

# NORTHERN TERRITORY OF AUSTRALIA

## ADMINISTRATION AND PROBATE ACT

As in force at 24 June 1993

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 24 June 1993

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## ADMINISTRATION AND PROBATE ACT

An Act relating to the Administration of the estates of deceased persons

### Part I Preliminary

#### 1 Short title

This Act may be cited as the *Administration and Probate Act*.

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 6 Interpretation

(1) In this Act, unless the contrary intention appears:

**Aboriginal** means a person who is a member of the aboriginal race of Australia.

**administration** includes all letters of administration of the real and personal estate of deceased persons whether with or without the will annexed and whether granted for general, special or limited purposes, exemplification of letters of administration and such other formal evidence of the letters of administration purporting to be under the seal of a court of competent jurisdiction as is in the opinion of the Court sufficient.

**administrator** includes any person to whom administration is granted.

**committee**, in relation to a person, means the committee of the estate of that person continued by the *Mental Health Act* and includes the manager of that person's estate appointed under the *Aged and Infirm Persons' Property Act*.

**Commonwealth country** means:

- (a) the States and Territories of the Commonwealth other than the Northern Territory; and

(b) the countries specified in Schedule 5,

and includes a prescribed country.

**deceased person** or **deceased** means a person dying on or after the date on which this Act comes into operation.

**de facto partner**, in relation to a deceased person, means:

- (a) where the deceased was a man – a woman who, immediately before the man's death, was living with him as his wife on a bona fide domestic basis although not married to him; and
- (b) where the deceased was a woman – a man who, immediately before the woman's death, was living with her as her husband on a bona fide domestic basis although not married to her.

**distribute** means to pay, deliver or divide the estate or property referred to, or to among the person or persons entitled thereto under any intestacy or under any will.

**election** means an election to administer the estate or a part of the estate of a deceased person.

**next of kin**, in relation to a deceased, means those persons, other than a spouse or de facto partner of the deceased, who would be entitled to take an interest in the estate of the deceased if he had died intestate.

**probate** includes **exemplification of probate** or any other formal document, purporting to be under the seal of a court of competent jurisdiction, which, in the opinion of the Court, is deemed sufficient.

**Public Trustee** has the same meaning as in the *Public Trustee Act*.

**purposes of administration**, in relation to the administration of the estate of a deceased person, includes the payment in due course of administration of the debts, funeral and testamentary expenses, duties and commission, and the costs, charges and expenses of the executor or administrator, and any costs which may be ordered to be paid out of the estate.

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

**representation** means the probate of a will and administration.

**will** includes a codicil.

- (2) In this Act, unless the contrary intention appears, a reference to a public trustee, in relation to a country, shall be read as including a reference to an officer of that country who is entitled under a law of that country to apply, in a case where a deceased person has died intestate leaving no next of kin, to a court for an order that authorizes the officer to administer the estate of the deceased person.
- (4) For the purposes of this Act, an Aboriginal who has entered into a relationship with another Aboriginal that is recognized as a traditional marriage by the community or group to which either Aboriginal belongs is married to the other Aboriginal, and all relationships shall be determined accordingly.
- (5) Except where they are defined in this Act to have a different meaning or the contrary intention appears, words used in this Act have the same meaning as defined in the *Supreme Court Act* or in Chapter 3 of the Rules of the Supreme Court made under that Act.

## **Part III                      Grant of representation**

### **Division 1                  Jurisdiction of the Court**

#### **14                      Probate or administration may be granted**

- (1) The Court shall have jurisdiction to grant probate of the will or administration of the estate of any deceased person leaving property, whether real or personal, within the Territory.
- (2) The Court shall have jurisdiction to grant probate of the will, or administration of the estate, of a deceased person who did not leave property, whether real or personal, within the Territory, if the Court is satisfied that the grant of probate or administration is necessary.

#### **15                      Evidence of death**

- (1) Probate of the will, or administration of the estate, of a person may be granted by the Court if it is satisfied, by direct evidence or by evidence supporting a presumption of death, that the person is, or may be presumed to be, dead.
- (2) A grant of probate of the will, or administration of the estate, of a person made upon direct evidence of the death of the person or upon evidence supporting a presumption of the death of the person is valid notwithstanding that the person is, after the day on which the grant was made, found to have been alive on that day.

## **16 Grant on presumption of death**

- (1) Where the Court makes a grant of probate of the will, or administration of the estate, of a person upon evidence supporting a presumption of the death of the person:
  - (a) the grant shall be expressed to be made on presumption of the death of the person;
  - (b) the estate of the person shall not be distributed without the leave of the Court;
  - (c) the Court may, in the probate or administration or by an order made at any time, give leave to distribute the estate;
  - (d) the Court may, in giving leave to distribute the estate of the person, direct that the distribution shall not be made unless each person who is to take under the distribution gives an undertaking or security that he will, if the probate or administration is revoked, restore the property received by him under the distribution to the person entitled to it, or pay to that person an amount equal to the value of that property; and
  - (e) the Court may direct the executor or the administrator to give, before he distributes the estate, such notices (including a notice specifying a date before which a caveat against the distribution of the estate may be lodged with the Registrar) as the Court thinks fit.
- (2) Where an executor or administrator of an estate has given the notices that the Court has, under subsection (1), directed him to give before distributing the estate, the executor or administrator:
  - (a) may, subject to subsection (3), after the expiration of the period specified in the notices, distribute the estate among the persons entitled to it, having regard only to the claims of which the executor or administrator has notice at the time of the distribution; and
  - (b) is not liable, in respect of any part of the estate so distributed, to a person entitled to that part of whose claim he did not have notice at the time of the distribution.
- (3) Where a caveat against the distribution of an estate has been lodged with the Registrar under sub-section (1):
  - (a) the executor or administrator shall not distribute the estate among the persons entitled to it except in pursuance of an order of the Court under subsection (4); and



- (b) the executor or administrator, the person who lodged the caveat or a person interested in the distribution of the estate may make application to the Court for an order under subsection (4).
- (4) The Court may, upon application under sub-section (3)(b), make an order authorizing the executor or administrator of an estate to distribute the estate among the persons entitled to it notwithstanding the lodging of a caveat under subsection (1).
- (5) An order under subsection (4) may authorize the distribution of the estate subject to such conditions as the Court thinks fit.
- (6) Where, in relation to the enforcement of an undertaking or security given under subsection (1), a dispute arises as to the value of any property received under a probate or administration that is revoked, the Court may, upon application by any person affected by the undertaking or security, make such order in respect of the property as it thinks fit.
- (7) The Court may upon application by a person who has given an undertaking or security under subsection (1) or the executor or administrator of the estate of such a person, make such order for the termination or modification of the obligations under the undertaking or security as it thinks fit.

## **17 When probate may be issued by registrar**

- (1) Subject to the provisions of this section, probate or administration may, upon application to the Registrar, supported by affidavits upon which for the time being the Court would, in the opinion of the Registrar, grant the probate or administration, be issued by the Registrar as of course in the name and under the seal of the Court, and every such probate or administration shall be deemed to have been granted by the Court.
- (2) The Registrar shall not, without an order of the Court, issue probate of the will, or administration of the estate, of a deceased person:
  - (a) in any case where a caveat has been lodged;
  - (b) in any case where there is no direct evidence of the death of the person but only evidence supporting a presumption of the death of the person; or
  - (c) in any case in which it appears to the Registrar to be doubtful whether the probate or administration should be granted.

- (3) Whenever the Court makes an order for the grant of probate or administration, the probate or administration shall be issued by the Registrar in the name and under the seal of the Court.

**18 Sealing of probate and letters of administration**

The seal of the Court shall not be affixed to any probate or letters of administration until all duties and fees payable under any law in force in the Territory have been paid or security has been given in accordance with any such law for payment of such duties and fees.

**19 Grant to one executor reserving leave to others to apply**

The Court may, if it thinks fit, grant probate to one or more of the executors named in a will reserving leave to the executor who has not renounced, or the executors who have not renounced, to come in and apply for a grant of probate at a future time.

**20 Court may grant probate to public trustee named as executor**

Where a deceased person has named the public trustee of a State or Territory of the Commonwealth as an executor of his will, the Court may grant probate of the will to that public trustee.

**21 Practice as to granting administration of real and personal estate**

Subject to this Act and the Rules, the practice and procedure with reference to the granting of administration of the personal estate of an intestate shall be applicable, so far as may be, to the granting of administration of the real estate, and administration of both real and personal estate may be granted in and by the same letters.

**22 To whom administration may be granted**

- (1) Subject to this section, the Court may grant administration of the estate of an intestate person to:
- (a) the spouse or de facto partner of the deceased;
  - (b) one or more of the next of kin;
  - (c) the spouse or de facto partner conjointly with one or more of the next of kin; or
  - (d) such person, whether a creditor or not of the deceased, as the Court thinks fit.

- (2) The Court shall not grant administration to a person who is not the spouse or de facto partner or one of the next of kin of the deceased unless:
  - (a) there is no such spouse or de facto partner or next of kin;
  - (b) there is no such spouse or de facto partner or next of kin within the jurisdiction who is, in the opinion of the Court, fit to be trusted; or
  - (c) there is no such spouse or de facto partner or next of kin who, when duly cited, appears and prays for administration.
- (2A) References in subsections (1) and (2) to a spouse or de facto partner of a deceased are references only to a spouse or de facto partner who is entitled to an interest in the deceased's intestate estate.
- (3) The Court shall not grant administration to an infant.

## **23 Administration bond to be given**

The Registrar may order a person to whom a grant of administration is made to enter into, and file with the Registrar, a bond with a surety for duly collecting, getting in and administering the estate of a deceased person and before the issue of the administration the person shall enter into and file the bond accordingly.

## **26 Probate or administration may be revoked or further bond required**

- (1) At any time after probate of the will, or administration of the estate, of a deceased person has been granted, the Court may, upon the application of a person who is interested in the estate, revoke the probate or administration, as the case may be.
- (2) At any time after administration of the estate of a deceased person has been granted, the Court may, upon the application of a person who is interested in the estate, order the administrator of the estate to execute a bond, or an additional bond, as the case may be, of such amount and within such time as the Court thinks fit and with one surety, being an insurance company approved by the Minister.
- (3) If an administrator fails to comply with the terms of an order made under subsection (2), the Court may remove the administrator and appoint another person to be an administrator of the estate in his place.

- (4) Where the Court has removed an administrator of an estate under subsection (3) and appointed another person to be an administrator of the estate in his place, any contract, made before the date on which the administrator was so removed, in respect of which the administrator so removed was, in his capacity of administrator of the estate, a party shall, on and after that date, be read and construed, and may be enforced, as if references in the contract to the administrator so removed were references to the administrator so appointed in his place.

**27 Application by surety for relief**

If, upon application by a surety to an administration bond, it appears to the Court that:

- (a) the estate is being wasted, or is in danger of being wasted; or
- (b) the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate,

the Court may grant such relief as it thinks fit.

**28 Renunciation or non-appearance by executor renouncing probate or not acting or not appearing to a citation to be treated as if he had renounced**

Where:

- (a) any person renounces probate of the will of which he is appointed an executor;
- (b) an executor appointed in a will survives the testator but dies without having taken probate; or
- (c) an executor named in a will is personally cited to take probate and does not appear to the citation,

the right of that person in respect of the executorship shall wholly cease, and the representation of the testator and the administration of his estate shall, without any further renunciation, go, devolve, and be committed in like manner as if that person had not been appointed executor.

**29            Renunciation, &c., by person appointed both executor and trustee of will**

If a person who is appointed by will both executor and trustee thereof renounces probate or after being duly cited fails to apply for probate, the renunciation or failure shall be deemed to be a disclaimer of the trust contained in the will.

**30            Administration to guardian of infant sole executor**

- (1) Where an infant is sole executor, administration with the will annexed may be granted to:

- (a) the guardian of that infant; or
- (b) such other person as the Court thinks fit,

until the infant has attained the age of 18 years, with full or limited powers to act in the premises until probate has been granted to the executor or administration has been granted to some other person.

- (2) The person to whom that administration is granted shall have the same powers vested in him as an administrator by virtue of an administration granted to him durante minore aetate of the next of kin.

**31            Administration to be granted to attorney in certain cases**

- (1) When any person named as executor, or any spouse, de facto partner or next of kin entitled to probate or administration, is out of the jurisdiction, but has some person within the jurisdiction appointed under power of attorney to act for him or her respectively, administration may be granted to that attorney, but on behalf of the person entitled thereto, and on such terms and conditions as the Court thinks fit.
- (2) Where administration has been granted, under subsection (1), to an attorney appointed under a power of attorney, unless the grant otherwise provides, the grant continues in force notwithstanding the death of the donor of the power of attorney.

**32            Administration pendente lite and receiver**

- (1) The Court may:
- (a) pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of administration; or
  - (b) during a contested right of administration,

appoint an administrator of the personal estate and the same or any other person to be receiver of the real estate of any deceased person, with such full or limited powers, and with or without a bond or sureties, as the Court thinks fit.

- (2) The Court may make such orders for the remuneration of the administrator or receiver out of the personal and real estate of the deceased as it thinks right.

### **33 Power as to appointment of administrator**

The Court may, in any case where a person dies:

- (a) intestate;
- (b) leaving a will, but without having appointed an executor thereof; or
- (c) leaving a will and having appointed an executor thereof, who:
  - (i) is not willing and competent to take probate; or
  - (ii) is resident out of the Territory,

if it thinks it necessary or convenient, appoint some person to be the administrator of the estate of the deceased or of any part thereof, upon his giving such security (if any) as the Court directs, and every such administration may be limited as the Court thinks fit.

### **34 Proceeding where executor neglects to prove will**

- (1) In any case where the executor named in a will:
- (a) neglects or refuses to prove the will or to renounce probate thereof within 3 months from the death of the testator or from the time of the executor attaining the age of 18 years; or

- (b) is unknown or cannot be found,

the Court may, upon the application of:

- (c) any person interested in the estate;
- (d) the Public Trustee; or
- (e) any creditor of the estate,

order that probate of the will be granted to the executor or order that administration with the will annexed be granted to the applicant or make such other order for the administration of the estate as it thinks fit.

**35 Issue of special letters of administration**

If, at the expiration of 6 months from the death of any person, the executor to whom probate has been granted or the administrator is then residing out of the Territory, the Court may, upon the application of any creditor, legatee, next of kin or Public Trustee grant to the person so applying special letters of administration of the estate of the deceased person, nevertheless to cease upon an order being made under section 37.

**36 Special administrator to make certain affidavits**

The person applying for any such special grant shall satisfy the Court by affidavit that the executor or administrator of the estate of the deceased person is resident out of the Territory, and that:

- (a) the applicant is thereby delayed in recovering or obtaining payment of moneys or the possession of goods and chattels or real estate, to which he is by law entitled; or
- (b) the estate is liable to loss or waste.

**37 On return of original executor or administrator special administration to be rescinded**

- (1) On the return within the Territory of the executor to whom probate has originally been granted, or the administrator, the executor or administrator may apply to the Court to rescind the special grant of administration.
- (2) The Court, on the hearing of the application, may make an order to rescind the special grant of administration upon such terms and conditions as to security, costs, or otherwise as to the Court appear reasonable, and thereafter the original probate or administration shall be and remain as valid and effectual as if the special grant of administration had not been made.

**38 Accounting by special administrator**

Upon any order being made by the Court for the rescission of any grant of special administration, the special administrator shall be bound duly to account to the original executor or administrator, and to pay over all moneys received by him as such special administrator and then remaining in his hands undisposed of, as the Court may order.

**39 Liability of executor or administrator neglecting to apply for rescission of special administration**

If the executor or administrator neglects to apply for an order for the rescission of the special administration, he shall, notwithstanding that the special administration remains unrescinded, be liable to answer and make good all claims and demands against the estate of the deceased to the extent of the assets which have come to his hands or which might have come to his hands but for his wilful neglect, or default, including the neglect mentioned in this section.

**40 Revocation of grants not to prejudice actions or suits**

If, while any legal proceeding is pending in any court by or against any executor or administrator lawfully acting as such, the grant of probate or administration is revoked or rescinded, that court under its rules of procedure may provide that the proceeding be continued by or against the new personal representative in like manner, as if the proceeding had been originally commenced by or against him, but subject to such conditions and variations (if any) as that court directs.

**41 Discharge or removal of executor or administrator**

- (1) Notwithstanding anything contained in any law in force in the Territory, where an executor or administrator to whom representation has been granted, or where an administrator who has been appointed under this section:

- (a) remains out of the Territory for more than 2 years;
- (b) desires to be discharged from his office of executor or administrator; or
- (c) after the grant or appointment, refuses, or is unfit, to act in the office, or is incapable of acting therein,

the Court may upon application order the discharge or removal of that executor or administrator, and the appointment of some proper person as administrator in place of the executor or administrator so discharged or removed, upon such terms and conditions as the Court thinks fit, and may make all necessary orders for vesting the estate in the new administrator, and as to accounts, and such order as to costs, as the Court thinks fit.

- (2) Notice of the application shall be served on such persons, if any, as the Court directs.



- (3) An executor or administrator so removed or discharged shall, from the date of the order, cease to be liable for acts and things done after that date.
- (4) Upon the appointment of the new administrator the property and rights vested in, and the liabilities properly incurred in the due administration of the estate by, the executor or administrator so discharged or removed, shall become and be vested in, and transferred to, the new administrator, who shall, as such, have the same privileges, rights, powers, duties, discretions and liabilities, as if probate or administration had been granted to him originally.

#### **42 Revocation of grant if person living at the date of the grant**

- (1) Where the Court is satisfied that a person was living at the time when probate of his will, or administration of his estate, was granted by the Court, the Court:
  - (a) shall revoke the grant on such terms, if any, as the Court thinks fit with respect to proceedings which have been commenced by or against the executor or administrator or with respect to costs or any other matter; and
  - (b) may at any time, whether before or after the revocation of the grant, make such orders as the Court thinks fit for the protection of the estate, including an order for an injunction against the executor or administrator or another person and an order for the appointment of a receiver.
- (2) An application to the Court for the revocation, under subsection (1), of a grant of probate of the will, or administration of the estate, of a person may be made:
  - (a) by the person; or
  - (b) if the person has died since the grant - by any person entitled to apply for a grant of probate of the will, or administration of the estate, of the person or by a person interested in the estate of the person.

#### **43 Effect of revocation of grant**

- (1) Where a grant of probate or administration has been revoked under this Act:
  - (a) the executor or administrator to whom the grant was made shall account to the Court for the property that he has received, or that has vested in him, as such executor or administrator, and the Court may make such orders as it thinks fit with respect to the disposal by the executor or

administrator of so much of that property as remains in his hands;

- (b) the executor or administrator is not liable in respect of property that he has disposed of under the grant in good faith before the revocation of the grant if he complied with the provisions of section 16 in and in relation to the disposing of that property;
  - (c) the revocation of the grant does not, of its own force, invalidate a disposal of property made by, or to, the executor or administrator before the revocation of the grant;
  - (d) an action does not lie against the Registrar-General for loss suffered by any person in consequence of the registration of a dealing with land under the provisions of the *Real Property Act* being a dealing lawfully made by the executor or administrator before the revocation of the grant; and
  - (e) the Court may make such vesting orders as it thinks fit.
- (2) This section does not affect:
- (a) any entitlement of an executor or administrator to commission, or to any protection, indemnity, reimbursement or right under any other provision of this Act; or
  - (b) the right of a person to follow an asset into the hands of the person to whom it was distributed or who has received it.

## **Division 2            Caveats**

### **44            Caveat may be lodged**

Subject to and in accordance with the Rules, a person may, at any time before the granting of representation, lodge with the Registrar a caveat against an application for representation.

## **Division 3            Effect of grant of representation**

### **51            Estate to vest in public trustee**

- (1) Upon the death of a person his real and personal property shall be deemed to vest in the Public Trustee until it vests in the Public Trustee or some other person in pursuance of this Act or the *Public Trustee Act*.

**52 Real and personal estate to vest in executor or administrator**

Upon the grant of representation of the estate of any deceased person, all the property whether real or personal which the person has left within the Territory, and which is unadministered at the date of the grant, shall, as from the death of that person, pass to and become vested in the executor to whom probate has been granted or the administrator (as the case may be) for all his estate and interest therein in the manner following, that is to say:

- (a) on testacy, in the executor or administrator with the will annexed;
- (b) on intestacy, in the administrator; and
- (c) on partial intestacy, in the executor or administrator with the will annexed.

**53 Real estate held in trust**

All real estate held by any person in trust or by way of mortgage, and vesting in pursuance of section 52, shall vest in his executor or administrator, subject to the trusts and equities affecting the estate.

**54 Property of deceased to be assets**

- (1) The real, as well as the personal, estate of every deceased person shall be assets in the hands of his executor to whom probate has been granted, or his administrator, for the payment of all duties and fees, and for the payment of his debts in the ordinary course of administration.
- (2) The executor or administrator for purposes of administration, may, subject to the provisions of sections 80 and 82, sell that real estate, or mortgage it with or without a power of sale, and convey it to a purchaser or mortgagee in as full and effectual a manner in law as the deceased person could have done in his lifetime.

**55 Property of deceased liable for debts**

- (1) The real and personal property of a deceased person, to the extent of his beneficial interest in it, and the real and personal property (if any) disposed of by the person's will (whether made before or after the commencement of this Act) in exercise of a general power, are assets for the payment of the funeral, testamentary and administrative expenses, the debts and the liabilities of the person.

(2) If a person:

- (a) on whom a beneficial interest in any property referred to in subsection (1) devolves;
- (b) to whom such an interest is given; or
- (c) in whom such an interest vests,

disposes of the interest or of a part of the interest in good faith before a proceeding is taken or process is sued out against him, the person is personally liable for the value of the interest or part so disposed of by him, but the interest or part is not liable to be taken in execution in the proceedings or under the process.

**56                      Appointments by will under general power**

- (1) Where a provision contained in the will of a deceased person operates as an appointment under a general power to appoint by will, the property, whether real or personal, that passes by virtue of the provision vests in the executor or administrator as if the testator had been entitled to the property at his death, whether or not he was so entitled for an estate or interest determining on his death or for any other estate or interest.
- (2) Where a provision contained in the will of a person who died on or after 1 January, 1911, but before the commencement of this Act, operated as an appointment under a general power to appoint by will, the property, whether real or personal, that passed by virtue of the provision shall be deemed to have vested in the executor or administrator as if that property had been vested in the testator at the time of his death whether or not he was entitled to it for an estate or interest determining on his death or for any other estate or interest.
- (3) Subsection (2) does not affect:
  - (a) a right or title that accrued, before the commencement of this Act, under a disposition by an appointee which, but for that subsection, would be valid; or
  - (b) the operation of section 52.

**57                      Administration of assets**

- (1) Where the estate of a deceased person is sufficient for the payment in full of all the expenses, debts and liabilities payable from the estate, his real and personal property is, subject to the provisions of his will, if any, and to any law in force in the Territory as to charges on property, applicable in the order set out in Part I of Schedule 4

for the payment of the expenses, debts and liabilities payable from the estate.

- (2) Where the estate of a deceased person is insufficient for the payment in full of all the expenses, debts and liabilities payable from the estate, his real and personal property shall, subject to the Bankruptcy Act 1966 of the Commonwealth, be administered in accordance with the rules set out in Part II of Schedule 4.

## **58            Application of income of settled residuary estate**

- (1) Where a deceased person leaves a will containing a residuary gift by virtue of which real or personal property is settled by way of succession, this section applies to and in relation to the income derived from that property.
- (2) The income to which this section applies is not applicable in payment of:
  - (a) the funeral, testamentary or administrative expenses payable from the estate of the person;
  - (b) the debts or liabilities of the person;
  - (c) any interest that accrued on any such debts or liabilities before the death of the person; or
  - (d) any legacies bequeathed by the will of the person.
- (3) The income to which this section applies is applicable in payment of the interest (if any) that accrues:
  - (a) on the funeral, testamentary or administrative expenses payable from the estate of the person;
  - (b) after the death of the person, on the debts or liabilities of the person; or
  - (c) on any legacies bequeathed by the will of the person,before payment, and the income is so applicable in priority to any other assets in the estate of the person.
- (4) Subject to subsection (3), the income to which this section applies is payable to the person for the time being entitled to the income from the settled property.

- (5) Where, in the final adjustment of the estate of a deceased person among the persons entitled to share in the distribution of the estate:
- (a) property (other than property referred to in subsection (1)) is treated as if it had been used in the proper order in payment of the funeral, testamentary and administrative expenses, or of the debts and the liabilities of the estate, or of any legacies bequeathed by the will of the deceased person although it was not in fact so used; and
  - (b) income was earned by that property after the death of the person but before the property was so used or was deemed to have been so used,

that income shall, for the purposes of this section, be deemed to be income to which this section applies.

- (6) This section:
- (a) does not affect the rights of a creditor of the estate; and
  - (b) applies, subject to the provisions of the will of the deceased person and of any law in force in the Territory, with respect to charges on the property of a deceased person.

## **59            Real estate to be held upon trusts of will**

Subject to the provisions of this Part, the real estate of every deceased person devising that estate by his will, shall be held by his executor to whom probate has been granted, or the administrator with the will annexed, according to the trusts and dispositions of the will.

## **60            Rights of executor as to real estate**

The executor or the administrator to whom probate has been granted shall have the same rights, and be subject to the same duties, with respect to the real estate of the deceased, as executors or administrators have or are subject to with reference to personal estate.

## **Division 4            Distribution of intestacy**

### **61            Interpretation**

- (1) In this Division, unless the contrary intention appears:

***intestate*** means a deceased person who either does not leave a will or leaves a will but does not dispose effectively, by the will, of the whole or part of his real or personal property.

***intestate estate***, in relation to an estate, means:

- (a) in the case of an intestate who leaves a will – the real and personal property of the intestate that is not effectively disposed of by the will; or
- (b) in any other case – the real and personal property of the intestate.

***personal chattels***, in relation to an intestate, means:

- (a) the articles of household or personal use or adornment, plated articles, china, glassware, pictures, prints, linen, jewellery, clothing, books, musical instruments or apparatus, scientific instruments or apparatus, wines, liquors, consumable stores and domestic animals of the intestate; and
- (b) the motor cars and accessories of the intestate,

but does not include:

- (c) any chattels of the intestate used exclusively for business purposes; or
- (d) money and securities for money of the intestate.

***personal representative***, in relation to an intestate, means the executor of the will, or the administrator of the estate, of the intestate, as the case requires.

(2) For the purposes of this Division:

- (a) each spouse shall be regarded as a separate person; and
- (b) in ascertaining relationship it is immaterial whether the relationship is of the whole blood or the half blood.

## **62      Executor, &c., to hold property on trust, &c.**

The personal representative of an intestate holds, subject to his rights, powers and duties for the purposes of administration, the intestate estate on trust for the persons entitled to it in accordance with the succeeding provisions of this Division or the provisions of Division 4A.

## **63      Provisions relating to persons who at the date of death of the intestate are infants**

- (1) Where a person who is entitled, under the provisions of this Division, to the whole of, or a share in, the intestate estate of an

intestate has not attained, at the date of death of the intestate, the age of 18 years and is not married, the person is entitled to take the intestate estate, or the share in the intestate estate, beneficially, upon his attaining the age of 18 years or marrying before attaining that age.

- (2) Where a person to whom subsection (1) applies dies before attaining the age of 18 years and without having married, this Division applies in relation to the intestate estate of the intestate as if the person had died before the intestate.
- (3) This section does not affect the operation of a law in force in the Territory authorizing expenditure for the maintenance, advancement or benefit of a person under the age of 18 years out of property held on trust for, or for the benefit of, the person and, if property forming part of the intestate estate is expended for the maintenance, advancement or benefit of such a person and that person dies before attaining that age and without having married, the intestate estate shall, for the purposes of this Division, be deemed to have been reduced by the amount so expended.

#### **64 Presumption of survivorship not to apply**

Where an intestate and his spouse or de facto partner have died in circumstances rendering it uncertain which of them survived the other, this Division applies, as to the persons entitled to the intestate estate, as if the spouse or de facto partner had not survived the intestate.

#### **65 Estate by courtesy or right of dower not to arise**

An estate by courtesy or right of dower or an equivalent estate does not arise out of the real property as to which a person dies intestate.

#### **66 Distribution of intestate estate on intestacy**

- (1) The person or persons entitled to take an interest in the intestate estate of an intestate, and the interest in that estate that that person is or those persons are entitled to take shall, subject to this Division, be ascertained by reference to Schedule 6 according to the facts and circumstances existing in relation to the intestate.
- (2) Where an intestate is survived by his spouse or a de facto partner, his intestate estate shall be taken, for the purposes of Schedule 6 and subsection (1), not to include any personal chattels of the intestate.
- (3) For the purposes of Schedule 6, the value of the intestate estate of an intestate shall be ascertained by deducting from the gross value



of that intestate estate an amount equal to such of the debts and liabilities of the estate, the funeral and testamentary expenses, the costs and expenses of administering the estate and the estate duties, succession duties and other duties and fees payable in relation to the estate as are payable out of that intestate estate.

- (4) Where a paragraph of Schedule 6 provides for the payment of a sum out of the estate of an intestate and then provides for the payment of an additional sum equal to a particular proportion of the value of the balance of the intestate estate, the value of the balance of the intestate estate shall be ascertained for the purposes of that paragraph by ascertaining the value of the intestate estate in the manner provided by subsection (3) and deducting from that value the first-mentioned sum.
- (5) For the purposes of Schedule 6:
  - (a) the brothers and sisters of an intestate;
  - (b) the grandparents of an intestate;
  - (c) the brothers and sisters of a parent of an intestate; and
  - (d) the issue of any of those brothers or sisters who predeceased the intestate,

are the next of kin of the intestate.

## **67 Right of spouse or de facto partner to personal chattels**

- (1) This section applies to the personal chattels of an intestate so far as not effectively disposed of by his will (if any), and has effect subject to section 67A.
- (2) Where the intestate is survived either by a spouse or by a de facto partner, but not by both, the surviving spouse or de facto partner, as the case may be, is entitled to the personal chattels absolutely.
- (3) Where the intestate is survived by both a spouse and a de facto partner:
  - (a) the de facto partner is entitled to the personal chattels absolutely if:
    - (i) he or she was the de facto partner of the intestate for a continuous period of not less than 2 years immediately preceding the intestate's death, and the intestate did not at any time during that period live with the person to whom he or she was married; or

- (ii) the intestate is also survived by issue of the intestate and the de facto partner; and
- (b) except where paragraph (a) applies, the spouse is entitled to the personal chattels absolutely.

**67A Intestate aboriginals survived by more than one spouse**

Where an intestate Aboriginal is survived by more than one spouse, the whole or that part of the intestate estate, as the case may be, passing to the spouse of the intestate by force of section 66(1) and the value of the personal chattels of the intestate passing to the spouse by force of section 67 shall be divided into a number of parts equal to the number of spouses of that intestate and each spouse of the intestate is entitled to one of those parts of the estate and chattels.

**68 Manner of distribution to issue**

- (1) Where an intestate is survived by issue who are entitled to the whole or a part of his intestate estate:
  - (a) if only one child of the intestate survives the intestate - that person is entitled to the whole, or that part, of the intestate estate, as the case may be;
  - (b) if the intestate is survived by the issue of his child or one of his children but by no other issue – those issue are entitled to the whole, or that part, of the intestate estate, as the case may be, through all degrees according to their stocks, and, if there are more than one issue, in equal shares; or
  - (c) in any other case – the whole or that part of the intestate estate shall be divided into a number of parts ascertained in accordance with subsection (2) and:
    - (i) each child (if any) of the intestate who survived the intestate is entitled to one of those parts; and
    - (ii) the issue of each child (if any) of the intestate who died before the intestate leaving issue who survived the intestate are entitled to one of those parts through all degrees, according to their stocks, and, if there are more than one issue, in equal shares.
- (2) The number of parts for the purposes of subsection (1)(c) is a number equal to the sum of:
  - (a) a number equal to the number of children (if any) of the intestate who survived the intestate; and

- (b) a number equal to the number of children (if any) of the intestate who died before the intestate leaving a child or remoter issue who survived the intestate.

(3) Where:

- (a) an intestate has, within the period of 5 years immediately before his death, paid any money, or transferred or assigned any property, to or for the benefit of his child, or settled any money or property for the benefit of his child, by way of advancement or on marriage of the child; and
- (b) his intestate estate, or a part of his intestate estate, is divisible between the child, or the issue of the child, and other issue of the intestate,

the money or property shall be taken to have been paid, transferred, assigned or settled in or towards satisfaction of the share that the child will become entitled to take, or would become entitled to take if he were to survive the intestate, as the case may be, in the intestate estate or the part of the intestate estate unless:

- (c) the contrary intention was expressed or 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 so paid or settled, of all the property so transferred, assigned or settled or all that money and property, or of so much of all that money or property, or money and property, in respect of which such a contrary intention was not expressed or did not appear, does not exceed \$1,000.

- (4) Where any money or property is taken to have been paid, transferred, assigned or settled, in accordance with subsection (3), in or towards satisfaction of the share of a child of an intestate, 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 child or the issue of the child, as the case may be, is entitled to take under this Division in the intestate estate or a part of the intestate estate.

## **69 Manner of distribution to next of kin**

- (1) Where, by virtue of this Act, the next of kin of an intestate are entitled to his intestate estate, the persons entitled to that intestate estate shall be ascertained in accordance with the following paragraphs:
  - (a) the brothers and sisters of the intestate who survived the intestate, and the issue of a brother or sister of the intestate who died before the intestate, being issue who survived the intestate, are entitled to the intestate estate;
  - (b) if the intestate is not survived by any persons entitled to the intestate estate under paragraph (a) but is survived by one or more of his grandparents, the grandparent is entitled to the intestate estate or the grandparents are entitled to the intestate estate in equal shares, as the case requires; and
  - (c) if the intestate is not survived by any persons entitled to the intestate estate under paragraphs (a) and (b), the uncles and aunts of the intestate who survived the intestate and the issue of such an uncle or aunt who died before the intestate, being issue who survived the intestate, are entitled to the intestate estate.
- (2) The intestate estate of an intestate shall be divided amongst the brothers and sisters or the uncles and aunts of the intestate, and the issue of those brothers or sisters, or uncles or aunts, who died before the intestate, in the same manner as the intestate estate would have been divided amongst those persons if the brothers and sisters or the uncles and aunts, as the case may be, had been children of the intestate and the issue of a brother, sister, uncle or aunt who died before the intestate had been issue of a child of the intestate who died before the intestate.

## **70 Partial intestacies**

- (1) Where a beneficial interest in the real or personal property (other than personal chattels) of an intestate is acquired under a will of the intestate by a spouse or de facto partner of the intestate who, but for this section, would be entitled to an interest in the intestate's intestate estate by virtue of Schedule 6, then:
  - (a) the person or persons entitled to take an interest in the intestate estate; and
  - (b) the interest in that estate which that person or those persons is or are entitled to take,

shall be ascertained by reference to this section, with Schedule 6 applying only to the extent that this section so provides.

- (2) Where the intestate is not survived by issue or a parent, a brother or sister or the issue of a brother or sister – the spouse or de facto partner is entitled to the whole of the intestate estate.
- (3) Where the intestate is survived by issue:
  - (a) if the value of the beneficial interest that is acquired by the spouse or de facto partner under the will does not exceed the amount prescribed for the purposes of item 2 in Part I of Schedule 6 – that item (including that item as applied by Part II or III of Schedule 6) has effect as if references in it to the prescribed amount or the prescribed sum were references to the prescribed amount or the prescribed sum, as the case may be, reduced by the value of that beneficial interest; or
  - (b) if the value of the beneficial interest that is acquired by the spouse or de facto partner under the will exceeds the amount prescribed for the purposes of item 3 in Part I of Schedule 6:
    - (i) the spouse or de facto partner is entitled to be paid out of the intestate estate a sum equal to, if one child or the issue of one child of the intestate but no other issue of the intestate survives the intestate, one-half of the value of the intestate estate or, in any other case, one-third of the value of the intestate estate; and
    - (ii) the issue of the intestate are entitled to the balance of the intestate estate after payment to the spouse or de facto partner of the sum to which the spouse or de facto partner is entitled under subparagraph (i).
- (4) Where the intestate is not survived by issue but is survived by a parent, a brother or sister or the issue of a brother or sister:
  - (a) if the value of the beneficial interest that is acquired by the spouse or de facto partner under the will does not exceed the amount prescribed for the purposes of item 3 in Part I of Schedule 6 – that item (including that item as applied by Part II or III of Schedule 6) has effect as if references in it to the prescribed amount or the prescribed sum were references to the prescribed amount or the prescribed sum, as the case may be, reduced by the value of that beneficial interest; or

- (b) if the value of the beneficial interest that is acquired by the spouse or de facto partner under the will exceeds the amount prescribed for the purposes of item 3 in Part I of Schedule 6:
    - (i) the spouse or de facto partner is entitled to be paid out of the intestate estate a sum equal to one-half of the value of the intestate estate;
    - (ii) if the intestate is survived by one or both of his parents (whether or not the intestate is also survived by a brother or sister or the issue of a brother or sister) – the surviving parent is entitled, or the parents are entitled in equal shares, as the case may be, to the balance of the intestate estate after payment to the spouse or de facto partner of the sum to which the spouse or de facto partner is entitled under subparagraph (i); and
    - (iii) if the intestate is not survived by a parent – the brothers and sisters of the intestate who survive the intestate, and the issue who survive the intestate of a brother or sister of the intestate who died before the intestate, are entitled to the balance of the intestate estate, after payment to the spouse or de facto partner of the sum to which the spouse or de facto partner is entitled under subparagraph (i), in the shares in which he or they would have been entitled to the intestate estate if the intestate had not been survived by his spouse or de facto partner.
- (5) Section 66(3) applies for the purposes of subsections (3) and (4) in like manner as it applies for the purposes of Schedule 6.
- (6) Where a child of an intestate who is entitled to take an interest in his intestate estate also acquires an interest under the will of the intestate in the real or personal property of the intestate, the interest to which the child is entitled under the will 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 interest that the child is entitled to take under this Division in the intestate estate.
- (7) For the purposes of this section, a beneficial interest in real or personal property acquired by virtue of the exercise, by will, of a general power of appointment, shall be taken to be an interest acquired under that will.

## **Division 4A       Intestate Aboriginals**

### **71            Application**

- (1) This Division applies in respect of the intestate estate of an intestate Aboriginal who:
  - (a) has not entered into a marriage that is a valid marriage under the *Marriage Act 1961* of the Commonwealth; and
  - (b) dies after the commencement of the *Administration and Probate Act 1979*.
- (2) In this Division **intestate** and **intestate estate** have the meanings respectively ascribed thereto in Division 4.

### **71A        Intestate estate not to include debts, &c.**

For the purposes of this Division, the intestate estate of an intestate does not include an amount equal to such of the debts and liabilities of the estate, the funeral and testamentary expenses, the costs and expenses of administering the estate and the estate duties, succession duties and other duties and fees payable in relation to the estate as are payable out of the intestate estate.

### **71B        Applications for orders for distribution**

- (1) A person who claims to be entitled to take an interest in an intestate estate of an intestate Aboriginal under the customs and traditions of the community or group to which the intestate Aboriginal belonged or the Public Trustee may apply to the Court for an order under this Division in relation to the intestate estate.
- (2) An application under subsection (1) shall be accompanied by a plan of distribution of the intestate estate prepared in accordance with the traditions of the community or group to which the intestate Aboriginal belonged.

### **71C        Time for making applications**

- (1) Subject to subsection (2), an application under section 71B in respect of an intestate estate shall be made within a period of 6 months after the date on which administration has been granted in respect of the estate.
- (2) The Court may, after hearing such of the persons affected as the Court thinks necessary, extend the time in which an application may be made under section 71B.

- (3) An extension of time in pursuance of this section made be granted:
  - (a) upon such conditions as the Court thinks fit; and
  - (b) whether or not the time for making an application has expired.
- (4) An application for an extension under this section of the time within which an application under section 71B may be made shall not be made after the intestate estate has been lawfully and fully distributed.
- (5) An application under section 71B shall, for the purposes of this section, be deemed to have been made on the date upon which the notice of motion or other document instituting the application is filed.

#### **71D        Service of applications**

- (1) Where an application has been made to the Court under section 71B in relation to an intestate estate, the applicant shall cause notice of the application to be served on each person who is an administrator of the intestate estate.
- (2) The Court may:
  - (a) of its own motion, and either before or during the hearing of an application under section 71B; or
  - (b) on application made by the applicant or by the administrator of the intestate estate,order that notice of the application be served on such person as the Court thinks fit.

#### **71E        Distribution order**

- (1) Notwithstanding any other provision of this Act but subject to this Division, the Court may order that an intestate estate or a part of an intestate estate be distributed in the manner specified by the Court.
- (2) The Court shall, in making an order for the distribution of an intestate estate under this Division, take into account:
  - (a) the plan of distribution prepared under section 71B(2); and
  - (b) the traditions of the community or group to which the intestate Aboriginal belonged.



- (3) The Court shall not make an order for the distribution of an estate under this Division unless it is satisfied that to make the order would, in all the circumstances, be just.

**71F            Property in respect of which distribution order may be made**

- (1) Subject to subsection (2), but notwithstanding any distribution of an intestate estate made by the administrator of the estate before the administrator had notice of an application under section 71B in relation to the estate made within 6 months after the date on which administration of the estate was granted, the Court may make an order under this Division in respect of the property comprised in the intestate estate that has been so distributed.
- (2) The Court shall not make an order under sub-section (1) if the making of that order would affect or disturb a distribution that was a proper distribution made for the purposes of providing for the maintenance, education or advancement in life of a person who was totally or partially dependent on the intestate Aboriginal immediately before his death.

**Division 5                  Matrimonial home (including home of de facto partner)**

**72                Definitions**

- (1) In this Division, unless the contrary intention appears:

***dwelling*** includes:

- (a) a unit under the *Unit Titles Act*; and
- (b) a part of a building that is designed for occupation as a permanent residence.

***representation***, in relation to an intestate, means probate of the will, or administration (including administration with the will of the intestate annexed) of the estate, of the intestate, as the case requires.

***intestate***, ***intestate estate*** and ***personal representative*** have the same meanings, respectively, as in Division 4.

- (2) This Division does not apply to or in respect of the intestate estate of an Aboriginal who is survived by more than one spouse.

**73 Right of spouse or de facto partner to have matrimonial home appropriated**

- (1) Subject to the provisions of this Division, where the intestate estate of an intestate who is survived by his spouse or de facto partner comprises or includes an interest in a dwelling in which the spouse or de facto partner of the intestate was residing at the date of the intestate's death, the spouse or de facto partner may elect to have that interest appropriated under section 81 in or towards the satisfaction of any interest of the spouse or de facto partner in the real and personal property of the intestate; and, if the spouse or de facto partner so elects, the personal representative of the intestate shall appropriate that interest accordingly.
- (2) An election under this section may be exercised within a period of one year after the date on which representation in the estate of the intestate is granted by the Court or within such extended period as the Court allows.
- (3) Where:
  - (a) probate of a will of the intestate has been revoked on the ground that the will be invalid;
  - (b) a question whether a person had an interest in the estate of the intestate, or a question as to the nature of an interest claimed in the estate of the intestate, had not been determined at the time when administration of the estate was granted or first granted, as the case may be; or
  - (c) the Court, for any other reason affecting the administration or distribution of the estate, considers it proper to do so,the Court may extend the period specified in subsection (2).
- (4) An election by a spouse or de facto partner shall be furnished in writing:
  - (a) if the spouse or de facto partner is not a personal representative of the intestate - to the personal representative or to each personal representative, as the case may be, of the intestate;
  - (b) if the spouse or de facto partner is one of the personal representatives of the intestate - to the other personal representative, or to each other personal representative, as the case may be, of the intestate; or
  - (c) if the spouse or de facto partner is the sole personal representative of the intestate - to the Registrar.

- (5) An election is not revocable except with the consent of the personal representative or of each personal representative, as the case may be, of the intestate.
- (6) A spouse or de facto partner may require the personal representative of the intestate to have the interest in the dwelling valued, and to inform him of the result of that valuation, before deciding whether to exercise the right conferred by this Division.

**74                      Interest in matrimonial home to be valued**

For the purposes of this Division, the value of the interest of an intestate in a dwelling is the amount determined by a valuer, within the meaning of the *Valuation of Land Act*, engaged by the personal representatives of the intestate to be the market value of the interest.

**75                      Right not exercisable in case of certain tenancies**

The right conferred by this Division is not exercisable where the interest of the intestate in the dwelling is a tenancy:

- (a) that will determine within a period of 2 years after the date of death of the intestate; or
- (b) that the landlord is, by notice given after the date of death of the intestate, entitled to determine before the expiration of that period.

**76                      Right not exercisable in certain other cases**

Where:

- (a) a dwelling forms part of a building and an interest in the whole of the building is comprised in the intestate estate of an intestate;
- (b) a dwelling is held with agricultural land and an interest in the agricultural land is comprised in the intestate estate of an intestate;
- (c) the whole or part of a dwelling was, at the date of an intestate's death, used as a hotel or boarding-house; or
- (d) a part of a dwelling was, at the date of an intestate's death, used for purposes other than domestic purposes,

the right conferred by this Division on the spouse or de facto partner of the intestate in respect of the dwelling is not exercisable by the spouse or de facto partner unless the Court, being satisfied that the exercise of that right is not likely to:

(e) diminish the value of the assets (other than the interest in the dwelling) in the intestate estate; or

(f) make those assets more difficult to dispose of,

orders that it be so exercisable.

## **77 Personal representative not to sell or dispose of interest without consent**

- (1) A personal representative of an intestate is not authorized to sell or otherwise dispose of the interest of the intestate in a dwelling in which the spouse or de facto partner of the intestate was residing at the date of the intestate's death during the period of one year after the date on which representation in the estate of the intestate is granted by the Court or, if that period is extended by the Court, during that extended period without the consent in writing of the spouse or de facto partner, except in the course of administration owing to want of other assets or except with the approval of the Court.
- (2) Where on an application for an order under section 76 made by the spouse or de facto partner or by the personal representatives of the intestate, the Court does not order that the right conferred by section 73 may be exercised by the surviving spouse or de facto partner, the Court may approve the disposal of the interest in the dwelling within the period of one year referred to in subsection (1).
- (3) This section does not apply where the spouse or de facto partner of the intestate is the sole personal representative, or one of 2 or more personal representatives, of the intestate.
- (4) Nothing in this section shall be taken to affect the validity of a sale by the personal representatives of an intestate of any part of the estate of the intestate.

## **78 Rule that trustee not to purchase trust property**

Where the spouse or de facto partner of an intestate is the sole personal representative of the intestate or one of 2 or more personal representatives of the intestate, he may, notwithstanding that he is a trustee, acquire under this Division the interest of the intestate in the dwelling in which the spouse or de facto partner was residing at the date of the intestate's death.

**79        Surviving spouse or de facto partner under a legal disability**

- (1) Where the spouse or de facto partner of an intestate is a person under a disability, other than an infant, a requirement or consent under this Division may be made or given on his behalf by his guardian, if any, or, where there is no such guardian, by the Court.
- (2) A requirement of consent made or given under this Division by a surviving spouse or de facto partner who is an infant is as valid as it would be if he had attained the age of 18 years.

**Division 6        Rights, powers, duties and liabilities of executors and administrators**

**80        Powers of executors and administrators as to sale, mortgage, or lease of real estate**

- (1) Subject to this section, executors and administrators may, without the consent of any person or the order of a court:
  - (a) sell or mortgage the real estate of the deceased person for purposes of administration;
  - (b) sell the real estate of the deceased person as to which he died intestate, for purposes of distribution or division amongst the persons entitled;
  - (c) lease the real estate of the deceased person in possession for any term not exceeding 3 years; or
  - (d) subject to subsection (4), raise, on the security of the whole or any part of the intestate estate of the deceased person, any sum required by the executors or administrators for the purpose of paying to the spouse or de facto partner of the person the share, or a part of the share, of the spouse in the intestate estate of the person.
- (2) Any conditions may be imposed on the exercise of any such power of sale, mortgage, lease or raising of any sum by an administrator, and either generally or in the case of a particular sale, mortgage, lease or raising of any sum, by Rules of Court, or by the Court in the grant of administration (if any), or by other order.
- (3) The Registrar shall write on the letters of administration, and on any copy of the letters of administration issued by him, a certified copy of any conditions imposed by the Court under subsection (2).

- (4) The power conferred by subsection (1)(d) on the executors or administrators of a deceased person is exercisable only in a case where the deceased person is an intestate for the purposes of Division 4.
- (5) In this section, ***the intestate estate***, in relation to a person who is an intestate for the purposes of Division 4, has the same meaning as in that Division.
- (6) A purchaser, mortgagee, lessee or other person who for valuable consideration acquires an interest in the estate of a deceased person, or the Registrar-General or other person registering title under any sale, mortgage or lease under this section, is not bound to inquire whether the powers mentioned in subsection (1) or any of them are being or have been exercised for the purposes specified in that subsection, and the receipt of the executor or administrator shall be a sufficient discharge, and shall exonerate the persons paying the moneys from any responsibility for the application of the moneys expressed to have been so received.
- (7) Some or one only of several executors or administrators shall be entitled to exercise those powers with the leave of the Court, and not otherwise, and the Court may make such orders as it thinks fit for the purpose of carrying out any such sale, mortgage, lease or raising of any sum.

## **81 Powers of executors and administrators as to appropriation**

- (1) Subject to this section, the executor or administrator may, without the consent of any person or the order of a court, appropriate any part of the estate, including things in action, of the deceased person, in its actual condition or state of investment at the time of appropriation, in or towards satisfaction of any legacy bequeathed by the deceased person or of any other interest or share in his property, whether settled or not, as to the personal representative seems just and reasonable according to the respective rights of the persons interested in the property of the deceased.
- (2) An appropriation shall not be made under this section so as to affect prejudicially any specific device or bequest.

- (3) Subject to this section, an appropriation of property, whether or not it is an investment authorized by law or by the will (if any) of the deceased for the investment of money subject to the trust created by the will, shall not be made under this section except with the following consents:
  - (a) when made for the benefit of a person absolutely and beneficially entitled in possession – the consent of that person;
  - (b) when made in respect of any settled legacy, share or interest - the consent of either the trustee thereof, if any, (not being also the executor or administrator) or the person who is for the time being entitled to the income.
- (4) If the person whose consent is required under subsection (3) is an infant or a mentally defective person, the consent shall be given on his behalf by:
  - (a) his parents or parent, testamentary or other guardian or committee;
  - (b) the Court on the application of his next friend, if he is an infant and there is not such a parent or guardian; or
  - (c) the Court on the application of the executor or administrator, if he is a mentally defective person and there is not such a committee.
- (5) No consent (except of such a trustee as is mentioned in subsection (3)(b)) shall be required on behalf of a person who may come into existence after the time of appropriation or who cannot be found or ascertained at that time.
- (6) If, independently of the executor or administrator, there is no trustee of a settled legacy, share or interest and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of the legacy, share or interest provided that the appropriation is of an investment authorized by law or by the will (if any) of the deceased for the investment of money subject to the trust.
- (7) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorized investment and may be retained or dealt with accordingly.
- (8) For the purposes of such an appropriation the executor or administrator may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he thinks fit and shall for that purpose employ a duly qualified

valuer in any case where such employment may be necessary; and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.

- (9) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased person whose consent is not required by this section.
- (10) The executor or administrator shall in making the appropriation have regard to the rights of any person who may thereafter come into existence or who cannot be found or ascertained at the time of appropriation and of any other person whose consent is not required by this section.
- (11) This section shall not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased and where an appropriation is made under this section in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition and management or varying investments which would have been applicable to it or to the legacy, share or interest in respect of which the appropriation is made if no such appropriation had been made.
- (12) If, after any real estate (including chattels real) has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest in it, then in favour of a purchaser the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite consents (if any) had been given.
- (13) In this section a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation and includes also an annuity; and "purchaser" means a purchaser for money or money's worth.
- (14) This section:
  - (a) applies whether the deceased died intestate or not;
  - (b) extends to property over which a testator exercises a general power of appointment, including the statutory power to dispose of entailed interests; and
  - (c) authorizes the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.



**82 Court may make special order**

The Court or a Judge may, where administration has been granted, upon the application of the administrator, or in case of partial intestacy the executor or administrator with the will annexed, or of any person beneficially interested, and after such previous notice to the other parties and inquiry as the Court or Judge thinks fit, order and direct the course of proceedings which shall be taken in regard to:

- (a) the time and mode of sale of any real estate;
  - (b) the letting and management thereof until sale;
  - (c) the application for maintenance or advancement or otherwise of shares or income of shares of infants; and
  - (d) the expediency and mode of effecting a partition, if applied for,
- and generally in regard to the administration of the real estate for the greatest advantage of all persons interested.

**83 Court may authorize postponement of realization and carrying on of business**

- (1) The Court may, where it thinks it beneficial so to do and subject to such conditions as it thinks fit to impose, authorize an executor or administrator:
  - (a) to postpone, for such period as the Court thinks fit, the realization of the real or personal estate of a deceased person, or any part of that estate; or
  - (b) to carry on, for such period or periods as the Court from time to time thinks fit, the business, trade or occupation of the deceased person, and for that purpose to use therein such estate or part thereof.
- (2) An order under this section may be made either ex parte or on such notice as the Court in any case thinks proper, and may be varied from time to time as the Court thinks fit.
- (3) If an executor or administrator has, prior to the commencement of this Act, postponed the realization of the estate of a deceased person, or any part of that estate, or carried on the business, trade or occupation of the deceased person, the Court may, in its discretion, approve of any such postponement or carrying on of the business, trade or occupation, and the approval shall operate and take effect as if this section had been in force when such postponement or carrying on of the business, trade or occupation

occurred and the approval had been obtained prior thereto.

**84 Court may order partition in a summary way**

- (1) Where, upon an inquiry under section 82 the Court is satisfied that a partition of the real estate, or any part thereof, will be advantageous to the parties interested therein, the Court may appoint one or more arbitrators to effect the partition.
- (2) The report and final award of the arbitrators setting forth particulars of the land allotted to each party interested shall, when signed by them and confirmed by the order of the Court and registered in the office of the Registrar-General, be effectual without the necessity of any further conveyance to vest in each party the land so allotted to him, and an office copy of the award so signed, confirmed, and registered, shall for all purposes be equivalent to an indenture of conveyance to each party of the lands allotted to him.
- (3) In the case of land subject to the provisions of the *Real Property Act* each party shall be entitled to have issued to him a certificate as to title for the land so allotted to him.
- (4) If the allotment be made subject to the charge of any money payable to any other party interested for equalizing the partition, the charge shall take effect according to the terms and conditions in regard to time and mode and otherwise which are expressed in the award without the necessity of any further instrument being made or executed.
- (5) In the case of land subject to the provisions of the *Real Property Act*, the certificate as to title shall issue subject to the charge, unless the charge is satisfied.
- (6) The preceding provisions of this section do not authorize the partition of any real estate in contravention of the provisions of any other law in force in the Territory relating to the partition of that real estate.

**85 Personal representative not required to continue to act against own consent**

A personal representative shall not be required against his own consent to continue the duty of a trustee by managing the property during an enforced suspension of sale, but shall be entitled, upon that suspension being ordered, to relinquish his trust to such person as the Court appoints.

## **87 All debts to stand in equal degree**

- (1) In the administration of the estate of a deceased person, all the creditors of every description of that person shall, notwithstanding anything to the contrary contained in any law, be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person.
- (2) In the administration of the estate of a deceased person, in respect of which representation is granted under this Act, no debt or liability of that person shall be entitled to any priority or preference by reason only that it is due to an executor or administrator of the estate.
- (3) This Act shall not prejudice or affect any mortgage, lien, charge or other security which any creditor may hold or be entitled to for payment of his debt.
- (4) Nothing in this Act shall affect the provisions of any law protecting life assurance or other policies against creditors.

## **88 Summary application for legacy, &c.**

If the executor or administrator, after request in writing, neglects or refuses to:

- (a) execute a conveyance of land devised to the devisee; or
- (b) pay or hand over to the person entitled any legacy or residuary bequest,

the Court may, on the application of such devisee or person, make such order in the matter as it thinks fit.

## **89 Executor or administrator to pass certain accounts**

An executor or administrator of the estate of a deceased person shall, when required to do so by:

- (a) the Court; or
- (b) the *Supreme Court Rules*,

file or file and pass accounts relating to the administration of the estate.

**90            Passing and allowance of the accounts of executors and administrators**

The Registrar in the name and under the seal of the Court may make any order or grant any certificate which the Court may make or grant:

- (a) in and about the passing and allowance of the accounts of executors and administrators and the costs in connection therewith where no commission is applied for; or
- (b) in or in connection with the granting of further time to executors and administrators to file, to file and pass or to pass their accounts in a case where no objection is raised to the granting of the further time by a person interested or where no doubt or difficulty arises.

**91            Punishment for accounts not exhibited**

- (1) In case an executor or administrator neglects for one month after the expiration of the period fixed, to file an inventory or statement, or to file, to file and pass or to pass accounts, in accordance with section 89, the Registrar shall cause the executor or administrator to be notified of the neglect.
- (2) In the case of further neglect for a period of one month, the Registrar shall cause the executor or administrator to be summoned before the Court to show cause why he should not be ordered to file the inventory or statement or to file, to file and pass or to pass the accounts forthwith.
- (3) If the executor or administrator does not, within the prescribed time, or within such further time as is allowed him by the Court, file the inventory or file, file and pass or pass the accounts, as the case may be, in the prescribed manner or in such other manner as the Court orders, he shall be liable to punishment for contempt of court.
- (4) An executor or administrator to whom this section applies is, unless the Court otherwise orders, personally liable for the costs and expenses of any proceedings in pursuance of subsection (3).

**92            Proceedings under section 91 not to prejudice proceedings on bond**

Proceedings being taken under section 91 shall not prejudice the right to proceed against the executor or administrator for an account and administration, or prevent the Court from ordering the assignment of any bond to any person with a view to enforcing the penalty thereof.

**93 Court may make order as to disposal of moneys in hands of executor, &c.**

- (1) The Court may make such order, as it thinks fit, with reference to the distribution or application of any moneys which the executor, administrator or Public Trustee has in hand, or as to the residue of the estate.
- (2) No final order for distribution shall be made except upon notice to all the parties entitled.

**94 Payments under revoked probates or administrations valid**

The executor or administrator who has acted under any revoked or rescinded probate or administration may retain and reimburse himself, or shall be entitled to be reimbursed for, an amount equal to the amount of any payments made by him which the person to whom probate or administration is afterwards or was originally granted might have lawfully made.

**95 Persons, &c., making payments upon probate granted for estate of deceased person to be indemnified**

All persons making or permitting to be made any payment or transfer, bona fide, upon any probate or administration or order granted in respect of the estate of any deceased person under the authority of this Act shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the probate or administration or order not then known to those persons.

**96 Distribution of assets, &c.**

- (1) Where an executor or administrator has given such or the like notices as, in the opinion of the Court in which the executor or administrator is sought to be charged, would have been given by the Supreme Court in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, the executor or administrator may at the expiration of the time named in the notices, or the last of the notices, for sending in those claims, distribute the assets of the testator or intestate, or any part thereof, amongst the persons entitled thereto, having regard to the claims of which the executor or administrator has then notice.
- (2) The executor or administrator shall not be liable for the assets or any part thereof so distributed to any person of whose claim he has not had notice at the time of the distribution.

- (3) An action shall not lie against the administrator of an intestate estate of an intestate Aboriginal by reason of the distribution of the whole or any part of the intestate estate of the Aboriginal if the distribution was a distribution made in pursuance of an order under Division 4A of Part III or if:
- (a) the distribution was made before the administrator had notice of an application for such an order; and
  - (b) before making the distribution, the administrator had given notices under subsection (1) and the time specified in the notices or in the last of the notices for the sending in of claims had expired.

**97 Claim barred against executor or administrator in certain cases**

- (1) When an executor or administrator has given the notices mentioned in section 96, and a claim against the estate is sent in to him, he may, if he disputes the claim, serve upon the person, by whom or on whose behalf the claim was sent in, a notice calling upon him to take proceedings to enforce his claim within a period of 6 months, and to duly prosecute the claim.
- (2) If, after that period of 6 months has expired, that person does not satisfy the Court that he is duly prosecuting his claim, the Court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as appear just, or make such other order as the Court thinks fit.

**98 Distribution of estate by executors and administrators**

- (1) Where an executor or administrator liable as such, under any lease or agreement for a lease, granted or assigned to, or made and entered into with, the testator or intestate whose estate is being administered, to the rents, covenants or agreements contained in the lease or agreement for a lease has:
- (a) satisfied all such liabilities under the lease, or agreement for a lease, as have accrued due and been claimed up to the assignment mentioned in paragraph (c);
  - (b) set apart a sufficient sum to answer any future claim that may be made in respect of any fixed and ascertained sum, covenanted or agreed by the lessee, to be laid out on the property demised, or agreed to be demised, although the period for laying out the sum may not have arrived; and

- (c) assigned the lease, or agreement for a lease, to a purchaser, or to a legatee, devisee, or other person entitled to call for a conveyance thereof,

he may distribute the estate of the testator or the intestate remaining in his hands amongst the parties entitled thereto respectively, without appropriating any part, or any further part thereof, as the case may be, to meet any future liability under the lease, or agreement for a lease.

- (2) An executor or administrator so distributing the estate shall not, after having made or executed that assignment, and having, where necessary, set apart that sufficient fund, be personally liable in respect of any subsequent claim under the lease, or agreement for a lease.
- (3) In this section **lease** includes an underlease.

## **99 Right to follow assets**

Nothing in section 96, 97 or 98 contained shall prejudice the right of any creditor or claimant or lessor, or those claiming under any lessor, to follow the assets or estate, or any part thereof, into the hands of the persons, or any of them, among whom they may have been distributed, or who may have received them.

## **101 Every executor, &c., to be deemed resident in the territory**

- (1) Every executor or administrator:
  - (a) named in any probate or letters of administration granted by any Court of competent jurisdiction in any portion of a Commonwealth country and making application under the provisions of this Act for the sealing of the probate or administration; or
  - (b) appointed under this Act,shall be deemed to be resident in the Territory.
- (2) Where not actually so resident, he shall, before the issue or sealing of any probate or administration, file with the Registrar an address in the Territory at which notices and processes may be served upon him; and all services at that registered address shall be deemed personal service.

**Division 7      Commission****102      Executors, &c., may be allowed commission**

- (1) It shall be lawful for the Court to allow out of the assets of a deceased person to his executor, administrator or trustee for the time being, in passing his accounts, such commission or percentage, not exceeding 5% for his pains and trouble as is just and reasonable.
- (2) No such allowance shall be made to an executor, administrator or trustee who neglects or omits, without a special order of the Court, to pass his accounts in accordance with section 89.

**Part IV      Small estates****106      Application to registrar**

In all cases where a person dies leaving property not exceeding \$15,000 (or, where another amount is for the time being prescribed, that other amount) in value, application for representation may be made direct to the Registrar.

**107      Duties of registrar**

- (1) The Registrar shall, upon being satisfied as to:
  - (a) the identity of the applicant;
  - (b) the right of the applicant to administer the estate of the deceased; and
  - (c) the value of the estate,furnish him with all necessary information for the purpose of enabling him to fill up advertisements, affidavits and documents necessary for obtaining representation.
- (2) The Registrar may:
  - (a) swear the applicant and every deponent; and
  - (b) attest the execution of the administration bond.
- (3) The Registrar shall receive payment, in connection with the application, of all proper fees fixed by the Rules of Court.



**108 Registrar to issue probate or administration in the name of the court**

- (1) The Registrar shall, upon being satisfied:
- (a) with the sufficiency of the evidence in support of the application;
  - (b) that the estate does not exceed \$15,000 (or, where another amount is for the time being prescribed, that other amount) in value;
  - (c) that no caveat has been entered against the application; and
  - (d) that no will has been deposited with the Public Trustee,
- cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand.
- (2) Probate or administration under this section shall be issued in the name and under the seal of the Court.

**109 Matters as to which registrar not satisfied**

In any case where the Registrar is not satisfied as to the matters mentioned in section 108, he shall state, to the applicant, the matters in respect of which he is not satisfied.

**110 Obligation of registrar**

In no case shall the Registrar be under any obligation by reason of this Part to deal with any application which he may think proper to be dealt with by the Court, or to be placed in the hands of a solicitor.

**Part V Recognition of foreign grants****111 Reseal of grant made in certain countries**

- (1) Where a court of competent jurisdiction in a Commonwealth country has, whether before or after the commencement of this Act, granted probate of a will, administration of an estate or an order to collect and administer an estate, the person who is:
- (a) in the case of a probate of a will:
    - (i) the executor to whom the probate was granted;

- (ii) a person authorized by that executor, under a power of attorney, to make the application; or
  - (iii) the executor, by representation, of the will;
- (b) in the case of administration of an estate:
  - (i) the administrator to whom the administration was granted; or
  - (ii) the person authorized by that administrator, under a power of attorney, to make the application; or
- (c) in the case of an order to collect and administer an estate – a public trustee in the country or a part of the country to whom the order was granted,

may, upon producing the probate, administration or order to the Registrar and depositing a copy of it with the Registrar, apply to the Court to have it sealed with the seal of the Court, and the Court may seal it accordingly.

- (2) Where an application is made under subsection (1) the Registrar may, subject to subsection (3), seal the probate, administration or order in the name and under the seal of the Court and if he does so the probate, administration or order shall be deemed to have been sealed by the Court.
- (3) The Registrar shall not seal the probate, administration or order without an order of the Court:
  - (a) in any case where a caveat has been lodged; or
  - (b) in any case in which it appears to the Registrar to be doubtful whether the probate, administration or order should be sealed.
- (4) Where a probate or administration is sealed under subsection (1) or (2):
  - (a) the probate or administration has the same force, effect and operation as if it had been originally granted by the Court; and
  - (b) the person who made the application under subsection (1) shall perform the same duties and be subject to the same liabilities as if the probate or administration had been originally granted by the Court and he was the person to whom the probate or administration had been so granted.

- (5) Where an order to collect and administer an estate is sealed under subsection (1) or (2), the person who made application for the sealing of the order has the same duties and is subject to the same liabilities as if he was the Public Trustee under the *Public Trustee Act*.
- (6) The Court, may, before or after a probate administration or order to collect and administer an estate is sealed under subsection (1) or (2), require the applicant to give security for the proper administration of the estate to which it relates.
- (7) In this section, a reference to an order to collect and administer an estate shall be read as including a reference to an exemplification of such an order.

## **112      Caveat**

Any person may lodge with the Registrar a caveat against the sealing of any such probate or administration, and any such caveat shall have the same effect, and shall be dealt with in the same manner, as if it were a caveat against the granting of probate or administration.

## **113      Seal not to be affixed till duty is paid, &c.**

- (1) The seal of the Court shall not be fixed to any such probate or administration until all such succession duties and other duties and fees but not including estate duty have been paid as would have been payable if the probate or administration had been originally granted by the Court.
- (2) The administration shall not be so sealed until such bond has been entered into as would have been required if the administration had been originally granted by the Court.
- (3) The seal of the Court shall not be affixed to any such probate or administration except upon an affidavit that notices of the intention to apply in that behalf have been published, once in a newspaper printed and published in Darwin and once in a newspaper printed and published in Alice Springs at least 14 days before the making of the affidavit, and that no caveat has been lodged in respect thereof.

## **114      Inclusion of orders to collect and Scotch confirmation**

A reference in this Part to probate or administration shall be read as including a reference to:

- (a) an order to a curator or other person to collect and administer an estate; and

- (b) a confirmation of the executor or another person granted in a Sheriff Court in Scotland.

## **Part VII                      Procedure**

### **147                      Order to produce an instrument purporting to be testamentary**

- (1) The Court may, whether any proceeding is or is not pending in the Court with respect to any probate or administration, order any person to produce and bring into the office of the Registrar any paper or writing, being or purporting to be testamentary, or otherwise material to the matter before the Court, which is shown to be in the possession or under the control of that person.
- (2) If it is not shown that any such paper or writing is in the possession or under the control of that person, but it appears that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined in open court or upon interrogatories respecting the paper or writing.
- (3) Any such person directed so to attend shall be bound to answer such questions or interrogatories, and (if so ordered) to produce and bring in the paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering those questions or interrogatories, or not bringing in that paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made that default.

## **Part VIII                      Miscellaneous**

### **148                      Registrar to keep record of probates, &c.**

- (1) The Registrar shall cause entries to be made in a book to be kept for that purpose of:
  - (a) all grants of probate and administration;
  - (b) all elections and orders to collect;
  - (c) the filing, passing and allowance of the accounts required to be filed or to be filed and passed under section 89; and
  - (d) any special order extending the time for passing those accounts.

- (2) The book referred to in subsection (1) shall set forth:
- (a) the dates of the grants, elections and orders;
  - (b) the names of the testators or intestates;
  - (c) the place and time of death;
  - (d) the names and description of the executors or administrators;
  - (e) the sworn value of the estates; and
  - (f) the dates of the filing, passing and allowance of, and special orders with reference to, the accounts.

**149 Proved wills and other documents to be held by registrar**

An original will:

- (a) which is brought into the Court;
- (b) probate of which is granted under this Act; or
- (c) a copy of which is annexed to administration granted under this Act,

and such other documents as the Court directs shall be deposited and preserved at the office of the Registrar and may, subject to the Rules, be inspected there.

**150 Office copies**

- (1) A person may, on payment of the fee (if any) payable to the Registrar under this Act, obtain from the Registrar:
- (a) a certificate or exemplification of a grant of probate or administration; or
  - (b) a copy of:
    - (i) the whole or a part of a will; or
    - (ii) such other document as the Court approves.
- (2) Notwithstanding subsection (1), the Registrar shall, at the request of a person who is a party to a matter under this Act, furnish to that person, free of charge, one office copy of a will or other document to which the matter relates.

**152      Person fraudulently disposing of will liable for damages**

Where a person suffers damage as a result of the stealing of a will or a part of a will, or as a result of the fraudulent destroying, cancelling, obliterating or concealing of a will or a part of a will, the person may recover damages in respect of the damage by action in a court of competent jurisdiction from the person who stole, destroyed, cancelled, obliterated or concealed the will or part, as the case may be.

**152A      Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing:

- (a) the proportion of an estate to which a spouse or de facto partner is entitled;
- (b) the value of an intestate estate for the purpose of determining its distribution in accordance with Schedule 6;
- (c) the proportions payable to persons other than the spouse or de facto partner of an intestate who are entitled to share in the intestate estate; and
- (d) the fees payable in respect of any matter under this Act.

## **Schedule 4**

section 57

### **PART I**

#### *Order of Application of Assets where the Estate is Solvent*

1. Assents undisposed of by will, subject to the retention out of those assets of a fund sufficient to meet any pecuniary legacies.
2. Assets not specifically disposed of by will but included (either by a specific or general description) in a residuary gift, subject to the retention out of those assets of a fund sufficient to meet any pecuniary legacies which are not provided for out of the assets undisposed of by will.
3. Assets specifically unappropriated or disposed of by will (either by a specific or general description) for the payment of debts.
4. Assets charged with, or disposed of by will (either by a specific or general description) subject to a charge for, the payment of debts.
5. The fund, if any, retained to meet pecuniary legacies.
6. Assets specifically disposed of by will, rateably according to value.

### **PART II**

#### *Rules as to Payment of Debts and Liabilities when the Estate is Insolvent*

1. The funeral, testamentary and administration expenses have priority.
2. Subject to the last preceding rule, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to the valuation of annuities and future and contingent liabilities, respectively, and as to the priorities of debts and liabilities as are in force at the death of the deceased person under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.
3. In the application of those rules, the date of the death of the deceased person shall be substituted for the date of the sequestration order.

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**Schedule 5 Commonwealth countries**

section 6

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Barbados	Malaysia
Botswana	Malta
Canada	New Zealand
Ceylon	Federal Republic of Nigeria
Republic of Cyprus	Pakistan
The Gambia	Sierra Leone
Ghana	Republic of Singapore
Guyana	United Republic of Tanzania
India	Trinidad and Tobago
Jamaica	Uganda
Kenya	United Kingdom of Great Britain and Northern Ireland
Lesotho	Zambia
Malawi	



## Schedule 6 Distribution of intestate estate upon intestacy

section 66

### PART I – MANNER OF DISTRIBUTION WHERE INTESTATE IS SURVIVED BY A SPOUSE AND NOT BY ANY DE FACTO PARTNER

Item	Circumstances	Manner in which the intestate estate of the intestate is to be distributed
1.	Where the intestate is not survived by: <ul style="list-style-type: none"> <li>(a) issue; or</li> <li>(b) a parent, a brother or sister or the issue of a brother or sister.</li> </ul>	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"> <li>1. The spouse is entitled:               <ul style="list-style-type: none"> <li>(a) if the value of the intestate estate does not exceed the prescribed amount – to the whole of the intestate estate; or</li> <li>(b) if the value of the intestate estate exceeds the prescribed amount – to be paid out of the intestate estate the prescribed sum and an additional sum equal to:                   <ul style="list-style-type: none"> <li>(i) if one child or the issue of one child of 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</li> <li>(ii) if any other case – one-third of the value of the balance of the intestate estate.</li> </ul> </li> </ul> </li> <li>2. The issue of the intestate</li> </ol>

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|----|--|--|
|    |  | 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 paragraph 1.   |
| 3. | Where the intestate is not survived by issue but is survived by a parent, a brother or sister or the issue of a brother or sister. | <ol style="list-style-type: none"><li>1. the spouse is entitled:<ol style="list-style-type: none"><li>(a) if the value of the intestate estate does not exceed the prescribed amount – to the whole of the intestate estate; or</li><li>(b) if the value of the intestate estate exceeds the prescribed amount – to be paid out of the intestate estate the prescribed sum and an additional sum equal to one-half of the value of the balance of the intestate estate.</li></ol></li><li>2. If the intestate is survived by one or both of his parents (whether or not the intestate is also survived by a brother or sister or the issue of a brother or sister), the surviving parent is entitled, or the parents are entitled in equal shares, as the case may be, 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 paragraph 1.</li><li>3. If the intestate is not survived by a parent, the brothers and sisters of the intestate who survive the intestate, and the issue who survive the intestate of a brother or sister of the intestate who died before the</li></ol> |
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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 paragraph 1 of this item in the shares in which he or they would have been entitled to the intestate estate if the intestate had not been survived by his or her spouse.

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## **PART II – MANNER OF DISTRIBUTION WHERE INTESTATE IS SURVIVED BY A DE FACTO PARTNER BUT NOT BY A SPOUSE**

Where the intestate is survived by a de facto partner, but not by a spouse:

- (a) if the intestate is not survived by issue, item 1 or (as the case requires) 3 in Part I shall apply as if references to the spouse of the intestate were references to the de facto partner; and
- (b) if the intestate is survived by issue, item 2 in Part I shall apply similarly where:
  - (i) the issue are, or include, issue of the intestate and the de facto partner; or
  - (ii) the de facto partner was the de facto partner of the intestate for a continuous period of not less than 2 years immediately preceding the intestate's death,

but in any other case the issue shall be entitled to the whole of the intestate estate.

## **PART III – MANNER OF DISTRIBUTION WHERE INTESTATE IS SURVIVED BY BOTH A SPOUSE AND A DE FACTO PARTNER**

1. Where the intestate is survived by both a spouse and a de facto partner, and:

- (a) the de facto partner was the de facto partner of the intestate for a continuous period of not less than 2 years immediately preceding the intestate's death, and the intestate did not at any time during that period live with the person to whom he or she was married; or

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- (b) the intestate is also survived by issue of the intestate and the de facto partner,

items 1 to 3 (inclusive) in Part I shall apply as if references to the spouse of the intestate were references to the de facto partner.

2. Where the intestate is survived by both a spouse and a de facto partner and clause 1 does not apply, the intestate shall be treated as having been survived by the spouse and not by the de facto partner, and Part I shall have effect accordingly.

**PART IV – MANNER OF DISTRIBUTION WHERE INTESTATE IS  
SURVIVED BY NEITHER A SPOUSE NOR A DE FACTO PARTNER**

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Item	Circumstances	Manner in which the intestate estate of the intestate is to be distributed
<hr/>		
1.	Where the intestate is survived by issue.	The issue are entitled to the whole of the intestate estate.
2.	Where the intestate is not survived by issue but is survived by a parent or both parents.	The parent is entitled to the whole of the intestate estate or, if both parents survive the intestate, the parents are entitled to the whole of the intestate estate in equal shares.
3.	Where the intestate is not survived by issue or by a parent but is survived by next of kin.	The next of kin are entitled to the intestate estate in accordance with section 69.
4.	Where the intestate is not survived by issue, by a parent or by next of kin.	The interstate estate shall be deemed to be bona vacantia and the Territory is entitled to it.

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## 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*****Administration and Probate Ordinance 1969 (Act No. 38, 1969)***

Assent date	17 October 1969
Commenced	8 February 1971 (Gaz No. 51, 23 December 1970, p 371)

***Ordinances Revision Ordinance 1973 (Act No. 87, 1973)***

Assent date	11 December 1973
Commenced	11 December 1973 (s 12(2))

***Amending Legislation******Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

Assent date	26 August 1974
Commenced	11 December 1973 (s 3(2))

***Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)***

Assent date	24 October 1974
Commenced	11 December 1973 (s 3)

***Ordinances Revision Ordinance 1976 (Act No. 27, 1976)***

Assent date	28 June 1976
Commenced	ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974

***Administration and Probate Ordinance 1974 (Act No. 22, 1974)***

Assent date	19 August 1974
Commenced	19 August 1974

***Age of Majority Ordinance 1974 (Act No. 37, 1974)***

Assent date	23 September 1974
Commenced	1 November 1974 (Gaz No. 42, 17 October 1974, p 475)

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***Transfer of Powers (Further Provisions) Ordinance 1977 (Act No. 51, 1977)***

Assent date 9 December 1977  
Commenced 1 January 1978 (s 2)

***Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)***

Assent date 1 July 1978  
Commenced 1 July 1978 (s 2)

***Status of Children Act 1978 (Act No. 16, 1979)***

Assent date 26 January 1979  
Commenced 21 September 1979 (Gaz G38, 21 September 1979, p 1)

***Administration and Probate Act 1979 (Act No. 38, 1979)***

Assent date 27 April 1979  
Commenced 3 December 1979 (Gaz S25, 28 November 1979, p 1)

***Administration and Probate Act (No. 2) 1979 (Act No. 90, 1979)***

Assent date 10 August 1979  
Commenced 3 December 1979 (s 2, s 2 *Public Trustee Act 1979* (Act No. 84, 1979) and Gaz S25, 28 November 1979)

***Statute Law Revision Act 1980 (Act No. 6, 1981)***

Assent date 9 January 1981  
Commenced 9 January 1981

***Statute Law Revision Act 1981 (Act No. 29, 1981)***

Assent date 25 March 1981  
Commenced 25 March 1981

***Statute Law Revision Act (No. 3) 1981 (Act No. 91, 1981)***

Assent date 21 September 1981  
Commenced 21 September 1981

***Administration and Probate Amendment Act 1983 (Act No. 24, 1983)***

Assent date 24 June 1983  
Commenced 28 October 1983 (Gaz G43, 28 October 1983, p 2)

***Administration and Probate Amendment Act 1985 (Act No. 9, 1985)***

Assent date 1 April 1985  
Commenced 1 May 1985 (Gaz G17, 1 May 1985, p 8)

***Administration and Probate Amendment Act 1988 (Act No. 17, 1988)***

Assent date 15 June 1988  
Commenced 15 June 1988

***Administration and Probate Amendment Act 1989 (Act No. 55, 1989)***

Assent date 2 October 1989  
Commenced 2 October 1989

***Statute Law Revision Act 1989 (Act No. 60, 1989)***

Assent date 2 October 1989  
Commenced 2 October 1989

***Statute Law Revision Act 1990 (Act No. 33, 1990)***

Assent date 11 June 1990  
Commenced 11 June 1990

***Real Property (Consequential Amendments) Act 1991 (Act No. 33, 1991)***

Assent date	25 June 1991
Commenced	1 October 1991 ( <i>Gaz</i> S49, 1 October 1991)

***Statute Law (Miscellaneous Amendments) Act 1991 (Act No. 77, 1991)***

Assent date	16 December 1991
Commenced	16 December 1991

***Administration and Probate Amendment (De Facto Relationships) Act 1991 (Act No. 83, 1991)***

Assent date	24 December 1991
Commenced	1 January 1992 (s 2)

***Administration and Probate Amendment Act 1993 (Act No. 22, 1993)***

Assent date	24 June 1993
Commenced	24 June 1993

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

- s 6 *Transfer of Powers (Further Provisions) Ordinance 1977* (Act No. 51, 1977)
- s 8 *Transfer of Powers (Self-Government) Ordinance 1978* (Act No. 54, 1978)
- s 12 *Administration and Probate Act (No. 2) 1979* (Act No. 90, 1979)
- s 6 *Administration and Probate Amendment Act 1985* (Act No. 9, 1985)

**4 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to: ss 3, 4, 6, 9, 10, 12, 13, 16, 18, 22, 23, 26, 30, 31, 34, 35, 41 – 44, 51, 53 – 56, 58, 61, 63, 66, 68, 69, 70, 71, 73, 75, 77 – 81, 84, 89, 91, 92, 97 – 99, 101 – 104, 106, 108, 109, 111, 113, 115, 118, 120 – 122, 124, 127, 130, 131, 135, 140, 143 – 145, 148, 149 and Sixth sch.

**5 LIST OF AMENDMENTS**

It	amd No. 6, 1981, s 4
ss 1 – 2	amd No. 6, 1981, s 4
s 3	amd No. 22, 1974, s 3; No. 6, 1981, s 4; No. 29, 1981, s 2; No. 91, 1981, s 2 rep No. 77, 1991, s 13
s 4	rep No. 38, 1979, s 4
s 5	rep No. 22, 1974, s 4
s 6	amd No. 38, 1979, s 5; No. 90, 1979, s 4; No. 6, 1981, ss 2 and 4; No. 29, 1981, s 2; No. 91, 1981, s 2; No. 55, 1989, s 3; No. 55, 1989, s 4; No. 60, 1989, s 6; No. 77, 1991, s 13; No. 83, 1991, s 4
s 7	rep No. 51, 1977, s 3
s 8	amd No. 51, 1977, s 3; No. 54, 1978, s 4; No. 6, 1981, s 4; No. 55, 1989, s 4 rep No. 77, 1991, s 13
ss 9 – 10	amd No. 6, 1981, s 4 rep No. 77, 1991, s 13
s 11	amd No. 54, 1978, s 4 rep No. 90, 1979, s 5
s 12	rep No. 90, 1979, s 5
s 13	amd No. 54, 1978, s 4 rep No. 90, 1979, s 5

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s 16	amd No. 29, 1981, s 4
s 18	amd No. 55, 1989, s 5
s 21	amd No. 6, 1981, s 4
s 22	amd No. 37, 1974, s 10; No. 55, 1989, s 14; No. 83, 1991, s 5
s 23	amd No. 51, 1977, s 3; No. 54, 1978, s 4; No. 90, 1979, s 6 sub No. 55, 1989, s 6
s 24	rep No. 55, 1989, s 6
s 25	amd No. 90, 1979, s 7; rep No. 55, 1989, s 6
s 26	amd No. 51, 1977, s 3; No. 54, 1978, s 4; No. 55, 1989, s 14
s 30	amd No. 37, 1974, s 10
s 31	amd No. 55, 1989, s 14; No. 83, 1991, s 11
s 34	amd No. 37, 1974, s 10; No. 55, 1989, ss. 7 and 14
s 37	amd No. 55, 1989, s 14
ss 40 – 41	amd No. 55, 1989, s 14
s 41	sub No. 55, 1989, s 8
s 43	amd No. 6, 1981, s 4
s 44	sub No. 55, 1989, s 9 amd No. 22, 1974, s 5
ss 45 – 49	rep No. 55, 1989, s 9
s 50	amd No. 90, 1979, s 8 rep No. 55, 1989, s 9
s 51	amd No. 90, 1979, s 9; No. 6, 1981, s 4
s 55	amd No. 29, 1981, s 2
s 56	amd No. 6, 1981, s 4
s 57	amd No. 6, 1981, s 4; No. 29, 1981, s 2; No. 91, 1981, s 2
ss 60 – 61	amd No. 55, 1989, s 14
s 62	amd No. 38, 1979, s 6
s 63	amd No. 37, 1974, s 10
s 64	amd No. 83, 1991, s 11
s 66	amd No. 29, 1981, s 2; No. 91, 1981, s 2; No. 83, 1991, s 11
s 67	amd No. 38, 1979, s 7 sub No. 83, 1991, s 6
s 67A	ins No. 38, 1979, s 8
s 68	amd No. 6, 1981, s 4; No. 29, 1981, s 2
s 69	amd No. 87, 1973, s 12; No. 6, 1981, s 4
s 70	amd No. 6, 1981, s 4; No. 29, 1981, s 2; No. 91, 1981, s 2; No. 83, 1991, s 7
pt III	
div 4A hdg	ins No. 38, 1979, s 9
s 71	rep No. 16, 1979, s 19 ins No. 38, 1979, s 9
s 71A	ins No. 38, 1979, s 9
s 71B	ins No. 38, 1979, s 9 amd No. 90, 1979, s 10
ss 71C – 71F	ins No. 38, 1979, s 9
pt III	
div 5 hdg	amd No. 83, 1991, s 11
s 72	amd No. 38, 1979, s 10; No. 55, 1989, s 10
s 73	amd No. 55, 1989, s 14; No. 83, 1991, s 8
ss 74 – 75	amd No. 55, 1989, s 14
ss 76 – 77	amd No. 55, 1989, s 14; No. 83, 1991, s 11
s 79	amd No. 37, 1974, s 10; No. 55, 1989, s 14; No. 83, 1991, s 9
s 80	amd No. 6, 1981, s 4; No. 83, 1991, s 11
s 81	amd No. 6, 1981, s 4
s 83	amd No. 6, 1981, s 4
s 84	amd No. 6, 1981, s 4; No. 55, 1989, s 14; No. 33, 1991, s 7
s 86	rep No. 55, 1989, s 14
s 87	amd No. 6, 1981, s 4; No. 29, 1981, s 2



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s 88	amd No. 55, 1989, s 11
s 89	sub No. 22, 1993, s 2
	amd No. 9, 1985, s 4; No. 55, 1989, s 14
s 89A	ins No. 9, 1985, s 5
	amd No. 55, 1989, s 12
	rep No. 22, 1993, s 2
s 91	amd No. 55, 1989, s 13
s 93	amd No. 55, 1989, s 14
s 95	amd No. 6, 1981, s 2
s 96	amd No. 38, 1979, s 11
s 96	amd No. 55, 1989, s 14
s 99	amd No. 29, 1981, s 2
s 100	rep No. 55, 1989, s 14
s 101	amd No. 22, 1974, s 6; No. 6, 1981, s 4; No. 55, 1989, s 14; No. 77, 1991, s 13
pt III	
div 7 hdg	amd No. 33, 1990, s 2
s 102	rep No. 55, 1989, s 14
	ins No. 33, 1990, s 2
s 103	amd No. 6, 1981, s 4; No. 29, 1981, s 2
	rep No. 55, 1989, s 14
s 104	rep No. 33, 1990, s 2
s 105	rep No. 33, 1990, s 2
s 106	amd No. 38, 1979, s 12; No. 17, 1988, s 2
s 108	amd No. 6, 1981, s 4; No. 17, 1988, s 3; No. 55, 1989, s 14
s 111	amd No. 6, 1981, s 4
s 115	amd No. 54, 1978, s 4
	rep No. 90, 1979, s 11
ss 116 – 117	rep No. 90, 1979, s 11
ss 118 – 119	amd No. 54, 1978, s 4
	rep No. 90, 1979, s 11
ss 121 – 127	rep No. 90, 1979, s 11
s 128	amd No. 54, 1978, s 4
	rep No. 90, 1979, s 11
ss 129 – 142	rep No. 90, 1979, s 11
s 143	amd No. 54, 1978, s 4
	rep No. 90, 1979, s 11
s 144	amd No. 54, 1978, s 4
s 145	amd No. 54, 1978, s 4
	rep No. 90, 1979, s 11
s 146	rep No. 55, 1989, s 14
s 147	amd No. 55, 1989, s 14
s 148	amd No. 22, 1993, s 3
s 149	amd No. 29, 1981, s 2; No. 55, 1989, s 14
s 150	amd No. 22, 1974, s 7; No. 6, 1981, s 4; No. 55, 1989, s 14
s 151	amd No. 6, 1981, s 4
	rep by No. 55, 1989, s 14
s 152A	ins No. 24, 1983, s 4
	amd No. 83, 1991, s 11
s 153	amd No. 6, 1981, s 4; No. 29, 1981, s 2; No. 91, 1981, s 2
	rep No. 24, 1984, s 5
sch 1 – 2	amd No. 29, 1981, s 2
	rep No. 77, 1991, s 13
sch 3	sub No. 22, 1974, s 8
	amd No. 29, 1981, s 2
	rep No. 24, 1983, s 6
sch 4 – 5	amd No. 29, 1981, s 2

## ENDNOTES

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sch 6            amd No. 54, 1978, s 4; No. 29, 1981, s 2; No. 24, 1983, s 7; No. 83, 1991,  
s 10