



**WILLS ACT 2012**

[Consolidated as at 14 February 2013  
on the authority of the Administrator  
and in accordance with  
the *Enactments Reprinting Act 1980*]

**[Part 5 not yet commenced]**

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NORFOLK



ISLAND

## WILLS ACT 2012

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An Act to reform the law relating to the making, alteration, rectification, construction and revocation of wills and for other purposes.

**BE IT ENACTED** by the Legislative Assembly of Norfolk Island as follows —

### PART 1—PRELIMINARY

#### 1. Citation

This Act may be cited as the *Wills Act 2012*.

#### 2. Commencement

(1) Section 1 and this section come into operation on the day on which notification of the assent of the Administrator to this Act is published in the Gazette.

(2) Subject to subsection (3), the remaining provisions of this Act, other than Part 5, come into operation on a day or days fixed by the Administrator.

(3) If a provision referred to in subsection (2) does not come into operation before 1 January 2013, it comes into operation on that day.

(4) Part 5 comes into operation on a day or days to be fixed by the Administrator by notice in the Gazette, not being a day earlier than the day on which the Convention providing a Uniform Law on the Form of an International Will 1973 enters into force in respect of Australia or a day earlier than the other provisions come into operation.

#### 3. Definitions

(1) In this Act unless the contrary intent is expressed—

*Court* means the Supreme Court.

*disposition* includes the following—

- (a) any gift, devise or bequest of property under a will;
- (b) the creation by will of a power of appointment affecting property;
- (c) the exercise by will of a power of appointment affecting property.

*document*, other than in section 9, means any paper or material on which there is writing.

*domestic partner* of a deceased person means a person to whom the person was not married but with whom the deceased person was living at the date of death as a couple on a genuine domestic basis (irrespective of gender).

*minor* means a person who is less than 18 years old.

**Registrar** means the Registrar of Probates within the meaning of the *Administration and Probate Act 2006*.

**spouse** of a deceased person means a person to whom the deceased person was married at the date of death.

**testator** means a person who made a will.

**will** includes a codicil and any other testamentary disposition.

## **PART 2—THE MAKING, ALTERATION, REVOCATION AND REVIVAL OF WILLS**

### **Division 1—Making a will**

#### **4. What property may be disposed of by will?**

- (1) A person may, by will, dispose of—
- (a) any property to which the person is entitled at the time of his or her death, whether or not the entitlement of the person did or did not exist at the date of the making of the will; and
  - (b) any property to which the personal representative of that person becomes entitled, by virtue of the office of personal representative to that person, after the death of that person—

other than property of which the testator is trustee.

- (2) In this section **property** includes—
- (a) a contingent, executory or future interest in property—
    - (i) whether the person becomes entitled to the interest by way of the instrument which created the interest or otherwise; and
    - (ii) whether that person has or has not been ascertained as the person in whom the interest may become vested; and
  - (b) a right of entry or recovery of property or a right to call for the transfer of title of property.

#### **5. Minimum age for making a will**

- (1) A will made by a minor is not valid.
- (2) Subsection (1) does not apply to a will made under an order under section 16.
- (3) Despite subsection (1)—
- (a) a minor may make a will in contemplation of marriage, and may alter or revoke such a will, but the will is of no effect if the marriage contemplated does not take place;
  - (b) a minor who is married may make, alter or revoke a will;
  - (c) a minor who has been married may revoke the whole or any part of a will made while the person was married or in contemplation of that marriage.

### **Division 2—Executing a will**

#### **6. How should a will be executed?**

- (1) A will is not valid unless—
  - (a) it is in writing, and signed by the testator or by some other person, in the presence of, and at the direction of the testator; and
  - (b) the signature is made with the testator's intention of executing a will, whether or not the signature appears at the foot of the will; and
  - (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
  - (d) at least two of the witnesses attest and sign the will in the presence of the testator but not necessarily in the presence of each other.

(2) A statement in a will that the will has been executed in accordance with this section is not necessary for the will to be valid.

(3) Where a testator purports to make an appointment by his or her will in the exercise of a power of appointment by will, the appointment is not valid unless the will is executed in accordance with this section.

(4) Where a power is conferred on a person to make an appointment by a will that is to be executed in some particular manner or with some particular solemnity, the person may exercise the power by a will that is executed in accordance with this section, but is not executed in that manner or with that solemnity.

(5) This section does not apply to a will made under section 17.

#### **7. Must witnesses know that they are signing a will?**

A will which is executed in accordance with this Act is validly executed even if a witness to the will did not know that it was a will.

### **Division 3—Dispensing with requirements for execution, alteration or revocation of a will**

#### **8. When may the Court dispense with requirements for execution or revocation?**

- (1) This section applies to a document, or part of a document, that—
  - (a) purports to state the testamentary intentions of a deceased person, and
  - (b) has not been executed in accordance with this Part.
- (2) The document, or part of the document, forms—
  - (a) the deceased person's will-if the Court is satisfied that the person intended it to form his or her will, or
  - (b) an alteration to the deceased person's will-if the Court is satisfied that the person intended it to form an alteration to his or her will, or
  - (c) a full or partial revocation of the deceased person's will-if the Court is satisfied that the person intended it to be a full or partial revocation of his or her will.

(3) In making a decision under subsection (2), the Court may, in addition to the document or part, have regard to—

- (a) any evidence relating to the manner in which the document or part was executed, and
- (b) any evidence of the testamentary intentions of the deceased person, including evidence of statements made by the deceased person.

(4) Subsection (3) does not limit the matters that the Court may have regard to in making a decision under subsection (2).

(5) This section applies to a document whether it came into existence within or outside Norfolk Island.

(6) For the purposes of this section—

*document* means any record of information, and includes—

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph.

#### **Division 4—Witnessing a will**

##### **9. What persons cannot act as witnesses to wills?**

A person who is unable to see and attest that a testator has signed a document, may not act as a witness to a will.

##### **10. Can an interested witness benefit from a disposition under a will?**

(1) This section applies if a beneficial disposition is given or made by will to a person (the “interested witness”) who attests the execution of the will.

(2) The beneficial disposition is void to the extent that it concerns the interested witness or a person claiming under the interested witness.

(3) A beneficial disposition is not void under subsection (2) if—

- (a) at least 2 of the people who attested the execution of the will are not interested witnesses, or
- (b) all the persons who would benefit directly from the avoidance of the disposition consent in writing to the distribution of the disposition under the will and have the capacity to give that consent, or
- (c) the Court is satisfied that the testator knew and approved of the disposition and it was given or made freely and voluntarily by the testator.

(4) In this section—

*beneficial disposition* does not include a charge or direction for the payment of—

- (a) a debt, or
- (b) reasonable remuneration to an executor, administrator, legal practitioner or other person acting in relation to the administration of the testator's estate.

#### **Division 5—Alteration, revocation and revival of wills**

### **11. When and how can a will be revoked?**

(1) The whole or any part of a will may be revoked but only—

- (a) if the revocation (whether by a will or other means) is authorised by an order under section 16 or 17, or
- (b) by the operation of section 12 or 13, or
- (c) by a later will, or
- (d) by some writing declaring an intention to revoke it, executed in the manner in which a will is required to be executed by this Act, or
- (e) by the testator, or by some person in his or her presence and by his or her direction, burning, tearing or otherwise destroying the will with the intention of revoking it, or
- (f) by the testator, or by some person in his or her presence and at his or her direction, writing on the will or dealing with the will in such a manner that the Court is satisfied from the state of the will that the testator intended to revoke it.

(2) No will or part of a will may be revoked by any presumption of an intention on the ground of an alteration in circumstances.

### **12. What is the effect of marriage on a will?**

(1) A will is revoked by the marriage of the testator.

(2) Despite subsection (1) the following are not revoked by the marriage of the testator—

- (a) a disposition to the person to whom the testator is married at the time of his or her death; or
- (b) an appointment as executor, trustee, advisory trustee or guardian of the person to whom the testator is married at the time of his or her death; or
- (c) a power to exercise, by will, a power of appointment, when, if the testator did not exercise the power, the property so appointed would not pass to the executor or administrator.

(3) Despite subsection (1)—

- (a) a will made in contemplation of a marriage (whether or not that contemplation is expressed in the will) is not revoked by the solemnisation of the marriage contemplated; and
- (b) a will which is expressed to be made in contemplation of marriage generally is not revoked by the marriage of the testator.

**13. What is the effect of divorce or an annulment on a will?**

- (1) The divorce of a testator or annulment of his or her marriage revokes—
- (a) a beneficial disposition to the testator's former spouse made by a will in existence at the time of the divorce or annulment, and
  - (b) an appointment of the testator's former spouse as an executor, trustee, advisory trustee or guardian made by the will, and
  - (c) a grant made by the will of a power of appointment exercisable by, or in favour of, the testator's former spouse.
- (2) Subsection (1) does not apply if a contrary intention appears in the will.
- (3) The divorce of a testator or the annulment of his or her marriage does not revoke—
- (a) the appointment of the testator's former spouse as trustee of property left by the will on trust for beneficiaries that include the former spouse's children, or
  - (b) the grant of a power of appointment exercisable by the testator's former spouse exclusively in favour of the children of whom both the testator and the former spouse are the parents.
- (4) If a disposition, appointment or grant is revoked by this section, the will takes effect in respect of the revocation as if the testator's former spouse had died before the testator.
- (5) Nothing in this section affects—
- (a) any right of the former spouse of a testator to make any application under Part 11 of the *Administration and Probate Act 2006*; or
  - (b) any direction, charge, trust or provision in the will of a testator for the payment of any amount in respect of a debt or liability (including any liability under a promise) of the testator to the former spouse of the testator or to the executor or the administrator of the estate of the former spouse.
- (6) In this section—
- annulment**, in relation to a testator, means—
- (a) the annulment of the testator's marriage by the Family Court of Australia, or
  - (b) the annulment of the testator's marriage under a law of a place outside Australia, if the annulment is recognised in Australia under the *Family Law Act 1975* of the Commonwealth.
- divorce** means the ending of a marriage by—
- (a) a divorce order in relation to the marriage taking effect under the *Family Law Act 1975* of the Commonwealth, or
  - (b) a decree of nullity in respect of the marriage by the Family Court of Australia, or
  - (c) the dissolution of the marriage in accordance with the law of a place outside Australia, if the dissolution is recognised in Australia under the *Family Law Act 1975* of the Commonwealth.
- spouse** includes a party to a purported or void marriage.



*testator's former spouse* means the person who was the testator's spouse immediately before the testator's marriage was ended by divorce or annulment.

#### **14. Can a will be altered?**

(1) An alteration to a will after it has been executed is not effective unless the alteration—

- (a) is executed in the manner in which a will is required to be executed under this Act, or
- (b) is made by a minor by the authority of an order of the Court under section 16 and is executed in accordance with, and satisfies the requirements for such a will set out in, section 16(5), or
- (c) is made for and on behalf of a person who does not have testamentary capacity by the authority of an order under section 17 and satisfies the requirements for such a will set out in section 21.

(2) Subsection (1) does not apply to an alteration to a will made by or at the direction of the testator, or signed by the Registrar under section 21, if the words or effect of the will are no longer apparent because of the alteration.

(3) If a will is altered, it is sufficient compliance with the requirements for execution if the signatures of the testator and of the witnesses to the alteration are made—

- (a) in the margin, or on some other part of the will beside, near or otherwise relating to the alteration, or
- (b) as authentication of a memorandum referring to the alteration and written on the will.

#### **15. Can a revoked will be revived?**

(1) A will or part of a will which has been revoked is revived by re-execution or by execution of a codicil which shows an intention to revive the will or part.

(2) A revival of a will which was partly revoked and later revoked as to the balance only revives that part of the will most recently revoked.

(3) Subsection (2) does not apply if a contrary intention appears in the document which revives the will.

(4) A will which has been revoked and later revived, either wholly or partly, is to be taken to have been executed on the date on which the will is revived.

### **PART 3—WILLS MADE OR RECTIFIED UNDER COURT AUTHORISATION**

#### **Division 1—Court authorised wills by minors**

#### **16. Court may authorise minor to make, alter or revoke a will**

(1) The Court may make an order authorising a minor—

- (a) to make or alter a will in the specific terms approved by the Court, or
- (b) to revoke a will or part of a will.

(2) An order under this section may be made on the application of the minor or a person on behalf of the minor.

- (3) The Court may impose any conditions on the authorisation that the Court thinks fit.
- (4) Before making an order under this section, the Court must be satisfied that—
- (a) the minor understands the nature and effect of the proposed will or revocation and the extent of the property disposed of by it; and
  - (b) the proposed will or revocation accurately reflects the intentions of the minor; and
  - (c) it is reasonable in all the circumstances that the order should be made.
- (5) A will is not validly made, altered or revoked, in whole or in part, as authorised by an order under this section unless—
- (a) in the case of the making or alteration of a will (in whole or in part)-the will or alteration is executed in accordance with the requirements of Part 2, and
  - (b) in the case of a revocation of a will (in whole or in part)—
    - (i) if made by a will-the will is executed in accordance with the requirements of Part 2, and
    - (ii) if made by other means-is made in accordance with the requirements of the order, and
  - (c) in addition to the requirements of Part 2, one of the witnesses to the making or alteration of the will under this section is the Registrar, and
  - (d) the conditions of the authorisation (if any) are complied with.
- (6) A will that is authorised to be made, altered or revoked in part by an order under this section must be deposited with the Registrar under Part 6.
- (7) A failure to comply with subsection (6) does not affect the validity of the will.

## **Division 2—Court authorised wills for persons who do not have testamentary capacity**

### **17. Wills for persons who do not have testamentary capacity authorised by the Court**

(1) The Court may make an order authorising a will to be made in specific terms approved by the Court or revoked on behalf of a person who does not have testamentary capacity.

(2) Any person may make an application for an order under this section if the person has first obtained leave of the Court to make the application.

(3) The Court may make an order under this section on behalf of a person who is a minor and who does not have testamentary capacity, but must not make an order under this section on behalf of a person who is deceased at the time the order is made.

### **18. Hearing an application for an order**

- (1) In considering an application for an order under section 17—
- (a) the Court may have regard to any information given to the Court in support of an application for leave under section 24; and
  - (b) the Court may inform itself of any other matter in any manner it sees fit; and
  - (c) the Court is not bound by the rules of evidence.

(2) Nothing in subsection (1) prevents the application of Part 3.10 of the *Evidence Act 2004* to an application under section 17.

### **19. Powers of the Court in making an order**

In making an order under section 17, the Court may make any necessary related orders or directions.

### **20. Revocation of a will made under an order under section 17**

If a will has been made under an order under section 17 on behalf of a person who acquires or regains testamentary capacity after the making of the order, that person may revoke or deal with the will without an order under section 17.

### **21. Execution and storage of wills made under an order under section 17**

(1) A will which is made under an order under section 17 is not valid unless it is in writing, signed by the Registrar and sealed with the seal of the Court.

(2) The revocation of a will which is made under an order under section 17 is not valid unless it is effected by a document which is signed by the Registrar and sealed with the seal of the Court.

(3) Any will and any document to which this section applies must be deposited with the Registrar under section 54.

(4) Despite section 56, any will and any document to which this section applies, which has been deposited with the Registrar, must not be withdrawn from the deposit unless—

- (a) the Court has made an order under this section revoking the will; or
- (b) the person on whose behalf the will has been made has acquired or regained testamentary capacity.

(5) A failure to comply with subsection (3) does not affect the validity of the will.

### **22. Matters of which Court must be satisfied before application for leave to make an application may be granted**

Before granting leave to apply for an order under section 17, the Court must be satisfied that—

- (a) the person on whose behalf the will is to be made or revoked does not have testamentary capacity; and
- (b) the proposed will or revocation reflects what the intentions of the person would be likely to be, or what the intentions of the person might reasonably be expected to be, if he or she had testamentary capacity; and
- (c) it is reasonable in all the circumstances for the Court, by order, to authorise the making of the will or the revocation of the will for the person.

### **23. Hearing an application for leave**

(1) In considering an application for leave to make an order under section 17—

- (a) in addition to any matter which the Court may take into account under section 24, the Court may inform itself in any manner it sees fit; and
- (b) the Court is not bound by the rules of evidence.

(2) Nothing in subsection (1) prevents the application of Part 3.10 of the *Evidence Act 2004* to an application under section 17.

(3) If the Court is satisfied, on the evidence tendered under subsection (1) of the matters set out in section 22(a) to (c), the Court may determine that the application for leave to apply for an order under section 17 proceed as an application for such an order.

#### **24. Information which the Court may require in support of an application for leave**

In proceedings for the hearing of an application for leave to apply for an order under section 17, the applicant must, if so required by the Court, give—

- (a) a written statement of the general nature of the application and the reasons for making it;
- (b) a reasonable estimate, formed from any evidence available to the applicant, of the size and character of the estate of the person on whose behalf the will is to be made;
- (c) a draft of the proposed will for which the applicant is seeking the Court's approval;
- (d) any evidence available to the applicant of the wishes of the person;
- (e) any evidence available to the applicant of the likelihood of the person acquiring or regaining testamentary capacity;
- (f) any evidence available to the applicant of the terms of any will previously made by the person;
- (g) any evidence available to the applicant of the likelihood of an application being made under Part 11 of the *Administration and Probate Act 2006* in respect of property of the person;
- (h) any evidence available to the applicant of the circumstances of any person for whom provision might reasonably be expected to be made under the will;
- (i) any evidence available to the applicant of any persons who might be entitled to claim on intestacy;
- (j) any evidence available to the applicant of any gift for a charitable or other purpose that the person might reasonably be expected to give or make by will;
- (k) any other evidence available to the applicant and which is relevant to the application.

## 25. Persons who are entitled to appear at an application for leave

Each of the following persons is entitled to appear and be heard in any proceedings for the hearing of an application for leave to apply for an order under section 17—

- (a) the person on whose behalf the will is to be made;
- (b) the holder of a recognised interstate practising certificate (within the meaning of the *Legal Profession Act 1993*) representing that person;
- (c) an attorney appointed by that person under an enduring power of attorney;
- (d) any guardian or administrator of a person who has been appointed in accordance with a law of a State or Territory or of the Commonwealth for the assistance of persons with a disability or in respect of missing persons;
- (e) any other person who has, in the opinion of the Court, a genuine interest in the matter.

## 26. Recognition of statutory wills

(1) A statutory will made according to the law of the place where the deceased was resident at the time of the execution of the will is deemed to be a valid will of the deceased.

(2) In this section, *statutory will* means a will executed under a statutory provision on behalf of a person who, at the time of the execution, lacked testamentary capacity.

### Division 3—Court authorised rectification of wills

## 27. Can a will be rectified?

(1) The Court may make an order to rectify a will to carry out the intentions of the testator, if the Court is satisfied that the will does not carry out the testator's intentions because—

- (a) a clerical error was made; or
- (b) the will does not give effect to the testator's instructions.

(2) A person who wishes to make an application for an order under subsection (1) must apply to the Court within 6 months from the date of the grant of probate.

(3) The Court may extend the period of time for making an application if the Court thinks this is necessary, even if the original period of time has expired, but not if the final distribution of the estate has been made.

(4) If the personal representative makes a distribution to a beneficiary, the personal representative is not liable if—

- (a) the distribution is made—
  - (i) to a person who is, at the date of the deceased's death, the spouse of the deceased; or
  - (ii) to the domestic partner or a child of the deceased—  
and is made—
    - (iii) in good faith; and
    - (iv) for the purpose of providing for the maintenance, support or education of the person to whom it is made; or

- (b) the distribution has been made—
  - (i) when the personal representative has not been aware of any application under this section or any application under Part 11 of the *Administration and Probate Act 2006* having been made; and
  - (ii) at least 6 months after the grant of probate.

## **28. Order to be attached to will**

The Court must direct that a certified copy of an order under section 27 must be attached to the grant of probate or letters of administration with the will annexed (as the case requires) of the will to which the order relates, and the Court must retain the probate or letters of administration until the copy of the order is attached.

## **PART 4—CONSTRUCTION OF WILLS**

### **Division 1—General rules about the construction of wills**

## **29. What interest in property does a will operate to dispose of?**

If—

- (a) a testator has made a will disposing of property; and
- (b) after the making of the will and before his or her death, the testator disposes of an interest in that property—

the will operates to dispose of any remaining interest the testator has in that property.

## **30. When does a will take effect?**

(1) A will takes effect, with respect to the property disposed of by the will, as if it had been executed immediately before the death of the testator.

(2) Subsection (1) does not apply if a contrary intention appears (whether in the will or elsewhere).

## **31. What is the effect of a failure of a disposition?**

(1) If any disposition of property is ineffective, the will takes effect as if the property were part of the residuary estate of the testator.

(2) Subsection (1) does not apply if a contrary intention appears (whether in the will or elsewhere).

(3) In this section *disposition of property* does not include the exercise of a power of appointment.

**32. When is evidence admissible to clarify a will?**

(1) In any proceedings to construe a will, if the language used in a will renders the will or any part of the will—

- (a) meaningless; or
- (b) uncertain or ambiguous on the face of the will; or
- (c) uncertain or ambiguous in the light of surrounding circumstances—

evidence may be admitted to assist in the interpretation of that language.

(2) Evidence which may be admitted under subsection (1)(c) does not include evidence of the testator's intention.

(3) Nothing in this section prevents the admission of evidence which would otherwise be admissible at law in any proceedings to construe a will.

**33. What is the effect of a change in the testator's domicile?**

The construction of a will is not altered by a change in the testator's domicile after he or she has executed the will.

**34. Income on contingent and future dispositions**

A contingent, future or deferred disposition of property, whether specific or residuary, includes any intermediate income of the property which has not been disposed of by the will.

**35. Beneficiaries must survive testator by 30 days**

(1) If a disposition is made to a person who dies within 30 days after the death of the testator, the will is to take effect as if the person had died before the testator.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

(3) A general requirement or condition that a beneficiary survive the testator is not a contrary intention for the purpose of this section.

(4) If the personal representative makes a distribution under the will to a person who is—

- (a) the spouse of the testator at the date of the testator's death; or
- (b) the domestic partner or a child of the testator—

within 30 days after the death of the testator, the personal representative is not liable if the distribution is made—

- (c) in good faith; and
- (d) for the purpose of providing for the maintenance, support or education of the person to whom it is made—

whether or not an application has been made under Part 11 of the *Administration and Probate Act 2006* or under section 27 of this Act.

(5) Any distribution made to a person under subsection (4) must be deducted from the share of the estate to which the person is entitled under the will, or, if the person does not survive the testator by 30 days, must be treated as an administration expense.

## **Division 2—Construction of particular provisions in wills**

### **36. What does a general disposition of land include?**

(1) A general disposition of land or of the land in a particular area includes leasehold land whether or not the testator owns freehold land.

(2) Subsection (1) does not apply if a contrary intention appears (whether in the will or elsewhere).

### **37. What does a general disposition of property include?**

(1) A general disposition of—

(a) all or the residue of the testator's property; or

(b) all or the residue of his or her property of a particular description—

includes any property over which he or she has a general power of appointment exercisable by will and operates as an exercise of the power.

(2) Subsection (1) does not apply if a contrary intention appears (whether in the will or elsewhere).

### **38. What is the effect of a disposition of real property without words of limitation?**

(1) A disposition of real property to a person without words of limitation is to be construed as passing the whole estate or interest of the testator in that property to that person.

(2) Subsection (1) does not apply if a contrary intention appears (whether in the will or elsewhere).

### **39. How are dispositions to issue to operate?**

(1) A disposition to a person's issue, without limitation as to remoteness, must be distributed to that person's issue in the same manner as if that person had died intestate and as if that person had died leaving only issue surviving.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

### **40. How are requirements to survive with issue construed?**

(1) If there is a disposition to a person in a will which is expressed to fail if there is either—

(a) a want or a failure of issue of that person either in his or her lifetime or at his or her death; or

(b) an indefinite failure of issue of that person—

those words must be construed to mean a want or failure of issue in the person's lifetime or at the person's death and not an indefinite failure of his or her issue.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

(3) For the purposes of avoiding doubt, subsection (2) does not affect the operation of the rule against perpetuities.



#### **41. Dispositions not to fail because issue have died before the testator**

- (1) If a person makes a disposition to any of his or her issue, where—
  - (a) the disposition is not a disposition to which section 39 applies; and
  - (b) one or more of the issue do not survive the testator for thirty days; and
  - (c) the interest in the property is not determinable at or before the death of the issue—

the issue of the deceased issue who survive the testator for 30 days take the deceased issue's share of the disposition in place of the deceased issue in the same manner as if the testator had died intestate and as if the testator had died leaving only issue surviving.

(2) Subsection (1) applies to dispositions to issue either as individuals or as members of a class.

(3) Subsection (1) does not apply if a contrary intention appears in the will, but a general requirement or condition that a beneficiary survive the testator or attain a specified age does not indicate a contrary intention for the purposes of this section.

- (4) If an original beneficiary under a will—
  - (a) is issue of the testator; and
  - (b) did not survive the testator by 30 days; and
  - (c) did not fulfil a contingency required by the will—

subsection (1) does not operate to entitle issue of that beneficiary to a disposition under the will.

#### **42. Construction of residuary dispositions**

(1) A disposition of the whole or of the residue of the estate of a testator which refers only to the real estate of the testator or only to the personal estate of the testator is to be construed to include both the real and personal estate of the testator.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

(3) If any part of—

- (a) a residuary disposition which is in fractional parts; or
- (b) a disposition of the whole of the estate which is in fractional parts—

fails, the part that fails passes to the part which does not fail and, if there is more than one part which does not fail, to all those parts proportionately.

(4) Subsection (3) does not apply if a contrary intention appears in the will.

#### **43. Dispositions to unincorporated associations of persons**

- (1) A disposition—
  - (a) to an unincorporated association of persons, which is not a charity; or
  - (b) to or upon trust for the aims, objects or purposes of an unincorporated association of persons, which is not a charity; or
  - (c) to or upon trust for the present and future members of an unincorporated association of persons, which is not a charity—

has effect as a disposition in augmentation of the general funds of the association.

- (2) Property which is or which is to be taken to be a disposition in augmentation of the general funds of an unincorporated association must be—
- (a) paid into the general fund of the association; or
  - (b) transferred to the association; or
  - (c) sold or otherwise disposed of on behalf of the association and the proceeds paid into the general fund of the association.
- (3) If—
- (a) the personal representative pays money to an association under a disposition, the receipt of—
    - (i) the Treasurer; or
    - (ii) a like officer, if the officer is not so named—
 of the association is an absolute discharge for that payment; or
  - (b) the personal representative transfers property to an association under a disposition, the transfer of that property to a person or persons designated in writing by any two persons holding the offices of President, Chairman, Treasurer or Secretary or like officers, if those officers are not so named, is an absolute discharge to the personal representative for the transfer of that property.
- (4) Subsection (3) does not apply if a contrary intention appears in the will.
- (5) It is not an objection to the validity of a disposition to an unincorporated association of persons that—
- (a) a list of persons who were members of the association at the time the testator died cannot be compiled; or
  - (b) that the members of the association have no power to divide assets of the association beneficially among themselves.

**44. Can a person, by will, delegate the power to dispose of property?**

A power or a trust to dispose of property, created by will, is not void on the ground that it is a delegation of the testator's power to make a will, if the same power or trust would be valid if made by the testator, by instrument during his or her lifetime.

**45. What is the effect of referring to a valuation in a will?**

- (1) If—
- (a) there is an express or implied requirement in a will that a valuation be made or accepted for any purpose; and
  - (b) the will does not provide a method of calculating the valuation or the method of calculating the valuation is not provided for by the law of Norfolk Island or of another jurisdiction—

the reference to the valuation in the will is to be construed as if it were a reference to a valuation of the property as at the testator's death made by a competent valuer.

- (2) Subsection (1) does not apply if a contrary intention appears in the will.

### **Division 3—Wills to which foreign laws apply**

#### **46. General rule as to validity of a will executed in a foreign place**

- (1) This section and sections 47 and 49 do not limit the operation of Part 5.
- (2) A will is to be taken to be properly executed if its execution conforms to the internal law in force in the place—
  - (a) where it was executed; or
  - (b) which was the testator's domicile or habitual residence, either at the time the will was executed, or at the testator's death; or
  - (c) of which the testator was a national, either at the date of execution of the will, or at the testator's death.
- (3) The following wills are also to be taken to be properly executed—
  - (a) a will executed on board a vessel or aircraft, if the will has been executed in conformity with the internal law in force in the place with which the vessel or aircraft may be taken to have been most closely connected having regard to its registration and other relevant circumstances; or
  - (b) a will, so far as it disposes of immovable property if it has been executed in conformity with the internal law in force in the place where the property is situated; or
  - (c) a will, so far as it revokes a will or a provision of a will which has been executed in accordance with this Act, or which is taken to have been properly executed by this Act, if the later will has been executed in conformity with any law by which the earlier will or provision would be taken to have been validly executed; or
  - (d) a will, so far as it exercises a power of appointment, if the will has been executed in conformity with the law governing the validity of the power.
- (4) A will to which this section applies, so far as it exercises a power of appointment, is not to be taken to have been improperly executed because it has not been executed in accordance with the formalities required by the instrument creating the power.

#### **47. Ascertainment of the system of law which applies to a will**

If, in the case of a will to which the internal law in force in a place is to be applied, there is more than one system of internal law in force in the place which relates to the formal validity of wills the system to be applied is determined as follows—

- (a) if there is a rule in force throughout the place which indicates which system applies to the will, that rule must be followed; or
- (b) if there is no rule, the system must be that with which the testator was most closely connected—
  - (i) at the time of his or her death, if the matter is to be determined by reference to circumstances prevailing at his or her death; or
  - (ii) in any other case, at the time of execution of the will.

#### 48. Construction of the law applying to wills

(1) In determining whether a will has been executed in conformity with a particular law, regard must be had to the formal requirements of that law at the time of execution, but account may be taken of a later alteration of the law affecting wills executed at that time, if the alteration enables the will to be treated as properly executed.

(2) If a law in force outside Norfolk Island is applied to a will, a requirement of that law that special formalities must be observed by testators of a particular description or that the witnesses to the execution of a will must have certain qualifications, is to be taken to be a formal requirement only, despite any rule of that law to the contrary.

### PART 5—INTERNATIONAL WILLS

#### 49. Definitions

In this Part—

*Convention* means the Convention providing a Uniform Law on the Form of an International Will 1973 signed in Washington on 26 October 1973;

*international will* means a will made in accordance with the requirements of the Annex to the Convention as set out in the Schedule.

#### 50. Application of Convention

The Annex to the Convention has the force of law in Norfolk Island.

**Note:**—The Annex to the Convention is set out in the Schedule.

#### 51. Persons authorised to act in connection with international wills

(1) For the purposes of this Part, the following persons are authorised to act in connection with an international will—

- (a) a resident practitioner;
- (b) the holder of a recognised interstate practising certificate (within the meaning of the *Legal Profession Act 1993*);
- (c) a public notary of any Australian jurisdiction.

(2) For the purposes of this Part, a reference in the Annex to the Convention to a person authorised to act in connection with international wills is a reference to—

- (a) a person referred to in subsection (1) who is acting in Australia;
- (b) any other person who is acting as an authorised person under the law of a State (other than Australia) that is a party to the Convention.

**Note:**—This section gives effect to Articles 2 and 3 of the Convention.

#### 52. Witnesses to international wills

The conditions requisite to acting as a witness to an international will are governed by the law of Norfolk Island.

**Note:**—For the relevant provisions of this Act, see Division 4 of Part 2.

**53. Application of Act to international wills**

To avoid doubt, the provisions of this Act that apply to wills extend to international wills.

**PART 6—DEPOSIT OF WILLS****54. Deposit of wills with Registrar**

(1) Any person may deposit a will in the office of the Registrar.

(2) Any will deposited in the office of the Registrar must be in a sealed envelope which has written on it—

- (a) the testator's name and address (as they appear in the will); and
- (b) the name and address (as they appear in the will) of any executor; and
- (c) the date of the will; and
- (d) the name of the person depositing the will—

and must be accompanied by the prescribed fee.

(3) No fee is payable in respect of any will deposited with the Registrar if the deposit is made because a legal practitioner has died, or has ceased, or is about to cease, practising in Norfolk Island.

**55. Power to prescribe fees**

(1) The Administrator may make regulations for or with respect to prescribing fees for the purposes of section 54 or 56.

(2) Regulations made under subsection (1)—

- (a) may prescribe fees in respect of a particular class or classes of wills or will makers; and
- (b) may prescribe different fees in respect of different classes of wills or will makers; and
- (c) may authorise the Registrar to waive fees in particular cases or classes of cases.

**56. Delivery of wills by Registrar**

(1) Upon receiving an application in writing and the prescribed fees, the Registrar may give any will deposited with the Registrar—

- (a) to the testator; or
- (b) to a legal practitioner or trustee company nominated by the testator; or
- (c) upon the death of the testator—
  - (i) to any executor named in the will or any legal practitioner or trustee company nominated by an executor; or
  - (ii) to any person entitled to apply for letters of administration with the will annexed or a legal practitioner nominated by that person.

(2) The Registrar may examine any will to enable the Registrar to comply with section 54 or this section.

(3) The Registrar must ensure that an accurate copy of every will given to a person under subsection (1) is made and retained.

(4) If there is any doubt as to whom a will should be given, the Registrar, or any other person, may apply to the Court for directions as to whom the Registrar should give the will.

**57. Who may see a will?**

A person who has possession and control of a will, a revoked will or a purported will of a deceased person must allow the following persons to inspect and make copies of the will (at their own expense)—

- (a) any person named or referred to in the will, whether as beneficiary or not;
- (b) any person named or referred to in any earlier will as a beneficiary;
- (c) any spouse of the testator at the date of the testator's death;
- (d) any domestic partner of the testator;
- (e) any parent, guardian or children of the deceased person;
- (f) any person who would be entitled to a share of the estate if the deceased person had died intestate;
- (g) any parent or guardian of a minor referred to in the will or who would be entitled to a share of the estate of the testator if the testator had died intestate;
- (h) any creditor or other person who has a claim at law or in equity against the estate of the deceased person and who produces evidence of that claim.

**PART 7 —TRANSITIONAL AND CONSEQUENTIAL PROVISIONS****58. Repeal of *Wills Act 1973***

The *Wills Act 1973* is **repealed**.

**59. Transitional provisions**

(1) This Act, other than sections 4, 7, 8, 9, 27, 29, 30, 31, 33, 34, 36, 37, 38, 43, 44 and 45 applies only to wills made on or after the commencement of this section.

(2) The *Wills Act 1973*, as in force immediately before the commencement of this section, continues to apply to wills made before the commencement of this section, in so far as those wills do not come under the operation of subsection (3) or (5) or under the operation of the sections specified in subsection (4).

(3) Section 13 applies to a will made before the commencement of this section, if the granting of the decree absolute of the dissolution of the marriage or the annulment of the marriage has taken place after the commencement of this section.

(4) Sections 4, 7, 8, 9, 27, 29, 30, 31, 33, 34, 36, 37, 38, 43, 44 and 45 apply to wills whether or not they are executed before, on or after the commencement of this section, where the testator dies on or after that commencement.

(5) Section 11 applies to the revocation, after the commencement of this section, of a will, whether made before, on or after that commencement.

**SCHEDULE***Section 50***ANNEX TO CONVENTION PROVIDING A UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL 1973****ANNEX****UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL***Article 1*

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereafter.
2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

*Article 2*

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

*Article 3*

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

*Article 4*

1. The testator shall declare in the presence of two witnesses and of a person authorised to act in connection with international wills that the document is his will and that he knows the contents thereof.
2. The testator need not inform the witnesses, or the authorised person, of the contents of the will.

*Article 5*

1. In the presence of the witnesses and of the authorised person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
2. When the testator is unable to sign, he shall indicate the reason therefor to the authorised person who shall make note of this on the will. Moreover, the testator may be authorised by the law under which the authorised person was designated to direct another person to sign on his behalf.
3. The witnesses and the authorised person shall there and then attest the will by signing in the presence of the testator.

*Article 6*

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorised person. In addition, each sheet shall be numbered.

*Article 7*

1. The date of the will shall be the date of its signature by the authorised person.
2. This date shall be noted at the end of the will by the authorised person.

*Article 8*

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorised person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

*Article 9*

The authorised person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

*Article 10*

The certificate drawn up by the authorised person shall be in the following form or in a substantially similar form:

## CERTIFICATE

(Convention of October 26, 1973)

1. I, ..... (name, address and capacity), a person authorised to act in connection with international wills

2. Certify that on ..... (date) at ..... (place)

3. (testator) ..... (name, address, date and place of birth) in my presence and that of the witnesses

4. (a)..... (name, address, date and place of birth)

(b)..... (name, address, date and place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

\* (2) following a declaration of the testator stating that he was unable to sign his will for the following reason  
.....

– I have mentioned this declaration on the will

\* – the signature has been affixed by ..... (name, address)

7. (b) the witnesses and I have signed the will;

8. \* (c) each page of the will has been signed by ..... and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. \* (f) the testator has requested me to include the following statement concerning the safekeeping of his will:  
.....

12. PLACE

13. DATE

14. SIGNATURE and, if necessary, SEAL

\* To be completed if appropriate

*Article 11*

The authorised person shall keep a copy of the certificate and deliver another to the testator.

*Article 12*

In the absence of evidence to the contrary, the certificate of the authorised person shall be conclusive of the formal validity of the instrument as a will under this Law.

*Article 13*

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.



*Article 14*

The international will shall be subject to the ordinary rules of revocation of wills.

*Article 15*

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

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**NOTES**

The *Wills Act 2012* as shown in this consolidation comprises Act No. 8 of 2012 and amendments as indicated in the Tables below.

<b>Enactment</b>	<b>Number and year</b>	<b>Date of commencement</b>	<b>Application saving or transitional provision</b>
<i>Wills Act 2012</i>	8, 2012	1.1.2013 except Part 5	
<i>Wills (Amendment) Act 2013</i>	4, 2013	12.2.2013	

**Table of amendments**

ad = added or am = amended rep = repealed rs = repealed and inserted substituted

<b>Provisions affected</b>	<b>How affected</b>
59	am 4, 2013

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