

AUSTRALIAN CAPITAL TERRITORY

Administration and Probate (Amendment) Ordinance 1984

No. 67 of 1984

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 27 November 1984.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

GARETH EVANS
Attorney-General

An Ordinance to amend the *Administration and Probate Ordinance 1929*

Short title

1. This Ordinance may be cited as the *Administration and Probate (Amendment) Ordinance 1984*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Administration and Probate Ordinance 1929*.²

Application

3. The amendments effected by this Ordinance apply only in relation to the estates of persons who died after the commencement of this Ordinance.

The Court to make finding with respect to the domicile of deceased person

4. Section 8C of the Principal Ordinance is amended by omitting from sub-section (1) all the words from and including “at the time of his death of the deceased person” and substituting the following:

“of the deceased person at the time of his death, and, if the Court or Registrar has found that the deceased person was, at that time, domiciled in a State under the law of which death duty is payable out of the estates of deceased persons, the Court shall not grant the application or the Registrar shall not issue the grant of probate or administration, seal the probate, administration or order of the court or grant an order to the Curator, as the case requires, unless—

- (d) the Court or Registrar is satisfied that an assessment has been made, in accordance with the law of that State, of the amount of death duty that is, under the law, payable out of the estate of the deceased person; or
- (e) the appropriate officer of that State has consented in writing to—
 - (i) the grant of probate or administration;
 - (ii) the sealing with the seal of the Court of the probate, administration or order; or
 - (iii) the grant of the order to the Curator,as the case requires.”.

Issue of probate by Registrar

5. Section 10 of the Principal Ordinance is amended—

- (a) by adding at the end of paragraph (2) (a) “or”; and
- (b) by omitting paragraph (2) (b).

Repeal

6. Section 47 of the Principal Ordinance is repealed.

Distribution of intestate estate

7. Section 49 of the Principal Ordinance is amended—

- (a) by inserting in sub-section (4) “and interest on that sum” after “sum” (first occurring); and
- (b) by omitting from sub-section (4) all words after “provided by” and substituting “sub-section (3) and deducting from that value the first-mentioned sum and the interest payable on that sum”.

8. After section 49A of the Principal Ordinance the following section is inserted:

Immovable property outside Territory

“49AA. (1) Where—

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

the property or part of the property, or the sum of money, to which, under that law, the spouse is entitled, shall be taken to form part of the intestate estate of the intestate for the purposes of sub-section 49 (3).

“(2) Subject to sub-section (4), where—

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

the property or part of the property, or the sum of money, to which, under that law, the spouse is entitled, shall be taken to form part of the intestate estate of the intestate for the purposes of sub-section 49 (3).

“(3) Where property or a sum of money is, pursuant to sub-section (1) or (2), taken to form part of the intestate estate of an intestate, item 2 in Part I of the Sixth Schedule applies as if the references in that time to \$100,000 were references to the sum ascertained by deducting from \$100,000 an amount equal to the value of that property, or to that sum of money, as the case requires.

“(4) Sub-section (2) does not apply in relation to an intestate estate if the spouse’s share in that part of the estate that devolves in accordance with the law of the place in which the intestate was domiciled would, under that law, be reduced by an amount calculated by reference to the value of part or all of the immovable property referred to in paragraph (2) (c).”.

Manner of distribution

9. Section 49B of the Principal Ordinance is amended by omitting sub-sections (3) and (4).

10. After section 49B of the Principal Ordinance the following section is inserted:

Gifts made before death of intestate

“49BA. (1) Where—

- (a) an intestate has, within the period of 5 years immediately before his death, paid, transferred, assigned or settled (otherwise than for valuable consideration) any money or property, to or for the benefit of a person who is, by virtue of this Division, entitled to a share in the intestate estate of the intestate, or to or for the benefit of the spouse of such a person; and
- (b) his intestate estate, or a part of his intestate estate, is divisible between that person, or the issue of that person, and another person or persons entitled by virtue of this Division to a share in the intestate estate,

the money or property shall be taken to have been paid, transferred, assigned or settled, as the case requires, in or towards satisfaction of the share that the person will become entitled to take, or would have become entitled to take if he had survived the intestate, as the case may be, in the intestate estate or the part of the intestate estate unless—

- (c) the contrary intention appears from the circumstances of the particular case; or
- (d) the value, as at the date of death of the intestate, ascertained in accordance with the requirements of the personal representative of the intestate, of all the money or property or of so much of the money or property in respect of which such a contrary intention did not appear, does not exceed \$3,000.

“(2) Where, pursuant to sub-section (1), any money or property is taken to have been paid, transferred, assigned or settled in or towards satisfaction of the

share of a person referred to in sub-section (1), the money or property shall be brought into account at a valuation, as at the date of death of the intestate, in accordance with the requirements of the personal representative of the intestate, in calculating the share that the person or his issue, as the case may be, is, by virtue of this Division, entitled to take in the intestate estate or a part of the intestate estate.

“(3) This section does not apply in relation to money or property paid, transferred, assigned or settled, as the case may be, to or for the benefit of—

- (a) the spouse of the intestate; or
- (b) the spouse of a person referred to in sub-section (1), if the spouse is a person who is, by virtue of this Division, entitled to a share in the intestate estate of the intestate.”

Partial intestacies

11. Section 49D of the Principal Ordinance is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section:

“(2) Where an intestate is survived by his spouse but not by issue, the spouse is entitled to the whole of the intestate estate.”;

- (b) by omitting from sub-section (3) “by issue” and substituting “by his spouse and by issue”;
- (c) by omitting from sub-section (3) “Ten thousand dollars” (wherever occurring) and substituting “\$100,000”; and
- (d) by omitting sub-sections (4) and (5) and substituting the following sub-section:

“(4) Sub-section 49 (3) applies for the purposes of sub-section (3) in like manner as it applies for the purposes of the Sixth Schedule.”.

12. After Division 3B of Part III of the Principal Ordinance the following Division is inserted:

“Division 3C—Simultaneous Deaths

Devolution of property

“49P. (1) Notwithstanding section 119 of the Conveyancing and Law of Property Act 1898, N.S.W. in its application to the Territory, where a deceased person (in this section referred to as “the beneficiary”) who would, but for his

death, have been entitled, under a will or on an intestacy, to take an interest in the estate of another deceased person (in this section referred to as “the benefactor”) died at the same time as the benefactor or in circumstances that give rise to uncertainty as to which of them survived the other, the property of the benefactor shall, subject to sub-section (2), devolve as if he had survived the beneficiary and had died immediately after the beneficiary.

“(2) Property owned jointly and exclusively by two or more persons who died at the same time or in circumstances that give rise to uncertainty as to which of them survived the other or others, not being property so owned by them as trustees, shall devolve as if, at the time of their deaths, it had been owned by them as tenants in common in equal shares.”.

Executor or administrator to pass accounts

13. Section 58 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) A person to whom representation is granted—

- (a) shall file an inventory of the estate of the deceased; and
- (b) shall—
 - (i) file; or
 - (ii) file and pass,

his accounts relating to the estate,

within such time, and from time to time, and in such manner as is prescribed or as the Court orders.”.

Executors &c., may be allowed commission

14. Section 70 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-sections:

“(1) Subject to sub-section (1A), the Court or the Registrar may allow out of the assets of any deceased person to his executor, administrator or trustee, in passing his accounts, such commission or percentage for his services as is just.

“(1A) A commission or percentage allowed by the Registrar pursuant to sub-section (1) shall not exceed 5 per cent.”.

Sixth Schedule

15. The Sixth Schedule to the Principal Ordinance is amended by omitting Part I and substituting the following Part:

**“PART I—MANNER OF DISTRIBUTION WHERE INTESTATE IS
SURVIVED BY A SPOUSE**

Item	Circumstances	Manner in which the intestate estate of the intestate is to be distributed
1.	Where the intestate is not survived by issue	The spouse is entitled to the whole of the intestate estate.
2.	Where the intestate is survived by issue	<ol style="list-style-type: none"> 1. Where the value of the intestate estate does not exceed \$100,000, the spouse is entitled to the whole of the intestate estate. 2. Where the value of the intestate estate exceeds \$100,000, the spouse is entitled to be paid out of the intestate estate— <ol style="list-style-type: none"> (a) \$100,000; (b) interest on that sum, calculated at the rate of 8 per cent per annum from the date of the death of the intestate to the date on which that sum is paid or appropriated to the spouse (inclusive); and (c) an additional sum equal to— <ol style="list-style-type: none"> (i) if one child or the issue of one child of the intestate survives the intestate but no other issue of the intestate survives the intestate—one-half of the value of the balance of the intestate estate; or (ii) in any other case—one-third of the value of the balance of the intestate estate.
3.		The issue of the intestate are entitled to the balance (if any) of the intestate estate after payment to the spouse of the sum or sums to which the spouse is entitled under this item.

Further amendments

16. The Principal Ordinance is amended as set out in the Schedule.

SCHEDULE

Section 15

FURTHER AMENDMENTS

Provision	Amendment
Sub-section 5 (1)	Omit the definition of “Judge”.
Sub-section 14 (2)	Omit “or Judge”.
Section 17	Omit “or the Judge”.
Sub-section 18 (1)	(a) Omit “or the Judge”. (b) Omit “or he”.
Sub-section 18 (3)	(a) Omit “or the Judge”. (b) Omit “or he”.
Sub-section 18A (1)...	Omit “or the Judge”.
Sub-section 18A (2)...	Omit “or the Judge” (wherever occurring).
Sub-section 18A (3)...	Omit “or the Judge”.
Sub-section 18A (4)...	Omit “or the Judge”.
Sub-section 28 (1)	Omit “or the Judge”.
Sub-section 28 (2)	Omit “or Judge” (wherever occurring).
Sub-section 32 (1)	(a) Omit “or the Judge”. (b) Omit “or Judge” (wherever occurring).
Sub-section 32 (2)	Omit “or the Judge”.
Section 51	(a) Omit “or the Judge”. (b) Omit “or Judge”.
Sub-section 52 (1)	Omit “or Judge” (wherever occurring).
Sub-section 52 (2)	Omit “or Judge”.
Section 53	Omit “or the Judge”.

SCHEDULE—continued

Provision	Amendment
Section 57	(a) Omit “or the Judge”. (b) Omit “or Judge”. (c) Omit “or he”.
Sub-section 61 (1)	(a) Omit “or the Judge”. (b) Omit “or he”.
Sub-section 65 (2)	(a) Omit “or the Judge”. (b) Omit “or Judge” (wherever occurring).
Sub-section 70 (2)	Omit “or the Judge”.
Sub-section 71 (4)	Omit “or the Judge”.
Sub-section 92 (3)	Omit “or the Judge”.
Section 93	Omit “or the Judge”.
Sub-section 95 (1)	Omit “or the Judge” (wherever occurring).
Sub-section 95 (2)	Omit “or the Judge”.
Sub-section 96 (1)	(a) Omit “or the Judge”. (b) Omit “or his”.
Section 97	(a) Omit “or the Judge”. (b) Omit “or Judge”.
Sub-section 97A (2)...	(a) Omit “Judge” (wherever occurring), substitute “Court”. (b) Omit “he” (wherever occurring), substitute “it”. (c) Omit “him”, substitute “it”.
Sub-section 97A (3)...	(a) Omit “Judge” (wherever occurring), substitute “Court”. (b) Omit “his”, substitute “its”.
Sub-section 97A (4)...	(a) Omit “Judge”, substitute “Court”. (b) Omit “his”, substitute “its”.
Sub-section 98 (1)	Omit “or the Judge”.
Sub-section 98 (2)	Omit “or the Judge”.
Section 104	Omit “or the Judge”.
Sub-section 124 (1) ...	Omit “or the Judge”.

SCHEDULE—continued

Provision	Amendment
Sub-section 124 (2) ...	Omit “or the Judge”.
Sub-section 124 (4) ...	Omit “or Judge”.
Section 125A	Omit “or the Judge”.
Sub-paragraph 125B (b) (ii)	Omit “or the Judge”.
Sub-section 129 (1) ...	Omit “Judge of the”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 5 December 1984.
2. No. 18, 1929 as amended by No. 11, 1930; No. 13, 1932; No. 9, 1933; Nos. 2 and 6, 1934; Nos. 3, 13 and 27, 1937; No. 35, 1938; No. 7, 1943; No. 15, 1947; No. 16, 1950; No. 5, 1953; No. 2, 1954; No. 6, 1960; No. 20, 1965; No. 9, 1967; No. 16, 1969; No. 25, 1970; Nos. 27, 43 and 47, 1974; No. 53, 1976; No. 8, 1980.