

# NORTHERN TERRITORY OF AUSTRALIA

## AGED AND INFIRM PERSONS' PROPERTY ACT

As in force at 17 March 2014

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 17 March 2014

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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:

***advance personal plan***, see section 3 of the *Advance Personal Planning Act*.

***agent***, for a person, means any of the following:

- (a) a decision maker for the person;
- (b) a guardian appointed for the person under the *Adult Guardianship Act*;
- (c) the donee of an enduring power of attorney made by the person under Part III of the *Powers of Attorney Act*;
- (d) any other person who has lawful authority to manage the person's affairs.

***Court***, means the Local Court.

***decision maker***, see section 3 of the *Advance Personal Planning Act*.

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***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.

***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*.

***Registrar***, see section 3 of the *Local Court Act*.

## **5 Jurisdiction of Court**

- (1) This section is in addition to and not in derogation of any law vesting jurisdiction in the Court.
- (2) The jurisdiction of the Court under this Act may be exercised:
  - (a) in the case of an application for a protection order or where the 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 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.

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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 Court by:
  - (a) that person; or
  - (b) a spouse or de facto partner of that person, a near relation by blood, marriage or de facto relationship of that person or an adopted child of that person; or
  - (ba) an agent for the person; or
  - (c) the Public Trustee.
- (2) Any person (a person referred to in subsection (1) excepted) may, with leave of the 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 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), (ba), (c) or (2), personally on the person to whose estate the application relates; and
  - (b) on such other persons as the Court may direct.
- (2) The 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 Court may direct.
- (3) The 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 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 Court may, before making a protection order, order an investigation to be made by the Minister and may adjourn the proceedings until a report of that investigation is received by the Court.
- (2) Where the 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 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.

Maximum penalty: 4 penalty units.

**11 Power to make protection orders**

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

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

- (1) The 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 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.

## **12A          Restriction on orders if person has advance personal plan**

- (1) This section applies if the person to whose estate an application for or proposal to make a protection order relates has an advance personal plan.
- (2) The Court must take the plan (including any appointment of a decision maker) into account in determining:
  - (a) whether it is necessary for the person's estate to be protected; and
  - (b) whether to make a protection order; and
  - (c) if a protection order is to be made, the terms of the order.
- (3) Further, if the person has a decision maker the Court cannot make a protection order that will give the manager authority to do anything that the decision maker has authority to do.

*Note for section 12A(3)*

*If authority for a matter has been conferred on a decision maker and the Court considers that the authority ought to be conferred on a manager, the Court might be able to amend the advance personal plan to limit the decision maker's authority. However, the Court could do so only if grounds for amending the plan exist under section 61 of the Advance Personal Planning Act.*

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**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 Court may require the manager of a protected estate (the Public Trustee excepted) to give such security to the Public Trustee as the Court thinks fit for the due performance of the duties of the manager.

**14         Service of order**

- (1) The Registrar 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 Registrar shall cause to be served on each person appointed as manager of a protected estate a copy of the protection order so appointing him.
- (3) The Registrar must cause a copy of the protection order to be given to each agent for the protected person of which the Registrar is aware (other than an agent who is being appointed as a manager).

**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 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 Court has made an order under subsection (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.

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**16 Terms and conditions**

- (1) A protection order may be made subject to such terms and conditions as the 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; and
  - (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); and
    - (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; and
  - (d) terms and conditions the Court considers appropriate for ensuring an appropriate division of decision making authority between the manager and any agents for the protected person.

**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;



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- (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 *Land Title Act*; and
  - (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*.
  - (4) If the protected person has one or more agents, the manager must cooperate with all such persons to enable all of them to properly exercise their powers and perform their duties for the protected person.

## **18 Manager is a trustee**

- (1) 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.
- (2) However, if the protected person has made an advance care statement (as defined in section 3 of the *Advance Personal Planning Act*), the manager must exercise and perform his or her powers and duties so as to give effect to the statement even if doing so is not in the protected person's best interests, unless:
  - (a) the protected person, having capacity to do so, states that he or she does not want effect to be given to that statement; or

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- (b) a circumstance mentioned in section 23(2)(a) to (e) of the *Advance Personal Planning Act* exists.

**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 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.

**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.

Maximum penalty: 8 penalty units.

- (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.

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- (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 Court may make such orders and direct such conveyances, deeds and things (which may and shall accordingly be executed and done) as the Court thinks fit.

**23      *Land Title Act***

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

**24      *Account***

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

Maximum penalty:      8 penalty units.

- (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 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.

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## **25        Audit**

- (1) The Public Trustee shall examine each statement transmitted to him in accordance with section 24(4) and shall file in the 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.
- (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.

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## **28A Consequences if Court not aware of advance personal plan**

- (1) This section applies if:
  - (a) the Court has made a protection order; and
  - (b) before the order was made the protected person had made an advance personal plan; and
  - (c) when it made the protection order the Court was unaware of the advance personal plan.
- (2) The protection order is not invalid only because section 12A was not complied with in relation to the making of the order.
- (3) A decision maker appointed by the plan, or any other person who the Court considers has a proper interest in the matter, may apply to the Court to have the protection order amended or revoked on the ground that had it been aware of the advance personal plan the Court would not have made a protection order or would have made a protection order on different terms.

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

- (1) The manager of a protected estate may apply to the Court at any time for approval, advice or direction in relation to the administration of the estate.
- (2) Unless the 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.

## **29A Additional orders if protected person has agents**

- (1) This section applies if a protected person has one or more agents.
- (2) The Court may make such orders as the Court thinks fit in relation to the exercise by a manager of his or her powers, functions and duties for the purpose of facilitating a reasonable and workable division of decision making authority between the manager and the agents for the protected person.
- (3) An application for an order under this section may be made by a manager or agent for a person.

*Notes for section 29A*

- 1 The Court also has power to impose conditions on a protection order under section 16.*

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- 2     *Comparable orders may also be given to agents under the Advance Personal Planning Act, Adult Guardianship Act and Powers of Attorney Act.*

## 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
<i>Gaz</i> = <i>Gazette</i>	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 Persons' Property Act 1979* (Act No. 118, 1979)**

Assent date	15 October 1979
Commenced	1 April 1980 (s 2, s 2 <i>Mental Health Act 1979</i> (Act No. 5, 1979) and <i>Gaz</i> 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 (s 2)

***Land Title (Consequential Amendments) Act 2000* (Act No. 45, 2000)**

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 2, 2000) and <i>Gaz</i> G38, 27 September 2000, p 2)

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (Act No. 1, 2004)**

Assent date	7 January 2004
Commenced	17 March 2004 ( <i>Gaz</i> G11, 17 March 2004, p 8)

***Statute Law Revision Act (No. 2) 2004* (Act No. 54, 2004)**

Assent date	15 September 2004
Commenced	27 October 2004 ( <i>Gaz</i> G43, 27 October 2004, p 3)

***Justice Legislation Amendment (Penalties) Act 2010* (Act No. 12, 2010)**

Assent date	20 May 2010
Commenced	1 July 2010 ( <i>Gaz</i> G24, 16 June 2010, p 2)

***Advance Personal Planning (Consequential Amendments) Act 2013* (Act No. 36, 2013)**

Assent date	19 December 2013
Commenced	pt 3: 5 February 2014 ( <i>Gaz</i> G5, 5 February 2014, p 2); rem: 17 March 2014 ( <i>Gaz</i> S14, 17 March 2014)

### 3 LIST OF AMENDMENTS

s 4	amd No. 82, 1991, s 4; No. 1, 2004, s 62; No. 36, 2013, s 28
s 5	amd No. 36, 2013, s 29
s 6	rep No. 36, 2013, s 30
s 7	amd No. 82, 1991, s 4; No. 1, 2004, s 62; No. 54, 2004, s 7; No. 36, 2013, s 31
s 8	amd No. 36, 2013, s 32
s 9	amd No. 36, 2013, s 33
s 10	amd No. 12, 2010, s 3; No. 36, 2013, s 34
s 11	amd No. 36, 2013, s 35
s 12	amd No. 36, 2013, s 36
s 12A	ins No. 36, 2013, s 37
s 13	amd No. 36, 2013, s 38
s 14	amd No. 36, 2013, s 39
s 15	amd No. 36, 2013, s 40
s 16	amd No. 36, 2013, s 41
s 17	amd No. 82, 1991, s 4; No. 45, 2000, s 11; No. 36, 2013, s 42
s 18	amd No. 36, 2013, s 43
s 20	amd No. 36, 2013, s 44
s 21	amd No. 12, 2010, s 3
s 22	amd No. 36, 2013, s 45
s 23	amd No. 45, 2000, s 11
s 24	amd No. 12, 2010, s 3; No. 36, 2013, s 46
s. 25	amd No. 36, 2013, s 47
s 28A	ins No. 36, 2013, s 48
s 29	amd No. 36, 2013, s 49
s 29A	ins No. 36, 2013, s 50