



Queensland

Succession Amendment Act 2006

Act No. 1 of 2006



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Contents

		Page
1	Short title	6
2	Commencement	6
3	Act amended	6
4	Amendment of s 5 (Definitions)	6
5	Insertion of new s 5C	7
	5C Notes in text	7
6	Replacement of pt 2 (Wills)	7
	Part 2 Wills	
	Division 1 Application of part 2	
7	Application of pt 2.	7
	Division 2 Making a will	
8	Property that may be disposed of by will	8
9	Minimum age for making a will	8
10	How a will must be executed	9
11	When an interested witness may benefit from a disposition	10
12	When an interpreter may benefit from a disposition ..	11
	Division 3 Revoking, altering or reviving a will	
13	How a will may be revoked	11
14	Effect of marriage on a will	12
15	Effect of divorce or annulment on a will	13
16	How a will may be altered.	14
17	How a revoked will may be revived.	15
	Division 4 Powers of court	
	Subdivision 1 Execution requirements	
18	Court may dispense with execution requirements for will, alteration or revocation	16
	Subdivision 2 Minors	

19	Court may authorise minor to make, alter or revoke a will	16
20	Execution of will or other instrument made under order	17
Subdivision 3 Persons without testamentary capacity		
21	Court may authorise a will to be made, altered or revoked for person without testamentary capacity . . .	18
22	Leave to apply for s 21 order	19
23	Information required by court in support of application for leave	19
24	Matters court must be satisfied of before giving leave	20
25	Hearing an application for leave or for an order	21
26	Execution of will or other instrument made under order	21
27	Validity of will or other instrument made under order .	21
28	Relationship with Guardianship and Administration Act 2000 and Powers of Attorney Act 1998	22
Subdivision 4 Particular wills held by registrar		
29	Registrar to hold will or other instrument made under order under s 19.	22
30	Registrar to hold will or other instrument made under order under s 21.	23
31	Envelope required for will held by registrar.	23
32	Delivery of will or other instrument if testator has died	24
Subdivision 5 Rectification		
33	Court may rectify a will	25
33A	Protection of personal representatives who distribute as if the will had not been rectified	25
Division 5 Interpretation of wills		
33B	Beneficiaries must survive testator for 30 days	26
33C	Use of evidence to interpret a will	27
33D	Effect of a change in testator's domicile.	27
33E	When a will takes effect	27
33F	Will operates to dispose of remaining interest in property if part interest disposed of before death.	27
33G	Effect of a failure of a disposition of property	28
33H	Income of contingent, future or deferred disposition of property	28
33I	What a general disposition of land includes	28
33J	What a general disposition of property includes.	28

	33K	Effect of a disposition of real property without words of limitation	29
	33L	How dispositions of property to issue operate	29
	33M	How requirements to survive with issue are interpreted	30
	33N	Dispositions not to fail because issue have died before testator	30
	33O	Disposition of real estate or personal estate may include both in particular case	31
	33P	Disposition of fractional part in particular case.	31
	33Q	Dispositions to unincorporated associations of persons	31
	33R	When a person may delegate power to dispose of property by a will	33
	33S	Effect of reference to valuation in will	33
	Division 6	Wills with a foreign connection	
	33T	Wills that are taken to be properly executed	33
	33U	Deciding system of law to apply if more than 1 system of internal law	35
	33V	Formal requirements at time of execution apply.	35
	33W	Matters that are taken to be formal requirements.	35
	33X	Will by minor made under an order of a foreign court	36
	33Y	Recognition of statutory wills made by non-Queensland resident.	36
	Division 7	Miscellaneous	
	33Z	Persons entitled to inspect a will or to obtain a copy of a will	36
7		Amendment of s 49 (Powers of personal representatives).	38
8		Insertion of new s 49A	38
	49A	Personal representatives may make particular maintenance distribution	38
9		Omission of ss 62, 63, 64 and 67.	39
10		Insertion of new pt 7, div 4	39
	Division 4	Transitional provision for Succession Amendment Act 2006	
	76	Transitional provision for Succession Amendment Act 2006	39



Queensland

Succession Amendment Act 2006

Act No. 1 of 2006

An Act to amend the *Succession Act 1981*

[Assented to 22 February 2006]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Succession Amendment Act 2006*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act amended

This Act amends the *Succession Act 1981*.

4 Amendment of s 5 (Definitions)

(1) Section 5, definitions *disposition*, *internal law*, *property* and *will*—

omit.

(2) Section 5—

insert—

annulment see section 15.

disposition means a disposition by will and includes the following—

- (a) a gift, devise or bequest of property by 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.

divorce see section 15.

document—

- (a) for part 2, other than section 18, means any paper or material on which there is writing; or

(b) for section 18, see the *Acts Interpretation Act 1954*, section 36.

internal law, for part 2, in relation to a place, means the law that would apply if no question of the law in force in any other place arose.

registrar, for part 2, means a registrar or deputy registrar of the Supreme Court.

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

5 Insertion of new s 5C

After section 5B—

insert—

‘5C Notes in text

‘A note in the text of this Act is part of the Act.’.

6 Replacement of pt 2 (Wills)

Part 2—

omit, insert—

‘Part 2 Wills

‘Division 1 Application of part 2

‘7 Application of pt 2

‘Subject to section 76,¹ this part applies only to a will of a person who dies after the commencement of this section.

¹ Section 76 (Transitional provision for Succession Amendment Act 2006)

‘Division 2 Making a will

‘8 Property that may be disposed of by will

- ‘(1) A person may dispose by will of any property to which the person is entitled at the time of the person’s death.
- ‘(2) Subsection (1) applies whether or not the entitlement existed at the date of the making of the will.
- ‘(3) A person may dispose by will of any property to which the person’s personal representative becomes entitled, in the person’s capacity as personal representative, after the person’s death.
- ‘(4) Subsection (3) applies whether or not the entitlement existed at the time of the person’s death.
- ‘(5) A person may not dispose by will of property of which the person is trustee at the time of the person’s death.

‘9 Minimum age for making a will

- ‘(1) A will made by a minor is not valid.
- ‘(2) However—
 - (a) a minor may make a will in contemplation of marriage, and may alter or revoke the will, but the will is of no effect if the marriage contemplated does not take place; and
 - (b) a minor who is married may make, alter or revoke a will; and
 - (c) a minor whose marriage has ended, whether by divorce, annulment or death of the minor’s spouse, may revoke part or all of a will made—
 - (i) in contemplation of the marriage; or
 - (ii) while the person was married.
- ‘(3) Subsection (1) does not apply to a will—

- (a) made under an order made under section 19;² or
- (b) mentioned in section 33X.³

‘10 How a will must be executed

- ‘(1) This section sets out the way a will must be executed.
- ‘(2) A will must be—
 - (a) in writing; and
 - (b) signed by—
 - (i) the testator; or
 - (ii) someone else, in the presence of and at the direction of the testator.
- ‘(3) The signature must be made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time.
- ‘(4) At least 2 of the witnesses must attest and sign the will in the presence of the testator, but not necessarily in the presence of each other.
- ‘(5) However, none of the witnesses need to know that the document attested and signed is a will.
- ‘(6) The signatures need not be at the foot of the will.
- ‘(7) The signature of the testator must be made with the intention of executing the will.
- ‘(8) The signature of a person, other than the testator, made in the presence of and at the direction of the testator must be made with the intention of executing the will.
- ‘(9) A will need not have an attestation clause.
- ‘(10) A person who can not see and attest that a testator has signed a document may not act as a witness to a will.

2 Section 19 (Court may authorise minor to make, alter or revoke a will)

3 Section 33X (Will by minor made under an order of a foreign court)

- ‘(11) If a testator purports to make an appointment by will in the exercise of a power of appointment by will, the appointment is not valid unless the will is executed under this section.
- ‘(12) If a power is conferred on a person to make an appointment by will and the appointment must be executed in a particular way or with a particular solemnity, the person may make the appointment by a will that is executed under this section but is not executed in the particular way or with the particular solemnity.
- ‘(13) This section does not apply to a will made under an order under section 21.⁴

‘11 When an interested witness may benefit from a disposition

- ‘(1) This section applies if a disposition of property is made by a will to a person (the *interested witness*) who attests the execution of the will.
- ‘(2) The disposition is void to the extent it concerns the interested witness or a person claiming under the interested witness.
- ‘(3) However, subsection (2) does not apply 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 the consent; or
 - (c) the court is satisfied that the testator knew and approved of the disposition and it was made freely and voluntarily by the testator.
- ‘(4) In this section—
- disposition of property* does not include a charge or direction for the payment of—
- (a) a debt; or

4 Section 21 (Court may authorise a will to be made, altered or revoked for person without testamentary capacity)

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

'12 When an interpreter may benefit from a disposition

- '(1) This section applies if—
 - (a) for the purposes of making a will the services of a person (an *interpreter*) are used to interpret or translate from or to a language understood by the testator; and
 - (b) a disposition of property is made by the will to the interpreter.
- '(2) The disposition is void to the extent it concerns the interpreter or a person claiming under the interpreter.
- '(3) However, subsection (2) does not apply if—
 - (a) 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 the consent; or
 - (b) the court is satisfied that the testator knew and approved of the disposition and it was made freely and voluntarily by the testator.
- '(4) In this section—

disposition of property does not include a charge or direction for the payment of appropriate remuneration for being an interpreter for the testator in relation to the will.

'Division 3 Revoking, altering or reviving a will

'13 How a will may be revoked

- 'A will or part of a will may be revoked only—
 - (a) under section 14 or 15;⁵ or

⁵ Section 14 (Effect of marriage on a will) or 15 (Effect of divorce or annulment on a will)

- (b) by a will or other instrument made under an order under section 19 or 21;⁶ or
- (c) by a later will; or
- (d) by a document that—
 - (i) declares an intention to revoke the will or part; and
 - (ii) is executed in the way in which a will is required to be executed under this part; or
- (e) by the testator, or someone in the testator's presence and at the testator's direction—
 - (i) burning, tearing or otherwise destroying the will with the intention of the testator to revoke it; or
 - (ii) writing on the will, or dealing with the will, in a way that satisfies the court, from the state of the will, that the testator intended to revoke it.

'14 Effect of marriage on a will

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

Note—

For wills made before the commencement of section 7 as inserted by the *Succession Amendment Act 2006*, see section 76(2) and (3).

'(2) However, 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 the testator's death;
- (b) an appointment as executor, trustee, advisory trustee or guardian of the person to whom the testator is married at the time of the testator's death;
- (c) a will, to the extent it exercises a power of appointment, if the property in relation to which the appointment is exercised would not pass to an executor under any other will of the testator or to an administrator of any estate of

6 Section 19 (Court may authorise minor to make, alter or revoke a will) or 21 (Court may authorise a will to be made, altered or revoked for person without testamentary capacity)

the testator if the power of appointment were not exercised.

‘(3) Also—

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

‘15 Effect of divorce or annulment on a will

‘(1) A testator’s divorce or the annulment of a testator’s marriage revokes—

- (a) a disposition to the testator’s former spouse made by a will in existence when the divorce or annulment happens; and
- (b) an appointment, made by the will, of the former spouse as an executor, trustee, advisory trustee or guardian; and
- (c) any grant, made by the will, of a power of appointment exercisable by, or in favour of, the testator’s former spouse.

Note—

For wills made before the commencement of section 7 as inserted by the *Succession Amendment Act 2006*, see section 76 (4) and (5).

‘(2) However, a testator’s divorce or the annulment of a testator’s 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 only in favour of children of whom both the testator and the former spouse are parents.

- ‘(3) Subsection (1) does not apply if a contrary intention appears in the will.
- ‘(4) If a disposition, appointment or grant is revoked by this section, the will takes effect as if the former spouse had died before the testator.
- ‘(5) In this section—

annulment, in relation to a testator, means—

- (a) the granting of a decree of nullity in relation to the testator’s marriage by the Family Court of Australia; or
- (b) the annulment of the testator’s marriage under the law of a place outside Australia, if the annulment is recognised in Australia under the *Family Law Act 1975* (Cwlth).

divorce, in relation to a testator, means—

- (a) the taking effect of a divorce order for the testator under the *Family Law Act 1975* (Cwlth); or
- (b) the dissolution of the testator’s marriage under the law of a place outside Australia, if the dissolution is recognised in Australia under the *Family Law Act 1975* (Cwlth).

former spouse, in relation to a testator, means the person who was the spouse of the testator immediately before the divorce or annulment.

spouse includes a party to a purported or void marriage.

‘16 How a will may be altered

- ‘(1) An alteration to a will after it has been executed is not effective unless the alteration—
- (a) is executed in the way a will is required to be executed under this part; or
 - (b) is authorised by an order under section 19⁷ and is executed under section 20;⁸ or

7 Section 19 (Court may authorise minor to make, alter or revoke a will)

8 Section 20 (Execution of will or other instrument made under order)

- (c) is authorised by an order under section 21⁹ and is executed under section 26.¹⁰
- ‘(2) Subsection (1) does not apply to an alteration to a will made by, or at the direction of, the testator 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 under this section for execution of the alteration, if the signature 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.

‘17 How a revoked will may be revived

- ‘(1) A will or part of a will that has been revoked is revived by re-execution or by execution of a will that shows an intention to revive the will or part.
- ‘(2) A revival of a will that was partly revoked and later revoked as to the balance only revives the part of the will most recently revoked.
- ‘(3) Subsection (2) does not apply if a contrary intention appears in the document that revives the will.
- ‘(4) A will that has been revoked and is later entirely or partly revived is taken to have been executed on the day on which the will is revived.

9 Section 21 (Court may authorise a will to be made, altered or revoked for person without testamentary capacity)

10 Section 26 (Execution of will or other instrument made under order)

‘Division 4 Powers of court**‘Subdivision 1 Execution requirements****‘18 Court may dispense with execution requirements for will, alteration or revocation**

- ‘(1) This section applies to a document, or a part of a document, that—
- (a) purports to state the testamentary intentions of a deceased person; and
 - (b) has not been executed under this part.
- ‘(2) The document or the part forms a will, an alteration of a will, or a full or partial revocation of a will, of the deceased person if the court is satisfied that the person intended the document or part to form the person’s will, an alteration to the person’s will or a full or partial revocation of the person’s 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 way in which the document or part was executed; and
 - (b) any evidence of the person’s testamentary intentions, including evidence of statements made by the person.
- ‘(4) Subsection (3) does not limit the matters a court may have regard to in making a decision under subsection (2).
- ‘(5) This section applies to a document, or a part of a document, whether the document came into existence within or outside the State.

‘Subdivision 2 Minors**‘19 Court may authorise minor to make, alter or revoke a will**

- ‘(1) The court may make an order authorising a minor to—
- (a) make or alter a will in the terms stated by the court; or

- (b) revoke a will or part of a will.
- ‘(2) A minor, or a person on behalf of a minor, may apply for an order under subsection (1).
- ‘(3) The court may make the order only if the court—
 - (a) is satisfied that the minor understands the nature and effect of the proposed will, alteration or revocation and the extent of any property disposed of under the proposed will or alteration; and
 - (b) is satisfied that the proposed will, alteration or revocation accurately reflects the intentions of the minor; and
 - (c) is satisfied that it is reasonable in all the circumstances that the order be made; and
 - (d) has approved the proposed will, alteration or revocation.
- ‘(4) The court may make the order on the conditions it considers appropriate.
- ‘(5) To remove any doubt, it is declared that an order under this section does not make, alter or revoke a will or dispose of any property.

‘20 Execution of will or other instrument made under order

‘A will or other instrument made under an order under section 19 is not valid unless the following requirements are satisfied—

- (a) for a will—the will is executed under this part;
- (b) for another instrument—the other instrument is executed in the way a will is required to be executed under this part;
- (c) 1 of the witnesses attesting the will or other instrument is the registrar;
- (d) the conditions of the order, if any, are complied with.

Note—

For the holding of the will or other instrument by the registrar, see subdivision 4.

‘Subdivision 3 Persons without testamentary capacity

‘21 Court may authorise a will to be made, altered or revoked for person without testamentary capacity

- ‘(1) The court may, on application, make an order authorising—
- (a) a will to be made or altered, in the terms stated by the court, on behalf of a person without testamentary capacity; or
 - (b) a will or part of a will to be revoked on behalf of a person without testamentary capacity.
- ‘(2) The court may make the order only if—
- (a) the person in relation to whom the order is sought lacks testamentary capacity; and
 - (b) the person is alive when the order is made; and
 - (c) the court has approved the proposed will, alteration or revocation.
- ‘(3) For the order, the court may make or give any necessary related orders or directions.
- ‘(4) The court may make the order on the conditions the court considers appropriate.
- ‘(5) The court may order that costs in relation to either or both of the following be paid out of the person’s assets—
- (a) an application for an order under this section;
 - (b) an application for leave under section 22.
- ‘(6) To remove any doubt, it is declared that an order under this section does not make, alter or revoke a will or dispose of any property.
- ‘(7) In this section—
- person without testamentary capacity* includes a minor.

‘22 Leave to apply for s 21 order

- ‘(1) A person may apply for an order under section 21 only with the court’s leave.
- ‘(2) The court may give leave on the conditions the court considers appropriate.
- ‘(3) The court may hear an application for an order under section 21 with or immediately after the application for leave to make the application.

‘23 Information required by court in support of application for leave

‘On the hearing of an application for leave under section 22, the applicant must give the court the following information, unless the court directs otherwise—

- (a) a written statement of the general nature of the application to be made by the applicant under section 21 and the reasons for making it;
- (b) satisfactory evidence of the lack of testamentary capacity of the person in relation to whom an order under section 21 is sought;
- (c) any evidence available to the applicant, or that can be discovered with reasonable diligence, of the likelihood of the person acquiring or regaining testamentary capacity;
- (d) a reasonable estimate, formed from the evidence available to the applicant, of the size and character of the person’s estate;
- (e) a draft of the proposed will, alteration or revocation in relation to which the order is sought;
- (f) any evidence available to the applicant of the person’s wishes;
- (g) any evidence available to the applicant of the terms of any will previously made by the person;

- (h) any evidence available to the applicant of the likelihood of an application being made under section 41¹¹ in relation to the person;
- (i) any evidence available to the applicant of a gift for a charitable or other purpose that the person might reasonably be expected to give by will;
- (j) any evidence available to the applicant, or that can be discovered with reasonable diligence, of the circumstances of a person for whom provision might reasonably be expected to be made by a will by the person in relation to whom the order is sought;
- (k) any evidence available to the applicant, or that can be discovered with reasonable diligence, of any persons who might be entitled to claim on intestacy;
- (l) any other facts of which the applicant is aware that are relevant to the application.

'24 Matters court must be satisfied of before giving leave

'A court may give leave under section 22 only if the court is satisfied of the following matters—

- (a) the applicant for leave is an appropriate person to make the application;
- (b) adequate steps have been taken to allow representation of all persons with a proper interest in the application, including persons who have reason to expect a gift or benefit from the estate of the person in relation to whom an order under section 21 is sought;
- (c) there are reasonable grounds for believing that the person does not have testamentary capacity;
- (d) the proposed will, alteration or revocation is or may be a will, alteration or revocation that the person would make if the person were to have testamentary capacity;
- (e) it is or may be appropriate for an order to be made under section 21 in relation to the person.

11 Section 41 (Estate of deceased person liable for maintenance)

‘25 Hearing an application for leave or for an order

‘On the hearing of an application for leave under section 22 or for an order under section 21, the court—

- (a) may have regard to any information given to the court under section 23; and
- (b) may inform itself of any other matter relating to the application in any way it considers appropriate; and
- (c) is not bound by the rules of evidence.

‘26 Execution of will or other instrument made under order

‘(1) A will or other instrument made under an order under section 21 is properly executed if—

- (a) it is in writing; and
- (b) it is signed by the registrar and sealed with the seal of the court.

‘(2) A will or other instrument made under an order under section 21 may only be signed by the registrar if the person in relation to whom the order was made is alive.

Note—

For the holding of the will or other instrument by the registrar, see subdivision 4.

‘27 Validity of will or other instrument made under order

‘(1) A will made under an order under section 21 has the same effect for all purposes as if—

- (a) the person without testamentary capacity were capable of making a valid will; and
- (b) the person executed the will under section 10.¹²

‘(2) An instrument, revoking a will or part of a will, made under an order under section 21 has the same effect for all purposes as if—

12 Section 10 (How a will must be executed)

- (a) the person were capable of validly revoking a will or part of a will; and
 - (b) the person executed the instrument under section 13(d)(ii).¹³
- ‘(3) An instrument, altering a will, made under an order under section 21 has the same effect for all purposes as if—
- (a) the person were capable of making a valid alteration of a will; and
 - (b) the person executed the instrument under section 16(1)(a).¹⁴

‘28 Relationship with Guardianship and Administration Act 2000 and Powers of Attorney Act 1998

‘Nothing in the *Guardianship and Administration Act 2000* or the *Powers of Attorney Act 1998* prevents a person from making an application for an order under section 21¹⁵ or for leave under section 22.¹⁶

‘Subdivision 4 Particular wills held by registrar

‘29 Registrar to hold will or other instrument made under order under s 19

- ‘(1) A will or other instrument made under an order under section 19¹⁷ must be held by the registrar.
- ‘(2) The registrar may stop holding the will or other instrument only if—
 - (a) the testator is at least 18 years and has testamentary capacity; or

13 Section 13 (How a will may be revoked)

14 Section 16 (How a will may be altered)

15 Section 21 (Court may authorise a will to be made, altered or revoked for person without testamentary capacity)

16 Section 22 (Leave to apply for s 21 order)

17 Section 19 (Court may authorise minor to make, alter or revoke a will)

- (b) the court makes an order—
 - (i) under section 19 authorising the minor to revoke the will; or
 - (ii) under section 21 authorising the will to be revoked; or
 - (c) the will or other instrument is given to a person under section 32.¹⁸
- ‘(3) A failure to comply with subsection (1) or (2) does not affect the validity of the will or other instrument.

‘30 Registrar to hold will or other instrument made under order under s 21

- ‘(1) A will or other instrument made under an order under section 21 must be held by the registrar.
- ‘(2) The registrar may stop holding the will or other instrument only if—
- (a) the person on whose behalf the will or other instrument has been made (the *relevant person*) has acquired or regained testamentary capacity; or
 - (b) the court makes an order—
 - (i) under section 19 authorising the relevant person to revoke the will; or
 - (ii) under section 21 authorising the will to be revoked; or
 - (c) the will or other instrument is given to a person under section 32.
- ‘(3) A failure to comply with subsection (1) or (2) does not affect the validity of the will or other instrument.

‘31 Envelope required for will held by registrar

- ‘(1) A will or other instrument held by the registrar under section 29 or 30 must be in a sealed envelope that has written on it—

¹⁸ Section 32 (Delivery of will or other instrument if testator has died)

- (a) the name and address of the minor or other person without testamentary capacity as they appear on the will or other instrument; and
 - (b) the name and address, as they appear on the will, of any executor; and
 - (c) the date of the will or other instrument; and
 - (d) for a will or other instrument held under section 30—the name of the person who applied for the order under section 21.
- ‘(2) The registrar may examine the will or other instrument to enable the registrar to comply with this subdivision.

‘32 Delivery of will or other instrument if testator has died

- ‘(1) This section applies if—
- (a) a will or other instrument is held by the registrar under section 29 or 30; and
 - (b) the minor or other person without testamentary capacity has died.
- ‘(2) An executor named in the will, an executor by representation or a person entitled to apply for letters of administration with the will, may apply in writing to the registrar to be given the will or other instrument.
- ‘(3) On receiving the application, the registrar must give the will or other instrument to—
- (a) the applicant; or
 - (b) any legal practitioner or trustee company nominated by the applicant; or
 - (c) the public trustee, if nominated by the applicant.
- ‘(4) If there is doubt about the person to whom the will or other instrument should be given, the registrar or anyone else may apply to the court for directions.
- ‘(5) The registrar must make an accurate copy of each will or other instrument given to a person under subsection (3) and hold the copy.

‘(6) In this section—

trustee company see the *Trustee Companies Act 1968*, section 4.¹⁹

‘Subdivision 5 Rectification

‘33 Court may rectify a will

‘(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) An application for an order to rectify a will may only be made within 6 months after the date of death of the testator.

‘(3) However, the court may, at any time, extend the time for making an application under subsection (2) if—

- (a) the court considers it appropriate; and
- (b) the final distribution of the estate has not been made.

‘(4) If the court makes an order to rectify a will, the court may direct that a certified copy of the order be attached to the will.

‘(5) If the court gives a direction under subsection (4), the court must hold the will until the certified copy is attached to it.

‘33A Protection of personal representatives who distribute as if the will had not been rectified

‘(1) This section applies if—

- (a) a will is rectified under section 33; and
- (b) a personal representative makes a distribution to a beneficiary as if the will had not been rectified.

¹⁹ *Trustee Companies Act 1968*, section 4 (Definitions)

- ‘(2) The personal representative is not liable if the distribution is made under section 49A.²⁰
- ‘(3) The personal representative is also not liable if the distribution is made not earlier than 6 months after the testator’s death and without notice of either of the following—
- (a) an application, or intended application, for an order to rectify the will;
 - (b) an application, or intended application, under section 41(1) or 42²¹ in relation to the testator.
- ‘(4) If the personal representative receives notice of an application or intended application mentioned in subsection (3) (a *relevant application*), the personal representative is not liable if—
- (a) the distribution is made not earlier than 9 months after the testator’s death; and
 - (b) the personal representative has not—
 - (i) received notice that a relevant application has been started in the court; or
 - (ii) been served with a copy of a relevant application.
- ‘(5) For subsections (3) and (4), a notice in relation to an application or intended application must be in writing signed by the applicant or the applicant’s legal practitioner.

‘Division 5 Interpretation of wills

‘33B Beneficiaries must survive testator for 30 days

- ‘(1) If a disposition of property is made to a person who dies within 30 days after the testator’s death, the will takes effect as if the person had died immediately before the testator.

20 Section 49A (Personal representatives may make particular maintenance distribution)

21 Section 41 (Estate of deceased person liable for maintenance) or 42 (Court may vary order)

- ‘(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.

‘33C Use of evidence to interpret a will

- ‘(1) In a proceeding to interpret a will, evidence, including evidence of the testator’s intention, is admissible to help in the interpretation of the language used in the will if the language makes the will or part of it—
 - (a) meaningless; or
 - (b) ambiguous on the face of the will; or
 - (c) ambiguous in the light of surrounding circumstances.
- ‘(2) However, evidence of the testator’s intention is not admissible to establish any of the circumstances mentioned in subsection (1)(c).
- ‘(3) This section does not prevent the admission of evidence that would otherwise be admissible in a proceeding to interpret a will.

‘33D Effect of a change in testator’s domicile

‘The interpretation of a will is not changed by a change in the testator’s domicile after the testator has executed the will.

‘33E When a will takes effect

- ‘(1) A will takes effect, in relation to the property disposed of by the will, as if it had been executed immediately before the testator’s death.
- ‘(2) Subsection (1) does not apply if a contrary intention appears in the will.

‘33F Will operates to dispose of remaining interest in property if part interest disposed of before death

- ‘(1) This section applies if—

- (a) a testator has made a will disposing of property; and
 - (b) after the making of the will and before the testator's death, the testator disposes of an interest in the property.
- '(2) The will operates to dispose of any remaining interest the testator has in the property.

'33G Effect of a failure of a disposition of property

- '(1) If a disposition of property by a will is fully or partly 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 in the will.
- '(3) In this section—
disposition of property does not include the exercise of a power of appointment.

'33H Income of contingent, future or deferred disposition of property

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

'33I What a general disposition of land includes

- '(1) A general disposition of land, or of 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 in the will.

'33J What a general disposition of property includes

- '(1) A general disposition of all of the testator's property—

- (a) includes any property over which the testator has a general power of appointment exercisable by will; and
 - (b) operates as an exercise of the power of appointment.
- ‘(2) A general disposition of all of the testator’s property of a particular description—
- (a) includes any property of that description over which the testator has a general power of appointment exercisable by will; and
 - (b) operates as an exercise of the power of appointment.
- ‘(3) A general disposition of the residue of the testator’s property—
- (a) includes any property over which the testator has a general power of appointment exercisable by will; and
 - (b) operates as an exercise of the power of appointment.
- ‘(4) A general disposition of the residue of the testator’s property of a particular description—
- (a) includes any property of that description over which the testator has a general power of appointment exercisable by will; and
 - (b) operates as an exercise of the power of appointment.
- ‘(5) Subsection (1), (2), (3) or (4) does not apply if a contrary intention appears in the will.

‘33K Effect of a disposition of real property without words of limitation

- ‘(1) A disposition of real property to a person without words of limitation passes the whole estate or interest of the testator in the property to the person.
- ‘(2) Subsection (1) does not apply if a contrary intention appears in the will.

‘33L How dispositions of property to issue operate

- ‘(1) A disposition of property to a person’s issue, without limitation as to remoteness, must be distributed to the person’s

issue in the same way as the person's estate would be distributed if the person had died intestate leaving only issue surviving.

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

'33M How requirements to survive with issue are interpreted

- '(1) This section applies if there is a disposition of property to a person that, apart from this section, would be interpreted to mean that the disposition fails if there is an indefinite failure of issue of the person.
- '(2) The disposition must be interpreted to mean that the disposition fails if there is a want or a failure of issue of the person either in the person's lifetime or at the person's death.
- '(3) This section does not apply if a contrary intention appears in the will, other than if the result would be to cause a failure of the disposition.

'33N Dispositions not to fail because issue have died before testator

- '(1) This section applies if—
- (a) a testator makes a disposition of property to a person, whether as an individual or as a member of a class, who is issue of the testator (an *original beneficiary*); and
 - (b) under the will, the interest of the original beneficiary in the property does not come to an end at or before the original beneficiary's death; and
 - (c) the disposition is not a disposition of property to the testator's issue, without limitation as to remoteness; and
 - (d) the original beneficiary does not survive the testator for 30 days.
- '(2) The issue of the original beneficiary who survive the testator for 30 days take the original beneficiary's share of the property in place of the original beneficiary as if the original beneficiary had died intestate leaving only issue surviving.

- ‘(3) Subsection (2) does not apply if—
 - (a) the original beneficiary did not fulfil a condition imposed on the original beneficiary in the will; or
 - (b) a contrary intention appears in the will.
- ‘(4) A general requirement or condition that issue survive the testator or reach a specified age does not show a contrary intention for subsection (3)(b).
- ‘(5) A disposition of property to issue as joint tenants does not, of itself, show a contrary intention for subsection (3)(b).

‘330 Disposition of real estate or personal estate may include both in particular case

- ‘(1) A disposition of all, or the residue, of the estate of a testator that refers only to the real estate of the testator, or only to the personal estate of the testator, must be interpreted as referring to both the real and personal estate of the testator.
- ‘(2) Subsection (1) does not apply if a contrary intention appears in the will.

‘33P Disposition of fractional part in particular case

- ‘(1) If a part of a disposition in fractional parts of all, or the residue, of the testator’s estate fails, the part that fails passes to the part that does not fail and, if there is more than 1 part that does not fail, to all those parts proportionately.
- ‘(2) Subsection (1) does not apply if a contrary intention appears in the will.

‘33Q Dispositions to unincorporated associations of persons

- ‘(1) Each of the following dispositions of property has effect as a disposition in augmentation of the general funds of the association to which the disposition is made—
 - (a) a disposition to an unincorporated association of persons that is not a charity;

- (b) a disposition to or on trust for the aims, objects or purposes of an unincorporated association of persons that is not a charity;
 - (c) a disposition to or on trust for the present and future members of an unincorporated association of persons that is not a charity.
- ‘(2) Property, a disposition of which is, or has effect under subsection (1) as, 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, with the proceeds being paid into the general fund of the association.
- ‘(3) If the personal representative pays an amount to an unincorporated association under a disposition, the receipt of the treasurer or a similar officer of the association (however described) is an absolute discharge for the payment.
- ‘(4) If the personal representative transfers property to an unincorporated association under a disposition, the transfer of the property to a person nominated in writing by any 2 persons holding the offices of president, chairperson, treasurer or secretary of the association, or similar officers of the association (however described), is an absolute discharge to the personal representative for the transfer of the property.
- ‘(5) Subsections (3) and (4) do not—
 - (a) limit the way an absolute discharge may otherwise be obtained in accordance with the will; or
 - (b) apply if a contrary intention appears in the will.
- ‘(6) 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 of the testator’s death can not be compiled; or
 - (b) the members of the association may not divide assets of the association beneficially among themselves.

‘33R When a person may delegate power to dispose of property by a will

‘A power or a trust, created by will, to dispose of property 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, in the testator’s lifetime.

‘33S Effect of reference to valuation in will

- ‘(1) This section applies if—
- (a) there is an express or implied requirement in a will that a valuation of property be made or accepted for a purpose; and
 - (b) either—
 - (i) the will does not provide a method of valuation; or
 - (ii) the method of valuation is not provided for by the law of Queensland or another place.
- ‘(2) The reference in the will to the valuation must be interpreted, to the extent the method of valuation is not provided for as mentioned in subsection (1)(b)(i) or (ii), as if the reference were a reference to a valuation of the property as at the date of the testator’s death made by a competent valuer.
- ‘(3) Subsection (2) does not apply if a contrary intention appears in the will.

‘Division 6 Wills with a foreign connection**‘33T Wills that are taken to be properly executed**

- ‘(1) A will is taken to be properly executed if its execution is in accordance with the internal law in force in the place—
- (a) where it was executed; or
 - (b) that was the testator’s domicile or habitual residence, either at the time the will was executed or at the time of the testator’s death; or

- (c) of which the testator was a national, either at the time the will was executed or at the time of the testator's death.

‘(2) The following wills are also taken to be properly executed—

- (a) a will executed on board a vessel or aircraft and in accordance with the internal law in force in the place with which the vessel or aircraft was most closely connected having regard to its registration and other relevant circumstances;
- (b) a will, to the extent it disposes of immovable property, executed in accordance with the internal law in force in the place where the property is situated;
- (c) a will, to the extent it exercises a power of appointment, executed in accordance with the law governing the essential validity of the power;
- (d) a will to the extent it revokes—
 - (i) a will, or a provision of a will, that has been executed under this part; or
 - (ii) a will, or a provision of a will, that is taken by this section to be properly executed;

if the later will has been executed in accordance with a law under which the earlier will or provision would be taken to be validly executed.

‘(3) A will to which this section applies is not improperly executed to the extent it exercises a power of appointment only because it has not been executed in the particular way or with the particular solemnity required by the instrument creating the power.

Example of subsection (3)—

A will to which this section applies exercises a power of appointment. The instrument creating the power requires the instrument exercising the power to be witnessed by a notary public. The will, to the extent it exercises the power, is not improperly executed only because the will is not witnessed by a notary public.

‘33U Deciding system of law to apply if more than 1 system of internal law

- ‘(1) This section applies if—
- (a) the internal law of a place must be applied under section 33T; and
 - (b) there is more than 1 system of internal law, in force in the place, relating to the formal validity of wills.
- ‘(2) The system of internal law to be applied under section 33T is decided as follows—
- (a) if there is a rule in force throughout the place that states which system applies to the will, the rule must be followed;
 - (b) otherwise, the system is that with which the testator was most closely connected—
 - (i) if the matter is to be decided by reference to circumstances prevailing at the testator’s death—at the time of the testator’s death; or
 - (ii) otherwise—at the time the will was executed.

‘33V Formal requirements at time of execution apply

- ‘(1) In deciding, for the purpose of section 33T, whether a will has been executed in accordance with a particular law, regard must be had to the formal requirements of the particular law at the time the will was executed.
- ‘(2) However, regard may be had to a later change of the particular law affecting wills executed at the time the relevant will was executed, if the change enables the relevant will to be treated as properly executed.

‘33W Matters that are taken to be formal requirements

- ‘(1) This section applies if a particular law of a place outside Queensland is to be applied to a will, whether or not for the purpose of section 33T.
- ‘(2) The following requirements of the particular law are taken to be formal requirements only—

- (a) a requirement that special formalities be complied with by particular testators;
 - (b) a requirement that the witnesses to the execution of a will have particular qualifications.
- ‘(3) Subsection (2) applies despite any contrary rule of the particular law.

‘33X Will by minor made under an order of a foreign court

- ‘(1) A will of a deceased person that is a court authorised will for a minor is a valid will.
- ‘(2) A will is a *court authorised will for a minor* if—
- (a) a court, in a place outside Queensland, made an order authorising a minor to make the will; and
 - (b) the will is executed according to the law of the place relating to wills of minors; and
 - (c) the minor was a resident in the place at the time the will was executed.

‘33Y Recognition of statutory wills made by non-Queensland resident

- ‘(1) A statutory will made under the law of the place outside Queensland where a deceased person was resident at the time the statutory will was executed is a valid will of the person.
- ‘(2) In this section—
- statutory will* means a will executed in accordance with a statutory provision on behalf of a person who, at the time the will was executed, did not have testamentary capacity.

‘Division 7 Miscellaneous

‘33Z Persons entitled to inspect a will or to obtain a copy of a will

- ‘(1) A person who has possession or control of a will of a deceased testator must, if asked, do either or both of the following—

- (a) allow an entitled person to inspect the will;
 - (b) give an entitled person a certified copy of the will on payment of the person's reasonable expenses of giving the certified copy.
- ‘(2) If a will of a deceased testator has been lost, stolen or destroyed, a person who has possession or control of a copy of the will must, if asked, do either or both of the following—
- (a) allow an entitled person to inspect the copy;
 - (b) give an entitled person a certified copy of the copy on payment of the person's reasonable expenses of giving the certified copy.
- ‘(3) A person who has possession or control of a will, or a copy of a will, of a deceased person must produce it in court if the court requires it.

- ‘(4) In this section—

certified copy—

- (a) of a will—means a copy of the will that has a statement on it, signed by the person giving the copy, that the copy is a true copy of the will; or
- (b) of a copy of a will—means a copy of the copy of the will that has a statement on it, signed by the person giving the copy, that the copy is a true copy of what it purports to be.

entitled person, in relation to a will, means—

- (a) a person mentioned in the will, whether as beneficiary or not and whether named or not; or
- (b) a person mentioned in any earlier will of the testator as a beneficiary and whether named or not; or
- (c) a spouse, parent or issue of the testator; or
- (d) a person who would be entitled to a share of the estate of the testator if the testator had died intestate; or
- (e) a parent or guardian of a minor mentioned in the will or who would be entitled to a share of the estate if the testator had died intestate; or

(f) a creditor or other person who has a claim at law or in equity against the estate; or

(g) a person who may apply for an order under section 41.²²

parent see section 61A.

will includes—

(a) a purported will or revoked will; and

(b) a part of a will, purported will or revoked will.’

7 **Amendment of s 49 (Powers of personal representatives)**

(1) Section 49, heading, ‘Powers’—

omit, insert—

‘Particular powers’.

(2) Section 49(3)—

omit.

(3) Section 49(4) to (6)—

renumber as section 49(3) to (5).

8 **Insertion of new s 49A**

After section 49—

insert—

‘49A **Personal representatives may make particular maintenance distribution**

‘(1) This section applies if a person—

(a) survives a deceased person; and

(b) at the time of the deceased person’s death, was totally or substantially dependent on the deceased person; and

(c) will be entitled to part or all of the deceased person’s estate if the person survives the deceased person for 30 days.

²² Section 41 (Estate of deceased person liable for maintenance)

- ‘(2) The deceased person’s personal representative may make a distribution for the person’s maintenance, support or education at any time after the death of the deceased person, including within 30 days after the death of the deceased person.
- ‘(3) The personal representative may make the distribution even though the personal representative knows, when the distribution is made, of a pending application or an intended application for an order under section 41²³ in relation to the deceased person.
- ‘(4) The personal representative is not liable for a distribution under subsection (2) made in good faith.
- ‘(5) An amount distributed under subsection (2) to a person must be deducted from any share of the estate to which the person becomes entitled.
- ‘(6) However, if the person does not survive the deceased person for 30 days, the distribution must be treated as an administration expense.’.

9 Omission of ss 62, 63, 64 and 67

Sections 62, 63, 64 and 67—

omit.

10 Insertion of new pt 7, div 4

After section 75—

insert—

‘Division 4 Transitional provision for Succession Amendment Act 2006

‘76 Transitional provision for Succession Amendment Act 2006

- ‘(1) The repeal of old section 16 does not affect the validity of a will made under that section.

23 Section 41 (Estate of deceased person liable for maintenance)

- ‘(2) Old section 17 continues to apply to a will made before the commencement in relation to a marriage solemnised before the commencement.
- ‘(3) New section 14 applies to a will made before the commencement in relation to a marriage solemnised on or after the commencement.
- ‘(4) Old section 18 continues to apply to a will made before the commencement in relation to a divorce or annulment that happens before the commencement.
- ‘(5) New section 15 applies to a will made before the commencement in relation to a divorce or annulment that happens on or after the commencement.
- ‘(6) For the purposes of subsections (2) and (4), section 5 as in force immediately before the commencement applies.
- ‘(7) For the purposes of subsections (3) and (5), section 5 as amended by the *Succession Amendment Act 2006* applies.
- ‘(8) New section 33Z applies to a will regardless of when the testator died.
- ‘(9) In this section—

commencement means the commencement of section 7 as inserted by the *Succession Amendment Act 2006*.

new section 14 means section 14²⁴ as inserted by the *Succession Amendment Act 2006*.

new section 15 means section 15²⁵ as inserted by the *Succession Amendment Act 2006*.

new section 33Z means section 33Z²⁶ as inserted by the *Succession Amendment Act 2006*.

old section 16 means section 16²⁷ as in force immediately before the commencement.

24 Section 14 (Effect of marriage on a will)

25 Section 15 (Effect of divorce or annulment on a will)

26 Section 33Z (Persons entitled to inspect a will or to obtain a copy of a will)

27 Section 16 (Privileged wills)

old section 17 means section 17²⁸ as in force immediately before the commencement.

old section 18 means section 18²⁹ as in force immediately before the commencement.’.

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28 Section 17 (Revocation of will by marriage)

29 Section 18 (Effect of divorce on will)