiciled outside the ACT; and
- (b) the intestate is survived both by a partner and by issue; and
- (c) immovable property situated in the ACT forms part of the intestate estate; and

(d) the partner is, under a law of a place outside the ACT, entitled to all or part of any other property (other than personal chattels) that forms part of the intestate estate, or to a sum of money calculated by reference to the value of all or part of that other property;

the property or part of the property, or the sum of money, to which, under that law, the partner is entitled, is taken to form part of the intestate estate for section 49 (3).

- (3) If property or a sum of money is, under subsection (1) or (2), taken to form part of the intestate estate of an intestate, schedule 6, part 6.1, item 2 applies as if the references in that item to \$200 000 were references to the sum ascertained by deducting from \$200 000 an amount equal to the value of that property, or to that sum of money.
- (4) Subsection (2) does not apply in relation to an intestate estate if the partner's share in that part of the estate that devolves in accordance with the law of the place where the intestate was domiciled would, under that law, be reduced by an amount calculated by reference to the value of part or all of the immovable property referred to in subsection (2) (c).

#### **49B            How distribution to issue is made**

- (1) If an intestate is survived by issue who are entitled to the whole or a part of the intestate estate—
- (a) if only 1 child of the intestate survives the intestate—that person is entitled to the whole, or that part, of the intestate estate; or
- (b) if the intestate is survived by the issue of his or her child or 1 of his or her children but by no other issue—those issue are entitled to the whole, or that part, of the intestate estate through all degrees according to their stocks, and, if there are more than 1 issue, in equal shares; or

- (c) in any other case—the whole or that part of the intestate estate must be divided into a number of parts ascertained in accordance with subsection (2) and—
  - (i) any child of the intestate who survived the intestate is entitled to 1 of those parts; and
  - (ii) the issue of any child of the intestate who died before the intestate leaving issue who survived the intestate are entitled to 1 of those parts through all degrees, according to their stocks, and, if there are more than 1 issue, in equal shares.
- (2) The number of parts for subsection (1) (c) is a number equal to the sum of—
  - (a) a number equal to the number of children (if any) of the intestate who survived the intestate; and
  - (b) a number equal to the number of children (if any) of the intestate who died before the intestate leaving a child or remoter issue who survived the intestate.

**49BA Gifts made before death of intestate**

- (1) If—
  - (a) an intestate has, within the period of 5 years immediately before death, given any money or property to or for the benefit of a person who is, under this division, entitled to a share in the intestate estate, or to or for the benefit of an unentitled partner of such a person; and



- (b) the intestate estate, or a part of the intestate estate, is divisible between that person, or the issue of that person, and another person or persons entitled under this division to a share in the intestate estate;

the money or property is taken to have been given in or towards satisfaction of the share that the person will become entitled to take, or would have become entitled to take if he or she had survived the intestate in the intestate estate or the part of the intestate estate unless—

- (c) the contrary intention appears from the circumstances of the particular case; or
  - (d) the value, as at the date of death of the intestate, ascertained in accordance with the requirements of the personal representative of the intestate, of all the money or property or of so much of the money or property in relation to which such a contrary intention did not appear, does not exceed \$10 000.
- (2) If, under subsection (1), any money or property is taken to have been given in or towards satisfaction of the share of a person referred to in subsection (1), the money or property must be brought into account at a valuation, as at the date of death of the intestate, in accordance with the requirements of the personal representative of the intestate, in calculating the share that the person or the person's issue is, under this division, entitled to take in the intestate estate or a part of the intestate estate.
  - (3) This section does not apply in relation to money or property given to or for the benefit of the intestate's partner.
  - (4) If an intestate has made a gift to which this section applies, the ***unentitled partner*** of a person entitled to a share in the intestate's estate is, for subsection (1), someone who—
    - (a) is not entitled to a share in the intestate's estate; and

- (b) was the domestic partner of the entitled person at the time of the gift; and
- (c) either—
  - (i) was the entitled person’s spouse, civil union partner or civil partner at that time; or
  - (ii) had been the entitled person’s domestic partner continuously for 2 or more years at that time; or
  - (iii) was at that time the parent of a child of the entitled person, if the child was less than 18 years old at that time.

*Note* For the meaning of *domestic partner*, see [Legislation Act](#), s 169.

- (5) In this section:

*given*, in relation to money or property, means money or property paid, transferred, assigned or settled (otherwise than for valuable consideration).

#### **49C How distribution to next of kin is made**

- (1) If, under this Act, the next of kin of an intestate are entitled to the intestate estate, the persons entitled to that intestate estate must be ascertained as follows:
  - (a) the brothers and sisters of the intestate who survived the intestate, and the issue of a brother or sister of the intestate who died before the intestate, being issue who survived the intestate, are entitled to the intestate estate;
  - (b) if the intestate is not survived by any persons entitled to the intestate estate under paragraph (a) but is survived by 1 or more grandparents—the grandparent is entitled to the intestate estate or the grandparents are entitled to the intestate estate in equal shares;

- (c) if the intestate is not survived by any persons entitled to the intestate estate under paragraph (a) or (b)—the uncles and aunts of the intestate who survived the intestate and the issue of such an uncle or aunt who died before the intestate, being issue who survived the intestate, are entitled to the intestate estate.
- (2) An intestate estate must be divided among the brothers and sisters or the uncles and aunts of the intestate, and the issue of those brothers or sisters, or uncles or aunts, who died before the intestate, in the same way as the intestate estate would have been divided among those persons if the brothers and sisters or the uncles and aunts had been children of the intestate and the issue of a brother, sister, uncle or aunt who died before the intestate had been issue of a child of the intestate who died before the intestate.

#### **49CA      How distribution to the Territory is made**

If, under this Act, the Territory is entitled to an intestate estate, the public trustee and guardian—

- (a) must hold the intestate estate on trust for the Territory; and
- (b) at the end of 6 years from the date of death of the intestate—
  - (i) in relation to so much of the estate as is not money—must sell the estate and, after deducting from the proceeds of the sale all costs and charges lawfully due to the public trustee and guardian or any other person, pay the balance of the proceeds to the Territory; or
  - (ii) in relation to so much of the estate as is money—must, after deducting all costs and charges lawfully due to the public trustee and guardian or any other person, pay the balance of the money to the Territory.

## 49D Partial intestacies

- (1) If the partner of an intestate acquires a beneficial interest under the will of the intestate in the real or personal property of the intestate (other than in the personal chattels of the intestate), schedule 6 applies only to the extent it is expressed to apply under this section but the person or persons entitled to take an interest in the intestate estate, and the interest in that estate that that person or those persons are entitled to take, must be ascertained in accordance with this section according to the facts and circumstances existing in relation to the intestate.
- (2) If an intestate is survived by his or her partner but not by issue, the partner is entitled to the whole of the intestate estate.
- (3) If the intestate is survived by his or her partner and by issue—
  - (a) if the value of the beneficial interest that is acquired by the partner under the will does not exceed \$200 000—schedule 6, part 6.1, item 2 applies as if the references to the sum of \$200 000 were read as references to the sum ascertained by deducting from \$200 000 the value of that beneficial interest; or
  - (b) if the value of the beneficial interest that is acquired by the partner under the will exceeds \$200 000—
    - (i) the partner is entitled to be paid out of the intestate estate a sum equal to, if 1 child or the issue of 1 child of the intestate but no other issue of the intestate survives the intestate,  $\frac{1}{2}$  of the value of the intestate estate or, in any other case,  $\frac{1}{3}$  of the value of the intestate estate; and
    - (ii) the issue of the intestate are entitled to the balance of the intestate estate after payment to the partner of the sum to which the partner is entitled under subparagraph (i).
- (4) Section 49 (3) applies for subsection (3) in the same way as it applies for schedule 6.

- (5) If a child of an intestate who is entitled to take an interest in the intestate estate also acquires an interest under the will of the intestate in the real or personal property of the intestate, the interest to which the child is entitled under the will must be brought into account, at a valuation, as at the date of death of the intestate, in accordance with the requirements of the personal representative of the intestate, in calculating the interest that the child is entitled to take under this division in the intestate estate.
- (6) For this section, a beneficial interest in real or personal property acquired because of the exercise, by will, of a general power of appointment, is taken to be an interest acquired under that will.

#### **49DA      Effect of disclaimer or forfeiture**

- (1) This section applies if a person would be entitled to take an interest in an intestate estate but either—
  - (a) disclaims the interest; or
  - (b) is precluded by the forfeiture rule from obtaining the interest.
- (2) The person is taken to have died before the deceased person.
- (3) In this section:  
*forfeiture rule*—see the *Forfeiture Act 1991*, dictionary.

#### **49E      Presumptions of parentage**

For the application of this division and schedule 6 in relation to an intestate, a presumption of parentage arising under the *Parentage Act 2004*, section 9 in relation to a person is taken to operate only if the presumption arose before the intestate died.

## Division 3A.3 Rights of partners to intestate dwelling houses

### 49F Definitions for div 3A.3

In this division:

*dwelling house* includes—

- (a) a garden or portion of ground attached to, and usually occupied with, a dwelling house, or otherwise required for the amenity or convenience of a dwelling house; and
- (b) a part of a building occupied as a separate dwelling.

*representation*, in relation to an intestate, means probate of the will, or administration (including administration with the will of the intestate annexed) of the estate, of the intestate.

### 49G Claim by partner to dwelling house

- (1) Subject to this division, if the intestate estate of an intestate who is survived by a partner comprises or includes an interest in a dwelling house where the partner was residing at the date of the intestate's death, the partner may elect to have that interest appropriated under the *Trustee Act 1925*, section 46 in or towards the satisfaction of any interest of the partner in the real and personal property of the intestate.
- (2) An election under this section may be exercised within a period of 1 year after the date representation in the estate of the intestate is granted by the Supreme Court or within any extended period the court allows.
- (3) If—
  - (a) probate of a will of the intestate has been revoked on the ground that the will was invalid; or

- (b) a question whether a person had an interest in the estate of the intestate, or a question about the nature of an interest claimed in the estate of the intestate, had not been determined at the time when administration of the estate was granted or first granted; or
- (c) the Supreme Court, for any other reason affecting the administration or distribution of the estate, considers it proper to do so;

the court may extend the period specified in subsection (2).

- (4) An election by a partner must be given in writing—
  - (a) if the partner is not a personal representative of the intestate—to the personal representative, or to each personal representative, of the intestate; or
  - (b) if the partner is 1 of the personal representatives of the intestate—to the other personal representative, or to each other personal representative, of the intestate; or
  - (c) if the partner is the sole personal representative of the intestate—to the registrar.
- (5) An election is not revocable except with the consent of the personal representative or of each personal representative of the intestate.
- (6) A partner may require the personal representative of the intestate to have the interest in the dwelling house valued, and to inform the partner of the result of that valuation, before deciding whether to exercise the right given by this division.

## **49H Valuation**

For this division, the value of the interest of an intestate in a dwelling house is the amount determined by a qualified valuer engaged by the personal representatives of the intestate to be the market value of the interest.

**49J Right not exercisable for certain tenancies**

The right given by this division is not exercisable if the interest of the intestate in the dwelling house is a tenancy—

- (a) that will determine within a period of 2 years after the date of death of the intestate; or
- (b) that the landlord is, by notice given after the date of death of the intestate, entitled to determine before the end of that period.

**49K Right not exercisable in certain other cases**

If—

- (a) a dwelling house forms part of a building and an interest in the whole of the building is comprised in an intestate estate; or
- (b) a dwelling house is held with agricultural land and an interest in the agricultural land is comprised in an intestate estate; or
- (c) the whole or a part of a dwelling house was, at the date of an intestate's death, used as a hotel or boarding house; or
- (d) a part of a dwelling house was, at the date of an intestate's death, used for purposes other than domestic purposes;

the right given by this division to a partner of the intestate in relation to the dwelling house is not exercisable by the partner unless the Supreme Court so orders, being satisfied that the exercise of that right is not likely to—

- (e) diminish the value of the assets (other than the interest in the dwelling house) in the intestate estate; or
- (f) make those assets more difficult to dispose of.



**49L Personal representative not to sell or dispose of interest without consent**

- (1) A personal representative of an intestate is not authorised to sell or otherwise dispose of the interest of the intestate in a dwelling house in which a partner of the intestate was residing at the date of the intestate's death, during the period of 1 year after the date representation in the estate of the intestate is granted by the Supreme Court or, if that period is extended by the court, during that extended period without the written consent of the partner, except in the course of administration owing to want of other assets or except with the approval of the court.
- (2) If on an application under section 49K made by a partner or by the personal representatives of the intestate, the Supreme Court does not order that the right given by section 49G may be exercised by the partner, the court may approve the disposal of the interest in the dwelling house within the period of 1 year referred to in subsection (1).
- (3) This section does not apply if the partner of the intestate is the sole personal representative, or 1 of 2 or more personal representatives, of the intestate.
- (4) Nothing in this section is taken to affect the validity of a sale by the personal representatives of an intestate of any part of the estate of the intestate.

**49M Rule that trustee not to purchase trust property**

If a partner of an intestate is the sole personal representative of the intestate or 1 of 2 or more personal representatives of the intestate, the partner may, even though he or she is a trustee, acquire under this division the interest of the intestate in the dwelling house in which the partner was residing at the date of the intestate's death.

**49N If surviving partner is under legal disability**

- (1) If a partner of an intestate is a person of unsound mind, a requirement or consent under this division may be made or given on the partner's behalf by his or her committee (if any) or, if there is no committee, by the Supreme Court.
- (2) A requirement or consent made or given under this division by a surviving partner who is a child is as valid as it would be if he or she were at least 18 years old.

## Part 3B Simultaneous deaths

### 49P Simultaneous deaths—devolution of property generally

- (1) This section applies if—
  - (a) a person who has died (the *beneficiary*) would, if the person had not died, have been entitled, under a will or on an intestacy, to an interest in the estate of someone else who has died (the *benefactor*); and
  - (b) the beneficiary and the benefactor died at the same time or in an order that is uncertain.
- (2) The property of the benefactor devolves as if the benefactor had survived the beneficiary and had died immediately after the beneficiary.

### 49Q Simultaneous deaths—devolution of jointly owned property

- (1) This section applies to property—
  - (a) that was owned jointly and exclusively by 2 or more people who died at the same time or in an order that is uncertain; and
  - (b) that was not held by them as trustees.
- (2) The property devolves as if the joint owners had, at the time of their deaths, held the property as tenants in common in equal shares.

## Part 3C Functions of executors and administrators

### 50 Powers of executors and administrators to sell, mortgage or lease real estate

- (1) Subject to this section, an executor or an administrator may, without the consent of any person or the order of a court—
  - (a) sell or mortgage the real estate of the deceased person for purposes of administration; or
  - (b) sell the real estate of the deceased person in relation to which he or she died intestate, for purposes of distribution or division among the persons entitled; or
  - (c) lease the real estate of the deceased person in possession for any term not exceeding 3 years; or
  - (d) raise, on the security of the whole or any part of the intestate estate of the deceased person, any sum required by the executors or administrators for the purpose of paying to a partner of the person the share, or a part of the share, of the partner in the intestate estate of the person.
- (2) Any conditions may be imposed on the exercise of the power of sale, mortgage, lease or raising of any sum by an administrator, and either generally or for a particular sale, mortgage, lease or raising of any sum, by rules of court, or by the Supreme Court in the grant of administration (if any), or by other order.
- (3) The registrar must write on letters of administration issued by him or her, and on any copy of the letters of administration, a certified copy of any conditions imposed by the Supreme Court under subsection (2).

- (4) A purchaser, mortgagee, lessee or other person who for valuable consideration acquires an interest in the estate of the deceased person, or the registrar-general or other person registering title under any sale, mortgage or lease under this section, is not bound to inquire whether the powers mentioned in subsection (1) or any of them are being or have been exercised for the purposes specified in that subsection, and the receipt of the executor or administrator is a sufficient discharge, and exonerates the persons paying the money from any responsibility for the application of the money expressed to have been so received.
- (5) Some or 1 only of several executors or administrators may exercise those powers with the leave of the Supreme Court, and not otherwise, and the court may make any orders it considers appropriate for the purpose of carrying out any such sale, mortgage, lease or raising of any sum.
- (6) In this section:
- intestate*—see section 44.
- intestate estate*—see section 44.
- partner*, in relation to an intestate—see section 44.

## 51 **Supreme Court may make special order**

The Supreme Court may, if administration has been granted, on the application of the administrator, or for partial intestacy the executor or administrator with the will annexed, or of any person beneficially interested, and after the notice to the other parties and inquiry the court considers appropriate, order and direct the course of proceedings which must be taken in regard to—

- (a) the time and method of sale of any real estate; and
- (b) the letting and management of any real estate until sale; and
- (c) the application for maintenance or advancement or otherwise of shares or income of shares of children; and

(d) the expediency and mode of effecting a partition, if applied for; and generally in regard to the administration of the real estate for the greatest advantage of all persons interested.

**51A Supreme Court may authorise postponement of realisation and carrying on of business**

- (1) The Supreme Court may, if it considers it beneficial so to do and subject to the conditions it considers appropriate to impose, authorise an executor or administrator—
  - (a) to postpone, for the period the court considers appropriate, the realisation of the real or personal estate of a deceased person, or any part of that estate; or
  - (b) to carry on, for the period or periods that the court from time to time considers appropriate, the business, trade or occupation of the deceased person, and for that purpose to use the estate or part of it.
- (2) An order under this section may be made either ex parte or on the notice the Supreme Court considers proper, and may be varied from time to time as the court considers appropriate.

**52 Supreme Court may order partition in summary way**

- (1) If, on any such inquiry, the Supreme Court is satisfied that a partition of the real estate, or any part of it, will be advantageous to the parties interested, the court may appoint 1 or more arbitrators to effect the partition.

- (2) The report and final award of the arbitrators setting out particulars of the land allotted to each party interested is, when signed by them and confirmed by the order of the Supreme Court, and registered in the office of the registrar-general, effective without the necessity of any further conveyance to vest in each party the land allotted to the party, and an office copy of the award so signed, confirmed, and registered, is for all purposes equivalent to an indenture of conveyance to each party of the land allotted to the party.
- (3) For land subject to the provisions of the *Real Property Act 1900* (NSW) or the *Land Titles Act 1925*, each party is entitled to the issue of a certificate of title for the land allotted to the party.
- (4) If the allotment is made subject to the charge of any money payable to any other party interested for equalising the partition, the charge taken effect according to the terms and conditions in regard to time and method and otherwise that are expressed in the award without the necessity of any further instrument being made or executed.
- (5) For land subject to the provisions of the *Real Property Act 1900* (NSW) or the *Land Titles Act 1925*, the land must be registered, subject to the charge, unless the charge is satisfied.

### **53 Personal representative not required to continue to act against own consent**

A personal representative must not be required against his or her consent to continue the duty of a trustee by managing the property during an enforced suspension of sale, but is entitled, on that suspension being ordered, to relinquish his or her trust to the person the Supreme Court appoints.

**54 In suits executor or administrator to represent real estate**

In all suits concerning the real estate of a deceased person, the executor to whom probate has been granted or administrator represents the real estate so long as it remains vested in the executor or administrator, and the persons interested, in the same way and to the same extent as, in suits concerning personal estate, the executor or administrator represents the estate and the persons interested.

**55 All debts to stand in equal degree**

- (1) In the administration of the estate of a deceased person, all the creditors of every description of that person must, despite anything to the contrary contained in any law, be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person.
- (2) In the administration of the estate of a deceased person in relation to which representation is granted under this Act, no debt or liability of that person is entitled to any priority or preference only because it is due to an executor or administrator of the estate.
- (3) This Act does not prejudice or affect any mortgage, lien charge, or other security that any creditor may hold or be entitled to for payment of a debt.
- (4) Nothing in this Act affects the provisions of any law protecting life assurance or other policies against creditors.

**55A Interest on legacies**

- (1) Subject to subsection (2), if interest is payable on a legacy in accordance with the will under which the legacy is payable or in accordance with any enactment or rule of law, that interest is, unless the will otherwise provides, or the Supreme Court otherwise orders, payable at the rate determined by the Minister.



(2) If an executor or administrator, in accordance with any power given to him or her by a will under which a legacy (other than an annuity) is payable, appropriates any property in or towards satisfaction of the legacy, the legatee is entitled to the income from the property so appropriated, and interest is not payable out of any other part of the estate on so much of the legacy as has been satisfied by the appropriation.

(3) A determination under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act 2001](#).

## **56 Executor may sign acknowledgment instead of conveyance**

(1) If any real estate not under the [Real Property Act 1900](#) (NSW) or the [Land Titles Act 1925](#) is devised to any person by a will duly proved under this Act, the executor of the will or the administrator with the will annexed may, as the executor or administrator, instead of executing a conveyance to that person, sign an acknowledgment that the devisee is entitled to that real estate for the estate for which it is devised to him or her.

(2) The acknowledgment may be registered under the law in force regulating the registration of deeds, and on registration of the acknowledgment the real estate vests in the devisee for the estate for which it is devised to him or her in the same way, and subject to the same trusts and liabilities, as if the executor or administrator had executed a conveyance of the acknowledgment.

## **57 Summary application for legacy etc**

If the executor or administrator, after written request, neglects or refuses to—

- (a) sign that acknowledgment; or
- (b) execute a conveyance of land devised to the devisee; or

- (c) pay or hand over to the person entitled any legacy or residuary bequest;

the devisee or person may apply to the Supreme Court, calling on the executor or administrator to show cause why he or she should not comply with the request, and the court may make any order in the matter it considers appropriate.

## **58 Examination and passing of accounts etc**

- (1) The rules may require—
  - (a) the executor or administrator of the estate of a deceased person to file an inventory of the estate; and
  - (b) accounts of the executor or administrator of the estate of a deceased person to be examined and passed.
- (2) The Supreme Court may, by order, require—
  - (a) the executor or administrator of the estate of a deceased person to file an inventory of the estate; and
  - (b) accounts of the executor or administrator of the estate of a deceased person to be examined and passed.
- (3) An order of the Supreme Court passing an account of the executor or administrator of the estate of a deceased person—
  - (a) is evidence of its correctness; and
  - (b) operates, after the end of 3 years after the date of the order, to release the executor or administrator.
- (4) However, subsection (3) (b) does not apply to an account as far as someone interested in the estate shows that an error or omission or fraudulent entry has been made in the account.

**61 Supreme Court may make order about disposal of money in hands of executor etc**

- (1) The Supreme Court may make any order it considers appropriate in relation to the distribution or application of any money that the executor or administrator has in hand, or about the residue of the estate.
- (2) No final order for distribution may made except on notice to all the parties entitled.

**62 Payments under revoked probates or administrations valid**

The executor or administrator who has acted under any revoked probate or administration may keep and reimburse himself or herself, or be entitled to be reimbursed for, an amount equal to the amount of any payments made by him or her that the person to whom probate or administration is afterwards, or was originally, granted might have lawfully made.

**63 Persons etc making payments on probate granted for estate of deceased person to be indemnified**

All persons making or permitting to be made any payment or transfer, in good faith, on any probate or administration or order granted in relation to the estate of any deceased person under this Act must be indemnified and protected in so doing, despite any defect or circumstance of any kind affecting the validity of the probate or administration or order not then known to those persons.

**64 Notice before distribution of assets**

- (1) An executor or administrator of a deceased person's estate may give public notice before distributing the assets of the estate.

*Note 1* Public notice may be given before making a distribution under the following provisions:

- (a) the *Family Provision Act 1969*, s 21 (Protection of administrator);
- (b) the *Trustee Act 1925*, s 60 (Distribution after notice).

*Note 2* If a form is approved for a particular purpose under the *Court Procedures Act 2004*, s 8 the form must be used for that purpose.

- (2) The public notice must state that—
- (a) a creditor or anyone else may give the executor or administrator their claim against the estate within the period stated in the notice, being at least 1 month after the notice is given; and
  - (b) the executor or administrator intends to distribute the estate after the later of the following:
    - (i) the end of the period stated in the notice;
    - (ii) 6 months after the day probate or administration was granted; and
  - (c) the executor or administrator will only consider claims that are given to the executor or administrator when distributing the estate.
- (3) The executor or administrator must consider each claim given within the period stated in the notice.
- (4) The executor or administrator is not liable to any person for any distributed assets if the executor or administrator—
- (a) gave notice under subsection (1); and
  - (b) did not have notice of the person's claim when the distribution was made.

**65 Claims barred against executor or administrator in certain cases**

- (1) If an executor or administrator has given notices under section 64 and a claim against the estate is sent to him or her, the executor or administrator may serve a notice on the claimant calling the claimant to take proceedings to enforce the claim within a period of 6 months, and to duly prosecute the claim.
- (2) If, after that period of 6 months has ended, that person does not satisfy the Supreme Court that he or she is duly prosecuting the claim, the court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to any conditions that appear just, or make any other order the court considers appropriate.

**66 Distribution of estate by executors and administrators**

- (1) If an executor or administrator liable as such, under any lease or agreement for a lease granted or assigned to, or made and entered into with, the testator or intestate whose estate is being administered, to the rents, covenants, or agreements contained in the lease or agreement has—
  - (a) satisfied all liabilities under the lease, or agreement for a lease, as have accrued due and been claimed up to the assignment mentioned in paragraph (c); and
  - (b) set apart a sufficient sum to answer any future claim that may be made in relation to any fixed and ascertained sum, covenanted or agreed by the lessee, to be laid out on the property demised, or agreed to be demised, although the period for laying out the sum may not have arrived; and

- (c) assigned the lease, or agreement for a lease, to a purchaser, or to a legatee, devisee, or other person entitled to call for a conveyance of it;

the executor or administrator may distribute the estate of the testator or intestate remaining in his or her hands among the parties entitled respectively, without appropriating any part or any further part of it to meet any future liability under the lease or agreement.

- (2) An executor or administrator so distributing the estate is not, after having made or executed that assignment, and having, if necessary, set apart that sufficient fund, personally liable in relation to any subsequent claim under any such lease, or agreement for a lease.
- (3) In this section:

*assignment* includes an acknowledgment within the meaning of section 56.

*lease* includes an underlease.

## **67 Right to follow assets**

Nothing in section 64, 65 or 66 prejudices the right of any creditor or claimant or lessor, or those claiming under any lessor, to follow the assets or estate, or any part of the assets or estate, into the hands of the persons, or any of them, among whom they may have been distributed, or who may have received them.

## **68 Executors may compound etc**

An executor or administrator may—

- (a) pay any debts or claims on any evidence that he or she considers sufficient; or
- (b) accept any composition, or any security, real or personal, for any debts due to the deceased person; or

- (c) allow any time for the payment of any such debts as he or she considers appropriate; or
- (d) compromise, compound, or submit to arbitration, all debts, accounts, claims, and things whatsoever relating to the estate of the deceased person; and
- (e) for any of the purposes mentioned in this section, enter into, give, and execute any agreements, instruments of composition, releases, and other things he or she considers expedient, without being responsible for any loss occasioned thereby.

**69 Every executor etc taken to be resident in ACT**

Every executor or administrator—

- (a) named in any probate or letters of administration granted by any court of competent jurisdiction in any part of a Commonwealth country and making application under this Act for the sealing of the probate or administration; or
- (b) appointed under this Act;

is taken to be resident in the ACT.

**70 Executors etc may be allowed commission**

The Supreme Court may allow out of the assets of a deceased person to the person's executor, administrator or trustee the commission or percentage for his or her services that is just.

## Part 3D

### Liability of certain persons in relation to deceased estates

*Note* The provisions of this part were relocated from the Imperial Acts (Substituted Provisions) Act 1986, sch 2 (for the effect of a relocation, see [Legislation Act 2001](#), s 96). The 1986 Act substituted provisions for certain UK Acts that applied (or may have applied) in the ACT and repealed those Acts. The 1986 Act, s 4 (1) provided, in effect, that the rules of law about the interpretation of consolidating Acts apply to the interpretation of the provisions of a law set out in schedule 2. These rules of law continue to apply to this part (see [Legislation Act 2001](#), s 96 (3)).

#### 74A Fraudulently obtaining or keeping property

A person—

(a) who—

- (i) by obtaining, receiving or holding any real or personal property forming part of the estate of a deceased person; or
- (ii) by effecting the release of a debt or liability due to the estate of a deceased person;

defrauds any creditor of the estate of the deceased person; or

(b) who, without full valuable consideration—

- (i) obtains, receives or holds any real or personal property forming part of the estate of a deceased person; or
- (ii) effects the release of a debt or liability due to the estate of a deceased person;



is liable and chargeable as an executor in his or her own wrong to the extent of the real and personal property forming part of the estate of the deceased person that the person receives, or that comes into his or her hands, less—

- (c) the amount of any debt incurred for valuable consideration and without fraud that was due to the person from the deceased person at the time of his or her death; and

the amount of any payment made by the person that might have been properly made by the personal representative of the deceased person.

*Note* The provisions of this section were substituted for 43 Eliz. 1 c 8 (1601).

## **74B Persons liable for waste of deceased estate**

If a person (the *relevant person*) has, as the personal representative of a deceased person or as the executor in his or her own wrong of the will of a deceased person, wasted or converted to his or her own use any part of the estate of the deceased person, then, on the death of the relevant person, the personal representative of the relevant person is, to the extent of the available assets of the relevant person, liable and chargeable in relation to that waste or conversion in the same way as the relevant person would have been if the relevant person has not died.

*Note* The provisions of this section were substituted for 30 Chas. 2 c 7 (1678) and 4 Will. and Mary c 24, s 12 (1692).

## Part 5 Recognition of foreign grants

### 79A Orders to collect and administer estates for pt 5

For this part, a reference to an order to collect and administer an estate includes a reference to an exemplification of an order to collect and administer.

### 79B Inclusion of orders to collect and Scottish confirmation

For this part, a reference to probate or administration includes a reference to—

- (a) an order to a curator or someone else to collect and administer an estate; and
- (b) a confirmation of the executor or someone else granted in a sheriff court in Scotland.

### 80 Reseal of grant made in reciprocating jurisdiction

- (1) This section applies if a court of competent jurisdiction in a reciprocating jurisdiction has granted probate of a will, administration of an estate or an order to collect and administer an estate.
- (2) On application by a relevant person, the Supreme Court may order that the probate, administration or order be sealed with the seal of the court.
- (3) For subsection (2), each of the following is a *relevant person*:
  - (a) for a probate of a will—
    - (i) the executor to whom the probate was granted; or
    - (ii) a person authorised by the executor, under a power of attorney, to make the application; or
    - (iii) the executor, by representation, of the will;

- (b) for administration of an estate—
    - (i) the administrator to whom the administration was granted;  
or
    - (ii) the person authorised by the administrator, under a power of attorney, to make the application;
  - (c) for an order to collect and administer an estate—a public trustee in the reciprocating jurisdiction to whom the order was granted.
- (4) In this section:  
*reciprocating jurisdiction* means—
- (a) a State; or
  - (b) a Commonwealth country; or
  - (c) a country, or part of a country, prescribed by regulation.

### **80B Supreme Court may require security**

The Supreme Court may, before or after sealing a probate, administration or order to collect and administer an estate under section 80 (Reseal of grant made in reciprocating jurisdiction), require the applicant to give security for the proper administration of the estate to which it relates.

### **80C Effect of sealing**

- (1) If a probate or administration is sealed under section 80 (Reseal of grant made in reciprocating jurisdiction)—
- (a) the probate or administration has the same effect as if it had been originally granted by the Supreme Court; and
  - (b) the person who applied under section 80 must exercise the same functions, and is subject to the same liabilities, as if the person had been originally granted the probate or administration by the court.

- (2) If an order to collect and administer an estate is sealed under section 80, the person who applied under that section has the same functions, and is subject to the same liabilities, as if the person was the public trustee and guardian and the order was an order to collect and administer the estate granted to the public trustee and guardian under section 88.

## Part 6 Public trustee and guardian

### 87B Estates valued at \$30 000 or less

- (1) The public trustee and guardian may administer the estate of a deceased person if satisfied that—
  - (a) the net value of the estate is not more than \$30 000; and
  - (b) application has not been made for a grant of probate of the will, or administration of the estate, of the deceased person.
- (2) For subsection (1), the public trustee and guardian may do any of the following:
  - (a) call in the estate;
  - (b) sell and convert into money the part of the estate that does not consist of money;
  - (c) pay any of the deceased person's debts and liabilities;
  - (d) deal with the balance (if any) of the estate as if probate of the will or administration of the estate had been granted by the Supreme Court.
- (3) If any money remains after the estate is administered in accordance with subsection (2), the public trustee and guardian must deal with the money as follows:
  - (a) if the public trustee and guardian is of the opinion that the person died testate—as if probate of the last will of the person had been granted to the public trustee and guardian by the Supreme Court;
  - (b) in any other case—as if administration of the estate had been granted to the public trustee and guardian by the Supreme Court.
- (4) The public trustee and guardian must not administer an estate under this section unless notice of intention to do so has been given by advertisement or otherwise, in the way and form the public trustee and guardian considers appropriate.

- (5) If the public trustee and guardian holds or acquires the will of a deceased person whose estate is being, or has been, administered under this section, the public trustee and guardian must file the will in the Supreme Court.

**87C Estates valued at \$150 000 or less**

- (1) The public trustee and guardian may file in the Supreme Court an election, signed by the public trustee and guardian, to administer the estate of a deceased person if—
- (a) the person left property in the ACT; and
  - (b) the gross value of that property does not, in the opinion of the public trustee and guardian, exceed \$150 000; and
  - (c) probate of the will, or administration of the estate, of the person has not been granted by the Supreme Court to any person; and
  - (d) the public trustee and guardian is entitled under section 88 to apply for an order to collect and administer the estate of the person.
- (2) An election under subsection (1) in relation to the estate of a deceased person must contain—
- (a) particulars of the name of the deceased person; and
  - (b) the particulars of the place of residence, and the occupation, of the deceased person at the time of death that are known to the public trustee and guardian; and
  - (c) the particulars of the date of death, and the property forming part of the estate, of the deceased person that are known to the public trustee and guardian.
- (3) If, in the opinion of the public trustee and guardian, a deceased person died testate, an election must have the will of the person annexed to it and must state that the will was, in the opinion of the public trustee and guardian, duly executed by the person.

- (4) If the public trustee and guardian has filed an election, the estate of the person vests in the public trustee and guardian, and the public trustee and guardian has the functions that he or she would have had if the Supreme Court had, under section 88, granted to the public trustee and guardian an order to collect and administer the estate of the person.

*Note* **Function** includes authority, duty and power (see [Legislation Act](#), dict, pt 1).

- (5) The public trustee and guardian must give public notice of each election filed under this section, and public notice in relation to an estate is conclusive evidence that the public trustee and guardian is entitled to administer the estate of the deceased person.

*Note* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- (6) If, after the public trustee and guardian has filed an election—
- (a) if the will of the deceased person was annexed to the election—  
a later will; or
  - (b) in any other case—a will;

of the deceased person comes into the possession of the public trustee and guardian, the public trustee and guardian must file in the Supreme Court a notice, signed by the public trustee and guardian, containing particulars of that will.

- (7) If the public trustee and guardian files a notice under subsection (6), the election is taken to have been revoked and the public trustee and guardian ceases to have the functions given by this section in relation to the estate.
- (8) If, after the public trustee and guardian has filed an election in relation to the estate of a deceased person, the gross value of the estate is found to exceed \$150 000, the public trustee and guardian must file in the Supreme Court a notice, signed by the public trustee and guardian, certifying that the value of the estate exceeds that amount.

- (9) If the public trustee and guardian files a notice under subsection (8), the election is taken to have been revoked and the public trustee and guardian ceases to have the functions given by this section in relation to the estate.
- (10) The filing of a notice under subsection (6) or (8) in relation to the estate of a deceased person does not prevent the public trustee and guardian from applying, under section 88, for an order to collect and administer that estate.
- (11) If the public trustee and guardian has filed a notice under subsection (6) or (8) in relation to the estate of a deceased person, the provisions of section 32B apply as if the filing of an election under this section was the grant of probate of the will, or administration of the estate, of the deceased person and the filing of the notice was the revocation of that grant.

**88 Orders to public trustee and guardian to collect and administer**

- (1) The Supreme Court may, on the application of the public trustee and guardian, grant to the public trustee and guardian an order to collect and administer the estate of any deceased person leaving real or personal estate within the jurisdiction in any of the following cases:
  - (a) if the deceased person leaves no executor, partner or next of kin, resident within the jurisdiction, willing and capable of acting in execution of his or her will or administration of his or her estate;
  - (b) if the executors named renounce probate of the will of the deceased person, and all the persons primarily entitled to administration by writing filed with the registrar decline to apply for administration;
  - (c) if probate or administration is not applied for within 3 months after the death of the deceased person;



- (d) if, after the end of 30 days from the death there is no reasonable probability of application being made within that period of 3 months;
  - (e) if the estate or any part of the estate is liable to waste and the executor, any partner or the next of kin—
    - (i) is absent from the locality of the estate; or
    - (ii) is not known; or
    - (iii) has not been found; or
    - (iv) requests the public trustee and guardian in writing to apply for the order;
  - (f) if the estate, or any part of it, is—
    - (i) of a perishable nature; or
    - (ii) in danger of being lost or destroyed;
  - (g) if great expense may be incurred because of delay;
  - (h) if by the will of the deceased person the curator of estates of deceased persons or the public trustee and guardian is appointed to act.
- (2) The Supreme Court may, in any case—
- (a) require the public trustee and guardian to give the notices, produce the evidence, or do anything else, the court considers appropriate before granting the order applied for; or
  - (b) make a temporary order for collection or protection only or a temporary order limited to a part of the estate or otherwise.
- (3) In this section:

***partner***, in relation to a deceased person, has the same meaning as it has in part 3A (Intestacy) in relation to an intestate.

**89 Effect of order**

- (1) If an order to collect and administer the estate of any deceased person is granted, the public trustee and guardian has the same functions in relation to the estate, except as otherwise expressly provided, that the public trustee and guardian would have had if administration had been granted to him or her, and the estate of the deceased person vests in the public trustee and guardian.

*Note* **Function** includes authority, duty and power (see [Legislation Act](#), dict, pt 1).

- (2) If the Supreme Court grants an order to collect and administer the estate of a deceased person after having been satisfied that the deceased person made a valid will that had not been revoked before death—
- (a) a copy of that will must be annexed to the order; and
  - (b) the public trustee and guardian has, subject to this part, the same functions in relation to the estate of the person that the public trustee and guardian would have if administration with the will annexed of the estate of the deceased person had been granted to the public trustee and guardian.
- (3) All laws for the time being in force in relation to the administration of the estates of deceased persons apply to the administration of estates by the public trustee and guardian.

**90 Grant of probate or administration despite appointment of public trustee and guardian**

- (1) Even though that—
- (a) the public trustee and guardian is administering the estate of a deceased person under section 87B; or
  - (b) the public trustee and guardian has filed an election to administer the estate of a deceased person under section 87C; or

- (c) the public trustee and guardian has been granted an order to collect and administer the estate of a deceased person under section 88;

the Supreme Court may grant probate of the will, or administration of the estate, of the deceased person to an appropriate person on the conditions it considers appropriate.

- (2) An application for a grant under subsection (1) must be served on the public trustee and guardian in accordance with the rules.

## **91 Cessation of rights and liabilities of public trustee and guardian**

- (1) The following cease on the grant of probate or administration under section 90:
  - (a) all the interest and functions of the public trustee and guardian (except rights given by this section) in relation to the estate of the deceased person whose estate is affected by the grant;
  - (b) all liabilities of the public trustee and guardian under any contract or agreement entered into in relation to the estate, or any part of the estate.

*Note* **Function** includes authority, duty and power (see [Legislation Act](#), dict, pt 1).

- (2) The part of the estate of the deceased person left unadministered by the public trustee and guardian, and all functions of the public trustee and guardian in relation to it, vest in the executor or administrator obtaining the probate or administration.
- (3) Nothing in this section interferes with the allowance and payment of—
  - (a) all money due for the commission of the public trustee and guardian; and

- (b) the necessary outlay, disbursements, costs, charges, and expenses in relation to the estate, including all costs in relation to appearing on the application for the probate or administration.
- (4) Nothing in this section relieves the public trustee and guardian from any liability in relation to the management of the estate up to the time of granting the probate or administration.

**92 Order to public trustee and guardian to collect and administer in special circumstances**

- (1) If it is made to appear to the Supreme Court that there is reasonable ground to suppose that any person has died, either in or out of the jurisdiction of the court, intestate, leaving property within the jurisdiction, the court may order and empower the public trustee and guardian to collect and administer the estate, both real and personal, of that person.
- (2) The order is valid until revoked, and empowers the public trustee and guardian to—
  - (a) collect, manage, and administer the personal estate of the supposed deceased person; and
  - (b) enter on and receive the rents and profits and otherwise manage the real estate; and
  - (c) pay and discharge the debts and liabilities of that person;in like way as if he or she were certainly dead and the public trustee and guardian had obtained an order to collect and administer the estate of the person under section 88.
- (3) The public trustee and guardian must not proceed to any distribution of the assets without an order of the Supreme Court specially authorising the public trustee and guardian to make the distribution.

**93 Notice of order to be published**

Within 1 month after any order to collect and administer has been granted, the public trustee and guardian must, unless the Supreme Court otherwise orders, twice give public notice of the fact that the order has been granted.

*Note* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

**95 Supreme Court orders against public trustee and guardian**

- (1) This section applies if—
  - (a) the public trustee and guardian has the responsibility of collecting and administering a deceased estate; and
  - (b) the public trustee and guardian or the curator of estates of deceased persons has—
    - (i) neglected or refused to do any act in relation to the administration of the estate; or
    - (ii) acted, or threatened to act, in breach of his or her duty in relation to the administration of the estate.
- (2) If this section applies, a person interested in an estate referred to in subsection (1) may apply to the Supreme Court—
  - (a) for an order calling on the public trustee and guardian to show cause before the court why the public trustee and guardian should act, or fail to act, in the way complained of; or
  - (b) for an interim injunction.
- (3) On application under subsection (2), the Supreme Court may grant an order or interim injunction subject to any conditions about giving security for costs the court considers appropriate.

**96 Orders on complaints under s 95**

- (1) On the hearing of a complaint under section 95, the Supreme Court may make any order that it considers just.
- (2) To remove any doubt, an order under subsection (1) has effect, and may be enforced, as if it had been made by the Supreme Court in a proceeding between the parties to the complaint.

**97 Public trustee and guardian to act as Supreme Court directs**

If an order to collect and administer is made under this part, the Supreme Court may, on the application of the public trustee and guardian or any person interested in the estate, make any orders about the collection, sale, investment, and disposal of the estate, that the court considers appropriate.

**97A Public trustee and guardian may obtain directions of Supreme Court**

- (1) The public trustee and guardian may, ex parte, take the opinion or obtain the direction of the Supreme Court on any question, whether of law or of fact, arising under this part, or in the course of his or her duties.
- (2) The Supreme Court must give its opinion or direction to the public trustee and guardian, and the public trustee and guardian must act in accordance with its opinion or direction and must, on the request of any person interested in the estate, communicate to the person the effect of the opinion or direction.

**98 Proceedings for estates administered by the public trustee and guardian**

- (1) This section applies in relation to an estate administered by the public trustee and guardian under this part.
- (2) The following must be decided by the Supreme Court:
  - (a) all disputes and matters about the collection, management or administration of the estate;
  - (b) all claims on the estate.
- (3) However, if the Supreme Court considers that it should not decide a matter mentioned in subsection (2), the Supreme Court may direct that other proceedings to decide the matter be begun.

**101 Accounts to be kept etc**

The public trustee and guardian must—

- (a) make an inventory or list of all the estates of the persons that the public trustee and guardian has been ordered to collect and administer and keep it in his or her office; and
- (c) keep all letters received, and copies of all letters written by the public trustee and guardian, and all deeds, papers, and writings of and relating to those estates.

**102 Receipt of public trustee and guardian sufficient discharge**

The written receipt of the public trustee and guardian for any money payable to the public trustee and guardian under this part is a sufficient discharge for the money to the person paying it, and the person is not afterwards liable for any misapplication of the money.

## Part 9 Miscellaneous

### 126 People entitled to inspect will of deceased person

- (1) A person who has possession or control of a deceased person's will must, on request in writing by an interested person, allow the interested person to inspect, or be given copies of, the will or any copies of the will in the person's possession or control.
- (2) The interested person must bear any cost of a request under subsection (1).
- (3) In this section:

*interested person*, in relation to a deceased person's will, means any of the following:

- (a) a person named or referred to in the will, including a person who is a beneficiary under the will;
- (b) a person named in an earlier will as a beneficiary under the will;
- (c) a domestic partner or child of the deceased person;  
*Note* **Domestic partner**—see the [Legislation Act](#), s 169.
- (d) a parent or guardian of the deceased person;
- (e) a parent or guardian of a person younger than 18 years old who is a beneficiary under the will;
- (f) a parent or guardian of a person younger than 18 years old who would be entitled to a share of the estate if the deceased person had died intestate;
- (g) a person who would be entitled to a share of the estate if the deceased person had died intestate;
- (h) a person who, immediately before the death of the deceased person, was a guardian or manager for the person under the [Guardianship and Management of Property Act 1991](#);



- (i) an attorney under an enduring power of attorney made by the deceased person;
- (j) a person prescribed by regulation.

*will* includes a revoked will, an informal will or a codicil.

**127 Person fraudulently disposing of will liable for damages**

If a person suffers damage as a result of the stealing of a will or a part of a will, or as a result of the fraudulent destroying, cancelling, obliterating or concealing of a will or a part of a will, the person may recover damages in relation to the damage by action in a court of competent jurisdiction from the person who stole, destroyed, cancelled, obliterated or concealed the will or part.

**128 Application of amendments made by Administration and Probate (Amendment) Act 1996**

The following provisions as amended or inserted by the *Administration and Probate (Amendment) Act 1996* (and any other consequential amendments made by that Act, schedule) apply only in relation to the distribution of the estates of people who die on or after 1 May 1996:

- (a) section 12;
- (b) section 22;
- (c) part 3A heading;
- (d) division 3A.1 heading;
- (e) section 44;
- (f) division 3A.2 heading;
- (g) section 45A;
- (h) section 49BA;
- (i) paragraphs 49D (3) (a) and (b);

- (j) division 3A.3 heading;
- (k) parts 3B and 3C headings;
- (l) section 65;
- (m) section 69;
- (n) section 95;
- (o) schedule 6.

**129            Regulation-making power**

The Executive may make regulations for this Act.

---

## **Schedule 4**

(see s 41C)

### **Part 4.1                      Order of application of assets if estate solvent**

- 1 Assets undisposed of by will, subject to the retention out of those assets of a fund sufficient to meet any pecuniary legacies.
- 2 Assets not specifically disposed of by will but included (either by a specific or general description) in a residuary gift, subject to the retention out of those assets of a fund sufficient to meet any pecuniary legacies that are not provided for out of the assets undisposed of by will.
- 3 Assets specifically appropriated or disposed of by will (either by a specific or general description) for the payment of debts.
- 4 Assets charged with, or disposed of by will (either by a specific or general description) subject to a charge for, the payment of debts.
- 5 The fund (if any) kept to meet pecuniary legacies.
- 6 Assets specifically disposed of by will, rateably according to value.

## **Part 4.2**                      **Rules about payment of debts and liabilities if estate insolvent**

- 1 The funeral, testamentary and administration expenses have priority.
- 2 Subject to rule 1, the same rules must prevail and must be observed about the respective rights of secured and unsecured creditors and as to the valuation of annuities and future and contingent liabilities, respectively, and about the priorities of debts and liabilities that are in force at the death of the deceased person under the law of bankruptcy in relation to the assets of persons adjudged bankrupt.
- 3 In the application of those rules, the date of the death of the deceased person must be substituted for the date of the sequestration order.

---

## **Schedule 6      Distribution of intestate estate on intestacy**

(See s 49)

### **Part 6.1      Distribution of estate if intestate survived by partner**

<b>item</b>	<b>circumstances</b>	<b>How intestate estate of intestate is to be distributed</b>
1	if the intestate is not survived by issue	The partner is entitled to the whole of the intestate estate.
2	if the intestate is survived by issue	<ol style="list-style-type: none"><li>1 If the value of the intestate estate does not exceed \$200 000, the partner is entitled to the whole of the intestate estate.</li><li>2 If the value of the intestate estate exceeds \$200 000, the partner is entitled to be paid out of the intestate estate—<ol style="list-style-type: none"><li>(a) \$200 000; and</li><li>(b) interest on that sum, calculated at the rate of 8% per annum from the date of the death of the intestate to the date that sum is paid or appropriated to the partner (inclusive); and</li></ol></li></ol>

<b>item</b>	<b>circumstances</b>	<b>How intestate estate of intestate is to be distributed</b>
		<p>(c) an additional sum equal to—</p> <ul style="list-style-type: none"><li>(i) if 1 child or the issue of 1 child of the intestate survives the intestate but no other issue of the intestate survives the intestate—<math>\frac{1}{2}</math> of the value of the balance of the intestate estate; or</li><li>(ii) in any other case—<math>\frac{1}{3}</math> of the value of the balance of the intestate estate.</li></ul>
3		<p>The issue of the intestate are entitled to the balance (if any) of the intestate estate after payment to the partner of the sum or sums to which the partner is entitled under this item.</p>

---

## **Part 6.2**                      **Distribution of estate if intestate not survived by partner**

<b>item</b>	<b>circumstances</b>	<b>How intestate estate of intestate is to be distributed</b>
1	if the intestate is survived by issue	the issue are entitled to the whole of the intestate estate.
2	if the intestate is not survived by issue but is survived by a parent or both parents	the parent is entitled to the whole of the intestate estate or, if both parents survive the intestate, the parents are entitled to the whole of the intestate estate in equal shares.
3	if the intestate is not survived by issue or by a parent but is survived by next of kin	the next of kin are entitled to the intestate estate in accordance with section 49C.
4	if the intestate is not survived by issue, by a parent or by next of kin	the Territory is entitled to the intestate estate.

## Dictionary

(see s 2)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACT
- civil partner
- civil union
- civil union partner
- Commonwealth country
- domestic partner (see s 169 (1))
- foreign country
- land
- public trustee and guardian
- State
- Supreme Court.

***administration*** includes all letters of administration of the real and personal estate of deceased persons whether with or without the will annexed and whether granted for general, special, or limited purposes, exemplification of letters of administration and any other formal evidence of the letters of administration purporting to be under the seal of a court of competent jurisdiction that is in the opinion of the Supreme Court sufficient.

***administration bond*** means a bond or guarantee, with or without sureties, prescribed under the rules.

***administrator*** includes any person to whom administration is granted.

***distribute*** means to pay, deliver, or divide the estate or property referred to, to or among the person or persons entitled under any intestacy or under any will.

***dwelling house***, for division 3A.3 (Rights of partners to intestate dwelling houses)—see section 49F.



***election*** means an election to administer the estate or a part of the estate of a deceased person.

***eligible partner***, of an intestate, for part 3A (Intestacy)—see section 44.

***intestate***, for part 3A (Intestacy)—see section 44.

***intestate estate***, in relation to an intestate, for part 3A (Intestacy)—see section 44.

***original executor***, for division 3.4 (Position of executor of an executor)—see section 43A.

***partner***, for part 3A (Intestacy)—see section 44.

***personal chattels***, in relation to an intestate, for part 3A (Intestacy)—see section 44.

***personal representative***, in relation to an intestate, for part 3A (Intestacy)—see section 44.

***prescribed*** means prescribed by rules.

***probate*** includes exemplification of probate or any other formal document, purporting to be under the seal of a court of competent jurisdiction, that, in the opinion of the Supreme Court, is sufficient.

***public trustee***, in relation to a foreign country, includes an officer of the country who is entitled under a law of the country to apply, if a deceased person has died intestate leaving no next of kin, to a court for an order that authorises the officer to administer the estate of the deceased person.

***purposes of administration*** includes the payment in due course of administration of the debts, funeral and testamentary expenses duties and commission, and the costs, charges and expenses of the executor or administrator, and any costs that may be ordered to be paid out of the estate.

***registrar*** means the registrar of the Supreme Court.

***representation***—

- (a) for this Act generally—means the probate of a will and administration; and
- (b) in relation to an intestate, for division 3A.3 (Rights of partners to intestate dwelling houses)—see section 49F.

***rules*** mean rules under the *Court Procedures Act 2004* that apply in relation to the Supreme Court.

***will*** includes a codicil.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

---

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Administration and Probate Ordinance 1929* No 18 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 1 July 1992 under the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (7).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* A1989-21, s 5 on its conversion to an ACT enactment on 1 July 1992.

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Legislation before becoming Territory enactment

##### **Administration and Probate Act 1929 A1929-18**

notified 10 October 1929 (Cwlth Gaz 1929 No 95)

commenced 21 October 1929 (s 2)

as amended by

##### **Administration and Probate Ordinance 1930 Ord1930-11**

notified 25 July 1930 (Cwlth Gaz 1930 No 64)

commenced 25 July 1930 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

##### **Administration and Probate Ordinance 1932 Ord1932-13**

notified 28 April 1932 (Cwlth Gaz 1932 No 38)

commenced 28 April 1932 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

##### **Administration and Probate Ordinance 1933 Ord1933-9**

notified 4 May 1933 (Cwlth Gaz 1933 No 29)

commenced 4 May 1933 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate Ordinance 1934 Ord1934-2**

notified 8 February 1934 (Cwlth Gaz 1934 No 8)  
commenced 8 February 1934 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate Ordinance (No 2) 1934 Ord1934-6**

notified 22 March 1934 (Cwlth Gaz 1934 No 17)  
commenced 22 March 1934 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate Ordinance 1937 Ord1937-3**

notified 18 March 1937 (Cwlth Gaz 1937 No 12)  
commenced 18 March 1937 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate Ordinance (No 2) 1937 Ord1937-13**

notified 19 August 1937 (Cwlth Gaz 1937 No 46)  
commenced 19 August 1937 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Ordinances Revision Ordinance 1937 Ord1937-27 sch 2**

notified 23 December 1937 (Cwlth Gaz 1937 No 75)  
commenced 23 December 1937 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Ordinances Revision Ordinance 1938 Ord1938-35 sch 2**

notified 15 December 1938 (Cwlth Gaz 1938 No 79)  
commenced 15 December 1938 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate Ordinance 1943 Ord1943-7**

notified 13 May 1943 (Cwlth Gaz 1943 No 102)  
commenced 13 May 1943 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Trustee Companies Ordinance 1947 Ord1947-15**

notified 18 December 1947 (Cwlth Gaz 1947 No 241)  
commenced 18 December 1947 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate Ordinance 1950 Ord1950-16**

notified 21 December 1950 (Cwlth Gaz 1950 No 81)  
commenced 21 December 1950 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

## Endnotes

3 Legislation history

---

**Administration and Probate Ordinance 1953 Ord1953-5**

notified 27 February 1953 (Cwlth Gaz 1953 No 12)  
commenced 27 February 1953 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate Ordinance (No 2) 1954 Ord1954-2**

notified 7 January 1954 (Cwlth Gaz 1954 No 1)  
commenced 7 January 1954 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate Ordinance 1960 Ord1960-6**

notified 9 September 1960 (Cwlth Gaz 1960 No 63)  
commenced 12 September 1960 (s 2)

**Administration and Probate Ordinance 1965 Ord1965-20**

notified 21 December 1965 (Cwlth Gaz 1965 No 101A)  
commenced 1 January 1966 (s 2)

**Administration and Probate Ordinance 1967 Ord1967-9 (as am by Ord1967-23)**

notified 18 May 1967 (Cwlth Gaz 1967 No 43)  
s 1, s 2, s 7, s 10, s 12 commenced 18 May 1967 (s 2 (1))  
remainder commenced 1 July 1967 (s 2 (2))

**Administration and Probate Ordinance 1969 Ord1969-16**

notified 14 August 1969 (Cwlth Gaz 1969 No 70)  
commenced 1 September 1969 (s 2 and see Cwlth Gaz 1969 No 72)

**Administration and Probate Ordinance 1970 Ord1970-25**

notified 2 July 1970 (Cwlth Gaz 1970 No 53)  
commenced 20 July 1970 (s 2 and Cwlth Gaz 1970 No 59)

**Administration and Probate Ordinance 1974 Ord1974-27 (as am by Ord1974-43)**

notified 13 August 1974 (Cwlth Gaz 1974 No 66)  
commenced 13 August 1974 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate Ordinance (No 2) 1974 Ord1974-43 (as amended by Ord1974-47 sch 3)**

notified 18 October 1974 (Cwlth Gaz 1974 No 84B but see Cwlth Gaz 1974 No 85C)

commenced 18 October 1974 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Ordinances Revision (Age of Majority) Ordinance 1974 Ord1974-47 sch 1**

notified 24 October 1974 (Cwlth Gaz 1974 No 87A)

commenced 1 November 1974 (s 2)

**Administration and Probate (Amendment) Ordinance 1976 Ord1976-53**

notified 27 October 1976 (Cwlth Gaz 1976 No S190)

commenced 1 November 1976 (s 2)

**Administration and Probate (Amendment) Ordinance 1980 Ord1980-8**

notified 26 March 1980 (Cwlth Gaz 1980 No S63)

commenced 1 April 1980 (s 2 and Cwlth Gaz 1980 No S66)

**Administration and Probate (Amendment) Ordinance 1984 Ord1984-67**

notified 5 December 1984 (Cwlth Gaz 1984 No S515)

commenced 5 December 1984 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Public Trustee (Miscellaneous Amendments) Ordinance 1985 Ord1985-9**

notified 8 March 1985 (Cwlth Gaz 1985 No S69)

commenced 28 October 1985 (s 2 and Cwlth Gaz 1985 No G42)

**Administrative Arrangements (Consequential Amendments) Ordinance 1988 Ord1988-17 sch 2**

notified 22 April 1988 (Cwlth Gaz 1988 No S114)

commenced 22 April 1988 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

**Administration and Probate (Amendment) Ordinance 1988 Ord1988-34**

notified 6 July 1988 (Cwlth Gaz 1988 No GN24)

commenced 6 July 1988 (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12)

## Endnotes

3 Legislation history

---

### **Administration and Probate (Amendment) Ordinance 1989**

#### **Ord1989-17**

notified 22 March 1989 (Cwlth Gaz 1989 No S100)  
commenced 22 March 1989 (see [Seat of Government \(Administration\) Act 1910](#) (Cwlth), s 12)

### **Administration and Probate (Amendment) Ordinance (No 2) 1989**

#### **Ord1989-19**

notified 22 March 1989 (Cwlth Gaz 1989 No S100)  
commenced 24 March 1989 (s 2 and Cwlth Gaz 1989 No S101)

### **Self-Government (Consequential Amendments) Ordinance 1989**

#### **Ord1989-38 pt 2 div 1, sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
pt 2 div 1, sch 1 commenced 11 May 1989 (s 2 (2) and see [Australian Capital Territory \(Self-Government\) Act 1988](#) (Cwlth), s 2 (2) and Cwlth Gaz 1989 No S164)

## **Legislation after becoming Territory enactment**

### **Administration and Probate (Amendment) Act 1991 A1991-20**

notified 10 May 1991 (Gaz 1991 No S36)  
commenced 10 May 1991 (see [Australian Capital Territory \(Self-Government\) Act 1988](#) (Cwlth), s 25)

### **Administration and Probate (Amendment) Act (No 2) 1991 A1991-69**

notified 7 November 1991 (Gaz 1991 No S120)  
commenced 7 November 1991 (see [Australian Capital Territory \(Self-Government\) Act 1988](#) (Cwlth), s 25)

### **Registrar-General (Consequential Provisions) Act 1993 A1993-64 sch 1**

notified 6 September 1993 (Gaz 1993 No S172)  
s 1, s 2 commenced 6 September 1993 (s 2 (1))  
sch 1 commenced 1 October 1993 (s 2 (2) and see Gaz 1993 No S207)

### **Supreme Court (Amendment) Act (No 2) 1993 A1993-91 sch 3**

notified 17 December 1993 (Gaz 1993 No S258)  
commenced 17 December 1993 (s 2)



**Statutory Offices (Miscellaneous Provisions) Act 1994 A1994-97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

**Land Titles (Consequential Amendments) Act 1995 A1995-54 sch pt 1**

notified 20 December 1995 (Gaz 1995 No S313)  
commenced 20 June 1996 (s 2, see [Land Titles \(Amendment\) Act 1995 A1995-53 s 2 \(3\)](#) and LA s 79)

**Administration and Probate (Amendment) Act 1996 A1996-15**

notified 1 May 1996 (Gaz 1996 No S71)  
commenced 1 May 1996 (s 2)

**Legal Practitioners (Consequential Amendments) Act 1997 A1997-96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Birth (Equality of Status) (Amendment) Act 1998 A1998-42**

notified 14 October 1998 (Gaz 1998 No 41)  
ss 1-3 commenced 14 October 1998 (s 2 (1))  
remainder commenced 14 April 1999 (s 2 (3))

**Law Reform (Miscellaneous Provisions) Act 1999 A1999-66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Statute Law Amendment Act 2000 A2000-80 sch 3**

notified 21 December 2000 (Gaz 2000 No S69)  
commenced 21 December 2000 (s 2 (1))

**Legislation (Consequential Amendments) Act 2001 A2001-44 pt 3**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 3 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

## Endnotes

3 Legislation history

---

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.1**

notified 5 September 2001 (Gaz 2001 No S65)  
commenced 5 September 2001 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2002  
A2002-27 pt 2**

notified LR 9 September 2002  
s 1, s 2 commenced 9 September 2002 (LA s 75)  
pt 2 commenced 10 September 2002 (s 2)

**Civil Law (Wrongs) Act 2002 A2002-40 div 3.2.1**

notified LR 10 October 2002  
s 1, s 2 commenced 10 October 2002 (LA s 75 (1))  
div 3.2.1 commenced 1 November 2002 (s 2 (2) and [CN2002-13](#))

**Justice and Community Safety Legislation Amendment Act 2003  
A2003-2 pt 2**

notified LR 3 March 2003  
s 1, s 2 commenced 3 March 2003 (LA s 75 (1))  
pt 6, pt 7, pt 11, pt 15 commenced 4 March 2003  
pt 2 commenced 31 March 2003 (s 2 (2))

**Parentage Act 2004 A2004-1 sch 1 pt 1.1**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 1 pt 1.1 commenced 22 March 2004 (s 2 and [CN2004-3](#))

**Sexuality Discrimination Legislation Amendment Act 2004 A2004-2  
sch 1 pt 1.1**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 1 pt 1.1 commenced 22 March 2004 (s 2 and [CN2004-4](#))

**Court Procedures (Consequential Amendments) Act 2004 A2004-60  
sch 1 pt 1.1**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.1 commenced 10 January 2005 (s 2 and see [Court  
Procedures Act 2004 A2004-59, s 2 and \[CN2004-29\]\(#\)](#))

**Justice and Community Safety Legislation Amendment Act 2005  
(No 4) A2005-60 sch 1 pt 1.1**

notified LR 1 December 2005

s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))  
sch 1 pt 1.1 commenced 22 December 2005 (s 2 (4))

**Civil Unions Act 2006 A2006-22 sch 1 pt 1.1**

notified LR 19 May 2006

s 1, s 2 commenced 19 May 2006 (LA s 75 (1))  
sch 1 pt 1.1 never commenced

*Note* Act repealed by disallowance 14 June 2006 (see Cwlth  
Gaz 2006 No S93)

**Civil Law (Property) Act 2006 A2006-38 sch 1 pt 1.1**

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
sch 1 pt 1.1 commenced 28 March 2007 (s 2 and LA s 79)

**Justice and Community Safety Legislation Amendment Act 2006  
A2006-40 sch 2 pt 2.1**

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
sch 2 pt 2.1 commenced 29 September 2006 (s 2 (1))

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.2**

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
sch 3 pt 3.2 commenced 12 April 2007 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2008  
A2008-7 sch 1 pt 1.1**

notified LR 16 April 2008

s 1, s 2 commenced 16 April 2008 (LA s 75 (1))  
sch 1 pt 1.1 commenced 7 May 2008 (s 2)

**Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.1**

notified LR 15 May 2008

s 1, s 2 commenced 15 May 2008 (LA s 75 (1))  
sch 1 pt 1.1 commenced 19 May 2008 (s 2 and [CN2008-8](#))

## Endnotes

3 Legislation history

---

**Justice and Community Safety Legislation Amendment Act 2008 (No 2) A2008-22 sch 1 pt 1.1**

notified LR 8 July 2008  
s 1, s 2 commenced 8 July 2008 (LA s 75 (1))  
sch 1 pt 1.1 commenced 29 July 2008 (s 2)

**Justice and Community Safety Legislation Amendment Act 2008 (No 3) A2008-29 sch 1 pt 1.1**

notified LR 13 August 2008  
s 1, s 2 commenced 13 August 2008 (LA s 75 (1))  
sch 1 pt 1.1 commenced 27 August 2008 (s 2)

**Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.1**

notified LR 22 November 2011  
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))  
sch 1 pt 1.1 commenced 1 March 2012 (s 2 (1) and see [Evidence Act 2011 A2011-12](#), s 2 and [CN2012-4](#))

**Civil Unions Act 2012 A2012-40 sch 3 pt 3.1**

notified LR 4 September 2012  
s 1, s 2 commenced 4 September 2012 (LA s 75 (1))  
sch 3 pt 3.1 commenced 11 September 2012 (s 2)

**Justice and Community Safety Legislation Amendment Act 2014 (No 2) A2014-49 pt 2**

notified LR 10 November 2014  
s 1, s 2 commenced 10 November 2014 (LA s 75 (1))  
pt 2 commenced 17 November 2014 (s 2)

**Red Tape Reduction Legislation Amendment Act 2015 A2015-33 sch 1 pt 1.3**

notified LR 30 September 2015  
s 1, s 2 commenced 30 September 2015 (LA s 75 (1))  
sch 1 pt 1.3 commenced 14 October 2015 (s 2)

**Protection of Rights (Services) Legislation Amendment Act 2016 (No 2) A2016-13 sch 1 pt 1.1**

notified LR 16 March 2016  
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))  
sch 1 pt 1.1 commenced 1 April 2016 (s 2 and see [Protection of Rights \(Services\) Legislation Amendment Act 2016 A2016-1 s 2](#))

**Land Titles (Electronic Conveyancing) Legislation Amendment Act 2020 A2020-16 sch 1 pt 1.1**

notified LR 13 May 2020

s 1, s 2 commenced 13 May 2020 (LA s 75 (1))

sch 1 pt 1.1 commenced 1 June 2020 (s 2 and see [Electronic Conveyancing National Law \(ACT\) Act 2020 A2020-15 s 2](#))

**Justice and Community Safety Legislation Amendment Act 2021 A2021-3 pt 4**

notified LR 19 February 2021

s 1, s 2 commenced 19 February 2021 (LA s 75 (1))

pt 4 commenced 26 February 2021 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2021 (No 2) A2021-33 pt 2**

notified LR 10 December 2021

s 1, s 2 commenced 10 December 2021 (LA s 75 (1))

pt 2 commenced 17 December 2021 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2023 (No 3) A2023-57 pt 3**

notified LR 11 December 2023

s 1, s 2 commenced 11 December 2023 (LA s 75 (1))

pt 3 commenced 12 December 2023 (s 2 (1))

## Endnotes

4 Amendment history

---

### 4 Amendment history

#### Dictionary

s 2 om [A2001-44](#) amdt 1.22  
ins [A2007-3](#) amdt 3.3

#### Notes

s 3 am [Ord1930-11](#) s 2  
om [A1999-66](#) sch 3  
ins [A2007-3](#) amdt 3.3

#### Parts

s 4 am [Ord1953-5](#) s 2  
sub [Ord1965-20](#) s 3  
am [Ord1967-9](#) s 3; [Ord1969-16](#) s 3; [Ord1970-25](#) s 4  
om [Ord1976-53](#) s 3

#### Interpretation for Act

s 5 am [Ord1965-20](#) s 4; [Ord1967-9](#) s 4; [A1999-66](#) sch 3  
defs reloc to dict [A2007-3](#) amdt 3.8  
om [A2007-3](#) amdt 3.9  
def **acting curator** ins [Ord1965-20](#) s 4  
om [Ord1985-9](#) sch 1  
def **acting deputy curator** ins [Ord1965-20](#) s 4  
om [Ord1985-9](#) sch 1  
def **acting deputy registrar** ins [Ord1965-20](#) s 4  
am [Ord1985-9](#) sch 1; [Ord1988-34](#) s 3  
om [A1994-97](#) sch pt 1  
def **acting registrar** ins [Ord1965-20](#) s 4  
am [Ord1985-9](#) sch 1  
om [A1994-97](#) sch pt 1  
def **city area** om [Ord1985-9](#) sch 1  
def **Commonwealth country** ins [Ord1965-20](#) s 4  
om [Ord1969-16](#) s 4  
def **court** ins [A1996-15](#) sch  
om [A2007-3](#) amdt 3.4  
def **deceased person** or **the deceased** am [Ord1930-11](#) s 3;  
[Ord1985-9](#) sch 1  
sub [Ord1965-20](#) s 4  
om [A2007-3](#) amdt 3.5  
def **deputy curator** ins [Ord1965-20](#) s 4  
om [Ord1985-9](#) sch 1  
def **deputy registrar** ins [Ord1965-20](#) s 4  
am [Ord1985-9](#) sch 1; [Ord1988-34](#) s 3  
sub [A1994-97](#) sch pt 1  
om [A2006-40](#) amdt 2.1  
def **judge** ins [Ord1937-13](#) s 3  
om [Ord1984-67](#) sch

def **justice** om [Ord1937-13](#) s 3  
 def **portion of His Majesty's Dominions** ins [Ord1934-6](#) s 2  
 om [Ord1965-20](#) s 4  
 def **public trustee** ins [Ord1985-9](#) s 4  
 om [A2007-3](#) amdt 3.6  
 def **seal of the court** ins [A1996-15](#) sch  
 om [A2005-60](#) amdt 1.1  
 def **the court** sub [Ord1937-13](#) s 3; [Ord1965-20](#) s 4  
 om [A1996-15](#) sch  
 def **the curator** sub [Ord1965-20](#) s 4  
 om [Ord1985-9](#) sch 1  
 def **the registrar** sub [Ord1965-20](#) s 4  
 am [Ord1985-9](#) sch 1; [Ord1988-34](#) s 3  
 om [A1994-97](#) sch pt 1  
 def **the registrar of titles** sub [Ord1965-20](#) s 4  
 am [Ord1985-9](#) sch 1  
 om [A1993-64](#) sch 1  
 def **the seal of the court** ins [Ord1934-2](#) s 2  
 sub [Ord1965-20](#) s 4  
 am [Ord1985-9](#) sch 1  
 om [A1996-15](#) sch

**Administration**

s 6 om [Ord1985-9](#) sch 1

**Administration**

pt 2 hdg om [A2006-40](#) amdt 2.3

**Registrar of Probates**

s 7 am [Ord1930-11](#) s 4  
 sub [Ord1965-20](#) s 5  
 am [Ord1988-17](#) sch 2; [Ord1988-34](#) s 4  
 sub [A1994-97](#) sch pt 1  
 om [A2006-40](#) amdt 2.3

**Deputy Registrars of Probates**

s 7A ins [Ord1965-20](#) s 5  
 am [Ord1988-34](#) s 5  
 sub [A1994-97](#) sch pt 1  
 om [A2006-40](#) amdt 2.3

**Signature stamp**

s 7B hdg sub [A2005-60](#) amdt 1.2  
 s 7B ins [Ord1965-20](#) s 5  
 am [Ord1988-17](#) sch 2; [Ord1988-34](#) s 6; [A1994-97](#) sch pt 1;  
[A2005-60](#) amdt 1.3; ss renum [A2005-60](#) amdt 1.4  
 om [A2006-40](#) amdt 2.3

## Endnotes

### 4 Amendment history

---

#### **Powers and duties of deputies**

s 8 sub [Ord1930-11](#) s 5  
sub [Ord1965-20](#) s 5  
om [Ord1985-9](#) sch 1

#### **Powers of acting curator, deputy curator, etc**

s 8A ins [Ord1965-20](#) s 5  
om [Ord1985-9](#) sch 1

#### **Seal and stamp of the curator**

s 8B ins [Ord1965-20](#) s 5  
om [Ord1985-9](#) sch 1

#### **Jurisdiction of Supreme Court**

div 3.1 hdg (prev pt 3 div 1 hdg) renum R6 LA

#### **Preliminary**

pt 3 div 3A hdg ins [Ord1967-9](#) s 5  
om [A1996-15](#) s 7

#### **Rights of spouses to intestate dwelling-houses**

pt 3 div 3B hdg ins [Ord1967-9](#) s 5  
om [A1996-15](#) s 12

#### **Simultaneous deaths**

pt 3 div 3C hdg ins [Ord1984-67](#) s 12  
om [A1996-15](#) s 13

#### **Supreme Court to make finding about domicile of deceased person**

s 8C ins [Ord1970-25](#) s 5  
am [Ord1984-67](#) s 4; [Ord1985-9](#) sch 1; [A1996-15](#) sch;  
[A1999-66](#) sch 3; [A2006-40](#) amdt 2.4; [A2016-13](#) amdt 1.2

#### **Probate or administration may be granted**

s 9 am [Ord1965-20](#) s 6

#### **Evidence of death**

s 9A ins [Ord1965-20](#) s 7

#### **Grant on presumption of death**

s 9B ins [Ord1965-20](#) s 7  
am [Ord1969-16](#) s 5; [A1996-15](#) sch; [A2006-40](#) amdts 2.5-2.8;  
[A2007-3](#) amdt 3.13

#### **Evidentiary effect of probate and letters of administration**

s 9C ins [A2011-48](#) amdt 1.1

#### **Issue of probate by registrar**

s 10 am [Ord1965-20](#) s 8; [Ord1984-67](#) s 5; [A1996-15](#) sch; pars  
renum R6 LA  
om [A2006-40](#) amdt 2.9



**Sealing of probate and letters of administration**

s 10A ins [Ord1930-11](#) s 6  
 am [Ord1965-20](#) s 9; [A1996-15](#) sch  
 om [A2006-40](#) amdt 2.9

**Grant to single executor reserving leave to others to apply**

s 10B ins [Ord1965-20](#) s 10  
 am [A1996-15](#) sch

**Grant of probate to public trustee and guardian etc**

s 10C ins [Ord1965-20](#) s 10  
 sub [Ord1985-9](#) s 5; [A2016-13](#) amdt 1.1

**Eligible administrators**

s 12 am [Ord1974-47](#) sch 1  
 sub [A1996-15](#) s 5  
 am [A2004-2](#) amdt 1.8; [A2006-40](#) amdt 2.10

**Rights and duties of administrator**

s 13 am [Ord1937-3](#) s 2  
 om [Ord1947-15](#) s 2  
 ins [A1999-66](#) sch 3  
 am [A2001-44](#) amdt 1.23, amdt 1.24; [A2007-3](#) amdt 3.14

**Administration bond to be given**

s 14 sub [Ord1965-20](#) s 11; [Ord1969-16](#) s 6  
 am [Ord1984-67](#) sch; [Ord1985-9](#) sch 1; [A1996-15](#) sch  
 om [A2003-2](#) s 5

**Amount of penalty on administration bond**

s 15 am [Ord1930-11](#) s 7; [Ord1937-13](#) sch; [Ord1965-20](#) s 12;  
[Ord1967-9](#) sch  
 om [Ord1969-16](#) s 6

**Powers of registrar as to sureties, penalty, etc**

s 16 am [Ord1965-20](#) s 13; [Ord1967-9](#) sch  
 om [Ord1969-16](#) s 6

**Order may be made to assign bond**

s 17 am [Ord1930-11](#) s 8; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[A1996-15](#) sch  
 om [A2003-2](#) s 5

**Order to assign bond in creditor's administration**

s 18 am [Ord1930-11](#) s 9; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[Ord1985-9](#) s 6, sch 1; [A1996-15](#) sch  
 om [A2003-2](#) s 5

**Probate or administration may be revoked or further bond required**

s 18A ins [Ord1965-20](#) s 14  
 am [Ord1984-67](#) sch; [A1996-15](#) sch  
 om [A2003-2](#) s 5

## Endnotes

4 Amendment history

---

**Application by surety for relief**

s 19 om [A2003-2](#) s 5

**Renunciation or non-appearance by executor**

s 20 am [A1996-15](#) sch  
sub [A2006-40](#) amdt 2.11

**Renunciation etc by person appointed both executor and trustee of will**

s 20A ins [Ord1930-11](#) s 10  
am [A1996-15](#) sch  
sub [A2006-40](#) amdt 2.11

**Administration to guardian of child sole executor**

s 21 am [Ord1974-47](#) sch 1; [A1996-15](#) sch; [A1999-66](#) sch 3;  
[A2007-3](#) amdt 3.13

**Administration under power of attorney**

s 22 am [Ord1965-20](#) s 15  
sub [A1996-15](#) s 6

**Administration pendente lite and receiver**

s 23 am [A2003-2](#) s 6; [A2007-3](#) amdt 3.14

**Power to appoint administrator**

s 24 am [A1996-15](#) sch; [A2007-3](#) amdt 3.14

**Failure of executor to prove will**

s 25 am [Ord1937-13](#) s 4; [Ord1974-47](#) sch 1; [A1996-15](#) sch  
sub [A2006-40](#) amdt 2.12  
am [A2008-29](#) amdt 1.1

**Issue of special letters of administration**

s 26 am [A1996-15](#) sch; [A2006-40](#) amdt 2.13

**Special administrator to make certain affidavits**

s 27 am [A1996-15](#) sch

**On return of original executor or administrator special administration to be revoked**

s 28 hdg am [A2006-40](#) amdt 2.14  
s 28 am [Ord1930-11](#) s 11; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[A2006-40](#) amdt 2.15

**Accounting by special administrator**

s 29 am [A1996-15](#) sch; [A2006-40](#) amdt 2.16

**Liability of executor or administrator neglecting to apply for revocation of special administration**

s 30 hdg am [A2006-40](#) amdt 2.17  
s 30 am [A1996-15](#) sch; [A2006-40](#) amdt 2.17, amdt 2.18; [A2007-3](#)  
amdt 3.14

**Revocation of grants not to prejudice actions or suits**

s 31 am [Ord1930-11](#) s 12; [A1996-15](#) sch; [A2006-40](#) amdt 2.19

**Discharge or removal of executors and administrators**

s 32 am [Ord1930-11](#) s 13; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[A1996-15](#) sch; pars renum R6 LA  
sub [A2008-7](#) amdt 1.1

**Revocation of grant if person living at date of grant**

s 32A ins [Ord1965-20](#) s 16  
am [A1996-15](#) sch

**Effect of revocation of grant**

s 32B ins [Ord1965-20](#) s 16  
am [Ord1969-16](#) s 7; [A1993-64](#) sch 1; [A1995-54](#) sch pt 1;  
[A1996-15](#) sch; pars renum R6 LA

**Caveats**

div 3.2 hdg (prev pt 3 div 2 hdg) renum R6 LA  
om [A2006-40](#) amdt 2.20

**Caveat may be lodged**

s 33 am [A1996-15](#) sch  
om [A2006-40](#) amdt 2.20

**If caveat lodged court may grant order nisi**

s 34 om [A2006-40](#) amdt 2.20

**Service of order nisi**

s 35 am [A1996-15](#) sch  
om [A2006-40](#) amdt 2.20

**Proceeding if caveator does not appear**

s 36 om [A2006-40](#) amdt 2.20

**Evidence on hearing of order nisi**

s 37 om [A2006-40](#) amdt 2.20

**Withdrawal and removal of caveat**

s 37A ins [Ord1965-20](#) s 17  
om [A2006-40](#) amdt 2.20

**Costs if caveat lodged by public trustee**

s 38 am [Ord1985-9](#) s 7; [A1996-15](#) sch  
om [A2006-40](#) amdt 2.20

**Effect of grant of representation**

div 3.3 hdg (prev pt 3 div 3 hdg) renum R6 LA

## Endnotes

### 4 Amendment history

---

#### **Estate to vest in public trustee and guardian until grant**

s 38A hdg am [A2016-13](#) amdt 1.2  
s 38A ins [Ord1965-20](#) s 18  
am [Ord1985-9](#) s 8; [A2016-13](#) amdt 1.2  
sub [A2021-3](#) s 6

#### **Real and personal estate to vest in executor or administrator**

s 39 am [Ord1965-20](#) s 19; [A1996-15](#) sch

#### **Real estate held in trust**

s 40 am [Ord1965-20](#) s 20; [A1996-15](#) sch

#### **Property of deceased to be assets**

s 41 am [Ord1934-6](#) s 3; [A1996-15](#) sch

#### **Property of deceased liable for debts**

s 41A ins [Ord1965-20](#) s 21  
am [A1996-15](#) sch; [A2008-22](#) amdt 1.1

#### **Appointments by will under general power**

s 41B ins [Ord1965-20](#) s 21  
am [A1996-15](#) sch; [A2008-22](#) amdt 1.2, amdt 1.3

#### **Administration of assets**

s 41C ins [Ord1965-20](#) s 21  
am [A1996-15](#) sch; [A2008-7](#) amdt 1.17; [A2008-22](#) amdt 1.4

#### **Application of income of settled residuary estate**

s 41D ins [Ord1965-20](#) s 21  
am [A1996-15](#) sch; [A2008-22](#) amdt 1.4

#### **Real estate to be held on trusts of will**

s 42 am [A1996-15](#) sch

#### **Rights of executor in relation to real estate**

s 43 am [A1996-15](#) sch

#### **Position of executor of an executor**

div 3.4 hdg (prev pt 3 div 4 hdg) ins [A1999-66](#) sch 3  
renum R14 LA  
div 3.4 note ins [A1999-66](#) sch 3  
am [A2001-44](#) amdt 1.25, amdt 1.26

#### **Executor of executor**

s 43A ins [A1999-66](#) sch 3  
am [A2008-7](#) amdt 1.2

#### **When ceases to represent deceased**

s 43B ins [A1999-66](#) sch 3

**Rights and liabilities of executor of executor**s 43C ins [A1999-66](#) sch 3**Intestacy**pt 3A hdg ins [A1996-15](#) s 7**Preliminary**div 3A.1 hdg (prev pt 3A div 1 hdg) ins [A1996-15](#) s 7  
renum R6 LA**Interpretation for pt 3A**s 44 sub [Ord1967-9](#) s 5  
am [A1996-15](#) s 8, sch; [A2008-7](#) amdt 1.3  
def **eligible partner** sub [A2004-2](#) amdt 1.1  
am [A2006-22](#) amdt 1.1 ([A2006-22](#) rep before commenced  
by disallowance (see Cwlth Gaz 2006 No S93));  
[A2008-29](#) amdt 1.2; [A2012-40](#) amdt 3.1  
def **legal spouse** om [A2004-2](#) amdt 1.2  
def **partner** ins [A2004-2](#) amdt 1.3  
am [A2006-22](#) amdt 1.2 ([A2006-22](#) rep before commenced  
by disallowance (see Cwlth Gaz 2006 No S93));  
[A2008-29](#) amdt 1.3; [A2012-40](#) amdt 3.2  
def **personal chattels** sub [A2023-57](#) s 6  
def **spouse** om [A2004-2](#) amdt 1.4**Distribution on intestacy**div 3A.2 hdg (prev pt 3A div 2 hdg) ins [A1996-15](#) s 9  
renum R6 LA**Whole blood or half-blood relationships**s 44A ins [A2008-7](#) amdt 1.4**Executor or administrator to hold property of intestate on trust for persons entitled**s 45 am [Ord1954-2](#) s 2; [Ord1965-20](#) s 22  
sub [Ord1967-9](#) s 5  
am [A1996-15](#) sch**Distribution between spouse, civil union partner or civil partner and eligible partner**s 45A hdg sub [A2008-29](#) amdt 1.4  
am [A2012-40](#) amdt 3.3  
s 45A ins [A1996-15](#) s 10  
sub [A2004-2](#) amdt 1.5  
am [A2006-22](#) amdt 1.3 ([A2006-22](#) rep before commenced by  
disallowance (see Cwlth Gaz 2006 No S93)); [A2008-29](#)  
amdt 1.5; [A2012-40](#) amdt 3.3

## Endnotes

### 4 Amendment history

---

#### Entitlement of children

s 46 sub [Ord1967-9](#) s 5  
am [Ord1974-47](#) sch 1; [A1996-15](#) sch; [A2006-22](#)  
amds 1.4-1.6 ([A2006-22](#) rep before commenced by  
disallowance (see Cwlth Gaz 2006 No S93)); [A2012-40](#)  
amds 3.4-3.6  
sub [A2021-3](#) s 7

#### Presumption of survivorship not to apply

s 47 sub [Ord1967-9](#) s 5  
om [Ord1984-67](#) s 6

#### Estate by courtesy or right of dower not to arise

s 48 sub [Ord1967-9](#) s 5

#### Distribution of intestate estate

s 49 am [Ord1930-11](#) s 14; [Ord1937-13](#) sch  
sub [Ord1967-9](#) s 5  
am [Ord1984-67](#) s 7; [A1996-15](#) sch; R5 LRA; [A2004-2](#)  
amdt 1.8

#### Interest of partner on intestacy in personal chattels

s 49A hdg am [A2004-2](#) amdt 1.8  
s 49A ins [Ord1967-9](#) s 5  
am [A1996-15](#) sch; [A2004-2](#) amdt 1.8

#### Immovable property if intestate domiciled elsewhere

s 49AA ins [Ord1984-67](#) s 8  
am [A1996-15](#) sch; [A2004-2](#) amdt 1.8; [A2008-7](#) amdt 1.5

#### How distribution to issue is made

s 49B ins [Ord1967-9](#) s 5  
am [Ord1984-67](#) s 9; [A1996-15](#) sch

#### Gifts made before death of intestate

s 49BA ins [Ord1984-67](#) s 10  
am [A1996-15](#) s 11; [A2004-2](#) amdt 1.6, amdt 1.7; [A2006-22](#)  
amdt 1.7 ([A2006-22](#) rep before commenced by disallowance  
(see Cwlth Gaz 2006 No S93)); [A2008-14](#) amdt 1.1;  
[A2012-40](#) amdt 3.7

#### How distribution to next of kin is made

s 49C ins [Ord1967-9](#) s 5  
am [A1996-15](#) sch; [A2008-7](#) amdt 1.17

#### How distribution to the Territory is made

s 49CA ins [Ord1989-17](#) s 3  
am [Ord1989-38](#) s 3; [A2016-13](#) amdt 1.2

**Partial intestacies**

s 49D ins [Ord1967-9](#) s 5  
am [Ord1984-67](#) s 11; [A1996-15](#) sch; ss renum R6 LA;  
[A2004-2](#) amdt 1.8; [A2008-7](#) amdt 1.6

**Effect of disclaimer or forfeiture**

s 49DA ins [A2023-57](#) s 7

**Presumptions of parentage**

s 49E ins [Ord1967-9](#) s 5  
sub [Ord1989-19](#) s 4  
am [A1998-42](#) s 12; [A2004-1](#) amdt 1.1

**Rights of partners to intestate dwelling houses**

div 3A.3 hdg (prev pt 3A div 3 hdg) ins [A1996-15](#) s 12  
renum R6 LA  
am [A2004-2](#) amdt 1.8

**Definitions for div 3A.3**

s 49F ins [Ord1967-9](#) s 5  
am [A1996-15](#) sch

**Claim by partner to dwelling house**

s 49G hdg am [A2004-2](#) amdt 1.8  
s 49G ins [Ord1967-9](#) s 5  
am [A1996-15](#) sch; [A2001-56](#) amdt 3.1; [A2004-2](#) amdt 1.8

**Valuation**

s 49H ins [Ord1967-9](#) s 5

**Right not exercisable for certain tenancies**

s 49J ins [Ord1967-9](#) s 5  
am [A1996-15](#) sch

**Right not exercisable in certain other cases**

s 49K ins [Ord1967-9](#) s 5  
am [A1996-15](#) sch; [A2004-2](#) amdt 1.8

**Personal representative not to sell or dispose of interest without consent**

s 49L ins [Ord1967-9](#) s 5  
am [A1996-15](#) sch; [A2004-2](#) amdt 1.8

**Rule that trustee not to purchase trust property**

s 49M ins [Ord1967-9](#) s 5  
am [A1996-15](#) sch; [A2004-2](#) amdt 1.8

**If surviving partner is under legal disability**

s 49N hdg am [A2004-2](#) amdt 1.8  
s 49N ins [Ord1967-9](#) s 5  
am [Ord1974-47](#) sch 1; [A1996-15](#) sch; [A2004-2](#) amdt 1.8

## Endnotes

4 Amendment history

---

### **Simultaneous deaths**

pt 3B hdg ins [A1996-15](#) s 13

### **Simultaneous deaths—devolution of property generally**

s 49P ins [Ord1984-67](#) s 12  
am [A1996-15](#) sch  
sub [A2006-38](#) amdt 1.1

### **Simultaneous deaths—devolution of jointly owned property**

s 49Q ins [A2006-38](#) amdt 1.1

### **Functions of Executors and Administrators**

pt 3C hdg (prev div 4 pt 3 hdg) sub [A1996-15](#) s 14

### **Powers of executors and administrators to sell, mortgage or lease real estate**

s 50 am [Ord1965-20](#) s 23; [Ord1967-9](#) s 6; [A1993-64](#) sch 1;  
[A1996-15](#) sch; ss renum R6 LA; [A2004-2](#) amdt 1.8; [A2008-7](#)  
amdt 1.17; [A2008-22](#) amdt 1.5; ss renum R19 LA

### **Supreme Court may make special order**

s 51 am [Ord1930-11](#) s 15; [Ord1937-13](#) sch; [Ord1965-20](#) s 24;  
[Ord1984-67](#) sch

### **Supreme Court may authorise postponement of realisation and carrying on of business**

s 51A ins [Ord1934-6](#) s 4  
am [A1996-15](#) sch

### **Supreme Court may order partition in summary way**

s 52 am [Ord1930-11](#) s 16; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[A1993-64](#) sch 1; [A1995-54](#) sch pt 1; [A1996-15](#) sch;  
[A2020-16](#) amdt 1.1

### **Personal representative not required to continue to act against own consent**

s 53 am [Ord1930-11](#) s 17; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[A1996-15](#) sch

### **In suits executor or administrator to represent real estate**

s 54 am [A1996-15](#) sch

### **All debts to stand in equal degree**

s 55 am [A1996-15](#) sch; [A2007-3](#) amdt 3.10, amdt 3.11

### **Interest on legacies**

s 55A ins [A1991-69](#) s 3  
am [A2001-44](#) amdt 1.27, amdt 1.28

### **Executor may sign acknowledgment instead of conveyance**

s 56 am [A1993-64](#) sch 1; [A1995-54](#) sch pt 1; [A1996-15](#) sch;  
[A2006-40](#) amdt 2.21



**Summary application for legacy etc**

s 57 am [Ord1930-11](#) s 18; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[A1996-15](#) sch

**Examination and passing of accounts etc**

s 58 am [Ord1930-11](#) s 19; [Ord1965-20](#) s 25; [Ord1984-67](#) s 13;  
[Ord1989-19](#) s 5; [A1996-15](#) sch  
sub [A2006-40](#) amdt 2.22

**Passing and allowance of accounts of executors and administrators**

s 58A ins [Ord1930-11](#) s 20  
am [Ord1933-9](#) s 2; [Ord1965-20](#) s 26  
om [A2006-40](#) amdt 2.22

**If accounts not exhibited registrar to summon administrator before court, which may inflict penalty**

s 59 am [Ord1965-20](#) s 27; [A1996-15](#) sch  
om [A2006-40](#) amdt 2.22

**Proceedings under s 59 not to affect other proceedings**

s 60 am [A1996-15](#) sch  
sub [A2003-2](#) s 7  
om [A2006-40](#) amdt 2.22

**Supreme Court may make order about disposal of money in hands of executor etc**

s 61 am [Ord1930-11](#) s 21; [Ord1937-13](#) s 5, sch; [Ord1984-67](#) sch;  
[A1996-15](#) sch

**Payments under revoked probates or administrations valid**

s 62 am [Ord1930-11](#) s 22; [Ord1965-20](#) s 28; [A1996-15](#) sch;  
[A2006-40](#) amdt 2.23

**Notice before distribution of assets**

s 64 am [Ord1937-13](#) sch; [Ord1989-19](#) s 6; [A1993-64](#) sch 1;  
[A1999-66](#) sch 3; ss renum R6 LA; [A2007-3](#) amdt 3.14;  
[A2008-7](#) amdt 1.7; [A2014-49](#) s 4  
sub [A2021-33](#) s 4; [A2023-57](#) s 8

**Claims barred against executor or administrator in certain cases**

s 65 am [Ord1930-11](#) s 23; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[A1996-15](#) sch

**Distribution of estate by executors and administrators**

s 66 am [Ord1930-11](#) s 24; [A1996-15](#) sch

**Right to follow assets**

s 67 am [A1996-15](#) sch

**Executors may compound etc**

s 68 am [Ord1965-20](#) s 29; [A1996-15](#) sch; [A2007-3](#) amdt 3.14

## Endnotes

### 4 Amendment history

---

#### **Every executor etc taken to be resident in ACT**

s 69 am [Ord1965-20](#) s 30; [A1996-15](#) sch; [A2006-40](#) amdt 2.24;  
ss renum R13 LA

#### **Commission, charges and costs**

pt 3 div 5 hdg om [A1996-15](#) s 15

#### **Executors etc may be allowed commission**

s 70 am [Ord1930-11](#) s 25; [Ord1932-13](#) s 3; [Ord1937-13](#) sch;  
[Ord1967-9](#) sch; [Ord1984-67](#) s 14, sch; [A1996-15](#) sch; ss  
renum R6 LA; [A2002-27](#) s 4  
sub [A2006-40](#) amdt 2.25

#### **Limits of professional charges for obtaining probate etc**

s 71 am [Ord1930-11](#) s 26; [Ord1937-13](#) sch  
sub [Ord1950-16](#) s 2  
am [Ord1965-20](#) s 31; [Ord1967-9](#) s 7, sch; [Ord1976-53](#) s 4;  
[Ord1984-67](#) sch; [A1996-15](#) sch; ss renum R6 LA; [A2002-27](#)  
s 5; [A2006-40](#) amdt 2.26, amdt 2.27  
om [A2008-7](#) amdt 1.8

#### **Additional charge where necessary to employ agent**

s 72 am [Ord1950-16](#) s 3  
om [Ord1965-20](#) s 32

#### **Bill to be taxed by taxing officer**

s 73 sub [Ord1950-16](#) s 4  
am [A1996-15](#) sch  
om [A2006-40](#) amdt 2.28

#### **Taxing rules to apply**

s 74 am [Ord1950-16](#) s 5  
om [A2006-40](#) amdt 2.28

#### **Liability of certain persons in relation to deceased estates**

pt 3D hdg ins [A1999-66](#) sch 3  
pt 3D note ins [A1999-66](#) sch 3  
am [A2001-44](#) amdt 1.29, amdt 1.30

#### **Fraudulently obtaining or keeping property**

s 74A ins [A1999-66](#) sch 3

#### **Persons liable for waste of deceased estate**

s 74B ins [A1999-66](#) sch 3

#### **Small estates**

pt 4 hdg om [A2008-7](#) amdt 1.9

#### **Application to registrar for probate or administration**

s 75 am [Ord1965-20](#) s 33; [Ord1967-9](#) sch; [Ord1974-43](#) sch;  
[A1991-20](#) s 3  
om [A2008-7](#) amdt 1.9

**Duties of registrar**

s 76 am [Ord1974-27](#) s 2; [A1996-15](#) sch; [A2003-2](#) s 8; [A2007-3](#) amdt 3.14  
om [A2008-7](#) amdt 1.9

**Issue of probate or administration in name of Supreme Court**

s 77 am [Ord1930-11](#) s 27; [Ord1965-20](#) s 34; [Ord1967-9](#) sch;  
[Ord1974-43](#) sch; [A1991-20](#) s 4; [A2006-40](#) amdt 2.29  
om [A2008-7](#) amdt 1.9

**Matters about which registrar not satisfied**

s 78 am [A1996-15](#) sch  
om [A2008-7](#) amdt 1.9

**Obligation of registrar**

s 79 am [Ord1965-20](#) s 35; [A1996-15](#) sch; [A1997-96](#) sch 1  
om [A2008-7](#) amdt 1.9

**Orders to collect and administer estates for pt 5**

s 79A ins [A2003-2](#) s 9

**Inclusion of orders to collect and Scottish confirmation**

s 79B ins [A2003-2](#) s 9

**Reseal of grant made in reciprocating jurisdiction**

s 80 hdg note om [A2006-40](#) amdt 2.30  
s 80 sub [Ord1965-20](#) s 36  
am [Ord1969-16](#) s 8; [Ord1985-9](#) sch 1; [A1996-15](#) sch;  
ss renum R6 LA  
sub [A2003-2](#) s 10  
am [A2006-40](#) amdt 2.31; ss renum R13 LA

**Registrar not to seal**

s 80A ins [A2003-2](#) s 10  
om [A2006-40](#) amdt 2.32

**Supreme Court may require security**

s 80B ins [A2003-2](#) s 10

**Effect of sealing**

s 80C ins [A2003-2](#) s 10  
am [A2016-13](#) amdt 1.2

**Caveat**

s 81 am [Ord1965-20](#) s 37  
om [A2006-40](#) amdt 2.32

**Seal not to be attached until duty is paid etc**

s 82 am [Ord1930-11](#) s 28; [Ord1965-20](#) s 38; [A1996-15](#) sch;  
[A2003-2](#) s 11  
om [A2006-40](#) amdt 2.32

## Endnotes

4 Amendment history

---

### **Inclusion of orders to collect and Scotch confirmation**

s 83 sub [Ord1965-20](#) s 39  
om [A2003-2](#) s 12

### **Special provisions with respect to death duty payable under state law**

pt 5A hdg ins [Ord1970-25](#) s 6  
om [A1999-66](#) sch 3

### **Interpretation**

s 83A ins [Ord1970-25](#) s 6  
om [A1999-66](#) sch 3

### **Death duty etc payable under law of a State to constitute a debt payable out of Territory assets**

s 83B ins [Ord1970-25](#) s 6  
am [Ord1985-9](#) sch 1; [A1996-15](#) sch  
om [A1999-66](#) sch 3

### **Public trustee and guardian**

pt 6 hdg sub [Ord1965-20](#) s 40; [Ord1985-9](#) s 9  
am [A2016-13](#) amdt 1.2

### **Curator to give security**

s 84 sub [Ord1965-20](#) s 41  
om [Ord1985-9](#) sch 1

### **Successors to have power of administration de bonis non**

s 85 om [Ord1985-9](#) sch 1

### **Proceedings by and against curator**

s 86 am [Ord1965-20](#) s 42  
om [Ord1985-9](#) sch 1

### **As to fees and commission**

s 87 sub [Ord1960-6](#) s 3  
am [Ord1967-9](#) sch; [Ord1974-43](#) s 2  
om [Ord1985-9](#) sch 1

### **Appointment of agents**

s 87A ins [Ord1937-13](#) s 6  
om [Ord1985-9](#) sch 1

### **Estates valued at \$30 000 or less**

s 87B hdg am [A1991-20](#) s 5  
s 87B ins [Ord1965-20](#) s 43  
am [Ord1967-9](#) sch; [Ord1969-16](#) s 9; [Ord1974-43](#) sch;  
[Ord1985-9](#) sch 1; [A1991-20](#) s 5; [A1996-15](#) sch; [A2006-40](#)  
amdt 2.33  
sub [A2008-7](#) amdt 1.10  
am [A2016-13](#) amdt 1.2

**Estates valued at \$150 000 or less**

s 87C hdg sub [A2008-7](#) amdt 1.11  
s 87C ins [Ord1965-20](#) s 43  
am [Ord1967-9](#) sch; [Ord1969-16](#) s 10; [Ord1974-43](#) sch;  
[Ord1985-9](#) sch 1; [A1991-20](#) s 6; [A1996-15](#) sch; [A2006-40](#)  
amdt 2.34, amdt 2.35; [A2008-7](#) amdt 1.12; [A2008-22](#)  
amdts 1.6-1.8; [A2015-33](#) amdt 1.4; [A2016-13](#) amdt 1.2

**Orders to public trustee and guardian to collect and administer**

s 88 hdg am [A2016-13](#) amdt 1.2  
s 88 am [Ord1937-13](#) s 7; [Ord1943-7](#) s 4; [Ord1985-9](#) s 10, sch 1;  
[A1996-15](#) sch; [A2004-2](#) amdt 1.8; [A2006-40](#) amdt 2.36;  
[A2007-3](#) amdt 3.14; [A2016-13](#) amdt 1.2

**Effect of order**

s 89 am [Ord1937-13](#) s 8; [Ord1965-20](#) s 44; [Ord1985-9](#) sch 1;  
[A1996-15](#) sch; ss renum R6 LA; [A2007-3](#) amdt 3.14;  
[A2008-22](#) amdts 1.9-1.11; [A2016-13](#) amdt 1.2

**Grant of probate or administration despite appointment of public trustee and guardian**

s 90 hdg am [A2016-13](#) amdt 1.2  
s 90 am [Ord1937-13](#) s 9; [Ord1965-20](#) s 45; [Ord1985-9](#) s 11, sch 1;  
[A1999-66](#) sch 3; [A2006-40](#) amdt 2.37; [A2016-13](#) amdt 1.2

**Cessation of rights and liabilities of public trustee and guardian**

s 91 hdg am [A2016-13](#) amdt 1.2  
s 91 am [Ord1985-9](#) s 12, sch 1; [A1996-15](#) sch; [A2007-3](#) amdt 3.14;  
[A2008-22](#) amdts 1.12-1.14; [A2016-13](#) amdt 1.2

**Order to public trustee and guardian to collect and administer in special circumstances**

s 92 hdg am [A2016-13](#) amdt 1.2  
s 92 am [Ord1932-13](#) s 4; [Ord1937-13](#) s 10, sch; [Ord1984-67](#) sch;  
[Ord1985-9](#) s 13, sch 1; [A1996-15](#) sch; [A2016-13](#) amdt 1.2

**Notice of order to be published**

s 93 am [Ord1932-13](#) s 5; [Ord1937-13](#) s 11, sch; [Ord1984-67](#) sch;  
[Ord1985-9](#) sch 1  
sub [A2015-33](#) amdt 1.5  
am [A2016-13](#) amdt 1.2

**Like notices to next of kin**

s 94 am [Ord1932-13](#) s 6  
sub [Ord1937-13](#) s 12  
am [Ord1965-20](#) s 46  
om [Ord1985-9](#) sch 1

## Endnotes

4 Amendment history

---

### Payment to curator in a State or Territory

s 94A ins [Ord1937-13](#) s 12  
sub [Ord1965-20](#) s 47  
om [Ord1985-9](#) sch 1

### Curator may receive payment of estate situated in another State or Territory

s 94B ins [Ord1937-13](#) s 12  
sub [Ord1965-20](#) s 47  
om [Ord1985-9](#) sch 1

### Supreme Court orders against public trustee and guardian

s 95 hdg am [A2016-13](#) amdt 1.2  
s 95 am [Ord1930-11](#) s 29; [Ord1937-13](#) s 13, sch; [Ord1984-67](#) sch;  
[Ord1985-9](#) s 14, sch 1  
sub [A1996-15](#) sch  
am [A2006-40](#) amdt 2.38, amdt 2.39; [A2016-13](#) amdt 1.2

### Orders on complaints under s 95

s 96 am [Ord1930-11](#) s 30; [Ord1937-13](#) s 14, sch; [Ord1984-67](#) sch;  
[Ord1985-9](#) sch 1  
sub [A2006-40](#) amdt 2.40

### Public trustee and guardian to act as Supreme Court directs

s 97 hdg am [A2016-13](#) amdt 1.2  
s 97 am [Ord1930-11](#) s 31; [Ord1937-13](#) s 15, sch; [Ord1984-67](#) sch;  
[Ord1985-9](#) s 15, sch 1; [A2016-13](#) amdt 1.2

### Public trustee and guardian may obtain directions of Supreme Court

s 97A hdg am [A2016-13](#) amdt 1.2  
s 97A ins [Ord1937-13](#) s 16  
am [Ord1984-67](#) sch; [Ord1985-9](#) s 16, sch 1; [A1996-15](#) sch;  
[A2006-40](#) amdt 2.41; ss renum R13 LA; [A2016-13](#) amdt 1.2

### Proceedings for estates administered by the public trustee and guardian

s 98 hdg am [A2016-13](#) amdt 1.2  
s 98 am [Ord1930-11](#) s 32; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[Ord1985-9](#) sch 1  
sub [A2008-7](#) amdt 1.13  
am [A2016-13](#) amdt 1.2

### Payment of debts

s 99 am [Ord1937-13](#) s 17  
om [Ord1985-9](#) sch 1

### Payment to relatives etc in petty cases

s 100 am [Ord1930-11](#) s 33; [Ord1937-13](#) sch  
om [Ord1965-20](#) s 48

### Accounts to be kept etc

s 101 am [Ord1937-13](#) s 18; [Ord1965-20](#) s 49; [Ord1985-9](#) sch 1;  
[A1996-15](#) sch; [A2016-13](#) amdt 1.2

**Receipt of public trustee and guardian sufficient discharge**

s 102 hdg am [A2016-13](#) amdt 1.2  
 s 102 am [Ord1985-9](#) s 17, sch 1; [A1996-15](#) sch; [A2016-13](#) amdt 1.2

**Accounts to be audited by auditor-general**

s 103 am [Ord1937-13](#) s 19  
 sub [Ord1969-16](#) s 11  
 om [Ord1985-9](#) sch 1

**The curator to invest moneys after expiration of 6 months**

s 104 am [Ord1933-9](#) s 3; [Ord1937-13](#) s 20, sch; [Ord1943-7](#) s 5;  
[Ord1984-67](#) sch  
 om [Ord1985-9](#) sch 1

**Curator not liable for acts done in the performance of his duties**

s 105 om [Ord1985-9](#) sch 1

**Proceeds of property of third person to be handed over to him**

s 106 om [Ord1985-9](#) sch 1

**Conveyance of escheated lands and disposal of proceeds of sale**

s 107 am [Ord1965-20](#) s 50; [Ord1985-9](#) sch 1  
 om [Ord1989-17](#) s 4

**Unclaimed moneys**

s 108 am [Ord1930-11](#) s 34  
 sub [Ord1965-20](#) s 51; [Ord1969-16](#) s 12  
 om [Ord1985-9](#) sch 1

**Parties entitled may apply subsequently**

s 109 am [Ord1930-11](#) s 35; [Ord1937-13](#) sch  
 sub [Ord1965-20](#) s 51  
 om [Ord1969-16](#) s 12

**Testator's family maintenance**

pt 7 hdg sub [Ord1953-5](#) s 3; [Ord1954-2](#) s 3  
 om [Ord1969-16](#) s 13

**Where no adequate provision made by deceased person, court may make orders, etc**

s 110 om [Ord1953-5](#) s 4  
 ins [Ord1954-2](#) s 3  
 am [Ord1967-9](#) s 8  
 om [Ord1969-16](#) s 13

**Court may make order for widow's or children's maintenance**

s 111 am [Ord1930-11](#) s 36; [Ord1937-13](#) sch; [Ord1953-5](#) s 5  
 sub [Ord1954-2](#) s 3  
 am [Ord1967-9](#) s 9  
 om [Ord1969-16](#) s 13

## Endnotes

4 Amendment history

---

### Application by summons in chambers

s 112 om [Ord1930-11](#) s 37  
ins [Ord1954-2](#) s 3  
om [Ord1969-16](#) s 13

### Service of notice of application

s 113 am [Ord1930-11](#) s 38; [Ord1937-13](#) sch  
sub [Ord1954-2](#) s 3  
om [Ord1969-16](#) s 13

### Powers of court

s 114 am [Ord1930-11](#) s 39; [Ord1937-13](#) sch; [Ord1953-5](#) s 6  
sub [Ord1954-2](#) s 3  
om [Ord1969-16](#) s 13

### Court to consider net estate and widow's or children's means

s 115 am [Ord1930-11](#) s 40; [Ord1937-13](#) sch; [Ord1953-5](#) s 7  
sub [Ord1954-2](#) s 3  
om [Ord1969-16](#) s 13

### Cases in which court may refuse application

s 116 am [Ord1930-11](#) s 41; [Ord1937-13](#) sch  
sub [Ord1954-2](#) s 3  
om [Ord1969-16](#) s 13

### Contents of order

s 117 am [Ord1938-35](#) sch 2; [Ord1953-5](#) s 8  
sub [Ord1954-2](#) s 3  
om [Ord1969-16](#) s 13

### Adjustment of duty

s 118 om [Ord1954-2](#) s 3

### Time within which application to be made

s 119 sub [Ord1953-5](#) s 9  
om [Ord1954-2](#) s 3

### Practice

s 120 om [Ord1930-11](#) s 42

### Procedure

pt 8 hdg om [A2006-40](#) amdt 2.42

### Method of taking evidence

s 121 am [A2002-40](#) amdt 3.2  
om [A2006-40](#) amdt 2.42

### Trial of question of fact by jury

s 122 om [Ord1965-20](#) s 52

### Question to be stated

s 123 om [Ord1965-20](#) s 52



**Order to produce instrument purporting to be testamentary**

s 124 am [Ord1930-11](#) s 43; [Ord1937-13](#) sch; [Ord1984-67](#) sch;  
[A1996-15](#) sch  
om [A2006-40](#) amdt 2.42

**Registrar to keep record of probates etc**

s 125 am [Ord1965-20](#) s 53; pars renum R6 LA  
om [A2006-40](#) amdt 2.43

**Proved wills and other documents to be held by Supreme Court**

s 125A ins [Ord1965-20](#) s 54  
am [Ord1984-67](#) sch; [A1996-15](#) sch

**Official certificate or copy of grants and wills obtainable**

s 125B ins [Ord1965-20](#) s 54  
am [Ord1980-8](#) s 4; [Ord1984-67](#) sch; [A1993-91](#) sch 3;  
[A2004-60](#) amdt 1.2

**People entitled to inspect will of deceased person**

s 126 am [Ord1965-20](#) s 55  
om [A2006-40](#) amdt 2.43  
ins [A2014-49](#) s 5  
am [A2023-57](#) s 9

**Person fraudulently disposing of will liable for damages**

s 127 sub [Ord1965-20](#) s 56

**Application of amendments made by Administration and Probate (Amendment) Act 1996**

s 128 om [Ord1937-13](#) s 21  
ins [A2000-80](#) amdt 3.1

**Regulation-making power**

s 129 am [Ord1930-11](#) s 44; [Ord1937-13](#) sch; [Ord1937-27](#) sch 2;  
[Ord1984-67](#) sch  
om [A1999-66](#) sch 3  
ins [A2023-57](#) s 10

**Seal of the court**

s 129A ins [Ord1934-2](#) s 3  
om [Ord1965-20](#) s 57

**Transitional**

pt 10 hdg om [Ord1980-8](#) s 5  
ins [A2006-40](#) amdt 2.44  
om R15 LA

**Fees**

s 130 am [Ord1930-11](#) s 45; [Ord1974-43](#) s 3  
om [Ord1980-8](#) s 5

## Endnotes

### 4 Amendment history

---

#### **Things done by registrar of probates etc**

s 150 ins [A2006-40](#) amdt 2.44  
exp 29 March 2007 (s 150 (4) (LA s 88 declaration applies))

#### **Schedules**

schedules hdg om [A1999-66](#) sch 3

#### **Schedule 1**

sch 1 hdg om [A1999-66](#) sch 3  
sch 1 sub [Ord1930-11](#) s 46  
am [Ord1938-35](#) sch 2  
om [A1999-66](#) sch 3

#### **Schedule 2**

sch 2 om [Ord1960-6](#) s 4

#### **Fees**

sch 3 sub [Ord1960-6](#) s 4  
sub [Ord1967-9](#) s 10; [Ord1974-27](#) s 3  
om [Ord1980-8](#) s 6

#### **Schedule 4**

sch 4 ins [Ord1965-20](#) s 58

#### **Order of application of assets if estate solvent**

pt 4.1 hdg (prev pt 1 hdg) renum R6 LA

#### **Rules about payment of debts and liabilities if estate insolvent**

pt 4.2 hdg (prev pt 2 hdg) renum R6 LA

#### **Commonwealth countries**

sch 5 ins [Ord1965-20](#) s 58  
om [Ord1969-16](#) s 14

#### **Distribution of intestate estate on intestacy**

sch 6 ins [Ord1967-9](#) s 11  
am [Ord1984-67](#) s 15; [Ord1989-17](#) s 5; [Ord1989-38](#) sch 1;  
[A1996-15](#) s 16; [A2004-2](#) amdt 1.8; [A2008-7](#) amdt 1.14

#### **Distribution of estate if intestate survived by partner**

pt 6.1 hdg (prev sch 6 pt 1 hdg) renum R6 LA  
am [A2004-2](#) amdt 1.8

#### **Distribution of estate if intestate not survived by partner**

pt 6.2 hdg (prev sch 6 pt 2 hdg) renum R6 LA  
am [A2004-2](#) amdt 1.8

## Dictionary

dict

ins [A2007-3](#) amdt 3.12  
 am [A2008-14](#) amdt 1.2; [A2012-40](#) amdt 3.8; [A2014-49](#) s 6;  
[A2016-13](#) amdt 1.2  
 def **administration** am [Ord1937-13](#) s 3  
 reloc from s 5 [A2007-3](#) amdt 3.8  
 def **administration bond** ins [A2003-2](#) s 4  
 reloc from s 5 [A2007-3](#) amdt 3.8  
 def **administrator** am [Ord1937-13](#) s 3  
 reloc from s 5 [A2007-3](#) amdt 3.8  
 def **distribute** ins [Ord1937-13](#) s 3  
 reloc from s 5 [A2007-3](#) amdt 3.8  
 def **dwelling house** ins [A2008-7](#) amdt 1.15  
 def **election** ins [Ord1965-20](#) s 4  
 reloc from s 5 [A2007-3](#) amdt 3.8  
 def **eligible partner** ins [A2008-7](#) amdt 1.15  
 def **intestate** ins [A2008-7](#) amdt 1.15  
 def **original executor** ins [A2008-7](#) amdt 1.15  
 def **partner** ins [A2008-7](#) amdt 1.15  
 def **personal chattels** ins [A2008-7](#) amdt 1.15  
 def **personal representative** ins [A2008-7](#) amdt 1.15  
 def **prescribed** reloc from s 5 [A2007-3](#) amdt 3.8  
 def **probate** ins [Ord1932-13](#) s 2  
 reloc from s 5 [A2007-3](#) amdt 3.8  
 def **public trustee** ins [A2007-3](#) amdt 3.12  
 def **purposes of administration** reloc from s 5 [A2007-3](#)  
 amdt 3.8  
 def **registrar** ins [A1994-97](#) sch pt 1  
 sub [A2006-40](#) amdt 2.2  
 reloc from s 5 [A2007-3](#) amdt 3.8  
 def **representation** reloc from s 5 [A2007-3](#) amdt 3.8  
 sub [A2008-7](#) amdt 1.16  
 def **rules** am [Ord1930-11](#) s 3  
 sub [A1999-66](#) sch 3; [A2004-60](#) amdt 1.1  
 am [A2007-3](#) amdt 3.7  
 reloc from s 5 [A2007-3](#) amdt 3.8  
 def **will** ins [Ord1965-20](#) s 4  
 reloc from s 5 [A2007-3](#) amdt 3.8

## Endnotes

### 5 Earlier republications

---

#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	<a href="#">A1991-20</a>	31 August 1991
2	<a href="#">A1993-91</a>	31 January 1994
3	<a href="#">A1994-97</a>	31 January 1995
4	<a href="#">A1996-15</a>	30 November 1996
5	<a href="#">A1998-42</a>	31 August 1999
6	<a href="#">A2001-56</a>	9 May 2002
7	<a href="#">A2002-27</a>	10 September 2002
8	<a href="#">A2002-40</a>	1 November 2002
9	<a href="#">A2003-2</a>	31 March 2003
10	<a href="#">A2004-2</a>	22 March 2004
11	<a href="#">A2004-60</a>	10 January 2005
12	<a href="#">A2005-60</a>	22 December 2005
13	<a href="#">A2006-40</a>	29 September 2006
14	<a href="#">A2007-3</a>	28 March 2007
15	<a href="#">A2007-3</a>	30 March 2007
16	<a href="#">A2007-3</a>	12 April 2007
17	<a href="#">A2008-7</a>	7 May 2008
18	<a href="#">A2008-14</a>	19 May 2008
19	<a href="#">A2008-22</a>	29 July 2008
20*	<a href="#">A2008-29</a>	27 August 2008
21	<a href="#">A2011-48</a>	1 March 2012

---

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
22	<a href="#">A2012-40</a>	11 September 2012
23	<a href="#">A2014-49</a>	17 November 2014
24	<a href="#">A2015-33</a>	14 October 2015
25	<a href="#">A2016-13</a>	1 April 2016
26	<a href="#">A2020-16</a>	1 June 2020
27	<a href="#">A2021-3</a>	26 February 2021
28	<a href="#">A2021-33</a>	17 December 2021

© Australian Capital Territory 2023