

Serial 26
Administration and Probate Amendment Bill 2001
Dr Toyne

**A BILL
for
AN ACT**

to amend the *Administration and Probate Act*

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NORTHERN TERRITORY OF AUSTRALIA
ADMINISTRATION AND PROBATE AMENDMENT ACT 2001

No. of 2001

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2001

AN ACT

to amend the *Administration and Probate Act*

[Assented to 2001]
[Second reading 2001]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Administration and Probate Amendment Act 2001*.

2. Commencement

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

3. Principal Act

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

4. Interpretation

Section 6 of the Principal Act is amended –

- (a) by omitting "or "deceased" " from the definition of "deceased person" in subsection (1);

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(b) by inserting "person" after "deceased" in paragraphs (a) and (b) of the definition of "de facto partner" in subsection (1);

(c) by omitting the definition of "next of kin" in subsection (1) and substituting the following:

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

(d) by inserting after the definition of "probate" in subsection (1) the following:

" 'professional personal representative' means –

(a) the Public Trustee;

(b) a trustee company within the meaning of the *Companies (Trustees and Personal Representatives) Act*; or

(c) a legal practitioner within the meaning of the *Legal Practitioners Act*;".

5. Repeal and substitution

Section 51 of the Principal Act is repealed and the following substituted:

"49. Estate vests in Public Trustee on person's death

"Upon the death of a person, his or her real and personal property vests in the Public Trustee until –

(a) it vests in the Public Trustee or other executor or administrator of the deceased person's estate in pursuance of this or any other Act; or

(b) it is taken to vest in the Public Trustee or other professional personal representative under Part IV, Division 2.

"50. Public Trustee may act before property vests in executor or administrator

"(1) Until property vested in the Public Trustee under section 49 vests or is taken to vest in accordance with section 49(a) or (b), the Public Trustee may, if he or she thinks fit, exercise the powers and perform the duties in relation to the property that he or she would have been authorised to exercise and perform if the deceased had died intestate and the Public Trustee had been granted administration of the estate.

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- "(2) When acting under this section, the Public Trustee must not –
- (a) distribute any property to a beneficiary of the estate;
 - (b) sell, lease, exchange, mortgage or partition any portion of the real property of the estate unless ordered to do so by the Court on the application of the Public Trustee or another person; or
 - (c) sell any personal property without an order of the Court unless the property is of a perishable nature or liable to deteriorate or is for any other reason liable to decrease unduly in value if retained.

"(3) A decision by the Public Trustee when acting under this section that personal property is of a perishable nature or is liable to deteriorate, or is for any reason liable to decrease unduly in value if retained, is conclusive and binding upon all persons.

"(4) All costs, charges and expenses incurred by the Public Trustee when acting under this section is a first charge upon the property of the deceased person.

"(5) If the property of the deceased person vests or is taken to vest in accordance with section 49(a) or (b) on an executor or administrator other than the Public Trustee, he or she must enter into an appropriate agreement with the Public Trustee for the payment of any costs referred to in subsection (4).

"(6) The Public Trustee acting under this section is not liable as an executor de son tort.

"51. Public Trustee to give notice of intention to act

"(1) Before the Public Trustee first acts under section 50 in respect of an estate, he or she must serve a notice under this section on any person that he or she knows of who would be entitled to apply for representation of the estate.

"(2) A notice served under this section is to be in the form the Public Trustee thinks fit and is to state that the Public Trustee intends to act under section 50 unless the person to whom the notice is directed applies for representation of the estate and that the Public Trustee will be entitled to act under that section if the person –

- (a) does not, within a period of 21 days after service, advise the Public Trustee in writing that the person intends to apply for representation; or
- (b) having advised the Public Trustee in accordance with paragraph (a) –

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- (i) fails to apply to the Court within 14 days of giving that advice; or
- (ii) makes an application to the Court and is not successful in obtaining representation.

"(3) If the person served with a notice under this section fails to advise the Public Trustee in accordance with subsection (2)(a), or fails to obtain representation for a reason specified in subsection (2)(b), the Public Trustee may act under section 50 unless the Court orders otherwise.

"(4) If more than one person is entitled to apply for representation of an estate, it is sufficient for the Public Trustee to serve a notice under this section on only one of those persons.

"(5) If the Public Trustee is of the opinion that the delay in acting under section 50 caused by the requirement to give notice under this section would cause detriment to an estate, or to the interest of a creditor or beneficiary of the estate, the Public Trustee may act immediately under that section."

6. New Division

Part III of the Principal Act is amended by adding at the end the following:

Division 8 – Additional powers etc. of professional personal representatives

"103. Inquiries as to validity of claim

"(1) If, in the administration of an estate by a professional personal representative, a person claims against the estate (whether as a creditor or beneficiary) and the professional personal representative is in doubt as to the validity of the claim, the professional personal representative –

- (a) may institute the inquiries that he or she thinks proper regarding the claim; and
- (b) may, by a summons, require the claimant or any other person to appear before a Judge to answer all the questions that may be put to him or her with reference to the claim.

"(2) The professional personal representative must pay or tender to a person summonsed under this section the same amount as the person would be entitled to if he or she had been summonsed as a witness to the Court.

"(3) If a claimant served with a summons under this section –

- (a) fails to attend before the Judge at the time and place specified in the summons or at an adjournment of the hearing in respect of the summons; or

- (b) refuses or fails to truly answer a question put to him or her by or on behalf of the professional personal representative,

the Judge may direct that the professional personal representative may reject the claim.

"104. Rejection of small claim

"(1) If in the administration of an estate by a professional personal representative –

- (a) a person claims against the estate a sum of money in excess of, or personal property with a value (as estimated by the professional personal representative) in excess of, the prescribed amount or the professional personal representative has reason to believe a person may make such a claim; and
- (b) the professional personal representative refuses to admit or intends to reject the claim,

the professional personal representative may serve on the person a notice requiring the person to commence legal proceedings within 3 months after the date of service to establish or enforce the claim and to prosecute the proceedings with all due diligence.

"(2) If the person on whom a notice is served under this section fails to commence proceedings within 3 months after the date of service –

- (a) the claim is barred and the person is not entitled to enforce the claim by proceedings in any court; and
- (b) the professional personal representative may administer and distribute the estate disregarding the claim.

"(3) If no amount is prescribed by regulation for the purposes of subsection (1)(a), the prescribed amount is \$1 000.

"105. Requirement for life tenant to give undertaking

"(1) If –

- (a) a person is in occupation of or has the use or enjoyment of land as a legal or equitable tenant for life; and
- (b) that land is the subject of an estate being administered by a professional personal representative,

the professional personal representative may require the person to give an undertaking, with the security that the professional personal representative may

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require, to keep the property in repair and to pay the rates and taxes, insurance premiums, assessments, rents, impositions and other outgoings that the person is legally required to pay.

"(2) If a life tenant fails to comply with an undertaking given in pursuance of subsection (1), the professional personal representative may serve on the life tenant a notice requiring the life tenant to remedy the default or give up possession of the land within the time specified in the notice.

"(3) The time specified in a notice served under subsection (2) is to be not less than one month after the date of service.

"(4) If a life tenant fails to comply with a notice served under subsection (2), the legal or equitable life tenancy is terminated and the professional personal representative may claim possession of the property as if the life tenant were a trespasser.

"105A. Obtaining information about deceased person's property etc.

"(1) A professional personal representative who is administering the estate of a deceased person may serve on a person –

- (a) who is in possession of any property of the deceased person;
- (b) who was a debtor, creditor or partner of the deceased person;
- (c) who was a joint venturer with the deceased person; or
- (d) in whom the deceased person had invested by way of shares, stock or debenture,

a notice requesting the person to provide the professional personal representative with written information about any of the following matters:

- (e) the deceased person's relationship with the person;
- (f) the deceased person's interest in property of which the person is aware;
- (g) the extent, nature and situation of any of the deceased person's property, money, shares or debts of which the person is aware.

"(2) A notice under this section is to state the period, of not less than 14 days after the date of service, within which the person to whom the notice is directed must provide the information requested.

"(3) The person to whom a notice under this section is directed must

provide the professional personal representative with the information requested within the period specified in the notice.

Penalty: If the offender is a natural person – 20 penalty units.
If the offender is a body corporate – 100 penalty units."

7. New Division heading

Part IV of the Principal Act is amended by inserting after the heading the following:

"Division 1 – Applications for representation".

8. New Division

Part IV of the Principal Act is amended by adding at the end the following:

"Division 2 – Representation by professional personal representatives

"110A. Administration of small estate without representation or election

"(1) A professional personal representative need not apply for representation of the estate of a deceased person but may instead administer the estate under this section if –

- (a) the professional personal representative estimates that the net value of the property in the Territory does not exceed the prescribed amount; and
- (b) no application has been made for a grant of representation of the estate.

"(2) A professional personal representative is entitled to administer an estate under this section only after he or she has given public notice of his or her intention to do so.

"(3) The notice given under subsection (2) is to be by advertisement in a newspaper published in the Territory and is to contain the prescribed information.

"(4) A professional personal representative who administers an estate under this section is –

- (a) if the deceased person died testate – taken to be the executor of the will or the holder of letters of administration with the will annexed; or
- (b) if the deceased person died intestate – taken to be the holder of letters of administration of the estate of that person,

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as if a grant of representation had been made to the professional personal representative.

"(5) If after giving notice under subsection (2) the professional personal representative discovers that the net value of the property in the Territory exceeds the amount referred to in subsection (1)(a) but the net value of the property in the Territory does not exceed the amount referred to in section 110B(1)(a), he or she –

- (a) must file in the Court a memorandum stating the value of the property; and
- (b) may continue to administer the estate under this section.

"(6) If after giving notice under subsection (2) the professional personal representative discovers that the net value of the property in the Territory exceeds the amount referred to in section 110B(1)(a), he or she must –

- (a) file in the Court a memorandum stating the value of the property; and
- (b) apply for a grant of representation.

"(7) If a professional personal representative who is administering or has administered an estate in pursuance of this section is in possession or comes into possession of a will of the deceased person, he or she must deposit it with the Registrar.

"(8) If no amount is prescribed by regulation for the purposes of subsection (1)(a), the prescribed amount is \$20 000.

"110B. Election to administer small estate

"(1) A professional personal representative need not apply for representation of the estate of a deceased person but may instead file in the Court an election to administer the estate if –

- (a) the professional personal representative estimates that the net value of the property in the Territory at the time of filing the election does not exceed the prescribed amount; and
- (b) no other person in the Territory has been granted representation of the estate.

"(2) An election is to be in writing, setting out the following matters:

- (a) the name, address, occupation and date of death of the deceased person;

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- (b) details of the property of the deceased person;
- (c) whether the deceased person died testate or intestate;
- (d) if the deceased person died testate – a statement that after making proper inquiries the professional personal representative believes that the document annexed to the election is the testator's last will or an exemplification of the last will and that the will has been executed in accordance with the law governing the execution of that will.

"(3) On the filing of an election, the professional personal representative is –

- (a) if the deceased person died testate – taken to be the executor of the will or the holder of letters of administration with the will annexed; or
- (b) if the deceased person died intestate – taken to be the holder of letters of administration of the estate of that person,

as if a grant of representation had been made to the professional personal representative.

"(4) A professional personal representative who files an election must comply with any advertising requirements that are prescribed or that are specified in the Supreme Court Rules.

"(5) If after filing an election the professional personal representative discovers that the net value of the property in the Territory exceeds the amount referred to in subsection (1)(a), he or she must –

- (a) file in the Court a memorandum stating the value of the property; and
- (b) apply for a grant of representation.

"(6) If no amount is prescribed by regulation for the purposes of subsection (1)(a), the prescribed amount is \$85 000.

"110C. Election in respect of part administered estate

"(1) A professional personal representative need not apply for letters of administration de bonis non but may instead file in the Court an election to administer the unadministered part of the estate of a deceased person if –

- (a) representation of the estate has been granted in the Territory and the person last granted representation has, because of his or her death or other incapacity, left part of the estate unadministered;

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- (b) the professional personal representative estimates that the net value of the property in the Territory left unadministered at the time of filing the election does not exceed the prescribed amount; and
- (c) no other person in the Territory has been granted letters of administration de bonis non since the death or incapacity of the last administrator.

"(2) An election is to be in writing, setting out details of the following matters:

- (a) the last grant of representation;
- (b) the death or other incapacity of the last administrator;
- (b) the property in the Territory left unadministered.

"(3) On the filing of an election, the professional personal representative is taken to be the administrator of the part of the estate left unadministered as if he or she had been granted letters of administration de bonis non.

"(4) If after filing an election the professional personal representative discovers that the value of the property to be administered exceeds the amount referred to in subsection (1)(b), he or she must –

- (a) file in the Court a memorandum stating the value of the property; and
- (b) apply for a grant of administration de bonis non.

"(5) A statement in an election giving details of the death or other incapacity of the last administrator is, in the absence of evidence to the contrary, to be accepted by all courts, employees and persons, whether acting under an Act or not, as sufficient evidence of that fact without further proof.

"(6) If no amount is prescribed by regulation for the purposes of subsection (1)(b), the prescribed amount is \$85 000."

9. Further amendments

The Principal Act is amended as set out in Schedule 1.

10. Savings and transitional provisions

The savings and transitional provisions set out in Schedule 2 have effect.

SCHEDULE 1

Section 9

Provision	Amendment	
	omit	substitute
Section 16(1)(d)	he	he or she
	him	him or her
Section 16(1)(e)	he	he or she
Section 16(2)	him	him or her
Section 16(2)(b)	he	he or she
Section 20	his	his or her
Section 22(1)(a) and (d)	deceased	deceased person
Section 22(2A)	deceased	deceased person
	deceased's	deceased person's
Section 26(3)	his	his or her
Section 26(4)	his (all references)	his or her
Section 28	he	he or she
	his	his or her
Section 30(2)	him (all references)	him or her
Section 32(2)	deceased	deceased person
Section 33	or any part thereof, upon his	person or of any part of the estate, upon his or her
Section 34(d)	the Public Trustee	a professional personal representative
Section 35	Public Trustee	professional personal representative
Section 36(a)	he	he or she

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Section 38	him	him or her
	his	his or her
Section 39	he	he or she
	deceased	deceased person
	his (all references)	his or her
Section 40	him	him or her
Section 41(1)(b)	his	his or her
Section 41(4)	him	him or her
Section 42(1)	his (all references)	his or her
Section 43(1)(a)	he	he or she
	him	him or her
	his	his or her
Section 43(1)(b)	he (all references)	he or she
Sections 52 and 53	his	his or her
Section 54(1)	his (all references)	his or her
Section 54(2) and 55(1)	his	his or her
Section 55(2)	him (all references)	him or her
Section 56	his (all references)	his or her
	he (all references)	he or she
Sections 57 and 59	his (all references)	his or her
Section 60	deceased	deceased person

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Section 61(1)		
- definition of "intestate"	his	his or her
Sections 62, 63(1) and 64	his	his or her
Section 66(2)	his (all references)	his or her
Section 67(1)	his	his or her
Section 68(1)	his (all references)	his or her
Section 68(3)	his (all references)	his or her
	he	he or she
Sections 69(1) and (1)(b) and 70(4)(b)(ii)	his	his or her
Section 70(4)(b)(iii)	he or they his	he, she or they his or her
Section 70(6)	his	his or her
Section 71B(1)	the Public Trustee	a professional personal representative
Sections 71F(2) and 73(1)	his	his or her
Section 73(6)	him	him or her
Section 78	he (all references)	he or she
Section 79(1)	his (all references)	his or her
Sections 79(2) and 80(1)(b)	he	he or she
Section 80(3)	him	him or her

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Section 81(1)	his deceased.	his or her deceased person.
Section 81(3)	deceased	deceased person
Section 81(4)	his (all references) he (all references)	his or her he or she
Section 81(6)	deceased	deceased person
Section 81(8)	deceased as he	deceased person as he or she
Section 81(11) and (14)(a)	deceased	deceased person
Section 84(2) and (3)	him (all references)	him or her
Section 85	his (all references)	his or her
Section 87(3)	his	his or her
Section 91(2)	he	he or she
Section 91(3)	him he	him or her he or she
Section 94	himself him	himself or herself him or her
Section 96(2)	he	he or she
Section 97(1)	him, he may, if he him to take proceedings to enforce his	him or her, the administrator or executor may, if he or she that person to take proceedings to enforce his or her
Section 97(2)	he his	he or she his or her

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Section 98	he his	he or she his or her
Section 101(2)	he him;	he or she him or her
Section 102	his (all references)	his or her
Section 107(1)	deceased him (all references)	deceased person him or her
Section 109	he (all references)	he or she
Sections 110 and 111(2), (4)(b) and (5)	he	he or she
Section 147(2)	he him	he or she him or her
Section 147(3)	he (all references)	he or she
Schedule 6		
– Part 1, item 3, paragraph 2 relating to the manner of distribution of intestate estate	his	his or her
– Part 1, item 3, paragraph 3 relating to the manner of distribution of intestate estate	he or they his	he, she or they his or her

SCHEDULE 2

Section 10

SAVINGS AND TRANSITIONAL PROVISIONS

1. **Property vested in Public Trustee on person's death**

Property taken to be vested in the Public Trustee under section 51 of the Principal Act immediately before the commencement of this Act is, on that commencement, taken to be vested in the Public Trustee under section 49 of the Principal Act as amended by this Act.

2. **Administration of estate by professional personal representative**

On and after the commencement of this Act, a professional personal representative (within the meaning of the Principal Act as amended by this Act) may exercise the powers conferred by Part III, Division 8 in respect of the administration of an estate despite having been granted representation of the estate before that commencement.

3. **Administration of small estate by professional personal representative**

On and after the commencement of this Act, a professional personal representative (within the meaning of the Principal Act as amended by this Act) may administer the estate of a deceased person under Part IV, Division 2 regardless of the date of death of that person.

ALTERATIONS TO SECTION HEADINGS

On the day on which the *Administration and Probate Act* is amended by this Act, in addition to any alteration to section headings indicated in the text of this Act, the headings to the sections of the *Administration and Probate Act* specified in the table are altered as set out in the table

Section	Alteration	
	omit	substitute
Section 28	the whole heading	Renunciation or non-appearance by executor
Sections 54 and 55	deceased	deceased person