

CONCURRENCE COPY

MENTAL HEALTH (POWERS OF ATTORNEY) AMENDMENT BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Conveyancing (Powers of Attorney) Amendment Bill, 1983.

The object of this Bill is to include in the Mental Health Act, 1958, a provision to regulate the effect of powers of attorney given by persons whose property becomes subject to management under that Act.

1. *...*

2. *...*

**MENTAL HEALTH (POWERS OF ATTORNEY)
AMENDMENT BILL, 1983**

No. , 1983.

A BILL FOR

An Act to amend the Mental Health Act, 1958, to regulate the effect of powers of attorney given by persons whose property becomes subject to management under that Act.

[MR WALKER—9 *March*, 1983.]

Mental Health (Powers of Attorney) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 **Short title.**

1. This Act may be cited as the "Mental Health (Powers of Attorney) Amendment Act, 1983".

Commencement.

2. This Act shall commence on the date of assent to the Conveyancing
10 (Powers of Attorney) Amendment Act, 1983.

Amendment of Act No. 45, 1958.

3. The Mental Health Act, 1958, is amended by inserting after section 110 the following section:—

Powers of attorney.

15 110A. (1) In this section "principal" means a person who has given a power of attorney.

(2) A power of attorney is not terminated by property of the principal becoming subject to management under this Act.

20 (3) Subsection (2) has effect subject to the terms of the instrument creating the power.

(4) A person may give a power of attorney notwithstanding that his property is subject to management under this Act.

(5) A power of attorney is suspended while property of the principal is subject to management under this Act.

Mental Health (Powers of Attorney) Amendment.

5 (6) Notwithstanding subsection (5), where an attorney under a power of attorney does an act within the scope of the power while property of the principal is subject to management under this Act, the act of the attorney has no less validity and effect than the act of the attorney would have had if this section had not been enacted, but this subsection does not affect the operation of subsection (9).

10 (7) While a power of attorney is suspended by this section, the Court may restore the power of attorney to operation to such extent, and on such terms and conditions, as the Court thinks fit.

(8) The Court may restore a power of attorney to operation under subsection (7) as from any time whether before or after the order of restoration is made or takes effect.

15 (9) Where property of a principal is subject to management under this Act, the Court may—

- (a) terminate the power of attorney; or
- (b) order that the power of attorney be subject to such conditions and restrictions as the Court thinks fit.

20 (10) An attorney under a power of attorney and persons dealing with the attorney and all other persons shall have the like protections against any term or condition of any restoration of the power, and against any condition or restriction to which the power is subject under this section as if the term, condition or restriction were effected by act of the principal.

25 (11) For the purposes of this section—

- (a) where a person becomes a patient, his property thereupon becomes subject to management under this Act and remains so during his life or until his discharge or, if after his discharge the Protective Commissioner continues to have the care, protection and management of any of his property, until
30 the Protective Commissioner ceases to do so;

Mental Health (Powers of Attorney) Amendment.

- 5 (b) where the Protective Commissioner takes charge of the estate of a voluntary patient under section 22, his property thereupon becomes subject to management under this Act and remains so during his life or until the Protective Commissioner gives up charge of the estate or until the discharge of the voluntary patient, whichever is the later, or if after his discharge the Protective Commissioner continues to have the care, protection and management of any of his property, until the Protective Commissioner ceases to do so;
- 10 (c) where a person becomes a protected person or an incapable person, his property thereupon becomes subject to management under this Act and remains so during his life or until the Court makes a declaration in relation to him under section 40;
- 15 (d) where the Court directs a copy of an inquisition or finding in relation to a person to be filed of record in the Court under section 48, his property thereupon becomes subject to management under this Act and remains so during his life or until the Court declares that management of his estate under section 48 is not required; and
- 20 (e) where, in relation to a person, it is certified to the Protective Commissioner and the Protective Commissioner is authorised as mentioned in section 101 (1), the property of that person thereupon becomes subject to management under this Act and remains so during his life or until the Court declares that the exercise of the powers of the Protective Commissioner in relation to his property is not required.
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30 (12) The Court may make a declaration for the purposes of subsection (11) (d) or (e) on the application of the Protective Commissioner or of the person whose power of attorney is in question or of an attorney under the power of attorney.

(13) A declaration for the purposes of subsection (11) (d) or (e) shall not have any effect otherwise than for the purpose of the paragraph concerned.

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(14) This section does not apply to a power of attorney given before the commencement of Schedule 1 to the Conveyancing (Powers of Attorney) Amendment Act, 1983.

5 (15) This section has effect subject to section 160 of the Conveyancing Act, 1919.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

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