



Australian Capital Territory

## **Wills Act 1968    No 11**

### **Republication No 4 (RI)**

Republication date: 28 February 2002

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Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Wills Act 1968* as in force on 28 February 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

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 or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### 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 *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Wills Act 1968

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Amendments incorporated to  
12 September 2001



Australian Capital Territory

## **Wills Act 1968**

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An Act to make provisions in relation to the execution and interpretation of wills, and for other purposes

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Wills Act 1968*.

### 4 Definitions for Act

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

*personal property* includes leasehold property, and a share or interest in personal property.

*real property* includes an estate, right or interest in real property.

*registrar* means the registrar of probates under the *Administration and Probate Act 1929*.

*will* includes a codicil.

### 5 Application of Act

Except as otherwise provided by this Act, this Act applies to and in relation to a will or testamentary disposition of a person who dies after the commencement of this Act, whether the will or testamentary disposition was made before or after the commencement of this Act.



## Part 2                      Wills

### 7                      **Person may dispose of all his or her property by will**

- (1) A person may, by his or her will, devise, bequeath or dispose of any real property or personal property to which he or she is entitled at the time of his or her death, whether he or she became entitled to the property before or after the execution of his or her will.
- (2) Without limiting subsection (1), a person may, by his or her will, dispose of—
  - (a) property that, if not disposed of by his or her will, would devolve on the executor of his or her will or the administrator of his or her estate; and
  - (b) an estate *pur autre vie*, whether there is or is not a special occupant of the estate, whether the estate is freehold or of any other tenure and whether the estate is a corporeal or incorporeal hereditament; and
  - (c) a contingent, executory or future interest in real property or personal property, whether he or she becomes entitled to the interest under the instrument by which the interest was created or under a disposition of the interest by deed or will and whether he or she has or has not been ascertained as the person or 1 of the persons in whom the interest may become vested; and
  - (d) a right of entry for conditions broken and any other right of entry.

### 8                      **Minors—testamentary capacity**

- (1) Subject to this section and section 16, a will made by a minor is not valid.

- (2) A minor who is or has been married may make a valid will and may revoke a will, or a part of a will, that he or she has made.
- (3) A will made by a minor who may marry and that is made in contemplation of a marriage is, on the solemnisation of the marriage contemplated, valid.
- (4) If the Supreme Court, on an application by a minor under section 8A, makes an order in accordance with that section enabling the minor to make a will in the specific terms of a proposed will attached to the application, the minor may make a valid will in those terms.
- (5) If the Supreme Court, on an application by a minor under section 8B, makes an order in accordance with that section enabling the minor to revoke a will, or a part of a will, the minor may revoke the will, or the part of the will, in accordance with that order.
- (6) A minor who has made a will in accordance with an order of the Supreme Court under section 8A and who has not at any time been married may not revoke the will, or a part of the will, otherwise than in accordance with an order of the Supreme Court under section 8B.
- (7) This section has effect subject to section 9.

**8A Supreme Court enabling will by minor**

- (1) A minor may apply to the Supreme Court for an order declaring that the minor is entitled to make a will in the terms of a proposed will attached to the application.
- (2) On an application made by a minor under subsection (1), the Supreme Court may, if it is satisfied that—
  - (a) the minor understands the nature and effect of the proposed will; and
  - (b) the proposed will accurately reflects the intentions of the minor; and

- (c) it is reasonable in all the circumstances that the minor should be able to make the proposed will;

make an order declaring that the minor is entitled to make a valid will in the specific terms of the proposed will attached to the application.

### **8B Supreme Court enabling revocation of will by minor**

- (1) A minor who has made a valid will and has not at any time been married may apply to the Supreme Court for an order declaring that the minor is entitled to revoke the will, or a part of the will, by an instrument in the terms of a proposed instrument attached to the application.
- (2) On an application made by a minor under subsection (1), the Supreme Court may, if it is satisfied that—
- (a) the minor understands the nature and effect of the proposed instrument; and
  - (b) the proposed instrument accurately reflects the intentions of the minor; and
  - (c) it is reasonable in all the circumstances that the minor should be able to revoke the will, or the part of the will, by the proposed instrument;

make an order declaring that the minor is entitled to revoke the will, or the part of the will, by executing an instrument in the specific terms of the proposed instrument attached to the application.

### **9 Will to be in writing and signed before 2 witnesses**

- (1) Subject to this Act, a will is not valid unless—
- (a) it is in writing; and

- (b) it is signed at the foot or end by the testator, or by another person in the presence of and by the direction of the testator; and
  - (c) the signature of the testator is made or acknowledged, or the signature of the person who signs the will by the direction of the testator is acknowledged, by the testator in the presence of 2 or more witnesses present at the same time; and
  - (d) 2 or more of those witnesses each attest that signing of the will or that acknowledgment of the signing of the will and subscribe the will in the presence of the testator and of the other witness or witnesses.
- (2) Subsection (1) shall not be taken to require any form of attestation on a will.

## **10 When signature to will valid**

- (1) A will, so far only as regards the position of the signature of the testator on the will, is not invalid if the signature is so placed at, after, following, under, beside or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by that signature to the writing signed as his or her will.
- (2) Without limiting subsection (1), the validity of a will is not affected by reason of the fact—
- (a) that the signature of the testator does not follow, or is not immediately after, the foot or end of the will; or
  - (b) that a blank space intervenes between the concluding word of the will and the signature; or
  - (c) that the signature—
    - (i) is placed among the words of the testimonium clause or of the clause of attestation; or

- (ii) follows, or is after or under, the clause of attestation, whether or not a blank space intervenes between the concluding word of that clause and the signature; or
  - (iii) follows, or is after, under or beside, the names, or 1 of the names, of the subscribing witnesses; or
  - (d) that the signature is on a side, page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the will is written above the signature; or
  - (e) that there appears to be sufficient space for the signature on or at the bottom of the preceding side, page or other portion of the paper on which the will is written.
- (3) The signature of the testator on a will does not operate to give effect to a disposition or direction that is underneath or follows that signature, or that is inserted in the will after that signature is made.
- (4) In this section, references to the signature of the testator are, in relation to a will signed by a person by the direction of the testator, references to the signature of that person.

## **11 Appointments by will**

- (1) If a testator purports to make an appointment by his or her will in exercise of a power of appointment, the appointment is not valid unless the will is—
- (a) executed in accordance with this part; or
  - (b) under part 2A, to be taken to have been properly made.
- (2) If power is given to a person to make an appointment by a will that is executed in some particular manner or with some particular solemnity, the person may exercise the power by a will that is executed in accordance with this part but is not executed in that manner or with that solemnity.

**11A Validity of will etc not executed with required formalities**

- (1) A document, or a part of a document, purporting to embody testamentary intentions of a deceased person shall, notwithstanding that it has not been executed in accordance with the formal requirements of this Act, constitute a will of the deceased person, an amendment of the will of the deceased person or a revocation of the will of the deceased person if the Supreme Court is satisfied that the deceased person intended the document or part of the document to constitute his or her will, an amendment of his or her will or the revocation of his or her will respectively.
- (2) In forming a view of whether a deceased person intended a document or a part of a document to constitute his or her will, an amendment of his or her will or a revocation of his or her will, the Supreme Court may, in addition to having regard to the document, have regard to—
  - (a) any evidence relating to the manner of execution of the document; or
  - (b) any evidence of the testamentary intentions of the deceased person, including evidence (whether admissible before the commencement of this section or not) of statements made by the deceased person.

**12 Alteration in will**

- (1) An obliteration, interlineation, or other alteration made in a will after the execution of the will is not valid or effectual for any purpose, except so far as a word in the will or the effect of the will before the alteration is not apparent, unless—
  - (a) the obliteration, interlineation or alteration is signed by the testator or by another person in the presence of and by the direction of the testator; and

- (b) the signature of the testator is made or acknowledged, or the signature of the person who signs the will by the direction of the testator is acknowledged, by the testator in the presence of 2 or more witnesses present at the same time; and
  - (c) 2 or more of those witnesses each attest that signing or that acknowledgment of that signing and subscribe the obliteration, interlineation or alteration in the presence of the testator and of the other witness or witnesses.
- (2) An obliteration, interlineation or other alteration made in a will after the execution of the will shall be deemed to comply with the provisions of subsection (1) if the signature of the testator or of the person who signs on behalf of the testator and the subscription of the witnesses, in relation to the obliteration, interlineation or other alteration, are made—
- (a) in the margin, or on some other part of the will, opposite or near to the obliteration, interlineation or other alteration; or
  - (b) at the foot or end of, or opposite to, a memorandum that refers to the obliteration, interlineation or other alteration and is written at the end, or at another part, of the will.

## **12A Rectification**

- (1) If the court is satisfied that the probate copy of the will of a testator is so expressed that it fails to carry out his or her intentions, it may order that the will be rectified so as to carry out the testator's intentions.
- (2) If the court is satisfied that circumstances or events existed or occurred before, at or after the execution by a testator of his or her last will, being circumstances or events—
  - (a) that were not known to, or anticipated by, the testator; or
  - (b) the effects of which were not fully appreciated by the testator; or

(c) that occurred at or after the death of the testator;

in consequence of which the provisions of the will applied according to their tenor would fail to accord with the probable intention of the testator had he or she known of, anticipated or fully appreciated the effects of those circumstances or events, the court may, if it is satisfied that it is desirable in all the circumstances to do so, order that the probate copy of the will be rectified so as to give effect to that probable intention.

- (3) Except with the leave of the court, an application to the court for an order for rectification shall not be made after the expiration of the period of 6 months commencing—
- (a) if the public trustee is administering the estate of the testator under the *Administration and Probate Act 1929*, section 87B or 87C—on the day when notice was given under that Act, section 87B (3) or 87C (5);
  - (b) if an order has been granted under that Act, section 88 (1) or (3) in respect of the estate of the testator—on the day when the order was granted; or
  - (c) in any other case—on the day of the grant of probate of the will or letters of administration of the relevant estate with will annexed.
- (4) A personal representative of a deceased person may, within the period of 4 months commencing on the day referred to in subsection (3) (a), (b) or (c) (whichever is applicable), by advertisement published in a daily newspaper circulating in the ACT, give notice of his or her intention to distribute all or part of the estate of the deceased person after the expiration of the period of 2 months commencing on the day when the advertisement was so published and requiring any person wishing to make an application for an order for rectification to do so within that period of 2 months.
- (5) A personal representative of a deceased person is not liable for having distributed any part of the estate of the deceased person



otherwise than in accordance with the provisions of the will of that deceased person as altered by an order for rectification if the distribution was made prior to the making of that order in accordance with the provisions of the will before it was so altered and, at the time of the distribution—

- (a) a period of 2 months had elapsed since an advertisement was published in accordance with subsection (4) and the personal representative had not received notice that an application had been made to the court for an order for rectification; or
- (b) the period of 6 months commencing on the day referred to in subsection (3) (a), (b) or (c) (whichever is applicable) had expired and—
  - (i) the personal representative had not received notice that an application had been made to the court for an order for rectification, that the court had granted leave to apply for such an order or that an application had been made to the court for leave to apply for such an order; or
  - (ii) the court had granted leave to apply for an order for rectification but a period of 7 days had elapsed since the day when that leave was granted without any application for such an order having been made.
- (6) Nothing in this section shall be taken to affect the right of a person, arising by reason of the making of an order for rectification, to recover any part of the estate of a deceased person that had been distributed before that order was made.

- (7) In this section:

***court*** means the Supreme Court.

***order for rectification*** means an order inserting material in, or omitting material from, the probate copy of a will.

***personal representative***, in relation to a deceased person, means the executor of the will of the deceased person or the administrator of the estate of the deceased person (including the public trustee when administering the estate of the deceased person under the *Administration and Probate Act 1929*, section 87B, 87C or 88).

***probate copy***, in relation to a will of a deceased person, includes the copy of the will—

- (a) annexed to letters of administration of the estate of the deceased person; or
- (b) used in administering the estate of the deceased person under the *Administration and Probate Act 1929*, section 87B; or
- (c) annexed to an election to administer the estate of the deceased person under that Act, section 87C; or
- (d) annexed to an order granted to collect and administer the estate of the deceased person under that Act, section 88.

## **12B Extrinsic evidence**

In proceedings to construe a will, evidence, including evidence of the testator's dispositive intention, is admissible to the extent that the language used in the will renders the will, or any part of the will—

- (a) meaningless; or
- (b) ambiguous or uncertain on the face of the will; or
- (c) ambiguous or uncertain in the light of the surrounding circumstances;

but evidence of a testator's dispositive intention is not admissible to establish any of the circumstances referred to in paragraph (c).

**13 Publication of will unnecessary**

The validity of a will that has been executed in accordance with the provisions of this part is not affected by reason that a person who subscribed the will as a witness was unaware that the document was a will.

**14 Will not voided by incompetence of witness**

The validity of a will that has been executed in accordance with the provisions of this part is not affected by reason that a person who subscribed the will as a witness was, at the time of the execution of the will, incompetent to be admitted as a witness to prove the execution of the will or became so incompetent at any time after the execution of the will.

**14A Certain appointments and trusts not void**

If a testator, by his or her will—

- (a) gives a person a power to appoint property; or
- (b) appoints a person to be trustee of any property with power to distribute the property as the trustee thinks fit;

the giving of that power, or the creation of that trust, by the will shall not be void if the same power could have been given, or the same trust created, by an instrument inter vivos.

**15 Will attested by beneficiary or spouse of beneficiary**

No will or testamentary provision of a will shall be void by reason only of the execution of the will having been attested by a person, or the spouse of a person, who has or may acquire, under the will or provision, any interest in property subject to the will.

## Part 2A Formal validity of wills

### 15A Definitions for pt 2A

In this part:

*country* means any place or group of places having its own law of nationality or citizenship.

*internal law*, in relation to any country or place, means the law that would apply in that country or place if no question of the law in force in any other country or place arose.

*made*, in relation to a will, means executed or otherwise made.

*place* includes a State or Territory.

*testator* means a person who made a will.

*will* includes any testamentary instrument or act.

### 15B System of law to be applied

(1) If—

- (a) there are in force in any country or place 2 or more systems of internal law relating to the formal validity of wills; and
- (b) the internal law of that country or place is to be applied for a will;

the system to be applied in that case shall be ascertained as follows:

- (c) if there is in force throughout the country or place a rule indicating which of those systems should apply—that rule shall be followed;

- (d) if there is no such rule—the system shall be that with which the testator was most closely connected at the relevant time.
- (2) For subsection (1) (d), the relevant time is—
  - (a) if the matter is to be determined by reference to circumstances prevailing at the time of the testator's death—the time of that death; or
  - (b) in any other case—the time of the making of the will.

### **15C General rule as to formal validity**

A will shall be taken to have been properly made if it has been made in accordance with the internal law in force—

- (a) in the place where the will was made; or
- (b) in the place where the testator was domiciled at the time—
  - (i) when he or she made the will; or
  - (ii) of his or her death; or
- (c) in the place where the testator habitually resided at a time referred to in paragraph (b); or
- (d) in the country of which the testator was a national or citizen at a time referred to in paragraph (b).

### **15D Additional rules as to formal validity**

- (1) Without limiting section 15C, the following wills shall be taken to have been properly made:
  - (a) a will made on board any vessel or aircraft where the making of the will was in accordance with the internal law in force in the country or place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(b) a will, so far as it disposes of immovable property, where the will was made in accordance with the internal law in force in the country or place where the property is situated;

(c) a will, so far as it revokes—

(i) a will; or

(ii) a provision of a will;

that under this Act would be taken to have been properly made, if the later will was made in accordance with any law by reference to which the revoked will or the will containing the revoked provision, as the case may be, would be so taken to have been properly made.

(2) A will, so far as it exercises a power of appointment, shall not be taken to have been improperly made by reason only that it was not made in accordance with any formal requirements contained in the instrument creating the power.

### **15E Relevance of formal requirements for making**

(1) In determining for this part whether or not a will was made in accordance with a particular law, regard shall be had to the formal requirements of that law at the time when the will was made.

(2) Subsection (1) does not prevent account being taken of an alteration of law affecting wills that were made in the relevant country or place at the time when the relevant will was made if the alteration enables that will to be taken to have been properly made.

### **15F Certain requirements to be treated as formal**

If a law in force outside the ACT is to be applied in relation to a will, any requirement under that law that certain formalities are to be observed only by testators included in a particular class of testators, or that certain qualifications are to be possessed by

witnesses to the making of a will, shall, for this part, be taken to be a formal requirement only.

**15G Construction of will not affected by later change of domicile**

The construction of a will shall not be affected by reason of any change in the testator's domicile after the making of the will.

**15H Application of pt 2A**

This part applies only in relation to a will of a testator who dies after the date of commencement of this part, whether the will was made before or after that date.

## **Part 3**                      **Testamentary dispositions by members of the Defence Force**

### **16**                      **Wills of soldiers etc**

- (1) A testamentary disposition of real or personal property made by a person included in a class of persons specified in subsection (6), that is to say, a declaration, either oral or in writing, of such a person's intention with respect to the disposal of property on or after his or her death, is as valid and effectual as it would have been if it had been made in a will executed in accordance with the provisions of part 2.
- (2) An appointment made, either orally or in writing, by a person included in a class of persons specified in subsection (6) of another person to be the guardian of his or her infant children after his or her death is as valid and effectual as it would have been if it had been made in a will executed in accordance with the provisions of part 2.
- (3) In any proceedings, evidence of a matter specified in subsection (4) that relates to a declaration referred to in subsection (1) or an appointment referred to in subsection (2) that has been made by a person is admissible for the purpose of proving that the person intended the declaration or appointment to have effect upon or after the person's death.
- (4) The following matters are specified for subsection (3):
  - (a) any statement made by the person, either orally or in writing, at or about the time when he or she made the declaration or appointment;
  - (b) the circumstances in which the person made the declaration or appointment;



- (c) if the person made the declaration or appointment orally—the relationship between the person and the other person to whom the declaration or appointment was made;
  - (d) if the person made the declaration or appointment in writing—the relationship between the person and any other person—
    - (i) to whom the person gave that writing; or
    - (ii) in whose presence the person wrote or signed that writing; or
    - (iii) who wrote that writing at the request or by the direction of the person.
- (5) Subsection (3) is in addition to and not in substitution for any rules of law or procedure concerning evidence that is admissible in proceedings.
- (6) Each of the following classes of persons is specified for this section:
- (a) members of the Defence Force who are in actual armed service;
  - (b) persons employed outside Australia as representatives of organisations rendering philanthropic, welfare or medical service to members of the Defence Force;
  - (c) prisoners of war or persons interned in a country under the sovereignty, or in the occupation, of the enemy or in a neutral country who became prisoners of war or were so interned as a result of war or warlike operations and were, immediately before their capture or internment, persons included in a class of persons specified in paragraphs (a) or (b).
- (7) A person is not excluded from a class of persons specified in subsection (6) by reason only of the fact that he or she has not attained the age of 18 years.



power, pass to an executor under any other will of the testator or to an administrator of any estate of the testator.

- (3) If a will contains a devise or bequest to, an appointment of property in favour of, or a conferral of a power of appointment on, a person, being a devise, bequest, appointment or conferral expressed to be in contemplation of the marriage of the testator to that person—
- (a) the devise, bequest, appointment or conferral is not revoked by the marriage; and
  - (b) the remaining provisions of the will are not revoked by the marriage unless a contrary intention appears from the will or from evidence admitted under section 12B.

## **20A Effect of termination of marriage**

- (1) Subject to subsection (2), if, after a testator has made a will, the testator's marriage is terminated—
- (a) any beneficial gift (including any devise, legacy, estate, interest or appointment of or affecting any real or personal estate, but not including any charge or direction for the payment of any debt) in favour of the former spouse of the testator and any power of appointment given to the former spouse is revoked; and
  - (b) any appointment under the will of the former spouse of the testator as executor, trustee or guardian shall be taken to be omitted from the will; and
  - (c) any property that would, but for this subsection, have passed to the former spouse of the testator under a beneficial gift referred to in paragraph (a) shall pass as if the former spouse had predeceased the testator, but no class of beneficiaries under the will shall close earlier than it would have closed if the beneficial gift had not been revoked.

- (2) A beneficial gift or power of appointment is not revoked by subsection (1) (a), and an appointment shall not be taken to be omitted from a will under subsection (1) (b), if—
- (a) the Supreme Court is satisfied by any evidence, including evidence (whether admissible before the commencement of this section or not) of statements made by the testator, that the testator did not, at the time of termination of the marriage, intend to revoke the gift, power of appointment or appointment; or
  - (b) the gift, power of appointment or appointment is contained in a will that was republished after the termination of the marriage by a will or codicil that evidences no intention of the testator to revoke the gift, power of appointment or appointment.
- (3) Nothing in this section affects—
- (a) any right of the former spouse of a testator to make an application under the *Family Provision Act 1969*; or
  - (b) any direction, charge, trust or provision in the will of a testator for the payment of an amount in respect of a debt or liability of the testator to the former spouse of the testator or to the executor of the will, or administrator of the estate, of the former spouse.
- (4) For this section, the termination of a marriage occurs, or shall be taken to occur—
- (a) when a decree of dissolution of marriage under the Family Law Act becomes absolute; or
  - (b) on the making of a decree of nullity under the Family Law Act in respect of a purported marriage that is void; or
  - (c) on the annulment of the marriage in accordance with the law of a place outside Australia if the annulment is recognised in Australia under the Family Law Act.

- (5) In this section:

*Family Law Act* means the *Family Law Act 1975* (Cwlth).

*former spouse*, in relation to a testator, means the person who, immediately before the termination of the testator's marriage, was the testator's spouse, or, for a purported marriage of the testator that is void, was the other party to the purported marriage.

## 21 Revocation of will

Subject to sections 8B, 20 and 20A, a will or part of a will is not revoked except—

- (a) if the testator is a person to whom section 16 applies—by the testator expressing his or her intention to revoke the will or part of the will in a manner in which he or she is entitled to dispose of his or her property under that section; and
- (b) whether or not the testator is a person to whom section 16 applies—
  - (i) by a subsequent valid will of the testator; or
  - (ii) by the testator executing a document in like manner as a will is required by part 2 to be executed that shows his or her intention to revoke the will or part; or
  - (iii) by the burning, tearing or otherwise destroying of the will or part by the testator, or by a person acting in the presence of and by the direction of the testator, with the intention of revoking the will or part.

## 22 Revival of revoked will

- (1) A will, or a part of a will, that has been revoked is not revived unless—

- (a) the testator re-executes it in the manner in which a valid will is required by part 2 to be executed; or
  - (b) the testator executes, in the manner in which a valid will is required by part 2 to be executed, a valid codicil that shows the intention of the testator to revive the will.
- (2) If a testator who has revoked the remainder of a will after having previously revoked part of the will revives the will, the revival operates, unless the contrary intention appears, to revive only so much of the will as was last revoked.
- (3) A will that is revoked and subsequently revived shall, for this Act, be deemed to have been made at the time when it is revived.

**23 Will disposes of balance of property of testator at his or her death**

If, after a testator has made a will containing a disposition of real property or personal property, the testator conveys the property or does any other act relating to the property (other than an act that revokes the will), the operation of the will with respect to any estate or interest in the property that the testator has power to dispose of by will at the time of his or her death is not affected by the conveyance or other act.

**24 Will speaks from death of the testator**

A will shall, unless a contrary intention appears in it, be construed as speaking and taking effect so far as the real property and personal property referred to in it are concerned as if it had been executed immediately before the death of the testator.

**25 What a residuary devise includes**

If a devise of real property in a will fails by reason of the death of the devisee in the lifetime of the testator or by reason of the devise being contrary to law or otherwise incapable of taking

effect, the real property shall, unless a contrary intention appears in the will, be taken to be included in the residuary devise (if any) contained in the will.

## **26 What a general devise or bequest includes**

- (1) Unless a contrary intention appears in the will—
  - (a) a devise in the will—
    - (i) of all the land of the testator; or
    - (ii) of the land of the testator at a particular place or in the occupation of a particular person; or
    - (iii) of the land of the testator described in the will in some other general manner; or
  - (b) any other general devise in the will that would be apt to describe leasehold property of the testator if the testator does not have any real property that the devise is apt to describe;

shall be construed as if the leasehold estates of the testator, or the leasehold estates of the testator that the devise is apt to describe, as the case may be, as well as freehold estates, were land of the testator.

- (2) Unless the contrary intention appears in the will, if a testator has power to appoint, by will, any real property in such manner as he or she thinks fit, a general devise of the real property of the testator or of the real property of the testator at a particular place, in the occupation of a particular person or otherwise described in a general manner, in the will of the testator—
  - (a) shall be construed as including the real property over which the testator had that power of appointment, or so much of that real property as the description is apt to describe, as the case may be; and

- (b) operates as the appointment of that real property or so much of that real property as the description is apt to describe, as the case may be, under that power.
- (3) Unless the contrary intention appears in the will, if a testator has power to appoint, by will, any personal property in a manner that he or she thinks fit, a bequest of the personal property of the testator, or of any class of personal property of the testator described in a general manner, in the will of the testator—
- (a) shall be construed as including the personal property over which the testator had that power of appointment, or so much of that personal property as is included in that class, as the case may be; and
  - (b) operates as the appointment of that personal property or so much of that personal property as is included in the class of personal property so described, as the case may be, under that power.

## **27 How a devise without words of limitation is construed**

If real property is devised to a person without words of limitation, the devise shall, unless a contrary intention appears in the will, be construed as passing the fee simple or other the whole estate or interest in the real property that the testator has power to dispose of by will.

## **28 How the words ‘die without issue’ or ‘die without leaving issue’ or ‘have no issue’ is construed**

- (1) In a devise or bequest of real property or personal property in a will, the words ‘die without issue’, ‘die without leaving issue’ or ‘have no issue’, or any other words that may import either a want or failure of a person’s issue in his or her lifetime or at the time of his or her death or an indefinite failure of a person’s issue shall be construed as referring to a want or failure of issue in the lifetime or at the time of death of that person and not an indefinite failure of the issue of that person, unless a contrary



intention appears in the will by reason of that person having a prior estate tail, or by reason of a previous gift being, without any implication arising from any such words, a limitation of any estate tail to that person or issue, or for any other reason.

- (2) Subsection (1) does not apply if, in a will, words referred to in that subsection refer to no issue described in a previous gift being born, or no issue living to attain the age or otherwise to answer the description, required for obtaining a vested estate by a previous gift to that issue.

## **28A Devises to transsexual persons**

- (1) If—
- (a) there is in a will a direct or indirect reference to the sex of a person or class of persons; and
  - (b) during the period between the making of the will and the death of the testator that person, or a person who, but for this section, would have been within that class successfully undergoes sexual reassignment surgery;

then, unless the contrary intention appears from the will or from evidence admitted under section 12B, the will has effect as if the relevant person had not undergone the surgery.

- (2) In this section:

*sexual reassignment surgery*—see the *Births, Deaths and Marriages Registration Act 1997*, part 4.

## **29 Devises to trustees or executors**

If real property is devised to a trustee or executor, the devise shall be construed as passing the fee simple or other the whole estate or interest that the testator had power to dispose of by will in the real property, unless a definite term of years (whether or not provision is made for determining the estate before the

expiration of that term) or an estate of freehold is given to him or her expressly or by implication.

### **30 Trustees under an unlimited devise etc to take the fee**

If real property is devised to a trustee without an express limitation of the estate to be taken by the trustee and the beneficial interest in the real property, or in the surplus rents and profits of the real property—

- (a) is not given to any person for life; or
- (b) is given to some person for life but the purposes of the trust may continue beyond the life of that person;

the devise shall be construed as vesting the real property in the trustee in fee simple or as vesting the legal estate in the real property that the testator had power to dispose of by will, as the case may be, and not as vesting an estate determinable when the purposes of the trust are satisfied.

### **30A Intermediate income on future and contingent bequests and devises**

A contingent, future or deferred bequest or devise of property, whether specific or residuary, carries the intermediate income of that property except so far as that income or any part of it is otherwise disposed of by the will.

### **31 Gifts to issue**

- (1) If—
  - (a) a testator by will devises or bequeaths property to, or appoints property in favour of, a person (the *original beneficiary*) (whether individually or as a member of a class) who is a child or other issue of the testator for an estate or interest not determinable before or on the death of the original beneficiary; and

- (b) the original beneficiary dies in the lifetime of the testator and is survived by issue; and
- (c) any such issue survive the testator for a period of 30 days (the *specified period*);

then, unless a contrary intention appears from the will or from evidence admitted under section 12B, the will has force and effect as if the devise or bequest were to, or the appointment were in favour of, any issue of the original beneficiary who survive the testator for the specified period, to be distributed—

- (d) if only 1 issue of the original beneficiary survives for that period—to that issue; or
  - (e) if 2 or more issue of the original beneficiary survive for that period—in accordance with subsection (2).
- (2) If 2 or more issue of an original beneficiary survive the testator for the specified period, the property the subject of the devise, bequest or appointment shall be divided into a number of equal shares equivalent to the total number of the nearest issue of the original beneficiary who—
- (a) survive the testator for the specified period; or
  - (b) die before the end of that period leaving issue (*surviving issue*) who survive the testator for the specified period;

and those equal shares shall be distributed as follows:

- (c) each of the nearest issue of the original beneficiary who survives the testator for the specified period is entitled to 1 share;
- (d) any sole surviving issue of a nearest issue who fails to survive the testator for the specified period is entitled to 1 share;
- (e) if there are 2 or more surviving issue of a nearest issue who fails to survive the testator for the specified period—

those surviving issue are entitled, in equal shares, to 1 share.

- (3) Notwithstanding subsection (2), if a share is distributed in accordance with subsection (2) (e), no surviving issue remoter than children of the nearest issue of the original beneficiary shall form part of the class of surviving issue entitled to take, unless a parent, who would have taken had he or she survived the testator for the specified period, dies before the end of that period, and then any remoter issue is or are entitled to take, if more than 1 in equal shares, the share that that parent would have taken.
- (4) A general requirement or condition in a will that an original beneficiary survive the testator or attain a specified age shall not be taken to be an expression of a contrary intention for this section.
- (5) This section does not apply if an original beneficiary has not fulfilled a contingency required by the will as a condition of attaining the vested estate or interest, being a contingency other than surviving the testator or attaining a specified age.

### **31A Legitimacy of issue**

A reference in a will to issue (however described) of a person shall, unless a contrary intention appears from the will, be construed as referring to all such issue, whether legitimate or illegitimate.

### **31B Distribution to issue**

- (1) If a testator by will devises or bequeaths property to, or appoints property in favour of, his or her issue then, unless a contrary intention appears from the will or from evidence admitted under section 12B, the testator is presumed to have intended that, subject to subsection (2), the devise, bequest or appointment is to be distributed in equal shares between only those issue of the testator who—

- (a) are his or her nearest issue; and
  - (b) survive the testator for a period of 30 days (the *specified period*).
- (2) If a person who is one of the nearest issue of the testator dies before the end of the specified period, leaving issue who survive the testator for the specified period (*surviving issue*), the testator shall be presumed to have intended that any surviving issue of that deceased nearest issue take, if more than 1 in equal shares, the share in the testator's estate that that deceased nearest issue would have taken had he or she survived the testator for the specified period.
- (3) Subsection (2) does not operate to entitle any surviving issue remoter than the children of any deceased nearest issue to take unless the death of a parent who would have taken as surviving issue occurred before the end of the specified period, and then the testator shall be presumed to have intended that the remoter issue take, if more than 1 in equal shares, the share that that parent would have taken.

### **31C Beneficiary not surviving testator**

- (1) Subject to section 31, if—
- (a) a testator by will devises or bequeaths property to, appoints property in favour of, or gives the power to appoint property to, any person; and
  - (b) that person does not survive the testator by 30 days;
- then unless the contrary intention appears from the will, or from evidence admitted under section 12B, that person shall be deemed to have predeceased the testator and the devise, bequest, appointment or power shall lapse.
- (2) A general requirement or condition in a will that a beneficiary survive the testator shall not be taken to be an expression of a contrary intention for this section.

**32 Wills may be deposited with registrar**

- (1) Subject to subsection (2), a person may deposit his or her will in the office of the registrar.
- (2) The registrar may refuse to allow a will to be deposited under subsection (1) unless—
  - (a) the will is enclosed in a sealed envelope or cover; and
  - (b) the envelope or cover has written on it—
    - (i) the full name, occupation (if any) and address of the testator, or some other means of readily identifying the testator; and
    - (ii) the full name, occupation and address of the executor, or of each executor, named in the will.
- (3) The registrar shall cause a will deposited under subsection (1) to be kept safely at that office until it is dealt with in accordance with subsections (4) and (5).
- (4) If a person whose will is deposited in the office of the registrar under subsection (1) requests the registrar to do so, the registrar shall cause the will to be delivered to that person.
- (5) If the registrar is satisfied that a person whose will is deposited in the office of the registrar under subsection (1) is dead, the registrar shall—
  - (a) cause the will to be delivered to the executor or 1 of the executors named on the envelope or cover in which the will is sealed or, if such an executor cannot be found or refuses to accept the will, to the person (if any) that a judge of the Supreme Court directs; or
  - (b) with the permission of a judge of the Supreme Court, cause the will to be destroyed.

**33 Register of wills deposited with the registrar**

- (1) The registrar shall keep an index of wills deposited in his or her office under section 32.
- (2) If such a will is delivered to a person or destroyed under section 32 (4) or (5), the registrar shall enter in the index particulars of the date when, and the person to whom, the will was delivered or the date when the will was destroyed.

**34 Searches**

A person may search in the index kept by the registrar under section 33.

## Part 5 Transitional

### 35 Application of amendments and provisions

- (1) The provisions set out in the table, column 2 as amended or inserted by the *Wills (Amendment) Act 1989* (the **1989 amendment**) apply only in relation to wills made or republished after 24 March 1989.
- (2) The provisions set out in the table, column 3 as amended or inserted by the *Wills (Amendment) Act 1991* (the **1991 amendment**) apply only in relation to wills taking effect after 7 November 1991.

| Table<br>column 1<br>item | Table of provisions amended or inserted                               |  |
|---------------------------|---|--|
|                           | column 2<br>provision amended<br>or inserted by the<br>1989 amendment | column 3<br>provision amended or inserted by the<br>1991 amendment |
| 1                         |   | section 9  |
| 2                         |   | section 11   |
| 3                         |   | section 11A  |
| 4                         |   | section 12   |
| 5                         |   | section 12A  |
| 6                         |   | section 12B  |
| 7                         |   | section 14A  |
| 8                         |   | section 15   |
| 9                         |   | section 20   |
| 10                        |   | section 20A  |
| 11                        |   | section 30A  |



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| <b>column 1<br/>item</b> | <b>column 2<br/>provision amended<br/>or inserted by the<br/>1989 amendment</b> | <b>column 3<br/>provision amended or inserted by the<br/>1991 amendment</b> |
|--------------------------|---|---|
| 12                       |   | section 31  |
| 13                       | section 31A   |   |
| 14                       |   | section 31B   |
| 15                       |   | section 31C   |

## Endnotes

1 About the endnotes

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## 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 listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

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.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

|   |  |
|---|--|
| am = amended  | ord = ordinance                                  |
| amdt = amendment                                    | orig = original                                  |
| ch = chapter  | p = page   |
| cl = clause   | par = paragraph                                  |
| def = definition                                    | pres = present                                   |
| dict = dictionary                                   | prev = previous                                  |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously                           |
| div = division                                      | prov = provision                                 |
| exp = expires/expired                               | pt = part  |
| Gaz = Gazette                                       | r = rule/subrule                                 |
| hdg = heading                                       | reg = regulation/subregulation                   |
| ins = inserted/added                                | renum = renumbered                               |
| LA = Legislation Act 2001                           | reloc = relocated                                |
| LR = legislation register                           | R[X] = Republication No                          |
| LRA = Legislation (Republication) Act 1996          | s = section/subsection                           |
| mod = modified / modification                       | sch = schedule                                   |
| num = numbered                                      | sdiv = subdivision                               |
| No = number   | sub = substituted                                |
| o = order   | SL = Subordinate Law                             |
| om = omitted/repealed                               | <u>underlining</u> = whole or part not commenced |

### 3 **Legislation history**

The *Wills Act 1968* was originally the *Wills Ordinance 1968*. It became an ACT Act on self-government (11 May 1989).

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 self-government**

##### **Wills Act 1968 No 11**

notified 13 June 1968

commenced 13 June 1968

as amended by

##### **Ordinances Revision Ordinance 1977 No 65**

notified 22 December 1977

commenced 22 December 1977

##### **Ordinances Revision Ordinance 1978 No 46**

notified 28 December 1978

commenced 28 December 1978

##### **Wills (Amendment) Ordinance 1983 No 46**

notified 6 October 1983

commenced 6 October 1983

##### **Wills (Amendment) Ordinance 1989 No 16**

notified 22 March 1989

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

#### **Legislation after self-government**

##### **Wills (Amendment) Act 1991 No 67**

notified 7 Nov 1991 (Gaz 1991 No S120)

commenced 7 Nov 1991

## Endnotes

### 4 Amendment history

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#### **Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 Dec 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)

#### **Wills (Amendment) Act 1997 No 114**

notified 24 December 1997 (Gaz 1997 No S420)  
ss 1-3 commenced 24 December 1997 (s 2 (1))  
remainder commenced 24 June 1998 (s 2 (3))

#### **Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
sch 3 commenced 10 November 1999 (s 2)

#### **Statute Law Amendment Act 2000 No 80 amdt 3.39**

notified 21 December 2000 (Gaz 2000 No 69)  
commenced 21 December 2000 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 416**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 416 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

## 4 Amendment history

### **Parts**

s 2 om 1977 No 65 sch 2

### **Repeal and saving**

s 3 om 2001 No 44 amdt 1.4338

### **Definitions for Act**

s 4 def *registrar* sub 1994 No 97 sch pt 1

### **Administration of ordinance**

s 6 om 1978 No 46 sch 2

### **Minors—testamentary capacity**

s 8 sub 1991 No 67 s 3

### **Supreme Court enabling will by minor**

s 8A ins 1991 No 67 s 3

**Supreme Court enabling revocation of will by minor**

s 8B ins 1991 No 67 s 3

**Will to be in writing and signed before 2 witnesses**

s 9 am 1991 No 67 s 4

**Appointments by will**

s 11 am 1991 No 67 s 5

**Validity of will etc not executed with required formalities**

s 11A ins 1991 No 67 s 6

**Alteration in will**

s 12 am 1991 No 67 s 7

**Rectification**

s 12A ins 1991 No 67 s 8

**Extrinsic evidence**

s 12B ins 1991 No 67 s 8

**Certain appointments and trusts not void**

s 14A ins 1991 No 67 s 9

**Will attested by beneficiary or spouse of beneficiary**

s 15 sub 1991 No 67 s 10

**Formal validity of wills**

pt 2A ins 1983 No 46 s 2

**Definitions for pt 2A**

s 15A ins 1983 No 46 s 2  
def **country** ins 1983 No 46 s 2  
def **internal law** ins 1983 No 46 s 2  
def **made** ins 1983 No 46 s 2  
def **place** ins 1983 No 46 s 2  
def **testator** ins 1983 No 46 s 2  
def **will** ins 1983 No 46 s 2

**System of law to be applied**

s 15B ins 1983 No 46 s 2

**General rule as to formal validity**

s 15C ins 1983 No 46 s 2

**Additional rules as to formal validity**

s 15D ins 1983 No 46 s 2

**Relevance of formal requirements for making**

s 15E ins 1983 No 46 s 2

**Certain requirements to be treated as formal**

s 15F ins 1983 No 46 s 2

## Endnotes

4 Amendment history

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**Construction of will not affected by later change of domicile**

s 15G ins 1983 No 46 s 2

**Application of pt 2A**

s 15H ins 1983 No 46 s 2

**Wills of soldiers etc**

s 16 am R3 LRA; 1999 No 66 sch 3; pars renum R4 LA

**Revocation of will by testator's marriage**

s 20 am 1991 No. 67 s 11

**Effect of termination of marriage**

s 20A ins 1991 No 67 s 12

**Revocation of will**

s 21 am 1991 No 67 s 13

**Devises to transsexual persons**

s 28A ins 1997 No 114 s 4

**Intermediate income on future and contingent bequests and devises**

s 30A ins 1991 No 67 s 14

**Gifts to issue**

s 31 sub 1991 No 67 s 15

**Legitimacy of issue**

s 31A ins 1989 No 16 s 3

**Distribution to issue**

s 31B ins 1991 No 67 s 16

**Beneficiary not surviving testator**

s 31C ins 1991 No 67 s 16

**Transitional**

pt 5 ins 2000 No 80 amdt 3.39

**Application of amendments and provisions**

s 35 ins 2000 No 80 amdt 3.39

## 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. Except for the footer, electronic and printed versions of an authorised republication are identical.

| Republication No | Amendments to   | Republication date |
|------------------|-----------------|--------------------|
| 1                | Ord 1989 No 16  | 28 February 1991   |
| 2                | Act 1991 No 67  | 31 October 1992    |
| 3                | Act 1997 No 114 | 31 March 1999      |

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