
Wills (Amendment) Ordinance 1983

No. 46 of 1983

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 29 September 1983.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

GARETH EVANS
Attorney-General

An Ordinance to amend the *Wills Ordinance 1968***Short title**

1. This Ordinance may be cited as the *Wills (Amendment) Ordinance 1983*.¹

2. After Part II of the *Wills Ordinance 1968*² the following Part is inserted:

"PART IIA—FORMAL VALIDITY OF WILLS**Interpretation**

"15A. In this Part, unless the contrary intention appears—

'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 in a case where 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.

System of law to be applied

"15B. (1) Where—

(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 in the case of a will,

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

- (c) where there is in force throughout the country or place a rule indicating which of those systems should apply—that rule shall be followed; or
- (d) where there is no such rule—the system shall be that with which the testator was most closely connected at the relevant time.

“(2) For the purposes of paragraph (1) (d), the relevant time is—

- (a) where 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.

General rule as to formal validity

“15C. 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;
- (b) in the place where the testator was domiciled at the time—
 - (i) when he made the will; or
 - (ii) of his death;
- (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).

Additional rules as to formal validity

“15D. (1) Without limiting the generality of 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 Ordinance would be taken to have been properly made, where 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.

Relevance of formal requirements for making

“15E. (1) In determining for the purposes of 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) Sub-section (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.

Certain requirements to be treated as formal

“15F. Where a law in force outside the Territory 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 the purposes of this Part, be taken to be a formal requirement only.

Construction of will not affected by later change of domicile

“15G. 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.

Application

“15H. 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.”

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 6 October 1983.
2. No. 11, 1968 as amended by No. 65, 1977; No. 46, 1978.