



Australian Capital Territory

# **Wills Act 1968**

**A1968-11**

**Republication No 14**

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Last amendment made by [A2013-39](#) (never effective)  
(republication for amendments by [A2012-13](#))

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Wills Act 1968* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 April 2014. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 11 April 2014.

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

### Kinds of republications

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- 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 does not include 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 \$140 for an individual and \$700 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Wills Act 1968

## Contents

---

|               | Page  |
|---------------|---|
| <b>Part 1</b> | <b>Preliminary</b>  |
| 1             | Name of Act 2   |
| 2             | Dictionary 2  |
| 3             | Notes 2   |
| 5             | Application of Act 2  |
| <b>Part 2</b> | <b>Wills</b>  |
| 7             | Person may dispose of all his or her property by will 3       |
| 8             | Children—testamentary capacity 4                              |
| 8A            | Supreme Court enabling will by child 4                        |
| 8B            | Supreme Court enabling revocation of will by child 5          |
| 9             | Will to be in writing and signed before 2 witnesses 6         |
| 10            | When signature to will valid 6                                |
| 11            | Appointments by will 7  |
| 11A           | Validity of will etc not executed with required formalities 8 |

---

R14  
11/04/14

Wills Act 1968  
Effective: 11/04/14-13/10/15

contents 1

## Contents

---

|                |  | Page |
|----------------|--|------|
| 12             | Alteration in will   | 9    |
| 12A            | Rectification  | 10   |
| 12B            | Extrinsic evidence   | 13   |
| 13             | Publication of will unnecessary  | 13   |
| 14             | Will not voided by incompetence of witness   | 13   |
| 14A            | Certain appointments and trusts not void   | 14   |
| 15             | Will attested by beneficiary or domestic partner of beneficiary                                  | 14   |
| <b>Part 2A</b> | <b>Formal validity of wills</b>  |      |
| 15A            | Definitions for pt 2A  | 15   |
| 15B            | System of law to be applied  | 15   |
| 15C            | General rule as to formal validity   | 16   |
| 15D            | Additional rules as to formal validity   | 16   |
| 15E            | Relevance of formal requirements for making  | 17   |
| 15F            | Certain requirements to be treated as formal   | 18   |
| 15G            | Construction of will not affected by later change of domicile                                    | 18   |
| 15H            | Application of pt 2A   | 18   |
| <b>Part 3</b>  | <b>Testamentary dispositions by members of the Defence Force</b>                                 |      |
| 16             | Wills of soldiers etc  | 19   |
| <b>Part 3A</b> | <b>Court authorised wills for people without testamentary capacity</b>                           |      |
| 16A            | Court may authorise will to be made, altered or revoked for person without testamentary capacity | 21   |
| 16B            | Information required in support of application for leave   | 22   |
| 16C            | Hearing of application for leave   | 23   |
| 16D            | Hearing of application for order   | 23   |
| 16E            | Court must be satisfied about certain matters  | 24   |
| 16F            | Execution of will made under order   | 24   |
| 16G            | Retention of will  | 25   |
| 16H            | Separate representation of person without testamentary capacity                                  | 25   |
| 16I            | Recognition of statutory wills   | 26   |

|                | Page  |
|----------------|---|
| <b>Part 3B</b> | <b>International wills</b>  |
| 16J            | Definitions—pt 3B 27  |
| 16K            | Application of convention 27  |
| 16L            | Persons authorised to act in connection with international wills 27                                 |
| 16M            | Application of Act to international wills 28  |
| <b>Part 4</b>  | <b>Miscellaneous</b>  |
| 17             | Meaning of <i>will</i> 29   |
| 18             | Creditor to be admitted as witness 29   |
| 19             | Executor to be admitted as witness 29   |
| 20             | Revocation of will by testator's marriage, civil union or civil partnership 29                      |
| 20A            | Effect of termination of marriage, civil union or civil partnership 30                              |
| 21             | Revocation of will 33   |
| 22             | Revival of revoked will 33  |
| 23             | Will disposes of balance of property of testator at his or her death 34                             |
| 24             | Will speaks from death of the testator 34   |
| 25             | What a residuary devise includes 34   |
| 26             | What a general devise or bequest includes 35  |
| 27             | How a devise without words of limitation is construed 36  |
| 28             | How the words 'die without issue' or 'die without leaving issue' or 'have no issue' is construed 37 |
| 28A            | Devises to transsexual persons 37   |
| 29             | Devises to trustees or executors 38   |
| 30             | Trustees under an unlimited devise etc to take the fee 38   |
| 30A            | Intermediate income on future and contingent bequests and devises 39                                |
| 31             | Gifts to issue 39   |
| 31A            | Legitimacy of issue 41  |
| 31B            | Distribution to issue 41  |
| 31C            | Beneficiary not surviving testator 42   |
| 32             | Wills may be deposited with registrar 43  |
| 33             | Register of wills deposited with the registrar 44   |
| 34             | Searches 44   |
| <b>Part 5</b>  | <b>Transitional</b>   |
| 35             | Application of amendments and provisions 45   |

Contents

---

|  | Page |
|--|------|
| <b>Schedule 1</b> <b>Annex to Convention providing a Uniform<br/>Law on the Form of an International Will 1973</b> | 47   |
| <b>Dictionary</b>  | 52   |
| <b>Endnotes</b>  |      |
| 1      About the endnotes  | 53   |
| 2      Abbreviation key  | 53   |
| 3      Legislation history   | 54   |
| 4      Amendment history   | 58   |
| 5      Earlier republications  | 63   |



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 Name of Act

This Act is the *Wills Act 1968*.

### 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.

### 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.

*Note* See section 35 for particular provisions about wills made or republished after 24 March 1989 or taking effect after 7 November 1991.



## 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 Children—testamentary capacity**

- (1) Subject to this section and section 16, a will made by a child is not valid.
- (2) A child who is or has been married or in a civil union 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 child who may marry or enter into a civil union and that is made in contemplation of a marriage or civil union is, on the solemnisation of the marriage or entry into the civil union contemplated, valid.
- (4) If the Supreme Court, on an application by a child under section 8A, makes an order in accordance with that section enabling the child to make a will in the specific terms of a proposed will attached to the application, the child may make a valid will in those terms.
- (5) If the Supreme Court, on an application by a child under section 8B, makes an order in accordance with that section enabling the child to revoke a will, or a part of a will, the child may revoke the will, or the part of the will, in accordance with that order.
- (6) A child 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 or in a civil union 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 child**

- (1) A minor may apply to the Supreme Court for an order declaring that the child is entitled to make a will in the terms of a proposed will attached to the application.

- (2) On an application made by a child under subsection (1), the Supreme Court may, if it is satisfied that—
- (a) the child understands the nature and effect of the proposed will; and
  - (b) the proposed will accurately reflects the intentions of the child; and
  - (c) it is reasonable in all the circumstances that the child should be able to make the proposed will;

make an order declaring that the child 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 child**

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

make an order declaring that the child 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 Supreme 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) The Supreme Court may order that the probate copy of the last will of a testator be rectified to give effect to the testator's probable intention if satisfied that—
  - (a) any of the following apply in relation to circumstances or events (whether they existed or happened before, at or after the execution of the will):
    - (i) the circumstances or events were not known to, or anticipated by, the testator;
    - (ii) the effects of the circumstances or events were not fully appreciated by the testator;
    - (iii) the circumstances or events arose or happened at or after the death of the testator; and
  - (b) because of the circumstances or events, the application of the provisions of the will according to their tenor would fail to give effect to the probable intention of the testator if the testator had known of, anticipated or fully appreciated their effects.
- (3) Except with the leave of the Supreme 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 (4) 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, 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 Supreme 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:

***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 domestic partner 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 domestic partner 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.

## Part 3A                      Court authorised wills for people without testamentary capacity

### 16A            Court may authorise will to be made, altered or revoked for person without testamentary capacity

- (1) The Supreme Court may, on application, make an order authorising—
  - (a) a will to be made or altered, in the terms approved by the court, for a person who does not have testamentary capacity; or
  - (b) a will, or part of a will, to be revoked for a person who does not have testamentary capacity.

*Note*        A person may only make an application for an order if the person has obtained the leave of the Court—see s 16B.

- (2) An order under this section may authorise—
  - (a) the making or alteration of a will that deals with the whole or part of the property of a person who does not have testamentary capacity; or
  - (b) the alteration of part of the will of the person.
- (3) The Supreme Court must not make an order under this section unless the person for whom the order is sought is alive when the order is made.
- (4) The Supreme Court may make an order under this section for a child who does not have testamentary capacity.
- (5) In making an order under this section, the Supreme Court may give any necessary related orders or directions.
- (6) A will that is authorised to be made or altered by an order under this section must be deposited with the registrar under section 32.
- (7) A failure to comply with subsection (6) does not affect the validity of the will.

**16B Information required in support of application for leave**

- (1) A person may apply for an order under section 16A only with the Supreme Court's leave.
- (2) On an application for leave a person must, unless the Supreme Court otherwise directs, give the court the following information:
  - (a) a written statement of the general nature of the application and the reasons for making it;
  - (b) satisfactory evidence that the person for whom the order is sought does not have testamentary capacity;
  - (c) a reasonable estimate, formed from the evidence available to the applicant, of the size and character of the estate of the person for whom the order is sought;
  - (d) a draft of the proposed will, alteration or revocation for which the applicant is seeking the court's approval;
  - (e) any evidence available to the applicant of the wishes of the person for whom the order is sought;
  - (f) any evidence available to the applicant of the likelihood of the person for whom the order is sought acquiring or regaining testamentary capacity;
  - (g) any evidence available to the applicant of the terms of any will previously made by the person for whom the order is sought;
  - (h) any evidence available to the applicant, or that can be discovered with reasonable diligence, of any people who might be entitled to claim on the intestacy of the person for whom the order is sought;
  - (i) any evidence available to the applicant of the likelihood of an application being made under the *Family Provision Act 1969* in relation to the property of the person for whom the order is sought;

- (j) any evidence available to the applicant, or that can be discovered with reasonable diligence, of the circumstances of any person for whom provision might reasonably be expected to be made by will by the person for whom the order is sought;
- (k) any evidence available to the applicant of a gift for a charitable or other purpose that the person for whom the order is sought might reasonably be expected to make by will;
- (l) any other facts of which the applicant is aware that are relevant to the application.

### **16C Hearing of application for leave**

- (1) On hearing an application for leave the Supreme Court may—
  - (a) give leave and allow the application for leave to proceed as an application for an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity); and
  - (b) if satisfied of the matters set out in section 16E (Court must be satisfied about certain matters), make the order.
- (2) Without limiting the action the Supreme Court may take in hearing an application for leave, the court may revise the terms of any draft of the proposed will, alteration or revocation for which the court's approval is sought.

### **16D Hearing of application for order**

In considering an application for an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity), the Supreme Court—

- (a) may have regard to any information given to the court under section 16B (Information required in support of application for leave); and

- (b) may inform itself of any other matter in any manner it sees fit; and
- (c) is not bound by the rules of evidence.

### **16E Court must be satisfied about certain matters**

The Supreme Court must refuse leave to make an application for an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity) unless the court is satisfied that—

- (a) there is reason to believe that the person for whom the order is sought is, or is reasonably likely to be, incapable of making a will; and
- (b) the proposed will, alteration or revocation is, or is reasonably likely to be, one that would have been made by the person if he or she had testamentary capacity; and
- (c) it is or may be appropriate for the order to be made; and
- (d) the applicant for leave is an appropriate person to make the application; and
- (e) adequate steps have been taken to allow representation of all people with a legitimate interest in the application, including any person who has reason to expect a gift or benefit from the estate of the person for whom the order is sought.

### **16F Execution of will made under order**

- (1) A will that is made or altered by an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity) is properly executed if—
  - (a) it is in writing; and
  - (b) it is signed by the registrar and sealed with the seal of the Supreme Court.

- (2) A will may only be signed by the registrar if the person in relation to whom the order is made is alive.

### **16G Retention of will**

- (1) Despite section 32 (4), a will deposited with the registrar in accordance with this part must not be delivered to the person for whom it was made unless—
- (a) the Supreme Court has made an order under section 16A (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity) authorising the revocation of the whole of the will; or
  - (b) the person has acquired or regained testamentary capacity.
- (2) If the registrar is given a copy of an order made under section 16A authorising the revocation of the whole of a will, the registrar must—
- (a) enter the particulars of the order in the index; and
  - (b) with the permission of a judge of the Supreme Court, cause the will to be destroyed; and
  - (c) enter the date when the will was destroyed in the index.

### **16H Separate representation of person without testamentary capacity**

If it appears to the Supreme Court that the person who does not have testamentary capacity should be separately represented in proceedings under this part, the court may—

- (a) order that the person be separately represented; and
- (b) make any orders it considers necessary to secure that representation.

**16I Recognition of statutory wills**

(1) A statutory will made in accordance with the law of the place where the deceased person was resident at the time of the execution of the will is to be regarded as a valid will of the deceased person.

(2) In this section:

*statutory will* means a will executed in accordance with a law of the Territory, or another place for a person who, at the time of execution, did not have testamentary capacity.



## Part 3B International wills

### 16J Definitions—pt 3B

In this part:

*convention* means the *Convention providing a Uniform Law on the Form of an International Will 1973* signed in Washington DC in the United States of America on 26 October 1973.

*Note* The *Convention providing a Uniform Law on the Form of an International Will 1973* is accessible at [www.unidroit.org](http://www.unidroit.org).

*international will* means a will made in accordance with the requirements of the annex to the convention.

### 16K Application of convention

The annex to the convention has the force of law in the ACT.

*Note* The annex to the convention is set out in sch 1.

### 16L Persons authorised to act in connection with international wills

- (1) For this part, the following people are authorised to act in connection with an international will:
  - (a) an Australian legal practitioner;
  - (b) a public notary of any Australian jurisdiction.
- (2) For this part, a reference in the annex to the convention to a person authorised to act in connection with international wills is a reference to:
  - (a) a person mentioned in subsection (1) who is acting in Australia; or

- (b) any other person who is acting as an authorised person under the law of a state (other than Australia) that is a party to the convention.

*Note* This section gives effect to articles 2 and 3 of the convention.

- (3) In this section:

*Australian legal practitioner*—see the *Legal Profession Act 2006*, section 8.

**16M Application of Act to international wills**

To remove any doubt, the provisions of this Act that apply to wills extend to international wills.

## Part 4                      Miscellaneous

### 17            **Meaning of *will***

In this part:

*will* includes a testamentary disposition made by a person to whom section 16 applies.

### 18            **Creditor to be admitted as witness**

If a testator, by will, charges real property or personal property with payment of a debt due to a creditor and the creditor, or the domestic partner of the creditor, attests the signing of the will or the acknowledgment of the signing of the will, the creditor or domestic partner, as the case may be, is not, by reason of that charge, disqualified from being admitted as a witness to prove the execution, or the validity or invalidity, of the will.

### 19            **Executor to be admitted as witness**

A person who is an executor of a will is not, by reason of being such an executor, disqualified from being admitted as a witness to prove the execution, or the validity or invalidity, of the will.

### 20            **Revocation of will by testator's marriage, civil union or civil partnership**

- (1) Subject to subsections (2) and (3), if a person marries or enters into a civil union or civil partnership after having made a will, the will is revoked by the marriage, civil union or civil partnership unless the will was expressed to have been made in contemplation of that marriage, civil union or civil partnership.

- (2) If a testator marries or enters into a civil union or civil partnership after having made a will by which he or she has exercised a power of appointing real property or personal property by will, the marriage, civil union or civil partnership does not revoke the will so far as it constitutes an exercise of that power if the property so appointed would not, in default of the testator exercising that 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, that is expressed to be in contemplation of the testator marrying, or entering into a civil union or civil partnership with, that person—
- (a) the devise, bequest, appointment or conferral is not revoked by the marriage, civil union or civil partnership; and
  - (b) the remaining provisions of the will are not revoked by the marriage, civil union or civil partnership unless a contrary intention appears from the will or from evidence admitted under section 12B.

**20A Effect of termination of marriage, civil union or civil partnership**

- (1) Subject to subsection (2), if, after a testator has made a will, the testator's marriage, civil union or civil partnership 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, civil union partner or civil partner of the testator and any power of appointment given to the former spouse, civil union partner or civil partner is revoked; and

- (b) any appointment under the will of the former spouse, civil union partner or civil partner 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, civil union partner or civil partner of the testator under a beneficial gift referred to in paragraph (a) shall pass as if the former spouse, civil union partner or civil partner 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, civil union or civil partnership, 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, civil union or civil partnership 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, civil union partner or civil partner 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, civil union partner or civil partner of the testator or to the executor of the will, or administrator of the estate, of the former spouse, civil union partner or civil partner.
- (4) For this section—
- (a) a marriage is taken to be *terminated* if—
- (i) the marriage ends by divorce under the [Family Law Act](#); or
  - (ii) a decree of nullity is made under the [Family Law Act](#) in relation to the marriage; or
  - (iii) the marriage is annulled in accordance with the law of a place outside Australia if the annulment is recognised in Australia under the [Family Law Act](#); and
- (b) a civil union is taken to be *terminated* if the civil union ends under the [Civil Unions Act 2012](#), division 2.4 (otherwise than on the death of a party to the civil union); and
- (c) a civil partnership is taken to be *terminated* if the civil partnership ends under the [Domestic Relationships Act 1994](#), division 4A.4 (otherwise than on the death of a party to the civil partnership).
- (5) In this section:
- Family Law Act* means the [Family Law Act 1975](#) (Cwlth).

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

## **21 Revocation of will**

Subject to sections 8B, 16A, 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, other than a contingency of surviving the testator or attaining a stated 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<br>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  |
| 12                        |  | section 31   |
| 13                        | section 31A  |  |
| 14                        |  | section 31B  |

**Part 5** Transitional

Section 35

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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> |
|--------------------------|---|---|
| 15                       |   | section 31C   |

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## Schedule 1      Annex to Convention providing a Uniform Law on the Form of an International Will 1973

(see s 16K)

### Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.
2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

### Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

### Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

### Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.
2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

**Article 5**

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.
3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

**Article 6**

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

**Article 7**

1. The date of the will shall be the date of its signature by the authorized person.
2. This date shall be noted at the end of the will by the authorized person.

**Article 8**

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

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## Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

## Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

### CERTIFICATE

(Convention of October 26, 1973)

1. I, ..... (name, address and capacity), a person authorized to act in connection with international wills
2. Certify that on ..... (date) at ..... (place)
3. (testator)..... (name, address, date and place of birth) in my presence and that of the witnesses
4. (a)..... (name, address, date and place of birth)  
(b)..... (name, address, date and place of birth)  
has declared that the attached document is his will and that he knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses  
(1) the testator has signed the will or has acknowledged his signature previously affixed.  
\*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason.....  
—I have mentioned this declaration on the will  
\*—the signature has been affixed by..... (name, address)

7. (b) the witnesses and I have signed the will;
8. \*(c) each page of the will has been signed by ..... and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. \*(f) the testator has requested me to include the following statement concerning the safekeeping of his will:.....
12. PLACE
13. DATE
14. SIGNATURE and, if necessary, SEAL

**Article 11**

The authorized person shall keep a copy of the certificate and deliver another to the testator.

**Article 12**

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

**Article 13**

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

**Article 14**

The international will shall be subject to the ordinary rules of revocation of wills.



**Article 15**

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

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\*To be completed if appropriate

## 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 partnership
- civil union
- civil union partner
- daily newspaper
- domestic partner (see s 169 (1))
- estate
- interest
- land
- person.

*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 the Supreme Court.

*will* includes—

- (a) for this Act generally—a codicil; and
- (b) for part 4 (Miscellaneous)—see section 17.

## 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

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### 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 A1968-11**

notified 13 June 1968  
commenced 13 June 1968

as amended by

##### **Ordinances Revision Ordinance 1977 Ord1977-65**

notified 22 December 1977  
commenced 22 December 1977

##### **Ordinances Revision Ordinance 1978 Ord1978-46**

notified 28 December 1978  
commenced 28 December 1978

##### **Wills (Amendment) Ordinance 1983 Ord1983-46**

notified 6 October 1983  
commenced 6 October 1983

##### **Wills (Amendment) Ordinance 1989 Ord1989-16**

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

#### Legislation after self-government

##### **Wills (Amendment) Act 1991 A1991-67**

notified 7 Nov 1991 ([Gaz 1991 No S120](#))  
commenced 7 Nov 1991

**Statutory Offices (Miscellaneous Provisions) Act 1994 A1994-97 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 A1997-114**

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 A1999-66 sch 3**

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

**Statute Law Amendment Act 2000 A2000-80 amdt 3.39**

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

**Legislation (Consequential Amendments) Act 2001 A2001-44 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](#))

**Civil Unions Act 2006 A2006-22 sch 1 pt 1.29**

notified LR 19 May 2006  
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))  
sch 1 pt 1.29 never commenced

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

**Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.32**

notified LR 28 September 2006  
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
sch 2 pt 2.32 commenced 29 September 2006 (s 2 (1))

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.111**

notified LR 22 March 2007  
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
sch 3 pt 3.111 commenced 12 April 2007 (s 2 (1))

## Endnotes

3 Legislation history

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**Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3 pt 3.34**

notified LR 20 June 2007

s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))

sch 3 pt 3.34 commenced 11 July 2007 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2008**

**A2008-7 sch 1 pt 1.22**

notified LR 16 April 2008

s 1, s 2 commenced 16 April 2008 (LA s 75 (1))

sch 1 pt 1.22 commenced 7 May 2008 (s 2)

**Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.25**

notified LR 15 May 2008

s 1, s 2 commenced 15 May 2008 (LA s 75 (1))

sch 1 pt 1.25 commenced 19 May 2008 (s 2 and [CN2008-8](#))

**Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.80**

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.80 commenced 22 September 2009 (s 2)

**Justice and Community Safety Legislation Amendment Act 2010**

**A2010-13 sch 1 pt 1.9**

notified LR 31 March 2010

s 1, s 2 commenced 31 March 2010 (LA s 75 (1))

s 3 commenced 1 April 2010 (LA s 75AA)

sch 1 pt 9 commenced 28 April 2010 (s 2 (4))

**Justice and Community Safety Legislation Amendment Act 2012**

**A2012-13 sch 1 pt 1.11**

notified LR 11 April 2012

s 1, s 2 commenced 11 April 2012 (LA s 75 (1))

sch 1 pt 1.11 commenced 11 April 2014 (s 2 (4))

**Civil Unions Act 2012 A2012-40 sch 3 pt 3.26**

notified LR 4 September 2012

s 1, s 2 commenced 4 September 2012 (LA s 75 (1))

sch 3 pt 3.26 commenced 11 September 2012 (s 2)

**Marriage Equality (Same Sex) Act 2013 A2013-39 sch 2 pt 2.24**

notified LR 4 November 2013

s 1, s 2 commenced 4 November 2013 (LA s 75 (1))

sch 2 pt 2.24 commenced 7 November 2013 (s 2 and [CN2013-11](#))

*Note* The High Court held this Act to be of no effect (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Name of Act

s 1 sub [A2007-3](#) amdt 3.547

#### Dictionary

s 2 om [Ord1977-65](#) sch 2  
ins [A2007-3](#) amdt 3.550

#### Notes

s 3 om [A2001-44](#) amdt 1.4338  
ins [A2007-3](#) amdt 3.550

#### Definitions for Act

s 4 defs reloc to dict [A2007-3](#) amdt 3.549  
om [A2007-3](#) amdt 3.550

#### Application of Act

s 5 am [A2007-3](#) amdt 3.551

#### Administration of ordinance

s 6 om [Ord1978-46](#) sch 2

#### Children—testamentary capacity

s 8 hdg sub [A2007-3](#) amdt 3.552  
s 8 sub [A1991-67](#) s 3  
am [A2006-22](#) amdts 1.120-1.124 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93));  
[A2007-3](#) amdt 3.553; [A2012-40](#) amdts 3.104-3.106;  
[A2013-39](#) amdts 2.59-2.61 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55))

#### Supreme Court enabling will by child

s 8A ins [A1991-67](#) s 3  
am [A2007-3](#) amdt 3.553

#### Supreme Court enabling revocation of will by child

s 8B ins [A1991-67](#) s 3  
am [A2006-22](#) amdt 1.125 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); [A2007-3](#) amdt 3.553; [A2012-40](#) amdt 3.107; [A2013-39](#) amdt 2.61 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55))

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

s 9 am [A1991-67](#) s 4

#### Appointments by will

s 11 am [A1991-67](#) s 5



**Validity of will etc not executed with required formalities**s 11A ins [A1991-67](#) s 6**Alteration in will**s 12 am [A1991-67](#) s 7**Rectification**s 12A ins [A1991-67](#) s 8  
am [A2007-3](#) amdts 3.554-3.558; [A2008-7](#) amdt 1.80;  
[A2009-20](#) amdt 3.230**Extrinsic evidence**s 12B ins [A1991-67](#) s 8**Certain appointments and trusts not void**s 14A ins [A1991-67](#) s 9**Will attested by beneficiary or domestic partner of beneficiary**s 15 hdg sub [A2008-14](#) amdt 1.85  
s 15 sub [A1991-67](#) s 10  
am [A2006-22](#) amdt 1.126, amdt 1.28, amdt 1.29 ([A2006-22](#)  
rep before commenced by disallowance (see Cwlth Gaz 2006  
No S93)); [A2008-14](#) amdt 1.86; [A2012-40](#) amdt 3.108**Formal validity of wills**pt 2A ins [Ord1983-46](#) s 2**Definitions for pt 2A**s 15A ins [Ord1983-46](#) s 2  
def **country** ins [Ord1983-46](#) s 2  
def **internal law** ins [Ord1983-46](#) s 2  
def **made** ins [Ord1983-46](#) s 2  
def **place** ins [Ord1983-46](#) s 2  
def **testator** ins [Ord1983-46](#) s 2  
def **will** ins [Ord1983-46](#) s 2**System of law to be applied**s 15B ins [Ord1983-46](#) s 2**General rule as to formal validity**s 15C ins [Ord1983-46](#) s 2**Additional rules as to formal validity**s 15D ins [Ord1983-46](#) s 2**Relevance of formal requirements for making**s 15E ins [Ord1983-46](#) s 2**Certain requirements to be treated as formal**s 15F ins [Ord1983-46](#) s 2**Construction of will not affected by later change of domicile**s 15G ins [Ord1983-46](#) s 2

## Endnotes

4 Amendment history

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### **Application of pt 2A**

s 15H ins [Ord1983-46](#) s 2

### **Wills of soldiers etc**

s 16 am R3 LRA; [A1999-66](#) sch 3; pars renum R4 LA

### **Court authorised wills for people without testamentary capacity**

pt 3A hdg ins [A2010-13](#) amdt 1.36

### **Court may authorise will to be made, altered or revoked for person without testamentary capacity**

s 16A ins [A2010-13](#) amdt 1.36

### **Information required in support of application for leave**

s 16B ins [A2010-13](#) amdt 1.36

### **Hearing of application for leave**

s 16C ins [A2010-13](#) amdt 1.36

### **Hearing of application for order**

s 16D ins [A2010-13](#) amdt 1.36

### **Court must be satisfied about certain matters**

s 16E ins [A2010-13](#) amdt 1.36

### **Execution of will made under order**

s 16F ins [A2010-13](#) amdt 1.36

### **Retention of will**

s 16G ins [A2010-13](#) amdt 1.36

### **Separate representation of person without testamentary capacity**

s 16H ins [A2010-13](#) amdt 1.36

### **Recognition of statutory wills**

s 16I ins [A2010-13](#) amdt 1.36

### **International wills**

pt 3B hdg ins [A2012-13](#) amdt 1.44

### **Definitions—pt 3B**

s 16J ins [A2012-13](#) amdt 1.44  
def **convention** ins [A2012-13](#) amdt 1.44  
def **international will** ins [A2012-13](#) amdt 1.44

### **Application of convention**

s 16K ins [A2012-13](#) amdt 1.44

### **Persons authorised to act in connection with international wills**

s 16L ins [A2012-13](#) amdt 1.44

### **Application of Act to international wills**

s 16M ins [A2012-13](#) amdt 1.44

**Creditor to be admitted as witness**

s 18 am [A2006-22](#) amdt 1.127, amdt 1.30, amdt 1.31 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); [A2008-14](#) amdt 1.87

**Revocation of will by testator's marriage or civil partnership**

s 20 hdg sub [A2006-22](#) amdt 1.132 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); [A2008-14](#) amdt 1.88; [A2012-40](#) amdt 3.109; [A2013-39](#) amdt 2.62 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55))

s 20 am 1991 No. 67 s 11; [A2006-22](#) amdts 1.133-1.137 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); [A2007-3](#) amdt 3.559; [A2008-14](#) amdts 1.89-1.91; [A2012-40](#) amdts 3.110-3.115; [A2013-39](#) amdts 2.63-2.68 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55))

**Effect of termination of marriage, civil union or civil partnership**

s 20A hdg sub [A2006-22](#) amdt 1.138 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); [A2008-14](#) amdt 1.92; [A2012-40](#) amdt 3.116

s 20A ins [A1991-67](#) s 12  
am [A2006-22](#) amdts 1.139-1.144 ([A2006-22](#) rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); [A2006-40](#) amdt 2.211; [A2008-14](#) amdts 1.93-1.98; [A2012-40](#) amdts 3.117-3.122; ss renum R12 LA; [A2013-39](#) amdt 2.69, amdt 2.70 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55))

**Revocation of will**

s 21 am [A1991-67](#) s 13; [A2010-13](#) amdt 1.37

**Devises to transsexual persons**

s 28A ins [A1997-114](#) s 4

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

s 30A ins [A1991-67](#) s 14

**Gifts to issue**

s 31 sub [A1991-67](#) s 15  
am [A2007-3](#) amdt 3.560

**Legitimacy of issue**

s 31A ins [Ord1989-16](#) s 3

**Distribution to issue**

s 31B ins [A1991-67](#) s 16

**Beneficiary not surviving testator**

s 31C ins [A1991-67](#) s 16

## Endnotes

4 Amendment history

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### Transitional

pt 5 ins [A2000-80](#) amdt 3.39

### Application of amendments and provisions

s 35 ins [A2000-80](#) amdt 3.39

### Annex to Convention providing a Uniform Law on the Form of an International Will 1973

sch 1 ins [A2012-13](#) amdt 1.45

### Dictionary

dict ins [A2007-3](#) amdt 3.561  
am [A2008-14](#) amdt 1.99; [A2009-20](#) amdt 3.231; [A2012-40](#)  
amdt 3.123; [A2013-39](#) amdt 2.71 ([A2013-39](#) never effective  
(see *Commonwealth v Australian Capital Territory* [2013]  
HCA 55))  
def **personal property** reloc from s 4 [A2007-3](#) amdt 3.549  
def **real property** reloc from s 4 [A2007-3](#) amdt 3.549  
def **registrar** sub [A1994-97](#) sch pt 1; [A2006-40](#) amdt 2.210  
reloc from s 4 [A2007-3](#) amdt 3.549  
def **will** sub [A2007-3](#) amdt 3.548  
reloc from s 4 [A2007-3](#) amdt 3.549  
sub [A2007-16](#) amdt 3.140

## 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="#">Ord1989-16</a>                 | 28 February 1991   |
| 2                | <a href="#">A1991-67</a>                   | 31 October 1992    |
| 3                | <a href="#">A1997-114</a>                  | 31 March 1999      |
| 4 (RI) †         | <a href="#">A2001-44</a>                   | 6 June 2008        |
| 5 (RI) †         | <a href="#">A2006-40</a>                   | 6 June 2008        |
| 6 (RI) †         | <a href="#">A2007-3</a>                    | 6 June 2008        |
| 7 (RI) †         | <a href="#">A2007-16</a>                   | 6 June 2008        |
| 8 (RI) †         | <a href="#">A2008-7</a>                    | 6 June 2008        |
| 9 (RI) †         | <a href="#">A2008-14</a>                   | 6 June 2008        |
| 10               | <a href="#">A2009-20</a>                   | 22 September 2009  |
| 11               | <a href="#">A2010-13</a>                   | 28 April 2010      |
| 12               | <a href="#">A2012-40</a>                   | 11 September 2012  |
| 13               | <a href="#">A2013-39</a> (never effective) | 7 November 2013    |
| 13 (RI) ††       | <a href="#">A2013-39</a> (never effective) | 24 February 2014   |

† includes numbering correction in pt 5

†† reissued because of High Court decision in relation to [A2013-39](#)

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