

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
Wills (Amendment) Ordinance 1983
No. 46 of 1983

This Ordinance amends the Wills Ordinance 1968 to give effect, in the Australian Capital Territory, to the 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

The Convention is concerned only with the form of wills. The principal effect of the Convention, and of the Ordinance, is to provide that a will shall be treated as properly executed if its form complies with the requirements of the internal law of a country or place with which the testator has been in some way connected.

The Ordinance accords with similar legislation introduced in the Australian States.

Section 1 provides that the Ordinance may be cited as the Wills (Amendment) Ordinance 1983.

Section 2 provides for the insertion in the Wills Ordinance of a new Part IIA (sections 15A to 15H) intituled "Formal Validity of Wills". The sections contained in the new Part are as follows:

Section 15A contains definitions for the purposes of the new Part.

Section 15B provides a means of ascertaining (where the internal law of a country or place is to be applied in the case of a will) which system of law



is to be applied where there are in force in that country or place 2 or more systems of internal law relating to the formal validity of wills. The section provides that where there is a rule in force throughout the country or place indicating which of those systems should apply that rule shall be followed. If there is no such rule, then the system is to be that with which the testator was most closely connected at the 'relevant time'.

Sub-section 15B(2) provides that the 'relevant time' for this purpose 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.

Section 15C provides that 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 when he made the will or when he died;



- (c) in the place where the testator habitually resided at the time when he made the will or when he died; or
- (d) in the country of which the testator was a national or citizen when he made the will or when he died.

Section 15D provides rules (additional to the general rule as to formal validity contained in section 15C) to cover 4 specific instances in which a will shall be taken to have been properly made. These rules relate to a will made on board a vessel or aircraft; a will, so far as it disposes of immovable property; a will, so far as it revokes a will or a provision of a will; and a will, so far as it exercises a power of appointment.

Section 15E provides that in determining 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. The section also enables account to be taken of any alteration made to the law of a country or place where a will was made if the alteration enables the will to be taken to have been properly made.



Section 15F provides that any law requiring certain formalities to be observed only by a class of testators or requiring witnesses to a will to have certain qualifications, shall be treated as formal requirements only.

Section 15G ensures that the construction of a will is not affected by any change in the domicile of the testator after the will has been made.

Section 15H provides that the new Part applies only in relation to a will of a person who dies after the date of commencement of the Part, whether the will was made before or after that date.

Authority: Sub-section 12(1)
of the Seat of Government
(Administration) Act 1910

Ord 74/82

Reid
11/10/83
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