



ANNO TRICESIMO TERTIO

# ELIZABETHAE II REGINAE

A.D. 1984

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No. 73 of 1984

An Act to amend the Aged and Infirm Persons' Property Act, 1940.

[Assented to 15 November 1984]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Aged and Infirm Persons' Property Act Amendment Act (No. 2), 1984". Short title.

(2) The Aged and Infirm Persons' Property Act, 1940, is in this Act referred to as "the principal Act".

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 3 of the principal Act is amended—

(a) by inserting after the definition of "Master" the following definition:

"proclaimed state" means a country, state or territory declared by proclamation to be a proclaimed state for the purposes of this Act;

and

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) The Governor may, by proclamation, declare any country, state or territory to be a proclaimed state and may, by subsequent proclamation vary or revoke any such declaration.

4. Sections 16a and 16b of the principal Act are repealed and the following section is substituted:

Amendment of s. 3—  
Interpretation.

Repeal of ss. 16a and 16b and substitution of new section.

Where administration has disturbed entitlements of beneficiaries, the Court has power to intervene.

16a. (1) Where at the death of a protected person or former protected person who died leaving a will it appears that, in consequence of any dealing with the estate by an administrator, the share of any beneficiary in that estate under the will has been affected, the Court may, on application by an interested person, make such orders as it thinks just to ensure that no beneficiary gains a disproportionate advantage, or suffers a disproportionate disadvantage, of a kind not contemplated by the will, in consequence of the estate having been managed under this Act.

(2) An order made by the Court under subsection (1) shall operate and take effect as if it had been made by a codicil to the will of the protected person or former protected person executed immediately before his death.

(3) The Court shall, on making an order under subsection (1), direct that a certified copy of the order be made on the probate of the will and may, for that purpose, require the production of the probate.

(4) An application under this section must be made within six months from the date of the grant in this State of probate of the will unless the Court, after hearing such of the persons affected as the Court thinks necessary, extends the time for making the application.

(5) An extension of time granted under subsection (4) may be granted—

(a) on such conditions as the Court thinks fit;

and

(b) whether or not the time for making an application under this section has expired.

(6) An application for extension of time must be made before the final distribution of the estate.

(7) A distribution of any part of the estate made before an application for extension of time shall not be disturbed by reason of the application or any order made upon the application.

(8) This section does not apply in respect of the will of a deceased person who died before the commencement of this section.

Repeal of s. 27 and substitution of new section.

5. Section 27 of the principal Act is repealed and the following section is substituted:

Power of manager to avoid dispositions and contracts of protected persons.

27. (1) Subject to this section—

(a) a disposition of property of a protected estate made by the protected person;

or

(b) a contract entered into by a protected person,

is voidable at the option of the manager.

(2) A transaction may not be avoided by a manager if the other party to the transaction did not know and could not reasonably be expected to have known that the person with whom he dealt was unable, wholly or partially, to manage his affairs.

(3) The Court may, by order, exempt a disposition of property or contract from the operation of this section if the Court is satisfied that to do so would be for the benefit of the protected person and that he has an adequate understanding of the nature of the transaction.

(4) Nothing in this section affects the law relating to testamentary dispositions.

6. Section 28 of the principal Act is amended by striking out from subsection (2) the passage "and a memorandum thereof may accordingly be entered" and substituting the passage "and, upon application to the Registrar-General in a manner and form approved by him, a memorandum of the order may be entered".

Amendment of  
s. 28—  
Registration of  
protection order.

7. Section 29 of the principal Act is amended by striking out from subsection (1) the word "disposition" twice occurring and substituting, in each case, the word "provision".

Amendment of  
s. 29—  
Restriction of  
testamentary  
capacity of  
protected person.

8. Section 31 of the principal Act is amended by striking out from subsection (2) the passage "in accordance with rules made pursuant to section 122" and substituting the passage "and fees determined in accordance with regulations made pursuant to section 112".

Amendment of  
s. 31—  
Expenses and  
remuneration of  
manager.

9. The following sections are inserted immediately after section 32 of the principal Act:

Insertion of new  
ss. 32a and 32b.

32a. If an authority invested by the laws of any proclaimed state with the custody or administration of the estate of a person who is incapable of managing his affairs by reason of age, disease, illness or physical or mental infirmity—

Provision for  
Public Trustee to  
manage estates of  
persons in other  
parts of the  
world.

(a) certifies in writing under his hand to the Public Trustee that the person has property in this State;

and

(b) by instrument in writing under his hand authorizes the Public Trustee to manage the property of that person within this State,

the Public Trustee shall have and may exercise in respect of that property all the powers that he could exercise if he were the manager of the estate of that person.

32b. (1) Where it appears to a manager that the protected person has property in a proclaimed state he may, by instrument in writing directed to the authority of that proclaimed state who is or may be invested by its laws with the management of the estates of persons, however described under those laws, who are incapable of managing their affairs by reason of age, disease, illness or physical or mental infirmity—

Provision for  
Public Trustee to  
request authority  
in other parts of  
the world to  
administer estate  
of protected  
persons.

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(a) certify that he has the management of the estate of the protected person;

and

(b) authorize the authority to manage the property of the protected person that is in the proclaimed state.

(2) A manager may revoke or vary an authority given by him under subsection (1).

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor