

**Protected Estates Amendment
(Missing Persons) Bill 2004**
New South Wales

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Protected Estates Act 1983* (the **Principal Act**) to enable the estates of missing persons to be subject to management under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Protected Estates Act 1983* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts specified in Schedule 2.

**Schedule 1 Amendment of Protected Estates Act
1983**

Schedule 1 [1] inserts a definition of **protected missing person** into section 4 of the Principal Act. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [3] amends section 7 of the Principal Act to enable the Crown's expenses for the care and management of the estate of a protected missing person to be recovered from the estate, paid out of money of the person received by the Protective Commissioner or recovered on application to the Supreme Court.

Schedule 1 [4] amends section 8 of the Principal Act to enable the Protective Commissioner's fees to be recovered as a charge on the estate of a protected missing person.

Schedule 1 [5] gives relatives, friends, creditors or debtors of protected missing persons or other interested persons the right to apply to the Supreme Court under section 12 of the Principal Act for the giving of directions to the Protective Commissioner relating to inquiries, notices or the exercise of the Commissioner's functions.

Schedule 1 [8] inserts proposed Division 1A of Part 3 (section 21C) into the Principal Act. The proposed Division enables the Supreme Court to declare that a person is a missing person and to order that the whole or part of the estate of the person be subject to management under the Principal Act (as a **protected missing person**) if satisfied that the person is a missing person, that the person's usual place of residence is in this State and that it is in the best interests of the person. Such a declaration may be made only if the Court is satisfied that it is not known whether the person is alive, that all reasonable efforts have been made to locate the person and that persons residing at the same place, or relatives or friends, with whom the person would be likely to communicate, have not heard from, or of, the person for at least 90 days. Applications for a declaration and order may be made by a spouse, relative, business partner or employee of a person or the Attorney General, Protective Commissioner or any other person who has an interest in the estate of a person.

Schedule 1 [6] and [7] make consequential amendments.

Schedule 1 [9] enables the Supreme Court to make an order, under section 22 of the Principal Act, appointing a suitable person or the Protective Commissioner to manage the estate of a protected missing person. **Schedule 1 [10]** makes a consequential amendment.

Schedule 1 [11] confers on the Protective Commissioner the powers contained in section 24 of the Principal Act for the purposes of managing the estate of a protected missing person. The powers conferred include powers relating to the disposition of

property, the carrying on of a business, the alteration of a partnership and other powers relating to consents, contracts and legal proceedings.

Schedule 1 [12] gives the Protective Commissioner power, under section 25 of the Principal Act, to employ agents to transact business or do other acts for the administration and management of the estate of a protected missing person.

Schedule 1 [13] inserts proposed section 26 (1A) into the Principal Act which confers on the Protective Commissioner power to exercise any function that a protected missing person has and can exercise or would have and could exercise if the person were not missing. **Schedule 1 [15]** makes a consequential amendment.

Schedule 1 [14] authorises the Protective Commissioner, under section 26 of the Principal Act, to execute documents on behalf of a protected missing person and gives those documents the same effect as if they had been executed by the protected missing person. **Schedule 1 [16]** makes a consequential amendment.

Schedule 1 [17] enables the Protective Commissioner to apply money in the estate of a protected missing person for the purposes set out in section 28 of the Principal Act. They include the payment of debts and expenses, maintenance of a spouse, child, parent or other person dependent on the protected missing person, the preservation and improvement of the estate of the protected missing person, taking up shares and options and investment of the money. **Schedule 1 [18]–[21]** make consequential amendments.

Schedule 1 [23] extends to spouses of protected missing persons the right to make an application to the Administrative Decisions Tribunal under section 28A of the Principal Act for a review of a decision of the Protective Commissioner. **Schedule 1 [22]** makes a consequential amendment.

Schedule 1 [24] makes it clear that provisions applying to management of estates by other persons do not apply to the estates of protected missing persons committed to the management of the Protective Commissioner.

Schedule 1 [25] applies to the estates of protected missing persons the provisions of section 30 of the Principal Act, which enable the Protective Commissioner to confer powers on persons other than the Protective Commissioner who manage estates under the Principal Act and to give directions in respect of those powers.

Schedule 1 [26] confers a right on a person who manages the estate of a protected missing person to make an application to the Administrative Decisions Tribunal under section 30A of the Principal Act for a review of a decision of the Protective Commissioner in relation to the conferral of functions on the person.

Schedule 1 [27] enables the Supreme Court to require a manager of the estate of a protected missing person to give security, under section 31 of the Principal Act, to the Protective Commissioner in respect of the management of the estate.

Schedule 1 [28] amends section 31A of the Principal Act to enable the manager of the estate of a protected missing person to lodge money comprising the whole or part of the estate with the Protective Commissioner. Such funds may be invested by the Protective Commissioner.

Schedule 1 [29] confers on the Protective Commissioner power to prepare a financial plan, under section 31B of the Principal Act, in respect of the estate of a protected missing person.

Schedule 1 [30]–[32] enable the Supreme Court, under section 32 of the Principal Act, to make orders that appear to it to be necessary to make the property and income of a protected missing person available for paying debts, the benefit of the protected missing person, the maintenance and benefit of the family of the protected missing person and otherwise as it thinks necessary or desirable for the care and management of the estate of the protected missing person. The orders that may be made include orders for the sale or disposition of property and the application of the whole or part of the estate. **Schedule 1 [33]–[35]** make consequential amendments.

Schedule 1 [36] confers on the Supreme Court power, under section 33 of the

Principal Act, to make such orders as it thinks fit in relation to the administration and management of the estates of protected missing persons.

Schedule 1 [37] inserts proposed section 34 (2) into the Principal Act which sets out when the management of the estate of a protected missing person is terminated. The management of the estate is terminated when an order that the estate be subject to management is revoked, the Protective Commissioner certifies under proposed section 38A that it is terminated or the protected missing person dies.

Schedule 1 [38] inserts proposed section 35A into the Principal Act. The proposed section enables the Supreme Court, on the application of a protected missing person or other person, to revoke a declaration that a person is a missing person and an order that the person's estate be subject to management under the Principal Act, if satisfied that the person is alive.

Schedule 1 [39] inserts proposed section 38A into the Principal Act. The proposed section enables the Protective Commissioner to certify that management of the estate of a protected missing person is terminated if the Commissioner is satisfied that the protected missing person is alive.

Schedule 1 [40] amends section 39 of the Principal Act to require the Protective Commissioner, on termination of management of the estate of a protected missing person, to pay money standing to the credit of the person in the Commissioner's trust fund to the person and to hand over chattels and documents forming part of the estate of the person.

Schedule 1 [41] and [42] confer on the Protective Commissioner powers, under section 42 of the Principal Act, to pay certain money and deal with chattels of a protected missing person on the death of the person. The Commissioner may pay money or give chattels to a person claiming to be entitled in the distribution of an estate or as a legatee under a will or to the legal personal representative of the protected missing person.

Schedule 1 [43] confirms the power of the Protective Commissioner, under section 43 of the Principal Act, to continue to act in the management of the estate of a protected missing person until satisfied that the protected missing person has died or that the relevant order has been revoked.

Schedule 1 [44] amends section 47 of the Principal Act to make it clear that property taken in exchange, or a lease renewed, on behalf of a protected missing person under the Principal Act is subject to the same uses, trusts, charges, incumbrances, dispositions, devices and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

Schedule 1 [45] amends section 48 of the Principal Act to make it clear that a protected missing person retains the same interest in any surplus money or other property arising from any sale, mortgage, charge or disposition of property or other dealing with property under the Principal Act as the person would have had in property the subject of the sale, mortgage, charge, disposition or dealing if no sale, mortgage, charge, disposition or dealing had been made.

Schedule 1 [46] and [47] amend section 49 of the Principal Act to provide for money expended for the improvement, security or advantage of the property of a protected missing person, together with interest, to be a charge on the improved property or other property of the person.

Schedule 1 [48] inserts proposed section 50 (1A) into the Principal Act to require the Protective Commissioner to determine whether to consult with relatives of a protected missing person before taking any action in respect of the estate of the protected missing person.

Schedule 1 [49] applies to estates of protected missing persons provisions in section 50 of the Principal Act that set out the circumstances and matters to be considered by the Protective Commissioner when determining whether to consult and the steps to

be taken with respect to any such consultation. **Schedule 1 [50] and [51]** make consequential amendments.

Schedule 1 [52] amends section 51 of the Principal Act to require items of a personal nature in the estate of a protected missing person, that have been requested to be preserved by the person or the person's relatives, to be preserved as far as reasonably practicable.

Schedule 1 [53] confers on the Supreme Court power under section 69 of the Principal Act to dissolve a partnership when a member of the partnership becomes a protected missing person.

Schedule 1 [54] amends section 70 of the Principal Act to authorise the manager of the estate of a protected missing person, or another person approved by the Supreme Court or the Protective Commissioner, to execute conveyances, deeds and transfers and do other things directed by the Court or Commissioner to give effect to an order or direction under the Principal Act.

Schedule 1 [55] amends section 71 of the Principal Act to enable the Protective Commissioner or manager of the estate of a protected missing person to exercise a power of that person as a trustee or to give a consent for that person. The amendment also provides for the exercise of the power or the consent to have effect.

Schedule 1 [56] enables the Protective Commissioner, under section 72 of the Principal Act, to issue a certificate authorising a banker or other person holding cash or investments of a protected missing person to pay the amount specified in the certificate to a specified person. The certificate may be issued if the Commissioner is satisfied that it is necessary for the expenses of the maintenance or other necessary purposes or requirements of the protected missing person or any member of the family of a protected missing person. **Schedule 1 [57]** makes a consequential amendment.

Schedule 1 [58] enables the Supreme Court to make an order, under section 73 of the Principal Act, to require an appropriate person to transfer stock of a protected missing person or stock held in trust by the manager of the estate of a protected missing person if the manager dies or it is not known whether the manager is alive or dead or the manager refuses to transfer stock to a new manager.

Schedule 1 [59] amends section 76 of the Principal Act to apply in respect of protected missing persons provisions suspending the operation of powers of attorney while the principal's estate is subject to management under the Principal Act.

Schedule 1 [60] enables the Supreme Court or the Protective Commissioner to make an order, under section 77 of the Principal Act, that remuneration be paid to the manager of the estate of a protected missing person.

Schedule 1 [61] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [62] inserts a transitional provision as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Powers of Attorney Act 2003* to provide that the power conferred by an irrevocable power of attorney is not revoked or otherwise terminated by, or remains effective despite, the principal becoming a protected missing person. This is the same as in relation to protected persons under the *Protected Estates Act 1983*.

Schedule 2.2 amends the *Real Property Act 1900* to enable the Protective Commissioner or the manager of the estate of a protected missing person to withdraw a caveat lodged under that Act by the protected missing person. The same power currently exists in relation to protected persons under the *Protected Estates Act 1983*.