



WILLS (MISCELLANEOUS) AMENDMENT ACT 1994

No. 9 of 1994

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 3—Interpretation and application of Act
4. Substitution of s. 5
 5. Will of minor
 6. Will of minor pursuant to leave of Court
5. Substitution of s. 8
 8. Requirements as to writing and execution of will
6. Repeal of s. 9
7. Amendment of s. 12—Validity of will
8. Insertion of s. 25AA and heading
 - Rectification of wills*
 - 25AA. Power of rectification
9. Application of amendments to formality requirements



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ELIZABETHAE II REGINAE

A.D. 1994

No. 9 of 1994

An Act to amend the Wills Act 1936.

[Assented to 21 April 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Wills (Miscellaneous) Amendment Act 1994*.
- (2) The *Wills Act 1936* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Interpretation and application of Act

3. Section 3 of the principal Act is amended—

- (a) by inserting before the definition of "the Court" in subsection (1) the following definition:

"adult" means a person of or over the age of 18 years;;

- (b) by inserting after the definition of "the Court" in subsection (1) the following definition:

"minor" means a person under the age of 18 years;.

Substitution of s. 5

4. Section 5 of the principal Act is repealed and the following sections are substituted:

Will of minor

5. (1) Subject to this Act, a minor cannot make, alter or revoke a will.

(2) A minor who is or has been married may make, alter or revoke a will as if he or she were an adult.

(3) A minor may make a will in contemplation of marriage (and may alter or revoke such a will) but the will is of no effect unless the contemplated marriage is solemnised.

Will of minor pursuant to leave of Court

6. (1) The Court may, on application by a minor, make an order authorising the minor to make or alter a will in specific terms approved by the Court, or to revoke a will.

(2) An authorisation under this section may be granted on such conditions as the Court thinks fit.

(3) Before making an order under this section, the Court must be satisfied that—

- (a) the minor understands the nature and effect of the proposed will, alteration or revocation; and
- (b) the proposed will, alteration or revocation accurately reflects the intentions of the minor; and
- (c) it is reasonable in all the circumstances that the order should be made.

(4) A will or instrument altering or revoking a will made pursuant to an order under this section—

- (a) must be executed as required by law and one of the attesting witnesses must be the Registrar or the Public Trustee; and
- (b) must be deposited for safe custody with the Registrar under section 13 of the *Administration and Probate Act 1919*.

(5) The will may not be withdrawn from deposit with the Registrar by the minor unless the Court has made an order authorising the minor to revoke the will or the minor has attained the age of 18 years or is married.

Substitution of s. 8

5. Section 8 of the principal Act is repealed and the following section is substituted:

Requirements as to writing and execution of will

8. Subject to this Act, no will is valid unless it is in writing and executed in the following manner:

- (a) it must be signed by the testator or by some other person in the testator's presence and by the testator's direction; and
- (b) it must appear, on the face of the will or otherwise, that the testator intended by the signature to give effect to the will; and

- (c) the signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) the witnesses must attest and sign the will (but no form of attestation is necessary); and
- (e) the signatures of the witnesses must be made or acknowledged in the presence of the testator (but not necessarily in the presence of each other).

Repeal of s. 9

6. Section 9 of the principal Act is repealed.

Amendment of s. 12—Validity of will

7. Section 12 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(2) Subject to this Act, if the Court is satisfied that a document that has not been executed with the formalities required by this Act expresses testamentary intentions of a deceased person, the document will be admitted to probate as a will of the deceased person.

(3) If the Court is satisfied that a document that has not been executed with the formalities required by this Act expresses an intention by a deceased person to revoke a document that might otherwise have been admitted to probate as a will of the deceased person, that document is not to be admitted to probate as a will of the deceased person.

(4) This section applies to a document whether it came into existence within or outside the State.

(5) Rules of Court may authorise the Registrar to exercise the powers of the Court under this section.

Insertion of s. 25AA and heading

8. The following heading and section are inserted after section 25 of the principal Act:

Rectification of wills

Power of rectification

25AA. (1) If the Court is satisfied that a will does not accurately reflect the testamentary intentions of a deceased person, the Court may order that the will be rectified so as to give proper expression to those intentions.

(2) An application for an order under this section must not, except with the consent of the Court, be made more than six months after the grant of probate or letters of administration.

(3) Nothing in this section affects the operation of section 29 of the *Trustee Act 1936*.

Application of amendments to formality requirements

9. The amendments made to section 8 of the principal Act by section 5 of this Act and the repeal of section 9 of the principal Act by section 6 of this Act have effect in relation to wills whether made before, on or after the commencement of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor