



ANNO TRICESIMO TERTIO

# ELIZABETHAE II REGINAE

A.D. 1984

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No. 76 of 1984

An Act to amend the Administration and Probate Act, 1919.

[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 "Administration and Probate Act Amendment Act (No. 2), 1984". Short title.

(2) The Administration and Probate Act, 1919, 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. Sections 43 and 44 of the principal Act are repealed and the following sections are substituted: Repeal of ss. 43 and 44 and substitution of new sections.

43. (1) The revocation or rescission of probate or administration granted under this Act does not render the executor or administrator liable for any prior act done by him in good faith and in reliance on the probate or administration. Protection to persons acting in reliance on probate or administration.

(2) Subject to this Act, where a person, acting in good faith and in reliance on probate or administration granted under this Act, deals with an asset of the estate of a deceased person, he incurs no personal liability by so doing notwithstanding that the probate or administration may subsequently prove to be invalid or be revoked or rescinded.

(3) This section does not affect the rights that may lie against any person to whom property has been invalidly transferred, or to whom a payment has been invalidly made, by an executor or administrator.

## (4) In this section—

“administration” includes an order under section 79 authorizing the Public Trustee to administer the estate of a deceased person.

Obligation of person dealing with asset to ensure that it has been properly disclosed.

44. (1) A person who deals with an asset of the estate of a deceased person that is required to be disclosed under section 121a must satisfy himself by examination of the Registrar's certificate, or on the basis of some other reliable evidence, that the asset has in fact been so disclosed.

(2) A person who fails to comply with subsection (1) shall be guilty of a summary offence and liable to a penalty not exceeding two thousand dollars.

(3) This section does not apply to an asset of the estate of a deceased person who died before the day on which section 121a came into operation.

Repeal of s. 72d.

## 4. Section 72d of the principal Act is repealed.

Amendment of s. 77—  
Capacities in which Public Trustee may act.

## 5. Section 77 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) If the Court so approves, the Public Trustee may act in the same matter or transaction in different capacities or in the same capacity but as representative of different persons or interests and, in so doing, may commence and maintain proceedings against himself.

(3) In granting its approval under subsection (2), the Court may give such directions to the Public Trustee as it thinks fit.

Amendment of s. 105—  
Settlement on marriage of infant.

## 6. Section 105 of the principal Act is amended by striking out the word “female” and substituting the word “person”.

Amendment of s. 118l—  
Interpretation.

## 7. Section 118l of the principal Act is amended by inserting after the definition of “administrator” the following definition:

“the Board” means the Guardianship Board constituted under the Act.

Amendment of s. 118m—  
Powers of administrator.

## 8. Section 118m of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (2) and substituting the following paragraphs:

(a) sell, either by public auction or private contract, any property, or interest in property, of the patient;

(aa) purchase or otherwise acquire any property, or interest in property, on behalf of the patient (whether as a sole proprietor, joint tenant or tenant in common);

(ab) pay any amount necessary to provide proper accommodation for the patient and, in appropriate circumstances, for a spouse of the patient;

- (ac) take on lease or concur in taking on lease any property on behalf of the patient;;
- (b) by inserting after paragraph (q) of subsection (2) the following paragraph:
- (qa) lodge a caveat in respect of any land under the provisions of the Real Property Act, 1886, in which the administrator claims that the patient has an interest;;
- (c) by striking out from paragraph (u) of subsection (2) the passage “two thousand dollars” and substituting the passage “an amount prescribed by regulation”;

and

- (d) by inserting after subsection (2) the following subsection:

(3) Notwithstanding subsection (2)—

- (a) the consent of the Board is necessary for the sale or purchase of an interest in real estate, the value of which does not exceed the prescribed amount;
- (b) the approval of the Court is necessary for the sale or purchase of an interest in real estate, the value of which exceeds the prescribed amount;

and

- (c) the consent of the Board is necessary for the making of payments in excess of the prescribed limit in or towards the provision of accommodation under subsection (2) (ab).

9. The heading preceding section 1180 of the principal Act is repealed and the following heading is substituted:

Repeal of heading and substitution of new heading.

DIVISION IV—RECIPROCAL POWERS IN RELATION TO PROCLAIMED STATES.

10. Section 1180 of the principal Act is amended by striking out the passage “proclaimed State” and substituting the passage “proclaimed state”.

Amendment of s. 1180—  
Provision for Public Trustee to administer estates of persons in other parts of the world.

11. The following section is inserted immediately after section 1180 of the principal Act:

Insertion of new s. 1180a.

1180a. (1) Where it appears to the administrator of the estate of a patient that the patient 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 custody or administration of the estates of persons, however described under those laws, who are of unsound mind—

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

- (a) certify that he has the control and management of the estate of the patient;

and

- (b) authorize the authority to administer the property of the patient that is in the proclaimed state.

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

Repeal of s. 118q and substitution of new section.

12. Section 118q of the principal Act is repealed and the following section is substituted:

Power of administrator to avoid dispositions and contracts of patient.

118q. (1) Subject to this section—

(a) a disposition of property made by a person while his estate is subject to administration under this Part;

or

(b) a contract entered into by a person while his estate is subject to administration under this Part,

is voidable at the option of the administrator.

(2) A transaction may not be avoided by an administrator under subsection (1) 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 of unsound mind.

(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 person whose estate is subject to the administration 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.

Insertion of new s. 118s.

13. The following section is inserted immediately after section 118r of the principal Act:

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

118s. (1) Where at the death of a patient or former patient 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 subject to administration under this Part.

(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 patient or former patient 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 on 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.

14. The following section is inserted after section 121 of the principal Act:

Insertion of new s. 121a.

121a. (1) A person who applies—

(a) for probate or administration;

or

(b) for the sealing of any probate or administration granted by a foreign court,

Statement of assets and liabilities to be provided with application for probate or administration.

in respect of the estate of a deceased person shall, in accordance with the rules, disclose to the Court the assets and liabilities of the deceased person known to him at the time of making the application.

(2) An executor, administrator or trustee of the estate of a deceased person (being an estate in respect of which probate or administration has been granted or sealed by the Court) shall, in accordance with the rules, disclose to the Court any assets or liabilities of the deceased person (not being assets or liabilities previously disclosed under this section) which come to his knowledge while acting in that capacity.

(3) An executor, administrator or trustee of an estate shall not dispose of an asset of the estate in respect of which disclosure has not been made to the Court pursuant to this section.

(4) Nothing in subsection (3) affects the interests of a person who acquires an asset of an estate in good faith for valuable consideration and without knowing that the asset has not been disclosed to the Court pursuant to this section.

(5) An executor, administrator or trustee who contravenes or fails to comply with a provision of this section is guilty of a summary offence and liable to a penalty not exceeding two thousand dollars.

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

(7) A reference in this section to the assets and liabilities of a deceased person is a reference to—

(a) assets and liabilities of the deceased at the date of his death;

and

(b) assets falling into the estate after the death of the deceased not being an accretion to the estate arising out of an asset existing at the date of his death,

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but does not include a reference to any asset or liability prescribed by the rules.

(8) In this section—

“administration” includes an order under section 79 authorizing the Public Trustee to administer the estate of a deceased person.

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

D. B. DUNSTAN, Governor