

# NORTHERN TERRITORY OF AUSTRALIA

## AGED AND INFIRM PERSON'S PROPERTY ACT

As in force at 1 January 1992

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ENDNOTES



# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 January 1992

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## AGED AND INFIRM PERSONS' PROPERTY ACT

An Act to make provision for the protection of the property of persons suffering certain disabilities

### 1 Short title

This Act may be cited as the *Aged and Infirm Persons' Property Act*.

### 2 Commencement

This Act shall come into operation on the day on which the *Mental Health Act 1979* comes into operation.

### 3 Repeal

The *Inebriates Act, 1908* of South Australia shall, upon the commencement of this Act, cease to apply as a law of the Territory.

### 4 Definitions

In this Act, unless the contrary intention appears:

***de facto partner*** means:

- (a) in relation to a man – a woman who is living with him as his wife on a bona fide domestic basis although not married to him; and
- (b) in relation to a woman – a man who is living with her as her husband on a bona fide domestic basis although not married to her.

***estate*** includes part of an estate.

***manager***, in relation to a protected estate, means the person specified as the manager in the protection order relating to that estate.

***Master of the Supreme Court*** means the person appointed as Master of the Supreme Court under the *Supreme Court Act*.

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**protected estate** means an estate to which a protection order relates.

**protection order** means an order made under section 11.

**protected person** means a person in respect of whose estate a protection order has been made.

**Public Trustee** means the Public Trustee within the meaning of the *Public Trustee Act*.

## **5 Jurisdiction of supreme court**

- (1) This section is in addition to and not in derogation of any law vesting jurisdiction in the Supreme Court.
- (2) The jurisdiction of the Supreme Court under this Act may be exercised:
  - (a) in the case of an application for a protection order or where the Supreme Court proposes of its own motion to make a protection order – if the person who would be a protected person by virtue of the making of that order resides or is domiciled in the Territory;
  - (b) if the person whose estate is the subject of the protection order to which the proceedings relate:
    - (i) resides or is domiciled in the Territory; or
    - (ii) was at the time of commencement of the proceedings resident or domiciled in the Territory; or
  - (c) if the estate to which the application for a protection order or where the Supreme Court proposes of its own motion to make a protection order, the estate to which that proposal relates or the protected estate the subject of the proceedings is situated within the Territory.

## **6 Procedure**

The jurisdiction of the Supreme Court under this Act:

- (a) may be exercised by the Master of the Supreme Court; and
- (b) may be exercised in chambers.

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## **7 Applications, &c., for protection orders**

- (1) An application for a protection order in respect of the estate of any person and an application to vary or revoke a protection order made in respect of the estate of a person may be made to the Supreme Court by:
  - (a) that person;
  - (b) a spouse or de facto partner of that person, near relation by blood or marriage of that person or an adopted child of that person; or
  - (c) the Public Trustee.
- (2) Any person (a person referred to in subsection (1) excepted) may, with leave of the Supreme Court, make an application for a protection order in respect of the estate of any person or an application to vary or revoke a protection order.
- (3) The Supreme Court may, of its own motion, in any proceedings make, vary or revoke a protection order in respect of the estate of any party to the proceedings.

## **8 Service of notice of applications, &c.**

- (1) Notice of an application under section 7(1) or (2) shall be served:
  - (a) in the case of an application under section 7(1)(b), (c) or (2), personally on the person to whose estate the application relates; and
  - (b) on such other persons as the Supreme Court may direct.
- (2) The Supreme Court shall not of its own motion make a protection order under section 7(3) unless notice of the proposal to make the order has been served:
  - (a) personally on the person to whose estate the proposal relates; and
  - (b) on such other persons as the Supreme Court may direct.
- (3) The Supreme Court may, in any proceedings, if it is satisfied that special circumstances exist, direct that service of notice under subsection (1) or (2) need not be effected and may hear or determine any such proceedings as though such service had been effected.

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**9 Examination**

The Supreme Court may, before making a protection order, examine personally the person in respect of whose estate the application for or proposal to make the order has been made in any manner which it thinks fit either with or without the attendance of any other person.

**10 Investigation and report**

- (1) The Supreme Court may, before making a protection order, order an investigation to be made by the Minister having the responsibility under an Administrative Arrangements Order for the area of government known as Social Welfare and may adjourn any proceedings until a report of that investigation is received by the Court.
- (2) Where the Supreme Court has made an order under subsection (1), the Minister referred to in that subsection shall, as soon as practicable, conduct the investigation so ordered and send to the Supreme Court a written report of the results of the investigation.
- (3) For the purpose of an investigation under this section, the Minister referred to in subsection (1) may enter any building or premises where the person in respect of whose estate the investigation is being carried out is present.
- (4) For the purpose of conducting an investigation under this section, the Minister referred to in subsection (1) may require:
  - (a) any person who has the care and control of the person whose affairs are being investigated to render such assistance as is;  
and
  - (b) any person to produce such papers, books and other documents in the custody or control of that person relating to the estate of the person whose affairs are being investigated as are,  
  
specified by the Minister to the person first mentioned in paragraph (a) or (b), as the case may be.
- (5) A person to whom a requirement under subsection (4) is given shall comply with and not contravene the requirement.

Penalty:       \$500.

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**11            Power to make protection orders**

Subject to this Act, the Supreme Court may make, vary or rescind a protection order in respect of the estate of, or any part of the estate of, any person.

**12            Circumstances in which orders may be made**

- (1) The Supreme Court shall not make a protection order in respect of the estate of a person unless it is satisfied that the person is, by reason of age, disease, illness or mental or physical infirmity in a position which renders it necessary in the interests of that person or the interests of those dependent on him that his estate be protected.
- (2) In determining whether a person to whose estate an application for or proposal to make a protection order relates is in a position which renders it necessary in his interest or the interests of those dependent on him that his estate be protected, the Supreme Court shall take into account:
  - (a) the contents of any report made under section 10; and
  - (b) whether the person in respect of whose estate the application or proposal has been made is:
    - (i) unable, wholly or partly, to manage his affairs; or
    - (ii) subject to or liable to be subject to undue influence in respect of his estate or the disposition thereof.

**13            Manager**

- (1) A protection order shall appoint:
  - (a) the Public Trustee alone; or
  - (b) one or more persons other than the Public Trustee,to be the manager of the estate to which the order relates.
- (2) The Supreme Court may require the manager of a protected estate (the Public Trustee excepted) to give such security to the Public Trustee as the Supreme Court thinks fit for the due performance of the duties of the manager.

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**14            Service of order**

- (1) The Master of the Supreme Court shall cause a copy of each protection order appointing a person other than the Public Trustee to be the manager of a protected estate to be served on the Public Trustee.
- (2) The Master of the Supreme Court shall cause to be served on each person appointed as manager of a protected estate a copy of the protection order so appointing him.

**15            Termination of order**

- (1) Subject to subsection (2), a protection order ceases to have effect on the death of the protected person.
- (2) The Supreme Court may direct that a protection order remain in force for not more than 2 months after the death of the protected person.
- (3) Where the Supreme Court has made an order under sub-section (2), the protection order remains in force until:
  - (a) the expiration of 2 months or such lesser period as is specified in the order after the death of the protected person; or
  - (b) an administrator within the meaning of the *Public Trustee Act* has been appointed in respect of the protected estate,whichever is the sooner.

**16            Terms and conditions**

- (1) A protection order may be made subject to such terms and conditions as the Supreme Court thinks fit.
- (2) Without limiting the generality of subsection (1), the terms and conditions to which a protection order may be subject include:
  - (a) terms and conditions requiring the manager of the protected estate to continue to make payments (whether in the same, a greater or a lesser amount) out of the estate which the protected person made, whether regularly or casually, to or for the benefit of any person who was wholly or partly dependent on that person;



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- (b) terms and conditions authorizing the manager of the protected estate to:
    - (i) invest the whole or any specified part of the protected estate in such manner as is specified in the order (whether or not the investment is one authorized by law for the investment of trust moneys);
    - (ii) sell, mortgage, lease or otherwise dispose of the whole or any specified part of the protected estate; and
    - (iii) exercise any right or power that is exercisable by the protected person or would be exercisable by him if the protection order had not been made; and
  - (c) terms and conditions designed to preserve, so far as possible, the quality, tenure and devolution of the property in the protected estate.

## **17 Powers of manager**

- (1) Subject to the contrary intention appearing in the protection order, the manager of a protected estate may:
  - (a) take possession of the estate and recover possession thereof from any person;
  - (b) repair any part of the estate;
  - (c) insure the estate against any contingency;
  - (d) demand, recover and receive moneys and personal effects payable to or belonging to the protected person;
  - (e) apply any moneys of the estate for the maintenance or advancement of the protected person, any spouse or de facto partner of that person and any children of that person and in payment of the debts and liabilities of that person;
  - (f) carry on any trade or business carried on by the protected person whether in partnership or not;
  - (g) in the name of and on behalf of the protected person, lodge caveats in respect of land under the provisions of the *Real Property Act*; and

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- (h) in the name and on behalf of the protected person, execute and do all such conveyances, transfers, leases, deeds, assurances and things as may be necessary to exercise any power or carry out any duty conferred or imposed on him by or under this Act.
  - (2) Subject to this Act, the manager of a protected estate shall have such other powers and duties in respect of the protected estate as are specified in the protection order.
  - (3) Subject to this Act and the terms of the protection order in relation to the protected estate, the Public Trustee has, in the administration of a protected estate, all the powers, duties and obligations conferred or imposed on him by the *Public Trustee Act*.

## **18 Manager is a trustee**

Subject to this Act and, where the Public Trustee is the manager of a protected estate, subject to the *Public Trustee Act*, the manager of a protected estate is a trustee.

## **19 Joint managers**

Where more than one manager has been appointed in respect of a protected estate, all the managers of the estate must concur in every act, matter and thing done in relation to the estate by a manager of the estate.

## **20 Ability of protected person to contract**

- (1) A protected person is incapable of charging or otherwise disposing of (whether for valuable consideration or not) such part of his estate as is subject to the protection order, except:
  - (a) by means of a contract for necessities; or
  - (b) with the leave of the Supreme Court.
- (2) Subject to subsection (3), any charging or disposition made in contravention of subsection (1) shall be void.
- (3) Nothing in this section invalidates a charging or other disposition of a protected estate by a protected person for valuable consideration if the other party thereto acted in good faith and without actual notice of the protection order relating to the estate.

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**21      Liability of manager**

- (1) The manager of a protected estate shall, in any contract or other act entered into or done by him in pursuance of any power or duty conferred on him by or under this Act in relation to the protected estate, disclose to all other parties to the contract or act the fact that he is the manager of the estate.

Penalty:      \$1,000.

- (2) The manager of a protected estate is not personally liable in respect of any contract or other act entered into or done by him in accordance with subsection (1).

**22      Sale, &c., of protected estate**

- (1) Where the whole or any part of a protected estate is sold, mortgaged, leased or otherwise disposed of in accordance with section 16(2)(b)(ii), the manager of the estate shall place any moneys arising out of the sale, mortgage, lease or disposition to a separate credit.
- (2) The protected person, his heirs, executors, administrators, next of kin, devisees, legatees and assigns shall have the same interest in any moneys referred to in subsection (1) which may not have been otherwise applied as he or they would have had in the property the subject of the sale, mortgage, lease or disposition there referred to if no sale, mortgage, lease or disposition had been made and the surplus moneys shall be of the same nature as the property sold, mortgaged, leased or disposed of, as the case may be.
- (3) In order to give effect to this section, the Supreme Court may make such orders and direct such conveyances, deeds and things (which may and shall accordingly be executed and done) as the Supreme Court thinks fit.

**23      Real property act**

A protection order shall be deemed to be an instrument within the meaning of the *Real Property Act*.

**24      Account**

- (1) The manager of a protected estate shall prepare and file in the Supreme Court a statement showing:
- (a) the property comprised in the estate of which he is the manager;
- (b) the condition of that property;

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(c) an account of each transaction by which that property has been charged or otherwise disposed of; and

(d) any matter which is prescribed for the purpose of this section.

Penalty: \$1,000.

(2) A statement made by the manager of a protected estate under subsection (1) shall be verified by affidavit of the manager.

(3) The manager of a protected estate shall file the statement referred to in subsection (1) at such times as are prescribed and at such times as the Supreme Court directs.

(4) Where the Public Trustee is not the manager, the manager of a protected estate shall transmit a copy of each statement referred to in subsection (1) in relation to the estate to the Public Trustee.

## **25 Audit**

(1) The Public Trustee shall examine each statement transmitted to him in accordance with section 24(4) and shall file in the Supreme Court and serve on the manager of the protected estate a report on each such statement.

(2) The Public Trustee may, by notice in writing served on the manager of a protected estate, require the statements prepared under section 24(1) in respect of the estate to be audited by an auditor specified by the Public Trustee.

(3) An auditor referred to in subsection (2) may, for the purposes of carrying out an audit under this section, at all reasonable times have full and free access to the accounts and records of the manager of the protected estate and may make copies or take extracts from those accounts and records.

## **26 Fees**

The Public Trustee may, by notice in writing served on the manager of a protected estate, charge such fees as are prescribed in relation to any service performed by the Public Trustee in respect of the estate.

## **27 Expenses of administration**

(1) All expenses properly incurred by the manager of a protected estate in respect of the administration of the estate under this Act are payable out of the estate.

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- (2) The expenses referred to in subsection (1) include:
- (a) fees charged by the Public Trustee for the performance of services under section 25; and
  - (b) fees charged by an auditor appointed by the Public Trustee to audit the statements referred to in section 24(1).

**28 Commission**

Subject to the *Public Trustee Act*, the manager of a protected estate is entitled to be paid out of the estate such remuneration or commission as is prescribed or, if no remuneration or commission is prescribed, such remuneration or commission as is specified in the protection order relating to that estate.

**29 Approval, advice, &c.**

- (1) The manager of a protected estate may apply to the Supreme Court at any time for approval, advice or direction in relation to the administration of the estate.
- (2) Unless the Supreme Court otherwise directs, an application under subsection (1) may be made without service of the application on, or notice of the application being given to, any other person.

**30 Regulations**

The Administrator may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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## ENDNOTES

### 1 KEY

Key to abbreviations

|                       |                              |
|-----------------------|------------------------------|
| amd = amended         | od = order                   |
| app = appendix        | om = omitted                 |
| bl = by-law           | pt = Part                    |
| ch = Chapter          | r = regulation/rule          |
| cl = clause           | rem = remainder              |
| div = Division        | renum = renumbered           |
| exp = expires/expired | rep = repealed               |
| f = forms             | s = section                  |
| Gaz = Gazette         | sch = Schedule               |
| hdg = heading         | sdiv = Subdivision           |
| ins = inserted        | SL = Subordinate Legislation |
| lt = long title       | sub = substituted            |
| nc = not commenced    |                              |

### 2 LIST OF LEGISLATION

***Aged and Infirm Person's Persons Property Act (Act No. , )***

|             |   |
|-------------|---|
| Assent date | 15 October 1979   |
| Commenced   | 1 April 1980 (s 2, s 2 <i>Mental Health Act 1979</i> (Act No. 5, 1980) and Gaz G13, 28 March 1980, p 6) |

***De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)***

|             |                  |
|-------------|------------------|
| Assent date | 24 December 1991 |
| Commenced   | 1 January 1992   |

### 3 LIST OF AMENDMENTS

|      |                       |
|------|-----------------------|
| s 4  | amd No. 82, 1991, s 4 |
| s 7  | amd No. 82, 1991, s 4 |
| s 17 | amd No. 82, 1991, s 4 |