

NORTHERN TERRITORY OF AUSTRALIA

WILLS ACT

As in force at 11 December 2001

Table of provisions

Part 1	Preliminary	
1	Short title	1
2	Commencement	1
3	Definitions	1
4	Purpose	2
5	Application of Act	2
Part 2	Capacity and formal requirements	
Division 1	Capacity	
6	Property that may be disposed of by will	3
7	Minimum age for making will	3
Division 2	Execution of wills	
8	How wills should be executed	4
9	Witnesses need not know the contents of what they are signing	4
10	When Court may dispense with requirements for execution of wills	5
11	Persons who may not be witnesses to wills	5
12	Can interested witnesses benefit from dispositions under wills?	6
Division 3	Revocation, alteration and revival of wills	
13	How wills may be revoked	6
14	Effect of marriage on wills	7
15	Effect of divorce etc. on wills	7
16	How wills may be altered	8
17	How wills may be revived	9
Part 3	Wills made or rectified under Court authorisation	
Division 1	Wills made by minors	
18	Court may authorise wills by minors	9

Division 2 Wills for persons without testamentary capacity

19	Court may make certain orders regarding persons without testamentary capacity.....	11
20	Leave of Court is required to make application.....	11
21	Court must be satisfied as to certain matters.....	12
22	Orders Court may make on application for leave.....	13
23	Application for authorisation of making etc. of will	13
24	Execution of will	14
25	Retention of will or instrument	14
26	Recognition of statutory wills	14

Division 3 Rectification of wills by Court

27	Court may rectify will	15
----	------------------------------	----

Part 4 Construction of will

28	What interests in property do wills dispose of?	16
29	When do wills take effect?	16
30	Effect of failure of dispositions	16
31	Use of extrinsic evidence to clarify wills.....	16
32	Effect of change in testator's domicile	17
33	Income on contingent, future or deferred dispositions	17
34	Beneficiaries must survive testator by 30 days.....	17
35	What do general dispositions of property include?	17
36	What do general dispositions of land include?.....	17
37	Effect of devise of real property without words of limitation	18
38	How dispositions to issue operate	18
39	How requirements to survive with issue are to be construed.....	18
40	Dispositions not to fail because issue have died before testator	18
41	Construction of dispositions.....	19
42	Legacies to unincorporated associations of persons	19
43	Can persons delegate, by will, power to dispose of property?	20
44	Effect of referring to valuation in a will	20

Part 5 Wills under foreign law

45	Definition of <i>internal law</i>	21
46	General rule as to formal validity	21
47	Ascertainment of system of internal law	22
48	Construction of the law applying to wills under foreign law.....	22

Part 6 Deposit of wills with prescribed person

49	Prescribed person	23
50	Will may be deposited with prescribed person.....	23

51	Delivery of will by prescribed person	24
52	Examination of will by prescribed person	24
53	Failure to retain will does not affect validity of will	24

Part 7 Miscellaneous

54	Persons who are entitled to see will	25
55	Personal representative may make maintenance distribution within 30 days.....	25
56	Regulations.....	26
57	Repeal	26
58	Savings.....	26

Schedule

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 11 December 2001

WILLS ACT

An Act to clarify, amend and reform the law relating to the making, alteration, revocation, rectification and construction of wills and for related purposes

Part 1 Preliminary

1 Short title

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

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

Court means the Supreme Court.

disposition means a disposition by will and includes:

- (a) a gift, devise or bequest of property under a will;
- (b) the creation by will of a power of appointment affecting property; and
- (c) the exercise by will of a power of appointment affecting property.

document means any paper or other material on which there is writing.

minor means a person who is less than 18 years of age.

prescribed person means a person prescribed under section 49(1) to be a person with whom wills may be deposited or, if no such person has been prescribed, the Public Trustee.

property includes:

- (a) a contingent, executory or future interest in property;
- (b) a right of entry or recovery of property; and
- (c) a right to call for the transfer of title to property.

Public Trustee has the same meaning as in section 5 of the *Public Trustee Act*.

Registrar means the Registrar of the Supreme Court performing the functions of the Registrar of Probates.

will includes a codicil and any other testamentary disposition.

4 Purpose

The purpose of this Act is to clarify, amend and reform the law relating to the making, alteration, rectification, revocation and construction of wills and to make particular provision for:

- (a) the formalities required for the making, alteration and revocation of wills and the dispensation of those requirements in appropriate cases;
- (b) the making of wills by minors and other persons lacking testamentary capacity; and
- (c) the effect of marriage and divorce on wills.

5 Application of Act

- (1) Subject to this section, this Act applies only to wills executed on or after the commencement of this Act.
- (2) Subject to subsections (3) and (4), the *Wills Act* in force immediately before the commencement of this Act continues to apply to wills executed before the commencement of this Act.
- (3) If:
 - (a) a person is divorced after the commencement of this Act; or
 - (b) a person's marriage is annulled after the commencement of this Act,

section 15 applies to the person's will (if any) whether the will was executed before, on or after the commencement.

- (4) If a testator dies on or after the commencement of this Act, sections 6, 9, 10, 11, 12, 13, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 42, 43 and 44 apply to his or her will whether it was executed before, on or after that commencement.

Part 2 Capacity and formal requirements

Division 1 Capacity

6 Property that may be disposed of by will

- (1) A person may dispose by will of property to which the person is entitled at the time of his or her death.
- (2) A person may dispose by will of property to which the personal representative of that person becomes entitled by virtue of the office of personal representative after the death of that person.
- (3) Subsection (2) applies whether or not the entitlement of the person or of the personal representative exists at the date of making the will or at the time of the person's death.
- (4) A person may not dispose by will of property of which the person is trustee at the time of his or her death.

7 Minimum age for making will

- (1) Subject to subsection (2) and Part 3, a will made by a minor is not valid.
- (2) A minor:
- (a) may make a will in contemplation of marriage (and may alter or revoke the will) but the will is of no effect if the marriage contemplated does not take place;
 - (b) if he or she is married – may make, alter or revoke a will; and
 - (c) if he or she has been married – may revoke the whole or any part of a will made while the minor was married or in contemplation of his or her marriage.

Division 2 Execution of wills

8 How wills should be executed

- (1) A will is not valid unless:
 - (a) it is in writing and signed by the testator or by some other person in the presence of and at the direction of the testator;
 - (b) the signature is made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time; and
 - (c) at least 2 of those witnesses attest and sign the will in the presence of the testator.
- (2) It is not necessary for the 2 witnesses referred to in subsection (1)(c) to attest and sign the will in the presence of each other.
- (3) The signature of the testator:
 - (a) must be made with the intention of executing the will; and
 - (b) is not required to be made at the foot of the will.
- (4) It is not necessary for a will to have an attestation clause.
- (5) If a testator purports to make an appointment by his or her will in the exercise of a power of appointment by will, the appointment is not valid unless the will is executed in accordance with this section.
- (6) If:
 - (a) a power is conferred on a person to make an appointment by a will that is to be executed in some particular manner or with some particular solemnity; and
 - (b) the person exercises the power by a will that is in accordance with this section and not in that manner or with that solemnity,the exercise of the power is valid.

9 Witnesses need not know the contents of what they are signing

A will that is executed in accordance with this Act is validly executed even if one or more of the witnesses to the will did not know that the document he or she attested and signed was a will.

10 When Court may dispense with requirements for execution of wills

- (1) In this section, **document** means a record of information and includes:
- (a) anything on which there is writing;
 - (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (c) anything from which sounds, images or writings can be reproduced with or without the aid of another thing or device; and
 - (d) a map, plan, drawing or photograph.
- (2) If the Court is satisfied that a deceased person intended a document or part of a document that purports to embody the testamentary intentions of the deceased person (but which is not executed in the manner required by this Act) to constitute his or her will or an alteration of his or her will or to revoke his or her will, the document or part of the document constitutes the will of the deceased person or an alteration of the will or revokes the will, as the case requires.
- (3) In forming its view whether a deceased person intended a document or part of a document to constitute his or her will or an alteration of his or her will or to revoke his or her will, the Court may have regard (in addition to the document or a part of the document) to any evidence relating to the manner of execution or the testamentary intentions of the deceased person, including evidence (whether or not admissible before the commencement of this section) of statements made by the deceased person.
- (4) This section applies to a document whether it came into existence in or outside the Territory.

11 Persons who may not be witnesses to wills

A person who is not able to see and attest that a testator has signed a document may not be a witness to a will.

12 Can interested witnesses benefit from dispositions under wills?

- (1) Subject to subsection (2), if a beneficial disposition is given or made by will to a person who is a witness to the will, the disposition is void to the extent that it concerns the person or a person claiming under him or her.
- (2) A beneficial disposition is not void under subsection (1) if:
 - (a) at least 2 of the witnesses to the will are not persons to whom a beneficial disposition is given or made by the will;
 - (b) all the persons who would benefit directly from the avoidance of the disposition consent in writing to the distribution of the disposition according to the will; or
 - (c) the Court is satisfied that:
 - (i) the testator knew and approved of the disposition; and
 - (ii) the disposition was given or made freely and voluntarily by the testator.

Division 3 Revocation, alteration and revival of wills

13 How wills may be revoked

The whole or a part of a will may be revoked but only:

- (a) in the circumstances in respect of revoking a will specified in Division 1 or 2 of Part 3;
- (b) by the operation of section 14 or 15;
- (c) by a later will;
- (d) by some writing declaring an intention to revoke the will, executed in the manner in which a will is required to be executed by this Act;
- (e) by the testator, or another person in the testator's presence and at the testator's direction, burning, tearing or otherwise destroying the will with the intention of the testator of revoking it; or
- (f) by the testator, or another person in the testator's presence and at the testator's direction, writing on the will or dealing with the will in such a manner that the Court is satisfied from the state of the will that the testator intended to revoke it.

14 Effect of marriage on wills

- (1) Subject to this section, a will is revoked by the marriage of the testator.
- (2) The marriage of a testator does not revoke the following:
 - (a) a disposition to the person to whom the testator is married at the time of his or her death;
 - (b) an appointment as executor, trustee, advisory trustee or guardian of the person to whom the testator is married at the time of his or her death; and
 - (c) a will made in exercise of a power of appointment but only in the case where the property appointed would not pass to the executor, administrator or the Public Trustee if the power of appointment was not exercised.
- (3) A will made in contemplation of a marriage, whether or not that contemplation is expressed in the will, is not revoked by the solemnisation of that marriage.
- (4) A will that is expressed to be made in contemplation of marriage generally is not revoked by the solemnisation of a marriage of the testator.

15 Effect of divorce etc. on wills

- (1) In this section **testator's spouse** means the person who is the testator's spouse immediately before the testator's marriage ends by divorce or annulment.
- (2) For the purposes of this section, a testator's marriage ends by divorce or annulment:
 - (a) when a decree of dissolution of the testator's marriage becomes absolute under the *Family Law Act 1975* of the Commonwealth;
 - (b) on the granting of a decree of nullity in respect of the testator's marriage by the Family Court of Australia; or
 - (c) on the dissolution or annulment of the marriage in accordance with the law of a place outside Australia, but only if that dissolution or annulment is recognised in Australia under the *Family Law Act 1975* of the Commonwealth.

- (3) The divorce of a testator or annulment of his or her marriage revokes:
 - (a) a beneficial disposition made by the testator to the testator's spouse in a will in existence at the time of the divorce or annulment;
 - (b) an appointment of the testator's spouse as an executor, trustee, advisory trustee or guardian made by the will; and
 - (c) a grant made by the will of a power of appointment exercisable by or in favour of the testator's spouse.
- (4) Subsection (3) does not apply if a contrary intention appears in the will or is otherwise established.
- (5) The divorce of a testator or the annulment of his or her marriage does not revoke:
 - (a) the appointment of the testator's spouse as trustee of property left on trust for beneficiaries that include the spouse's children by a will in existence at the time of the divorce or annulment; or
 - (b) the grant made by the will of a power of appointment exercisable by the testator's spouse exclusively in favour of the children of whom both the testator and his or her spouse are the parents.
- (6) A will referred to in this section takes effect in respect of the revocation by this section of a disposition, appointment or grant as if the testator's spouse had died before the testator.

16 How wills may be altered

- (1) An alteration made to a will after the will is executed is not effective unless the alteration:
 - (a) is executed in a manner in which a will is required to be executed by this Act;
 - (b) is made by a minor pursuant to an order of the Court made under section 18(1) and is otherwise in accordance with section 18;
 - (c) is made for and on behalf of a person without testamentary capacity pursuant to an order of the Court made under section 19(1) and is otherwise in accordance with Division 2 of Part 3; or

- (d) is a document that under section 10 the Court is satisfied embodies testamentary intentions of a deceased person and so constitutes an alteration to the will of the deceased person; or
 - (e) obliterates words in the will so that their effect is no longer apparent.
- (2) In altering a will, it is sufficient compliance with the requirements for execution if the signatures of the testator and of the witnesses to the alteration are made:
- (a) in the margin or on some other part of the will beside, near or otherwise in relation to the alteration; or
 - (b) as authentication of a memorandum referring to the alteration and written on the will.
- (3) This section does not apply to an alteration to a will if the words or effect of the will are no longer apparent because of the alteration.

17 How wills may be revived

- (1) A will or a part of a will that has been revoked is revived by re-execution or by execution of a will showing an intention to revive the will or part.
- (2) A will that has been revoked and is later wholly or partly revived is to be taken to have been executed on the date on which the will or part of the will is revived.
- (3) If a will is partly revoked and later a part or the whole of the remaining will is revoked, a will reviving the will revives only that part of the will most recently revoked.
- (4) Subsection (3) does not apply if a contrary intention appears in the reviving will.

Part 3 Wills made or rectified under Court authorisation

Division 1 Wills made by minors

18 Court may authorise wills by minors

- (1) The Court may, on application by or on behalf of a minor, make an order authorising the minor to:
 - (a) make or alter a will in the terms approved by the Court; or

- (b) revoke the whole or a part of the will of the minor.
- (2) Before making the order the Court must be satisfied that:
- (a) the minor understands the nature and effect of the proposed will or alteration or revocation of the will and the extent of the property disposed of by it;
 - (b) the proposed will or alteration or revocation of the will accurately reflects the intentions of the minor; and
 - (c) it is reasonable in all the circumstances that the order should be made.
- (3) The Court may make an order under subsection (1) subject to the terms and conditions the Court considers fit.
- (4) A will or an instrument made pursuant to an order made under subsection (1) that makes or alters or revokes the whole or a part of a will is not valid unless:
- (a) it is executed as required by this Act;
 - (b) one of the attesting witnesses is the Registrar; and
 - (c) it is made in accordance with the conditions of the order.
- (5) After the will or instrument referred to in subsection (4) is executed, the Registrar must:
- (a) if the Registrar is a prescribed person – retain the will or instrument; or
 - (b) in any other case – deposit the will or instrument with a prescribed person,
- and, on the will or instrument being retained by or deposited with a prescribed person under paragraph (a) or (b), it is to be taken to have been deposited with the prescribed person in accordance with Part 6.
- (6) A will made by a deceased minor is a valid will if it is made in accordance with the law relating to wills of minors in force in the place where the deceased was residing at the time of execution of the will.

Division 2 Wills for persons without testamentary capacity

19 Court may make certain orders regarding persons without testamentary capacity

- (1) The Court may, on application, make an order under this Division authorising:
 - (a) the making or alteration of a will in the terms approved by the Court; or
 - (b) the revocation of the whole or a part of a will,for and on behalf of a person who lacks testamentary capacity.
- (2) An order referred to in subsection (1)(a) may authorise:
 - (a) the making or alteration of a will that deals with the whole or part only of the property of the person; or
 - (b) the alteration of part only of the will of the person.
- (3) The Court must not make an order under this Division unless the person in respect of whom the application is made is alive when the order is made.
- (4) The Court may make an order under this Division in respect of a minor.

20 Leave of Court is required to make application

- (1) A person must obtain the leave of the Court to make an application to the Court for an order under this Division.
- (2) In applying for the leave of the Court, the person must file at the Court:
 - (a) a written statement of the general nature of the application for the order and the reasons for making it;
 - (b) an estimate, to the extent that the person is aware, of the size and character of the estate of the person in respect of whom the application is proposed to be made (***the proposed testator***);
 - (c) an initial draft of the proposed will, alteration or revocation to be authorised by the order;
 - (d) evidence, to the extent that it is available, relating to the wishes of the proposed testator;

- (e) evidence of the likelihood of the proposed testator acquiring or regaining capacity to make a will at any future time;
- (f) a will or a copy of a will of the proposed testator that is in the person's possession or any details known to the person of a will of the proposed testator;
- (g) evidence of the interests, to the extent that they are known to the person or can be discovered with reasonable diligence, of a person who would be entitled to receive a part of the estate of the proposed testator if he or she were to die intestate;
- (h) evidence of any facts, to the extent that they are known to the person or can be discovered with reasonable diligence, indicating the likelihood of an application relating to the proposed testator being made under the *Family Provision Act*;
- (j) evidence of the circumstances, to the extent that they are known to the person or can be discovered with reasonable diligence, of a person for whom the proposed testator might reasonably be expected to make provision under a will;
- (k) a reference to any gift for a body, whether charitable or otherwise, or for a charitable purpose that the proposed testator might reasonably be expected to give or make by will; and
- (m) any other facts that the applicant considers to be relevant to the application,

as the Court requires.

21 Court must be satisfied as to certain matters

The Court must refuse leave to make an application for an order under this Division unless the Court is satisfied that:

- (a) there is reason to believe that the proposed testator is or may be incapable of making a will;
- (b) the proposed will or alteration or revocation of a will is or might be one that would have been made by the proposed testator if he or she had testamentary capacity;
- (c) it is or may be appropriate for an order authorising the making, alteration or revocation of a will to be made for the proposed testator;
- (d) the applicant is an appropriate person to make the application; and

- (e) adequate steps have been taken to allow representation of all persons with a legitimate interest in the making of the application, including persons who have reason to expect a gift or benefit from the estate of the proposed testator.

22 Orders Court may make on application for leave

On hearing an application for leave to make an application for an order under this Division, the Court may:

- (a) refuse the application;
- (b) adjourn the application;
- (c) give directions, including directions about the attendance of a person as a witness and, if it considers appropriate, the attendance of the proposed testator;
- (d) revise the terms of any initial draft of the proposed will, alteration or revocation provided to the Court;
- (e) grant the application on the terms it considers just; or
- (f) if it is satisfied of the propriety of the application:
 - (i) allow the application for leave to proceed as an application for an order under this Division authorising the making, alteration or revocation of a will; and
 - (ii) allow the application for an order and make an order in accordance with sections 19 and 23 authorising the making, alteration or revocation of a will, as the case requires.

23 Application for authorisation of making etc. of will

- (1) In considering an application for an order under this Division authorising the making, alteration or revocation of a will, the Court:
 - (a) may have regard to any information given to the Court in support of an application for leave to make the application;
 - (b) may inform itself on any matter in the manner it considers fit; and
 - (c) is not bound by the rules of evidence.

- (2) On hearing the application, the Court may, after considering the outcome of the application for leave to make the application and any further material or evidence it requires:
- (a) refuse the application; or
 - (b) grant the application subject to the terms and conditions it considers just.

24 Execution of will

A will or instrument altering or revoking a will pursuant to an order under this Division is to be signed by the Registrar and sealed with the seal of the Court.

25 Retention of will or instrument

- (1) A will or instrument altering or revoking a will pursuant to an order under this Division must be retained by a prescribed person and, on being retained by a prescribed person, is to be taken to have been deposited with the prescribed person in accordance with Part 6.
- (2) Despite section 51, a will referred to in subsection (1) may not be withdrawn from deposit with the prescribed person by or on behalf of the person on whose behalf it was made unless:
- (a) the Court makes an order under this Division authorising the revocation of the will; or
 - (b) the person acquires or regains testamentary capacity.
- (3) On being presented a copy of an order referred to in subsection (2)(a), the prescribed person must comply with the order.

26 Recognition of statutory wills

- (1) In this section, **statutory will** means a will executed by virtue of a provision of or under an Act of the Territory or another place on behalf of a person who, at the time of execution, lacked testamentary capacity.
- (2) A statutory will made in accordance with the law in force in the place where the deceased was residing at the time of execution of the will is a valid will of the deceased.

Division 3 Rectification of wills by Court

27 Court may rectify will

- (1) If the Court is satisfied that a will does not carry out the intentions of the testator because:
 - (a) a clerical error was made; or
 - (b) the will does not give effect to the testator's instructions,the Court may make an order to rectify the will so it carries out the testator's intentions.
- (2) A person who wishes to make an application for an order under this section must apply to the Court within 6 months after the date of the death of the testator.
- (3) The Court may, subject to subsection (4), extend the time within which an application may be made if the Court thinks it is just.
- (4) The Court may make an order extending the time for making the application either before or after the 6 month period referred to in subsection (2) expires but not if the final distribution of the estate has been made.
- (5) A personal representative who makes a distribution to a beneficiary is not liable if:
 - (a) the distribution was made in accordance with section 55; or
 - (b) the distribution was made at least 6 months after the death of the testator and at the time of making the distribution the personal representative was not aware of any application in respect of the estate having been made for rectification or under the *Family Provision Act*.
- (6) If the Court makes an order for rectification under this section, the Court:
 - (a) may direct that a certified copy of the order be attached to the will to which it applies; and
 - (b) if it makes a direction under paragraph (a) – must retain the will until the copy of the order is attached to it.

Part 4 Construction of will**28 What interests in property do wills dispose of?**

If:

- (a) a testator has made a will disposing of property; and
- (b) after making the will but before his or her death – the testator disposes of an interest in that property,

the will operates to dispose of any remaining interest the testator has in that property.

29 When do wills take effect?

- (1) A will takes effect in respect of property disposed of in the will as if it had been executed immediately before the death of the testator.
- (2) Subsection (1) does not apply if a contrary intention appears in the will or elsewhere.

30 Effect of failure of dispositions

- (1) If, and to the extent that, a disposition of property under a will (other than a disposition by the exercise of a power of appointment) is ineffective wholly or in part, the will takes effect as if the property or the undisposed part of the property were part of the residuary estate of the testator.
- (2) Subsection (1) does not apply if a contrary intention appears in the will or elsewhere.

31 Use of extrinsic evidence to clarify wills

- (1) In proceedings to construe a will, evidence is admissible to determine the meaning of the language used in the will to the extent that the language used renders the will or a part of the will:
 - (a) meaningless;
 - (b) ambiguous on the face of the will; or
 - (c) ambiguous in the light of the surrounding circumstances.
- (2) Except for the purposes of establishing the surrounding circumstances referred to in subsection (1)(c), evidence admissible under subsection (1) includes evidence of the testator's intention.

- (3) Nothing in this section prevents evidence that is otherwise admissible at law being admissible in proceedings to construe a will.

32 Effect of change in testator's domicile

The construction of a will is not affected because of a change in the testator's domicile after executing the will.

33 Income on contingent, future or deferred dispositions

A contingent, future or deferred disposition of property, whether specific or residuary, is to be construed as including a disposition of any intermediate income from the property that has not been disposed of by will.

34 Beneficiaries must survive testator by 30 days

- (1) If a testator makes a disposition to a person who dies within 30 days after the death of the testator, the testator's will is to take effect as if the person had died immediately before the testator.
- (2) Subsection (1) does not apply if a contrary intention appears in the will.
- (3) For the avoidance of doubt, a general requirement or condition that a beneficiary survive the testator does not indicate a contrary intention for the purposes of this section.

35 What do general dispositions of property include?

- (1) A general disposition of all or the residue of the testator's property or all or the residue of his or her property of a particular description:
- (a) is a disposition of all such property over which the testator has a general power of appointment exercisable by will; and
- (b) operates as an exercise of that power.
- (2) Subsection (1) does not apply if a contrary intention appears in the will or elsewhere.

36 What do general dispositions of land include?

- (1) A general disposition of land or of land in a particular area is to be construed as including a disposition of leasehold land (whether or not the testator owns freehold land).
- (2) Subsection (1) does not apply if a contrary intention appears in the will or elsewhere.

37 Effect of devise of real property without words of limitation

- (1) A disposition of real property to a person without words of limitation is to be construed as passing to the person the whole of the estate or interest of the testator in the property.
- (2) Subsection (1) does not apply if a contrary intention appears in the will or elsewhere.

38 How dispositions to issue operate

- (1) A disposition to a person's issue without limitation as to remoteness is to be distributed to that person's issue in the same way as that person's estate would be distributed if that person had died intestate leaving only issue surviving.
- (2) Subsection (1) does not apply if a contrary intention appears in the will.

39 How requirements to survive with issue are to be construed

- (1) If a disposition to a person is expressed to fail if there is:
 - (a) a want or failure of issue of that person either in his or her lifetime or at his or her death; or
 - (b) an indefinite failure of issue of that person,

the words used are to be construed to mean a want or failure of issue in the person's lifetime or at the person's death and not an indefinite failure of his or her issue.

- (2) Subsection (1) does not apply if a contrary intention appears in the will unless the result would cause the disposition to fail.

40 Dispositions not to fail because issue have died before testator

- (1) Subject to this section, if:
 - (a) a person makes a disposition to an issue of the person;
 - (b) the disposition is not a disposition to which section 38 applies;
 - (c) the interest in property disposed is not determinable at or before the death of the issue; and
 - (d) the issue does not survive the testator for 30 days,

the disposition is to be held on trust for the issue of the first-mentioned issue who survive the testator for 30 days in the shares they would have taken of the residuary estate of the testator if the testator had died intestate leaving only issue surviving.

- (2) Subsection (1) applies to dispositions that are to an issue as an individual or as a member of a class.
- (3) Subject to subsections (4) and (5), subsection (1) does not apply if a contrary intention appears in the will.
- (4) For the purposes of subsection (3):
 - (a) a general requirement or condition that issue survive the testator or attain a specified age does not indicate a contrary intention; and
 - (b) a gift of a joint tenancy does not alone indicate a contrary intention.
- (5) If a condition is imposed on an original beneficiary and the beneficiary fails to survive the testator for 30 days, the issue of the beneficiary may not take under this section unless the original beneficiary fulfilled the condition.

41 Construction of dispositions

- (1) A disposition of the whole of the estate of a testator or the residue of the estate of a testator that refers to only the real estate of the testator or only the personal estate of the testator is to be construed as including a disposition of both the real and personal estate of the testator.
- (2) If a part of a disposition in fractional parts of the whole or the residue of the estate of a testator fails, that part passes to the part that does not fail and, if there is more than one part that does not fail, to all those parts proportionately.
- (3) This section does not apply if a contrary intention appears in the will.

42 Legacies to unincorporated associations of persons

- (1) A disposition:
 - (a) to an unincorporated association of persons that is not a charity;
 - (b) to or on trust for the aims, objects or purposes of an unincorporated association of persons that is not a charity; or

- (c) to or on trust for the present and future members of an unincorporated association of persons that is not a charity, has effect as a legacy or devise in augmentation of the general funds of the association.
- (2) Property that is or is to be taken to be a disposition in augmentation of the general funds of an unincorporated association is to be:
- (a) paid into the general fund of the association;
- (b) transferred to the association; or
- (c) sold or otherwise disposed of on behalf of the association and the proceeds paid into the general fund of the association.
- (3) If a personal representative pays money to an unincorporated association under a disposition, the receipt of the Treasurer or like officer of the association (however described) is an absolute discharge for the payment.
- (4) If a personal representative transfers property to an unincorporated association under a disposition, the transfer of the property to a person or persons designated in writing by any 2 persons holding the offices of President, Chairperson, Treasurer or Secretary, or like officers of the association (however described), is an absolute discharge to the personal representative for the transfer of the property.
- (5) Subsections (3) and (4) do not apply if a contrary intention appears in a will.
- (6) It is not an objection to the validity of a disposition to an unincorporated association of persons that a list of persons who were members of the association at the time of the testator's death cannot be compiled or that the members of the association have no power to divide assets of the association beneficially among themselves.

43 Can persons delegate, by will, power to dispose of property?

A power or trust created by will to dispose of property is not void on the ground that it is a delegation of the testator's power to make a will if the same power or trust, having been made by the testator by instrument during his or her lifetime, would be valid.

44 Effect of referring to valuation in a will

- (1) Unless, and to the extent that, a method of valuation is at the relevant time required under a law in force in respect of a will

(whether a law of the Territory or of another place) or is provided for by a will, an express or implied requirement in a will that a valuation of property be made or accepted for any purpose is to be construed as if it were a reference to a valuation of the property:

- (a) as at the date of the testator's death; and
 - (b) made by a competent valuer.
- (2) Subsection (1) does not apply if a contrary intention appears in a will.

Part 5 Wills under foreign law

45 Definition of *internal law*

In this Part, *internal law*, in relation to a place, means the law applying in a case where no question of the law in force in any other place arises.

46 General rule as to formal validity

- (1) A will is properly executed if its execution conforms to the internal law in force in the place:
- (a) where it was executed;
 - (b) that was the testator's domicile or habitual residence either at the time the will was executed or at the testator's death; or
 - (c) of which the testator was a national either at the date of execution of the will or at the testator's death.
- (2) A will executed on board a vessel or aircraft in conformity with the internal law in force in the place with which the vessel or aircraft may be taken to have been most closely connected having regard to its registration and other relevant circumstances is properly executed.
- (3) A will that disposes of immovable property is properly executed to the extent that it disposes of immovable property if it is executed in conformity with the internal law in force in the place where the property is situated.
- (4) A will that revokes a will or a part of a will valid under this Act is properly executed to the extent that it revokes the will or part if it is executed in conformity with a law under which the will or part being revoked is validly executed.

- (5) A will exercising a power of appointment is properly executed to the extent that it exercises the power of appointment if it is executed in conformity with the law governing the essential validity of the power.
- (6) A will to which this section applies that exercises a power of appointment is not, to the extent that it exercises the power of appointment, to be taken to be improperly executed because it has not been executed in accordance with the formalities required by the instrument creating the power of appointment.

47 Ascertainment of system of internal law

If there is more than one system of internal law in force in a place that relates to the formal validity of a will, the system of internal law that applies to the will is:

- (a) if there is a rule in force throughout the place that indicates which system of internal law applies to the will – the system of law indicated by that rule; or
- (b) if there is no rule indicating which system of internal law applies – the system of internal law with which the testator was most closely connected either:
 - (i) in the case where the matter is to be determined by reference to circumstances prevailing at the time of the death of the testator – at the time of his or her death; or
 - (ii) in any other case – at the time of the execution of the will.

48 Construction of the law applying to wills under foreign law

- (1) In determining whether a will has been executed in conformity with a particular law, regard must be given to the formal requirements of that law at the time of execution and, if that law is later altered, account may be taken of that law as altered if it enables the will to be treated as properly executed.
- (2) If a law in force outside the Territory is applied to a will, a requirement of that law that special formalities must be observed by testators of a particular description or that witnesses to the execution of the will must have certain qualifications is to be taken to be a formal requirement only.
- (3) Subsection (2) applies despite any rule of a law referred to in that subsection to the contrary.

Part 6 Deposit of wills with prescribed person

49 Prescribed person

- (1) The Regulations may prescribe a person to be or more than one person each to be a person with whom a will may be deposited under this Part.
- (2) In prescribing a person under subsection (1), the Regulations may:
 - (a) prescribe a person by name;
 - (b) prescribe a person by reference to the office, designation or position held or occupied by the person; or
 - (c) prescribe a person as the person from time to time holding, acting in or performing the duties of a named office, designation or position.
- (3) If, for whatever reason, there is no person prescribed under subsection (1), the Public Trustee is the person with whom a will may be deposited under this Part.

50 Will may be deposited with prescribed person

- (1) A person may deposit a will with a prescribed person.
- (2) A will is not to be deposited with a prescribed person unless it is in a sealed envelope that has written on it:
 - (a) the testator's name and address (as they appear in the will);
 - (b) the name and address (as they appear in the will) of each executor of the will;
 - (c) the date of the will; and
 - (d) the name of the person depositing the will.
- (3) Subject to subsection (4), a will deposited with a prescribed person must be accompanied by the prescribed fee.
- (4) A person depositing a will with a prescribed person must pay the prescribed fee unless:
 - (a) the will is deposited with the prescribed person:
 - (i) under Part 3; or
 - (ii) because a legal practitioner has died or has ceased or is about to cease practising law in the Territory; or

- (b) the fee is waived by the prescribed person in accordance with the Regulations.

51 Delivery of will by prescribed person

- (1) If a will has been deposited with a prescribed person under this Act, the testator may at any time apply in writing to the prescribed person to be given the will or to have the will given to another person authorised in writing by the testator to receive it.
- (2) On receiving the application under subsection (1), the prescribed person must give the will to the testator or the person authorised by the testator unless the testator is a minor or a person who lacks testamentary capacity.
- (3) If a will has been deposited with a prescribed person and the testator has died, an executor named in the will or a person who is entitled to apply for letters of administration with the will annexed may apply in writing to the prescribed person to be given the will.
- (4) On receiving the application under subsection (3), the prescribed person must give the will to the executor or other person or to a legal practitioner or a trustee company within the meaning of the *Companies (Trustees and Personal Representatives) Act* authorised in writing by the executor or other person.
- (5) A prescribed person must make and retain or cause to be made and retained an accurate copy of every will he or she gives to a person under this section.
- (6) If there is any doubt as to whom a prescribed person should give a will, the prescribed person or any other person may apply to the Court for directions as to whom the will should be given.

52 Examination of will by prescribed person

A prescribed person may examine a will to enable him or her to comply with this Part.

53 Failure to retain will does not affect validity of will

If a prescribed person fails to retain a will as required by this Act, his or her failure to retain the will does not affect the validity of the will.

Part 7 Miscellaneous

54 Persons who are entitled to see will

- (1) In this section, **will** includes a revoked will, a document purporting to be a will, a part of a will and a copy of a will.
- (2) A person who has possession or control of a will of a deceased person must allow any one or more of the following persons to inspect the will and make copies of the will at their own expense:
 - (a) a person named or referred to in the will, whether as a beneficiary or otherwise;
 - (b) the surviving spouse or issue of the deceased person;
 - (c) a parent or a guardian of the deceased person;
 - (d) a person who would be entitled to a share of the deceased person's estate if the deceased person had died intestate;
 - (e) a creditor or other person having a claim at law or in equity against the deceased person's estate;
 - (f) a beneficiary of a prior will of the deceased person;
 - (g) a parent or guardian of a minor referred to in the will or a minor who would be entitled to a share of the deceased person's estate if the deceased person had died intestate.
- (3) A person who has possession or control of a will of a deceased person must produce it in a court if required to do so.

55 Personal representative may make maintenance distribution within 30 days

- (1) If a surviving person who is wholly or substantially dependent on a deceased person has an entitlement under the deceased person's will that does not become absolute until 30 days after his or her death, the deceased person's personal representative may make a distribution for the maintenance, support or education of the surviving person before the 30 day period expires.
- (2) A personal representative who makes a distribution under subsection (1) is not liable if the distribution was made in good faith.
- (3) The personal representative may make a distribution under subsection (1) even if he or she knows at the time of making the distribution of a pending application under the *Family Provision Act* in respect of the estate of the deceased person.

- (4) Subject to subsection (5), a sum distributed under subsection (1) is to be deducted from the share of the estate to which the person receiving the distribution becomes entitled.
- (5) If a person to whom a distribution is made under subsection (1) does not survive the deceased person for 30 days, the distribution is to be taken to be an administration expense.

56 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters that are:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may:
 - (a) prescribe the manner of giving public notice of a person who is prescribed under section 49(1) to be a person with whom wills may be deposited;
 - (b) prescribe the procedures for the transfer to a prescribed person of wills deposited under Part 6 with the Public Trustee or other person who is no longer a prescribed person;
 - (c) prescribe the fee payable under section 50 in respect of a will or testator or a class of will or testator and may authorise a prescribed person to waive the payment of a fee payable in respect of a will or class of will;
 - (d) provide for the keeping and maintenance of an index of wills deposited with a prescribed person and the making available of the index of wills for a member of the public to search; and
 - (e) provide for the destruction of or other dealing with a will that remains deposited with a prescribed person after the death of the testator whose will it is.

57 Repeal

The Acts specified in the Schedule are repealed.

58 Savings

- (1) In this section, **repealed Act** means the *Wills Act* in force before the commencement of this Act.

- (2) Subject to the appearance of a contrary intention, a reference in an Act, an instrument of a legal or administrative character or any other document to the repealed Act or a provision of the repealed Act is, on the commencement of this Act, to be taken to be and to have effect as if it were a reference to this Act or the provision of this Act (if any) that re-enacts, whether with or without modification, the provision of the repealed Act.

Schedule

section 57

ACTS OF THE NORTHERN TERRITORY

<i>Wills Ordinance 1938</i>	Act No. 4, 1938
<i>Wills Ordinance 1969</i>	Act No. 16, 1969
<i>Wills Amendment Act 1984</i>	Act No. 43, 1984
<i>Wills Amendment Act 1985</i>	Act No. 16, 1985
<i>Wills Amendment Act 1987</i>	Act No. 13, 1987

IMPERIAL ACT

An Act for the amendment of the 7 Will 4 and 1Vic., c.26
laws with respect to wills

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Wills Act 2000 (Act No. 59, 2000)

Assent date	14 November 2000
Commenced	1 March 2001 (<i>Gaz</i> G48, 6 December 2000, p 3)

Statute Law Revision Act (No. 2) 2001 (Act No. 62, 2001)

Assent date	11 December 2001
Commenced	11 December 2001

3 LIST OF AMENDMENTS

s 5 amd No. 62, 2001, s 14