



# NORTHERN TERRITORY OF AUSTRALIA

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No. 16 of 1985

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## AN ACT

To amend the *Wills Act*

[Assented to 23 May 1985]

**B**E 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 *Wills Amendment Act 1985*.

2. COMMENCEMENT

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

3. PRINCIPAL ACT

The *Wills Act* is in this Act referred to as the Principal Act.

4. WILLS MADE OUT OF THE TERRITORY

Section 13 of the Principal Act is amended by inserting after "a testator" the words "who died before the commencement of the *Wills Amendment Act 1985*".

5. WILLS MADE IN THE TERRITORY

Section 14 of the Principal Act is amended by inserting after "a testator" the words "who died before the commencement of the *Wills Amendment Act 1985*".

6. WILLS VALIDLY EXECUTED IN FOREIGN COUNTRY

Section 15(1) of the Principal Act is amended by inserting after "shall" the words ", where the testator died before the commencement of the *Wills Amendment Act 1985*,".

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### 7. NEW SECTIONS

The Principal Act is amended by inserting after section 15 the following:

#### "15A. INTERPRETATION AND APPLICATION

"(1) In this section and sections 15B and 15C -

'country' means a place or group of places having its own law of nationality or citizenship (including the Commonwealth and its Territories);

'internal law', in relation to a country or place, means the law which would apply in a case where no question of the law in force in any other country or place arose;

'place' includes a State or Territory.

"(2) For the purposes of sub-section (1), 'Commonwealth', 'State' and 'Territory' mean 'Commonwealth', 'State' and 'Territory' respectively within the meaning of the *Acts Interpretation Act 1901* of the Commonwealth.

"(3) Where under this Act the internal law in force in a country or place is to be applied in the case of a will, but there are in force in that country or place 2 or more systems of internal law relating to the formal validity of wills, there shall be applied -

(a) where there is in force throughout the country or place a rule indicating which of those systems can properly be applied in the case in question - the system to be applied according to that rule; or

(b) where there is no such rule, the system with which the testator was most closely connected at the relevant time and for this purpose the relevant time is the time of the testator's death, where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case.

"(4) In determining for the purposes of this Act whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time where the alteration enables the will to be treated as properly executed.

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"(5) This section and sections 15B and 15C shall apply to a will of a testator who dies after the commencement of the *Wills Amendment Act 1985* whether the will was executed before or after that commencement.

"(6) Where (whether in pursuance of this Act or not) a law in force outside the Territory is to be applied in relation to a will, a requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding a rule of that law to the contrary, as a formal requirement only.

### "15B. GENERAL RULE AS TO FORMAL VALIDITY

"Notwithstanding any other provision of this Act, a will shall be treated as properly executed for all purposes where its execution conformed to the internal law in force -

- (a) in the place where the will was executed;
- (b) in the place where the testator was domiciled at the time -
  - (i) when he executed the will; or
  - (ii) of his death;
- (c) in the place where the testator habitually resided at a time referred to in paragraph (a); or
- (d) in the country of which the testator was a national or citizen at a time referred to in paragraph (b).

### "15C. ADDITIONAL RULES

"Without limiting the generality of section 15B -

- (a) a will executed on board a vessel or aircraft of any description, where the execution of the will at that time conformed to the internal law in force in the country or place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will, so far as it disposes of immovable property, where at the time its execution conformed to the internal law in force in the country or place where the property was situated;

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- (c) a will so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will where the execution of the later will at that time conformed to a law by reference to which the revoked will or provision would be so treated; and
- (d) a will so far as it exercises a power of appointment where the execution of the will at that time conformed to the law governing the essential validity of the power,

shall be treated as properly executed."

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