

NSW Legislative Assembly Hansard

PROTECTED ESTATES AMENDMENT (MISSING PERSONS) BILL

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Bill introduced and read a first time.

Second Reading

Mr BOB DEBUS (Blue Mountains—Attorney General, and Minister for the Environment) [11.26 a.m.]: I move:

That this bill be now read a second time.

This bill represents a further major step in the Government's initiatives to assist families and friends of missing people. The Victims Rights Act 1996 was amended in 2000 to include the families of missing people as victims of crime. At the same time the Family and Friends of Missing People Unit in Victims Services was set up, and funding was provided for a telephone support and counselling service. Through interagency work and stakeholder participation, the unit has identified the need for clearer and simpler laws to help relatives and friends deal with the estates of missing people. Presently, family or friends can only manage the affairs and estates of missing people after obtaining a grant of probate from the Supreme Court. This means the missing person is presumed to be dead. Unless there is strong evidence that the person has died, probate may not be granted until they have been missing for seven years.

The presumption of death process is particularly distressing for families and friends of missing people because they usually do not want to accept, let alone prove, that the person is dead. It is also unsuitable for the majority of missing people, who are subsequently found alive. The process takes too long to provide any practical, timely assistance to people wishing to look after an estate in the short or medium term. More than 8,000 people go missing in New South Wales each year: 70 per cent are found within three days, 86 per cent are found within two weeks and 99.7 per cent are located overall. Long-term missing people are those who have been missing for more than a year. In New South Wales there are more than 500 long-term missing people. The Government, in consultation with families and friends of missing people, has developed a clear and simple legal procedure for applications to be made to allow others to manage property belonging to missing people.

The bill creates a statutory scheme, unique in Australia, for administering estates of missing people when it is not known if they are still alive. The bill includes a new section 21C in the Protected Estates Act 1983—the Act—to allow applications to the Supreme Court for a declaration that a person is missing and order that the person's estate is subject to management under the Act. An application to the court can be made by the spouse of the person, relative of the person, a business partner or employee of the person, the Attorney General, the Protective Commissioner or any other person who has an interest in the estate of the person. Section 21C also provides that the court may be satisfied a person is missing if it is not known whether the person is alive, all reasonable efforts have been made to locate the person, and people with whom the person would be likely to communicate have not heard from, or of, the person for at least 90 days. The court may make a declaration and estate management order if the person is missing, the person's usual place of residence is in New South Wales, and it is in the best interests of the person to do so. The court may then appoint any suitable person, or the Protective Commissioner, to manage and administer the estate of the missing person.

A new definition is inserted in section 4 of the Act and a "protected missing person" is a person in respect of whom such an estate management order is made. The Protected Estates Act will then apply to the estates of protected missing people, as it does to the estates of protected people who have been found to be incapable of managing their affairs. Amendments to section 24 of the Act ensure that when the Protective Commissioner is appointed to manage the estate of a protected missing person, the Protective Commissioner has all powers necessary to manage the estate, including the power to receive money or rent from real or personal property, to grant leases of property, to sell or mortgage real and personal property, to settle a demand against the estate, to carry on a business that the protected missing person had carried on, and to bring and defend proceedings on behalf of the protected missing person.

Division 4 of the Act applies to the management of estates by people other than the Protective Commissioner. Amendments to section 30 of the Act ensure that orders can be made when another person is appointed to manage the estate of a missing person, giving them all powers necessary to manage the estate. Under Division 4 of the Act, the Protective Commissioner will provide direction, supervision and support when another person is appointed to manage the estate of a protected missing person. Section 32 of the Act is amended to enable the court to make such orders as appear necessary for making the property and income of a protected missing person available for the payment of the debts, or otherwise for the benefit of the protected missing person; the maintenance and benefit of the family of the protected missing person; and other purposes for the care and management of the estate.

The Act is also amended to provide that fees can also be prescribed for functions exercised by the Protective Commissioner in relation to the estates of protected missing people. That is section 8. It is proposed to amend the Protected Estates Regulation 2003 to allow the Protective Commissioner to charge the same fees for the administration of

the estates of missing people as is currently charged for other protected persons. The bill also provides for estate management orders for protected missing people to be terminated. A new section 35A will allow an application to be made to the Supreme Court for the revocation of a declaration and order when there is evidence that the protected missing person is alive.

Section 38A provides for the Protective Commissioner to be able to terminate the management of the estate of a missing person when he or she is satisfied that the person is alive. The bill also provides for consultation of the relatives of a protected missing person by the Protective Commissioner. Amendments to section 50 require that before the Protective Commissioner takes any action in respect of the estate of a protected missing person he or she must determine whether the relatives of the person should be consulted. Section 76 is amended to provide that a power of attorney is suspended while the estate of a protected missing person is subject to management under the Act. This bill fills a significant gap in the present law.

The proposed amendments to the Protected Estates Act 1983 create a clear, effective mechanism for dealing with the estates of protected missing people. The scheme uses the extensive expertise that already exists in the Supreme Court and in the Office of the Protective Commissioner. The proposed role for the Protective Commissioner is compatible with the current role, duties and responsibilities of that office, that is, looking after the estates of people who are not able to do it for themselves. Considering that a proportion of people become missing because of a disability—for example, dementia—managing the estates of missing people will complement the Protective Commissioner's existing role.

The family and friends of a person who is missing are confronted with harrowing social and personal issues. These issues are presently made much more difficult by the complex legal processes involved in attempting to manage and preserve the missing person's estate. This legislation will be the first of its kind in Australia. Similar schemes exist in only two other countries in the world, Guam and Canada. The scheme proposed in the bill provides families and friends with a simple, timely and effective method for ensuring that the estate of a missing person can be managed when it is not known whether that person is alive. It is hoped that this legislation will help ease the grief and uncertainty of relatives and friends whilst at the same time help to preserve the property and assets of missing people.

I express my sincere thanks and sympathy to the families and friends of missing people who shared their personal stories and experiences with me during the development of this legislation. I am indebted to them for having the courage to speak out, in the face of terrible tragedy and heartache. They have experienced first hand the quagmire of legal problems involved in trying to deal with the estate of a missing loved one. Through their courage and insight, they have assisted in developing this legislation. They have eased the burden for all those other children, parents, spouses and friends who may in the future have to deal with the unexplained disappearance of someone dear to them. I commend the bill to the House.

Debate adjourned on motion by Mr Thomas George.

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