

# WILLS ORDINANCE 1969

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No. 16 of 1969

An Ordinance to amend the *Wills Ordinance* 1938

[Assented to 26 June, 1969]

**B**E it ordained by the Legislative Council for the Northern Territory of Australia as follows:—

1.—(1.) This Ordinance may be cited as the *Wills Ordinance* 1969. Short title and citation

(2.) The *Wills Ordinance* 1938 is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Wills Ordinance* 1938-1969.

2. This Ordinance shall come into operation on the date on which the *Administration and Probate Ordinance* 1969 comes into operation.\* Commencement

3. Section 3 of the Principal Ordinance is amended— Definitions

(a) by inserting, before the definition of “personal estate”, the following definition:—

“‘Judge’ means a Judge holding office under section seven of the *Northern Territory Supreme Court Act* 1961 or of that Act as amended at any time; and

(b) by inserting after the definition of “real estate” the following definition:—

“‘the Registrar’ means the Registrar of Probates holding office under the *Administration and Probate Ordinance* 1969”.

4. Section 6 of the Principal Ordinance is repealed and the following section inserted in its stead:—

“6.—(1.) Subject to the next succeeding sub-section, a will is not valid unless it is made by a person who has attained the age of eighteen years. Person under eighteen cannot make will

“(2.) Nothing in the last preceding sub-section shall be taken to affect the operation of section seven A of this Ordinance.”

\* That date was 8 February, 1971.

Wills of  
soldiers, &c.

5. After section 7 of the Principal Ordinance the following section is inserted:—

“7A.—(1.) A testamentary disposition of real or personal property made by a person included in a class of persons specified in sub-section (6.) of this section, that is to say, a declaration, either oral or in writing, of such a person’s intention with respect to the disposal of property upon or after his death, is as valid and effectual as it would have been if it had been made in a will executed in accordance with the provisions of this Ordinance.

“(2.) An appointment made, either orally or in writing, by a person included in a class of persons specified in sub-section (6.) of this section of another person to be the guardian of his infant children after his death is as valid and effectual as it would have been if it had been made in a will executed in accordance with the provisions of this Ordinance.

“(3.) In any proceedings, evidence of a matter specified in the next succeeding sub-section that relates to a declaration referred to in sub-section (1.) of this section or an appointment referred to in the last preceding sub-section that has been made by a person is admissible for the purpose of proving that the person intended the declaration or appointment to have effect upon or after the person’s death.

“(4.) The following matters are specified for the purpose of the last preceding sub-section:—

- (a) any statement made by the person, either orally or in writing, at or about the time when he made the declaration or appointment;
- (b) the circumstances in which the person made the declaration or appointment;
- (c) if the person made the declaration or appointment orally—the relationship between the person and the other person to whom the declaration or appointment was made; and
- (d) if the person made the declaration or appointment in writing—the relationship between the person and any other person—
  - (i) to whom the person gave that writing;
  - (ii) in whose presence the person wrote or signed that writing; or
  - (iii) who wrote that writing at the request or by the direction of the person.

“(5.) Sub-section (3.) of this section is in addition to and not in substitution for any rules of law or procedure concerning evidence that is admissible in proceedings.

“(6.) Each of the following classes of persons is specified for the purposes of this section:—

- (a) members of the Military Forces of the Commonwealth who are in actual military service;
- (b) members of the Naval Forces of the Commonwealth or of the Air Force of the Commonwealth who are so circumstanced that, if they were members of the Military Forces of the Commonwealth, they would be in actual military service;
- (c) persons subject to the *Defence Act* 1903-1917, or that Act as amended, by virtue of section one hundred and seventeen A of that Act or of that Act as amended who are so circumstanced that, if they were members of the Military Forces of the Commonwealth, they would be in actual military service;
- (d) persons employed outside Australia as representatives of organizations rendering philanthropic, welfare or medical service to members of the Defence Force; and
- (e) prisoners of war or persons interned in a country under the sovereignty, or in the occupation, of the enemy or in a neutral country who became prisoners of war or were so interned as a result of war or war-like operations and were, immediately before their capture or internment, persons included in a class of persons specified in a preceding paragraph of this sub-section.”.

6. Section 11 of the Principal Ordinance is repealed.

Repeal of  
section 11

7. Section 15 of the Principal Ordinance is repealed and the following section inserted in its stead:—

“15.—(1.) A will executed in a foreign country and valid according to the law of that country for the purpose of passing either real estate or personal estate shall be valid for all purposes in the Territory as if duly executed according to the law of the Northern Territory.

Will validly  
executed in  
foreign country  
to be valid in  
the Northern  
Territory

“(2.) Nothing contained in either of the last two preceding sections restricts the operation of the last preceding sub-section.”.



cover in which the will is sealed or, if such an executor cannot be found or refuses to accept the will, to such person (if any) as a Judge directs; or

(b) with the permission of a Judge, cause the will to be destroyed.

"39.—(1.) The Registrar shall keep an index of wills deposited in his office under the last preceding section or deemed to have been deposited in his office under section forty-one of this Ordinance. Register of wills deposited with the Registrar

"(2.) Where such a will is delivered to a person or destroyed in pursuance of sub-section (4.) or (5.) of the last preceding section, the Registrar shall enter in the index particulars of the date on which, and the person to whom, the will was delivered or the date on which the will was destroyed, as the case may be.

"40. A person may search in the index kept by the Registrar under the last preceding section. Searches

"41. A will deposited before the commencement of the *Administration and Probate Ordinance* 1969 in the office of the person who was at the time of the deposit the Registrar of Probates holding office under the *Administration and Probate Act and Ordinance* 1891 to 1940 shall be deemed to have been deposited in the Registrar's office under section thirty-eight of this Ordinance." Certain wills deemed to have been deposited with Registrar

10. The amendments effected by sections 3 to 9 inclusive of this Ordinance apply to and in relation to a will or testamentary disposition of a person who dies after the commencement of this Ordinance, whether the will or testamentary disposition was made before or after the commencement of this Ordinance. Application of amendments

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