

WILLS ACT, 1970-1971

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WESTERN AUSTRALIA.

WILLS.

No. 12 of 1970.¹

[As amended by Act:
No. 20 of 1971,² assented to 1st December, 1971;

and reprinted pursuant to the Amendments Incorporation Act,
1938.]

**AN ACT to Consolidate and Amend the Law
relating to Wills.**

[Assented to 29th April, 1970.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Wills Act, 1970-1971*. Short title.
Amended
by No. 20 of
1971, s. 1.

2. This Act shall come into operation on a date to be fixed by proclamation.¹ Commence-
ment.

3. On the coming into operation of this Act the Acts specified in the Schedule to this Act are repealed to the extent mentioned in that Schedule Repeals.

¹ Came into operation 1st July, 1970. See *Gazette* 5th June, 1970, p. 1521.

² Came into operation 21st January, 1972. See *Gazette* 21st January, 1972, pp. 71-2.

and the Acts of the United Kingdom specified in that Schedule cease to have effect in the State.

Definitions.

4. In this Act, unless the contrary intention appears—

Cf. W.A. Act
No. 24 of
1964 s. 3.

“country” means any place or group of places having its own law of nationality, including the Commonwealth and its territories;

Cf. U.K. 7
Will. IV and
1 Vict.
C. 26 s. 1.

“disposition” includes a gift, devise, bequest or an appointment of property contained in a will; and

“dispose of” has a corresponding meaning;

“internal law” in relation to any country or place means the law that would apply in a case where no question of the law in force in any other country or place arose;

“place” means any territory including a State or Territory of the Commonwealth;

“property” includes real and personal property or any interest therein and any thing or chose in action;

“will” includes a codicil and any testamentary instrument.

Application
of Act.
Cf. W.A. Act
No. 24 of
1964, s. 3(4).

5. This Act applies to the will of any person dying on or after the date of the coming into operation of this Act, whether the will was executed or made before, on or after that date but does not apply to the will of any person who died before that date.

PART II.—DISPOSITIONS AND APPOINTMENTS BY WILL.

Property dis-
posable by
will.
Cf. U.K.
7 Will.
IV and 1
Vict. C. 26,
s. 3

6. A person may, by a will executed or made in manner required or permitted by this Act, dispose of all his property (whether acquired before or after making his will) to which at the time of his death he is entitled either at law or in equity and of all

property that in exercise of a power of appointment he is entitled or able to dispose of by his will, and may also by his will appoint a guardian of his infant children.

7. Subject to the provisions of Part VI of this Act, a will made by a person under the age of eighteen years is not valid.

Age of capacity to make will.
Cf. U.K.
7 Will. IV and 1 Vict. C. 26, s. 7.

PART III.—EXECUTION OF WILLS.

8. Subject to the provisions of Part VI of this Act, a will is not valid unless—

Execution generally.
Cf. U.K.
7 Will. IV and 1 Vict. C. 26, s. 9.
W.A. Act 13, Vict. No. 13.

- (a) it is in writing;
- (b) it is signed by the testator or signed in his name by some other person in his presence and by his direction, in such place on the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will;
- (c) the testator makes or acknowledges the signature in the presence of at least two witnesses present at the same time; and
- (d) the witnesses attest and subscribe the will in the presence of the testator but no publication or form of attestation is necessary.

9. A will executed in the manner required by this Act is, so far as respects the execution and attestation thereof, a valid exercise of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity.

Execution of will exercising a power of appointment.
Cf. U.K.
7 Will. IV and 1 Vict. C. 26, s. 10.

10. (1) Subject to subsection (2) of this section, unless an alteration made to a will after its execution is made in accordance with the provisions

Alterations after execution.
Cf. U.K.
7 Will. IV and 1 Vict. C. 26, s. 21.

of this Act governing the making of a will, the alteration has no effect except to invalidate words or meanings that it renders no longer apparent.

(2) An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or in the case of a will that was made under Part VI of this Act, the signature of the testator, are or is made—

- (a) in the margin or in some other part of the will opposite or near the alteration; or
- (b) at the foot or end of, or opposite to, a memorandum referring to the alteration and written in some part of the will.

(3) In this section “apparent” means legible by the unaided eye or with the help of a magnifying lens but not otherwise.

PART IV—WITNESSES TO WILLS.

Executor or creditor not incompetent witness.
Cr. U.K. 7 Will. IV and 1 Vict. C. 26 ss. 16 and 17.

11. An executor of the will or a creditor of the estate to which the will relates is not on that account incompetent as a witness to prove the execution of the will or its validity or invalidity.

Beneficiary not incompetent witness.
Cr. U.K. Will. IV and 1 Vict. C. 26 s. 15.

12. A person to whom a disposition is made by a will or the spouse of such person is not on that account incompetent as a witness to prove the execution of the will or its validity or invalidity.

Dispositions to witnesses.

13. (1) A disposition, other than a charge for payment of a debt, to a person or the spouse of a person who is an attesting witness to the will is void.

(2) Where the will is attested by at least two persons other than the person to whom subsection (1) of this section applies or where no attestation is necessary, the disposition is not void under that subsection.

PART V—REVOCATION OF WILLS.

14. (1) A will is revoked by the marriage of the testator except where—

Subsequent marriage.
Cf. W.A. Act No. 83 of 1962, s. 20.
U.K. Will. IV and 1 Vict. C. 26 s. 18.

- (a) there is a declaration in the will that it is made in contemplation of the marriage; or
- (b) the will is made in exercise of a power of appointment where the property thereby appointed would not in default of appointment pass to the testator's personal representatives as such.

(2) A will expressed to be made in contemplation of the marriage of the testator is void if the marriage is not solemnised, unless the will provides to the contrary.

15. A will or a part of a will is revoked only by—

When will revoked.
Cf. U.K. 7 Will. IV and 1 Vict. C. 26, ss. 18 and 20.

- (a) marriage, subject to section 14 of this Act;
- (b) a later will executed in manner provided by this Act that expressly or impliedly revokes the earlier will;
- (c) a writing declaring an intention to revoke it that is executed in the manner in which a will is required by this Act to be executed; or
- (d) burning, tearing or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it.

16. (1) A will or any part of a will that has been in any manner revoked is revived only by the re-execution thereof or by a later will executed in manner required by this Act and showing an intention to revive the will or part.

How revoked will revived.
Cf. U.K. 7 Will. IV and 1 Vict. C. 26, s. 22.

(2) When a will that has been partly revoked and afterwards wholly revoked, is revived, the revival does not, unless the contrary intention appears by the will, extend to the part that was revoked before the revocation of the whole.

PART VI.—PRIVILEGED WILLS.

Persons entitled to make privileged wills.
Of. U.K. 7 Will. IV and 1 Vict. C. 26, s. 11. W.A. Act No. 20 of 1941.

17. Any of the following persons irrespective of his age may make a valid will and may also validly revoke a will with or without making a new will:—

- (a) any person, whether as a member or not, serving with the armed forces of the Commonwealth or its allies while in actual military, naval or air service in connection with operations that are, or have been taking place, or are believed to be imminent in relation to a war declared or undeclared or other armed conflict in which members of such armed forces are, or have been or are likely to be engaged;
- (b) any mariner or seaman being at sea.

Making of a privileged will.

18. A will made by a person to whom the provisions of section 17 of this Act apply need not be executed in the manner required by section 8 of this Act but may be made, without any formality, by any form of words, whether written or spoken, if it is clear that he thereby intended to dispose of his property after his death.

Revocation of privileged will.

19. A person who has made a will at a time when the provisions of section 17 of this Act applied to him may, after those provisions cease to apply to him and while under the age of eighteen years, revoke such will by any manner of revocation provided in this Act other than by the making of a later will.

PART VII—RULES AS TO FORMAL VALIDITY OF WILLS.

Effect of this Part.

20. The provisions of this Part of this Act take effect notwithstanding any other provisions of this Act.

General rule as to formal validity.
Cf. W.A. Act No. 24 of 1964, s. 4.

21. A will shall be treated as properly executed if its execution conformed to the internal law in force in the place where it was executed, or in the

place where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a country of which, at either of those times, he was a national.

22. Without prejudice to the provisions of section 21 of this Act the following wills shall be treated as properly executed:—

Additional
rules.
Cf. W.A. Act
No. 24 of
1964, s. 5.

- (a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the place with which, having regard to its registration, if any, and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it disposes of immovable property if its execution conformed to the internal law in force in the place where the property was situated;
- (c) a will so far as it revokes a will which under this Part of this Act would be treated as properly executed or revokes a provision which under this Part of this Act would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;
- (d) a will so far as it exercises a power of appointment if the execution of the will conformed to the law governing the essential validity of the power.

23. (1) Where under this Part of this Act the internal law in force in any country or place is to be applied in the case of a will, but there are in force in that country or place two or more systems of internal law relating to the formal validity of wills,

Ascertain-
ment of
system of
internal law.
Cf. W.A. Act
No. 24 of
1964, s. 3(2).

the system to be applied shall be ascertained as follows:—

- (a) if there is in force throughout the country or place a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or
- (b) if there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death and at the time of execution of the will in any other case.

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

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

PART VIII.—THE CONSTRUCTION OF WILLS.

Change of
domicile.
Cf. W.A. Act
No. 24 of
1964, s. 6.

24. The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

25. A transfer of or other act relating to any property comprised in a disposition, not being an act by which the will is revoked as provided in this Act, made or done after the making of the will, does not prevent the operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his death.

Disposition not revoked by an alteration of the estate or interest of the testator.
Cf. U.K. 7 Will IV and 1 Vict. C. 26, s. 23.

26. Unless the contrary intention appears by the will—

General rules of construction.

- (a) the will is to be construed, with reference to the property comprised in it, to speak and take effect as if it has been executed immediately before the death of the testator;
- (b) property that is the subject of a disposition that is void or fails to take effect is to be included in any residuary disposition contained in the will;
- (c) a general disposition of land or of the land in a particular area includes leasehold land whether or not the testator owns freehold land;
- (d) a general disposition of all the testator's property or of all his property of a particular kind includes property over which he had a general power of appointment exercisable by will and operates as an execution of the power;
- (e) a disposition of property without words of limitation whether to a person beneficially or as executor or trustee is to be construed as passing the whole estate or interest of the testator therein.

Cf. U.K. 7 Will. IV and 1 Vict. C. 26, ss. 24, 25, 26, 27, 28, 30 and 31.

27. (1) Unless the contrary intention appears by the will, where there is a disposition therein to a person who is a child or other issue of the testator, for an estate or interest not determinable at or before the death of that person and that person dies in the lifetime of the testator leaving a child or children who survive the testator, the disposition

Statutory substitutional gift.
Cf. W.A. Act No. 83 of 1962, s. 21, N.Z. Wills Amendment Act, 1958, s. 3.

does not lapse but takes effect as a substitutional disposition to such of the children of that person who survive the testator and if more than one in equal shares.

(2) This section applies whether the disposition referred to in subsection (1) of this section is to a person as a named or designated person or as a member of a class.

(3) This section does not apply to a disposition to a person as one of two or more joint tenants.

Charges on property to be paid primarily out of property charged.
 Cr. U.K. 17 and 18 Vict. C. 113, 15 Geo. V., C. 23, s. 35. W.A. Acts 34, Vict. No. 11. N.S.W. Act No. 6 of 1919, s. 145.

28. (1) Where by his will a testator disposes of any property that at the time of his death is charged with the payment of money whether by way of mortgage, charge, lien (including a lien for unpaid purchase money) or otherwise and the testator has not by the will or by a deed or other document signified a contrary or other intention the property so charged is, as between the different persons claiming through the testator, primarily liable for payment of the money secured by the charge, and every part of such property according to its value shall bear a proportionate part of the charge on the whole.

(2) Such contrary or other intention is not deemed to be signified—

- (a) by a general direction for the payment of the debts, or of all the debts of the testator out of his personal estate, or out of his residuary real and personal estate, or out of his residuary real estate; or
- (b) by a charge of debts on any such estates, unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of the person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the testator's estate or otherwise.

PART IX.—ILLEGITIMACY.

Part IX
added by
No. 20 of
1971, s. 3.

29. The provisions of this Part of this Act apply to the will of any person which is executed on or after the date of the coming into operation of the Wills Act Amendment Act, 1971, but does not apply to the will of any person which was executed before that date and, notwithstanding any rule of law, a disposition made by a will executed before that date shall not be treated for the purposes of this Part as made on or after that date by reason only that a codicil to the will is executed on or after that date.

Application
of Part IX.
Added by
No. 20 of
1971, s. 3.

30. As respects any will to which this Part applies, any rule of law that a disposition in favour of illegitimate children not in being when the disposition takes effect is void as contrary to public policy is hereby abolished.

Abolition of
rule regard-
ing illegiti-
mates not
in being.
Added by
No. 20 of
1971, s. 3.

31. (1) Unless the contrary intention appears by the will, where for the purpose of determining who is entitled to an interest in any property that is the subject of a disposition (whether that disposition is effected under that will or under the provisions of section 27 of this Act) it is necessary to determine any relationship, the relationship between a child and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships, whether lineal or collateral, shall be construed accordingly.

Determina-
tion of
relation-
ships.
Added by
No. 20 of
1971, s. 3.

(2) In any proceedings where a person relies on a matter of fact made relevant by the provisions of subsection (1) of this section—

- (a) that fact shall not be taken to be proved unless it is established to the reasonable satisfaction of the Court; and

(b) where the father and mother are not, or have not been, married to each other, the relationship between a child and his father, and all other lineal or collateral relationships, shall be recognised only—

(i) if paternity is admitted by or established against the father in his lifetime; and

(ii) where the purpose for which the relationship is to be determined enures for the benefit of the father, if paternity has been so admitted or established in the lifetime of the child.

SCHEDULE.

Number of Act.	Title of Act.	Extent of Repeal.
7 Will. IV and 1 Vict. C. 26.	An Act for the Amendment of the Laws with respect to Wills adopted in the State by Act No. 2 Vict. No. 1.	The whole.
18 Vict. No. 13.	An Ordinance for the amendment of the Laws with respect to Wills.	The whole.
17 and 18 Vict. C. 113.	An Act to amend the Law relating to the Administration of the Estates of deceased persons adopted in the State by Ordinance 31 Vict. No. 8.	The whole.
34 Vict. No. 1.	An Act further to amend the Law relating to the administration of the estates of deceased persons.	The whole.
43 Vict. No. 11.	An Act to declare the application of the Acts relating to the administration of the estates of deceased persons.	The whole.
No. 20 of 1941.	Wills (Soldiers, Sailors and Airmen) Act, 1941.	The whole.
No. 24 of 1964.	Wills (Formal Validity) Act, 1964.	The whole.
No. 32 of 1969.	Property Law Act, 1969.	Sections 116 and 117.

