

THE NORTHERN TERRITORY OF AUSTRALIA

No. 38 of 1979

AN ACT

To amend the Administration and Probate Act

[Assented to 27 April 1979]

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:

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| 1. This Act may be cited as the <u>Administration and Probate Act 1979</u> . | Short title |
| 2. This Act shall come into operation on a date to be fixed by the Administrator by notice published in the <u>Gazette</u> . | Commencement |
| 3. The <u>Administration and Probate Act</u> is in this Act referred to as the Principal Act. | Principal Act |
| 4. Section 4 of the Principal Act is repealed. | Repeal |
| 5.(1) Section 6(1) of the Principal Act is amended by inserting before the definition of "administration" the following definition:

"Aboriginal" means a person who is a member of the aboriginal race of Australia;" | Interpretation |
| (2) Section 6 of the Principal Act is amended by adding at the end thereof the following sub-section:

"(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." | |
| 6. Section 62 of the Principal Act is amended by inserting after "Division" the words "or the provisions of Division 4A". | Executor, &c., to hold property on trust, &c. |
| 7. Section 67 of the Principal Act is amended by omitting "Where" and substituting "Subject to section 67A, where". | Interest of spouse on intestacy, &c. |

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8. The Principal Act is amended by inserting after section 67 the following section:

Intestate
Aboriginals
survived by
more than
one spouse

"67A. 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."

9. After Division 4 of Part III of the Principal Act the following Division is inserted:

"Division 4A - Intestate Aboriginals

Application

"71.(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.

Intestate
estate not
to include
debts, &c.

"71A. 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.

Applications
for orders
for distribution

"71B.(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 may apply to the Court for an order under this Division in relation to the intestate estate.

"(2) An application under sub-section (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.

Time for
making
applications

"71C.(1) Subject to sub-section (2), an application under section 71B in respect of an intestate estate

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shall be made within a period of 6 months after the date on which administration has been granted or an order to collect and administer under section 122(1) has been made, 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 may 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.(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.

Service of
applications

"(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.(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.

Distribution
order

"(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

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(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.

Property in respect of which distribution order may be made

"71F.(1) Subject to sub-section (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."

Definitions

10. Section 72 of the Principal Act is amended -

- (a) by omitting from the definition of "intestate", "intestate estate" and "personal representative" the words "of Part III"; and
- (b) by adding at the end thereof the following sub-section:

"(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."

Distribution of assets, &c.

11. Section 96 of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

"(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 sub-section (1) and the time specified in the notices or in the last of the notices for the sending in of claims had expired."

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12. Section 106 of the Principal Act is amended
by omitting "2,000 dollars" and substituting "\$5,000".

Application
to Registrar

