

NORTHERN TERRITORY OF AUSTRALIA
ADMINISTRATION AND PROBATE AMENDMENT ACT 1989

No. 55 of 1989

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. 55 of 1989

AN ACT

to amend the *Administration and Probate Act*

[Assented to 2 October 1989]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Administration and Probate Amendment Act 1989*.

2. PRINCIPAL ACT

The *Administration and Probate Act* is in this Act referred to as the Principal Act.

3. INTERPRETATION

Section 6 of the Principal Act is amended by adding at the end the following:

"(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."

4. REGISTRAR OF PROBATES AND OTHER OFFICERS

Section 8 of the Principal Act is amended by adding at the end the following:

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"(4) Where the Minister has not, under subsection (1), appointed a person to be the Registrar of Probates or there is no person performing the duties of the Registrar, the Master shall be the Registrar until a Registrar is appointed or while a person is not appointed under subsection (3) to act in the office of the Registrar.

"(5) Where the Minister has not, under subsection (2), appointed a person to be the Deputy Registrar of Probates, or there is no person performing the duties of the Deputy Registrar, each Deputy Master shall be a Deputy Registrar until a Deputy Registrar is appointed or while a person is not appointed under subsection (2) to act in the office of the Deputy Registrar."

5. SEALING OF PROBATE AND LETTERS OF ADMINISTRATION

Section 18 of the Principal Act is amended by omitting all words after "letters of" and substituting "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".

6. REPEAL AND SUBSTITUTION

Sections 23, 24 and 25 of the Principal Act are repealed and the following substituted:

"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."

7. PROCEEDING WHERE EXECUTOR NEGLECTS TO PROVE WILL

Section 34 of the Principal Act is amended -

- (a) by omitting from subsection (1) all words after paragraph (b) and substituting the following:

"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."; and

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(b) by omitting subsection (2).

8. DISCHARGE OR REMOVAL OF EXECUTOR OR ADMINISTRATOR

Section 41 of the Principal Act is amended by omitting subsection (2) and substituting the following:

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

9. REPEAL AND SUBSTITUTION

Division 2 of Part III of the Principal Act is repealed and the following substituted:

"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."

10. DEFINITIONS

Section 72(1) of the Principal Act is amended by omitting the definition of "dwelling-house" and substituting the following:

"'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;"

11. SUMMARY APPLICATION FOR LEGACY, &c.

Section 88 of the Principal Act is amended by omitting all words after paragraph (b) and substituting the following:

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

12. PUBLIC TRUSTEE AND TRUSTEE COMPANIES NOT REQUIRED TO FILE ACCOUNTS

- (1) Section 89A of the Principal Act is amended -
 - (a) by inserting in subsection (1), after "Public Trustee", the words "or a trustee company";
 - (b) by omitting from subsection (2) all words before "and that other person" and substituting "Where the Public Trustee or a trustee company is appointed and acts jointly with another person

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in relation to an estate, the Public Trustee or trustee company"; and

(c) by adding at the end the following:

"(3) In this section 'trustee company' has the same meaning as it has in the *Companies (Trustees and Personal Representatives) Act*."

(2) The amendments effected by subsection (1) have effect in respect of the administration of an estate whether entered into before or after the commencement of this Act.

13. PUNISHMENT FOR ACCOUNTS NOT EXHIBITED

Section 91 of the Principal Act is amended -

(a) by omitting from subsection (3) "attachment in accordance with the practice of the Court" and substituting "punishment for contempt of court"; and

(b) by adding at the end the following:

"(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)."

14. FURTHER AMENDMENTS

The Principal Act is further amended as provided in the Schedule.

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SCHEDULE

Section 14

Section	Amendment	
	omit	substitute
6(1) definition of "Commonwealth country"	all words after para- graph (b)	"and includes a prescribed country;"
definitions of "mentally defective person", "prescribed", "Rules" and "the Court"	the whole definitions	
22	"husband or wife" (wherever occurring)	"spouse"
22(3)	"a person who has not attained the age of 18 years"	"an infant"
26(1)	"or a Judge"	
26(2)	"or a Judge"	
	"or the Judge"	
26(3) and (4)	"or a Judge"	
31	"husband or wife"	"spouse"
35	"or next of kin, grant to the creditor, legatee or next of kin"	"next of kin or Public Trustee grant to the person"
	"for the recision thereof as mentioned in"	"under"
37(1)	"or a Judge"	
37(2)	"or Judge" (twice occurring)	

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SCHEDULE - continued

Section	Amendment	
	omit	substitute
40	"Court may order"	"court under its rules of procedure may provide"
	"Court" (wherever occurring)	"court"
41(1)	"or a Judge"	
	"or Judge" (twice occurring)	
60	"his testator, as executors"	"the deceased, as executors or administrators"
	"executor"	"executor or the administrator"
	"assets"	"estate"
61(2)(a)	the whole paragraph	"(a) each spouse shall be regarded as a separate person; and"
73(1) and (6)	"dwelling-house"	"dwelling"
74	"dwelling-house is the amount determined by a qualified valuer"	"dwelling is the amount determined by a valuer, within the meaning of the <i>Valuation of Land Act</i> ,"
75, 76, 77 and 78	"dwelling-house" (wherever occurring)	"dwelling"
79(1)	"a mentally defective person"	"a person under a disability, other than an infant"
	"the committee of his estate"	"his guardian"
	"such committee"	"such guardian"
84	"or Judge" (wherever occurring)	
85	"or a Judge"	
86	the whole section	

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SCHEDULE - continued

Section	Amendment	
	omit	substitute
88	"or a Judge"	
	"or Judge"	
89	"or a Judge" (wherever occurring)	
89(4)	the whole subsection	
93(1)	"or a Judge"	
	"or he"	
	"executor or administrator"	"executor, administrator or Public Trustee"
97(2)	"or a Judge"	
	"or Judge" (twice occurring)	
100	the whole section	
101(2)	"5 kilometres from the office of the Master of the Supreme Court"	"15 kilometres from the registry where the application for the sealing was filed"
102 and 103	the whole sections	
108(1)(d)	"Registrar"	"Public Trustee"
146	the whole section	
147	"or a Judge" (twice occurring)	
147(1)	"suit or other proceedings"	"proceeding"
149	"or a Judge"	
149(b)	"this Act;"	"this Act; or"
149(c)	"this Act'"	"this Act,"

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SCHEDULE - continued

Section

Amendment

omit

substitute

paragraphs (d), (e)
and (f)

150(1)(b)(ii)

"or a Judge"

150(2)

"and section 153"

151

the whole section
