



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 80 of 1988

An Act to amend the Powers of Attorney and Agency Act, 1984.

[Assented to 1 December 1988]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Powers of Attorney and Agency Act Amendment Act, 1988*.

(2) The *Powers of Attorney and Agency Act, 1984*, is in this Act referred to as "the principal Act".

Enduring powers of attorney

2. Section 6 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) An enduring power of attorney may be created—

(a) by deed expressed to be made in pursuance of this section;

or

(b) by deed containing words indicating an intention that the authority conferred is to be exercised—

(i) notwithstanding the donor's subsequent legal incapacity;

or

(ii) in the event of the donor's subsequent legal incapacity.

Powers of Supreme Court in respect of enduring powers

3. Section 11 of the principal Act is amended—

(a) by striking out from subsection (1) "during a period of legal incapacity of the donor of an enduring power of attorney";

(b) by striking out from paragraph (a) of subsection (1) "donee of the power" and substituting "donee (or former donee) of an enduring power of attorney";

and

(c) by striking out paragraph (c) of subsection (1) and substituting the following paragraph:

(c) revoking or varying the terms of an enduring power of attorney or appointing a substitute donee of such a power.

Insertion of new section 11a

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

Applications by beneficiaries of the will of a deceased donor

11a. (1) Where—

(a) the donor, or former donor, of an enduring power of attorney dies leaving a will;

(b) the donor or former donor had, while the enduring power of attorney was in force, suffered a period of legal incapacity;

and

(c) it appears at the death of the donor or former donor that, in consequence of any exercise of power by the donee of the enduring power of attorney during that period of incapacity, the share of any beneficiary under the will has been affected,

the Supreme Court may, on application by any person who has, in the opinion of the Supreme Court, a proper interest in the matter, 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 exercise of the donee's powers during the period of legal incapacity of the donor or former donor.

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

(3) The Supreme Court must, on making an order under subsection (1), direct that a certified copy of the order be attached to the grant of probate of the will, or grant of letters of administration with will annexed, and may, for that purpose, require the production of the relevant grant.

(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 or letters of administration unless the Supreme Court, after hearing such of the persons affected as the Supreme 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 Supreme 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 will 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.

Amendment of second schedule

5. The second schedule to the principal Act is amended by inserting “[or in the event of any subsequent legal incapacity of the donor]” at the end of paragraph (a).

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

D. B. DUNSTAN, Governor