



TASMANIA

WILLS LEGISLATION AMENDMENT ACT 1995

No. 68 of 1995

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WILLS LEGISLATION AMENDMENT ACT 1995

No. 68 of 1995

AN ACT to amend the *Wills Act 1992* and the *Testator's Family Maintenance Act 1912*

[Royal Assent 14 November 1995]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Wills Legislation Amendment Act 1995*.

Commencement

2—This Act commences on a day to be proclaimed.

Principal Act

3—In this Act, the *Wills Act 1992** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 of the Principal Act is amended as follows:—

(a) by inserting after the definition of “active service” the following definition:—

“**Board**” means the Guardianship and Administration Board;

(b) by omitting the definition of “will” and substituting the following definitions:—

“**statutory will**” means a will made under Division 9 of Part 2;

“**will**” includes—

(a) a testament; and

(b) a codicil; and

(c) a declaration made and in force under section 9; and

(d) an appointment by will or by writing in the nature of a will in exercise of a power; and

(e) an appointment by will of the guardianship of a child by virtue of any Act; and

(f) a statutory will; and

(g) any other testamentary disposition.

Section 6 amended (Validity of wills made by minors)

5—Section 6 (1) of the Principal Act is amended by inserting after subsection (5) the following subsection:—

(5A) A statutory will made for a minor is valid.

* No. 29 of 1992.

Section 17 amended (Validity of powers of appointment exercised by will)

6—Section 17 of the Principal Act is amended by inserting after subsection (2) the following subsection:—

(3) This section does not apply to an appointment made by a statutory will in exercise of a power.

Section 23 amended (Manner of revocation)

7—Section 23 (2) of the Principal Act is amended as follows:—

(a) by omitting “testator.” from paragraph (d) and substituting “testator; or”;

(b) by inserting after paragraph (d) the following paragraph:—

(e) in the case of a statutory will, by a will made under Division 9.

Part 2, Division 9 inserted

8—After section 27 of the Principal Act, the following Division is inserted:—

Division 9—Wills for persons lacking testamentary capacity

Will for person lacking testamentary capacity

27A—(1) The Board may, in accordance with this Division, make orders to enable the execution for any person of a will making any provision whether by way of disposing of property or exercising any power or otherwise, which could be made by a will executed by that person if he or she had full testamentary capacity.

(2) The powers of the Board under subsection (1) may be exercised—

- (a) on the application of any person; or
- (b) of its own motion—

but the Board must first conduct a hearing in accordance with Division 1 of Part 10 of the *Guardianship and Administration Act 1995*.

(3) The Board must not make an order for the execution of a will for a person unless it is satisfied that—

- (a) following such enquiries as are reasonable, he or she has not made a valid will; and
- (b) he or she is incapable of making a valid will for himself or herself; and
- (c) in all the circumstances a will should be made for him or her.

(4) Where the Board makes an order enabling the execution of a will for any person, a will executed under that order is to be—

- (a) signed by the President or Deputy President of the Board in the presence of 2 or more witnesses present at the same time; and
- (b) attested and subscribed by those witnesses in the presence of the President or Deputy President.

Validity of statutory wills

27B—(1) A statutory will is invalid if there exists a prior valid will, which is not a statutory will, of the person for whom it is made.

(2) A valid statutory will has the same effect for all purposes as if—

- (a) the person for whom it is made were capable of making a valid will; and
- (b) the statutory will had been executed by him or her in the manner required by Division 3.

(3) For the purposes of this Division, a person does not lack testamentary capacity by reason only of the fact that he or she is a minor.

Application for a statutory will

27C—An application for a statutory will—

- (a) is to be lodged with the registrar of the Board; and
- (b) is to contain the prescribed information; and
- (c) is to specify the grounds on which it is alleged that the person for whom the will is proposed to be made lacks testamentary capacity.

Matters to be considered by Board

27D—Before exercising its powers under this Division, the Board must consider the following matters:—

- (a) any evidence relating to the wishes of the person for whom the will is to be made;
- (b) the likelihood of that person acquiring or regaining capacity to make a will at any future time;
- (c) the interests of any person who would be entitled to receive any part of the estate of the person for whom the will is proposed to be made if he or she dies intestate;
- (d) the likelihood of an application being made under the *Testator's Family Maintenance Act 1912* for or on behalf of an eligible person, within the meaning of that Act, in respect of the property of the person for whom the will is proposed to be made and the provision that the court might order to be made for the eligible person under that Act;
- (e) the circumstances of any person for whom the person for whom the will is proposed to be made might reasonably be expected to make provision under a will;
- (f) any gift for a charitable or other purpose that that person might reasonably be expected to give or make by a will;
- (g) the likely assets of that person's estate;
- (h) any other matter that the Board considers to be relevant.

Duty of Board

27E—In the exercise of its powers under this Division, the Board must seek to make, as nearly as practicable, the will which would have been made by the person for whom it is proposed to be made, if he or she had legal capacity to make a will at the time of the hearing of the application.

Application of common law and equity

27F—The principles and rules of the common law and of equity are, to the extent that they are not inconsistent with this Division, to apply to a valid statutory will in the same way as they apply to a will executed in accordance with Division 3.

Alteration of statutory will

27G—The Board may alter a statutory will on application by a person in accordance with this Division as if references to the procedure for making a statutory will were read as references to the procedure for alteration of a statutory will.

Revocation of statutory will

27H—(1) The Board may revoke a statutory will on application by a person in accordance with this Division as if references to the procedure for making a statutory will were read as references to the procedure for revocation of a statutory will.

(2) A person who acquires or regains capacity to make a will after a statutory will has been made on his or her behalf may revoke the statutory will in the same manner as a will may be revoked under Division 6.

Copies of statutory will to be forwarded to Public Trustee and person for whom it is made

27I—On the execution of a statutory will the Board must forward a copy of the will to—

- (a) the person for whom it is made; and
- (b) the Public Trustee.

Section 47 amended (Rectification of wills)

9—Section 47 of the Principal Act is amended by inserting after subsection (2) the following subsection:—

(3) The application of this section extends to a statutory will as if the references in subsection (1) to a deceased person and the reference in subsection (2) to the personal representative of the deceased person were read as references to the Board.

Section 48A inserted

10—After section 48 of the Principal Act, the following section is inserted:—

Appeals from decisions of Board

48A—(1) Where, on an application under Division 9 of Part 2, the Board makes an order enabling the execution of a statutory will or refuses to make any such order—

- (a) the person for whom the will is made or is proposed to be made; or
- (b) if that person had died intestate at the time when the application was made, any other person who would have been entitled in the distribution of the intestate estate; or
- (c) the applicant for the order—

may appeal to the Court from the decision of the Board.

(2) The Board is to be the respondent on an appeal.

(3) On an appeal the Court may affirm, vary or set aside the order of the Board.

Section 49A inserted

11—After section 49 of the Principal Act, the following section is inserted:—

Regulations

49A—The Governor may make regulations for the purposes of this Act, except for the purpose of regulating the procedure to be followed in making an application to the Court under, or for the purposes of, this Act.

Consequential amendments

12—The Principal Act is further amended as specified in the following table:—

Provision	Omission	Substitution
Section 5 (1) (a)	3;	3 or 9;
Section 16 (1)	3.	3 or 9.
Section 27 (1)	3,	3 or 9,
Section 32 (2)	6	6 or 9

Consequential amendments of *Testator's Family Maintenance Act 1912*

13—Section 8A of the *Testator's Family Maintenance Act 1912** is amended by inserting after subsection (1) the following subsection:—

(1A) Where an application under section 3 (1) relates to a will made under Division 9 of Part 2 of the *Wills Act 1992* by the Guardianship and Administration Board, the court or judge may have regard to the records of the Board relating to the person for whom the will was made and the reasons given by the Board for making the will.

[Second reading presentation speech made in:—
House of Assembly on 6 April 1995
Legislative Council on 17 August 1995]

* 3 Geo. V No. 7. For this Act, as amended to 1959, see the Reprint of Statutes (1826-1959), Vol. 6, p. 271. Subsequently amended by No. 57 of 1970, No. 36 of 1974, No. 46 of 1991 and No. 34 of 1995.