



ANNO DECIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1966

No. 27 of 1966

An Act to amend the Wills Act, 1936-1940.

[Assented to 17th March, 1966.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Wills Act Amendment Act, 1965-1966". Short titles.

(2) The Wills Act, 1936-1940, as amended by this Act may be cited as the "Wills Act, 1936-1966".

(3) The Wills Act, 1936-1940, is hereinafter referred to as "the principal Act".

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

3. The principal Act is amended by inserting immediately before section 1 thereof the following heading:— Heading to Part I of principal Act.

PART I.

PART I.

PRELIMINARY.

4. Section 1 of the principal Act is amended by adding at the end thereof the following subsection (the preceding provisions of the section being re-designated as subsection (1) thereof):— Amendment of principal Act, s. 1— Short title and arrangement.

(2) This Act is arranged as follows :—

PART I.—Preliminary (sections 1-3).

PART II.—The Making, Alteration, Revocation,
Revival, Etc., of Wills (sections 4-25).

PART III.—Formal Validity of Wills (sections 25a-25d).

PART IV.—Construction of Wills (sections 26-37).

Heading to
Part II of
principal Act.

5. The principal Act is amended by striking out the heading—

Property which may be Disposed of by Will.

immediately before section 4 thereof and inserting in lieu of that heading the following heading and sub-heading :—

PART II.

PART II.

THE MAKING, ALTERATION, REVOCATION,
REVIVAL, ETC., OF WILLS.

Property which may be Disposed of by Will.

Repeal of ss. 5,
6 and 6a of
principal Act
and re-enact-
ment of s. 5.

6. Sections 5, 6 and 6a of the principal Act are repealed and the following section is inserted in the principal Act in lieu thereof :—

No will of
person under
eighteen valid.

5. (1) No will made by any person under the age of eighteen years shall be valid.

(2) Subsection (1) of this section shall not apply to a will of a person who died before the date of the commencement of the Wills Act Amendment Act, 1965-1966, but shall apply to a will of a person who dies after that date (whether the will was executed before or after that date) and sections 5, 6 and 6a of this Act, as in force immediately before the commencement of the Wills Act Amendment Act, 1965-1966, shall continue to apply to a will of a person who died before the date of commencement of the Wills Act Amendment Act, 1965-1966, as if that Act had not come into operation.

Amendment of
principal Act,
s. 13—

Wills made
out of the
State to be
admitted if
made according
to the law of
the place
where made,
etc.

7. Section 13 of the principal Act is amended by inserting after the word "State" (first occurring) therein the passage "before the commencement of the Wills Act Amendment Act, 1965-1966,".

8. Section 14 of the principal Act is amended by inserting after the word "State" (first occurring) therein the passage "before the commencement of the Wills Act Amendment Act, 1965-1966,".

Amendment of principal Act, s. 14—
Wills made in the State to be admitted if made according to local usage.

9. The following Part is enacted and inserted in the principal Act immediately after section 25 thereof :—

Enactment of Part III of principal Act—

PART III.

PART III.

FORMAL VALIDITY OF WILLS.

25a. (1) In this Part—

Interpretation and application.

"country" means any place or group of places having its own law of nationality (including the Commonwealth of Australia and its territories) :

"internal law" in relation to any country or place means the law which would apply in a case where no question of the law in force in any other country or place arose :

"place" means any territory (including a State or Territory of the Commonwealth of Australia).

(2) Where under this Act the internal law in force in any country or place is to be applied in the case of a will, but there are in force in that country or place two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows :—

(a) If there is in force throughout the country or place a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed ; or

(b) If there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death and the time of execution of the will in any other case.

(3) In determining for the purposes of this Act whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

(4) This Part shall not apply to a will of a testator who died before the commencement of the Wills Act Amendment Act, 1965-1966, and shall apply to a will of a testator who dies after such commencement whether the will was executed before or after such commencement.

Certain requirements to be treated as formal.

(5) Where (whether in pursuance of this Act or not) a law in force outside the State falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

General rule as to formal validity.

25b. Notwithstanding any other provision of this Act, a will shall be treated as properly executed for the purpose of being admitted in the State to probate if its execution conformed to the internal law in force in the place where it was executed, or in the place where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a country of which, at either of those times, he was a national.

Additional rules.

25c. (1) Without limiting the generality of section 25b of this Act, the following wills shall be treated as properly executed for the purpose of being admitted in the State to probate :—

- (a) A will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected ;
- (b) A will so far as it disposes of immovable property if its execution conformed to the internal law in force in the country or place where the property was situated ;
- (c) A will so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated ;

(d) A will so far as it exercises a power or appointment if the execution of the will conformed to the law governing the essential validity of the power.

(2) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

25d. Nothing in this Part shall be held to restrict the operation of section 23 of the Administration and Probate Act, 1919-1960.

Saving of section 23 of Administration and Probate Act, 1919-1960.

10. The principal Act is amended by striking out the heading—

Heading to Part IV of principal Act.

Construction of Wills.

immediately before section 26 thereof and inserting in lieu of that heading the following heading :—

PART IV.

PART IV.

CONSTRUCTION OF WILLS.

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

EDRIC BASTYAN, Governor.