

## Wills Amendment Bill 2006

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Western Australia

LEGISLATIVE ASSEMBLY

## **Wills Amendment Bill 2006**

**A Bill for**

**An Act to amend the *Wills Act 1970* and to consequentially amend certain other Acts.**

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Wills Amendment Act 2006*.

**2. Commencement**

(1) This Act comes into operation on a day fixed by proclamation.

5 (2) Different days may be fixed under subsection (1) for different provisions.

**3. The Act amended**

The amendments in this Act are to the *Wills Act 1970*\*.

[\* *Reprint 3 as at 17 October 2003.*]

10 **4. Section 4 amended**

Section 4 is amended as follows:

(a) by inserting in the appropriate alphabetical position —

“

15 “**marriage**” has the meaning given to that term in the *Marriage Act 1961* of the Commonwealth;

”;

(b) in the definition of “will” by inserting after “instrument” —

“ or disposition ”.

20 **5. Section 6 replaced**

Section 6 is repealed and the following section is inserted instead —

“

**6. Provision that may be made by will**

25 A person may, by a will executed or made in a manner required or permitted by this Act —

(a) dispose of property (whether acquired before or after the making of the will) to which at the

time of the person's death the person is entitled either at law or in equity;

- 5 (b) dispose of property that in exercise of a power of appointment the person is entitled or able to dispose of by will; and
- (c) appoint a guardian of any infant child of the person.

”.

**6. Section 7 amended**

10 Section 7 is amended by deleting “the provisions of Part VI,” and inserting instead —

“ section 17, ”.

**7. Section 8 amended**

Section 8 is amended as follows:

- 15 (a) by deleting “the provisions of Part VI and section 34,” and inserting instead —

“ sections 17 and 20 and Parts X and XI, ”;

- (b) in paragraph (b) by deleting “his” in each place where it occurs and inserting instead —

20 “ the testator's ”.

**8. Section 9 amended**

- (1) Section 9(1) is repealed and the following subsection is inserted instead —

“

- 25 (1) If a power is conferred on a person to make an appointment by a will which power is to be executed in some particular manner or with some particular solemnity, the person may exercise the power by a will that is executed in a manner required or permitted by

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this Act, but is not executed in that particular manner  
or with that particular solemnity.

”.

5 (2) Section 9(2) is amended by deleting “this Act.” and inserting  
instead —

“ section 8. ”.

**9. Section 10 replaced**

Section 10 is repealed and the following section is inserted  
instead —

10 “

**10. Alterations after execution**

(1) In subsection (3) —

“**apparent**” means legible by the unaided eye or with  
the help of a magnifying lens but not otherwise.

15 (2) Subject to Part X, an alteration to a will after it has  
been executed is not effective unless the alteration is  
executed in a manner in which a will is required or  
permitted to be executed by this Act.

20 (3) Subsection (2) does not apply to an alteration to a will  
made by, or at the direction of, the testator if the words  
or effect of the will are no longer apparent because of  
the alteration.

25 (4) If a will is altered, it is sufficient compliance with the  
requirements for execution if the signatures of the  
testator and of the witnesses to the alteration, or in the  
case of a will referred to in section 17 the signature of  
the testator, are or is made —

30 (a) in the margin, or on some other part of the will  
beside, near or otherwise relating to the  
alteration; or



- (b) as authentication of a memorandum referring to the alteration and written on the will.

”.

**10. Section 11 inserted**

5 After section 10 the following section is inserted in Part III —

“

**11. Situation in which a person cannot be a witness**

A person who is unable to see and attest that a testator has signed a document cannot act as a witness to a will.

10

”.

**11. Part IV repealed**

Part IV is repealed.

**12. Section 14 amended**

15 (1) Section 14(1)(a) is amended by deleting “there is a declaration in the will that”.

(2) Section 14(2) is amended by deleting “expressed to be”.

(3) After section 14(2) the following subsections are inserted —

“

20 (3) For the purposes of this section, a will is made in contemplation of a marriage if —

(a) it is expressed to be made in contemplation of the marriage; or

(b) there is other evidence establishing that the will was made in contemplation of the marriage.

25 (4) Subsection (3)(b) applies to the will of a person dying on or after the day on which section 12 of the *Wills Amendment Act 2006* comes into operation, whether the will was executed or made before, on or after that day, and the will of a person who died before that day

s. 13

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is to be construed as if that section had not come into operation.

”.

**13. Section 14A inserted**

5 After section 14 the following section is inserted —

“

**14A. Ending of marriage**

(1) In this section —

10 **“Family Court of Australia”** means the Family Court of Australia created by the Family Law Act;

**“Family Law Act”** means the *Family Law Act 1975* of the Commonwealth.

(2) A will is revoked by the ending of the testator’s marriage except where —

- 15 (a) a contrary intention appears in the will; or  
(b) there is other evidence establishing such an intention.

(3) For the purposes of subsection (2), a marriage ends —

- 20 (a) when a divorce order terminating the marriage takes effect under the Family Law Act;  
(b) on the granting of a decree of nullity in respect of the marriage by the Family Court of Australia or the Family Court of Western Australia; or  
25 (c) on the dissolution or annulment of the marriage in accordance with the law of a place outside Australia, but only if that dissolution or annulment is recognised in Australia under the Family Law Act.

(4) Subsection (2) —

- (a) applies where a marriage ends on or after the day on which section 13 of the *Wills Amendment Act 2006* comes into operation, whether the will was executed or made before, on or after that day; and
- (b) does not apply where a marriage ends before that day.

”.

10 **14. Section 15 replaced**

Section 15 is repealed and the following section is inserted instead —

“

15 **15. When will revoked**

Without limiting sections 14(1) and 14A(2), the whole or any part of a will may be revoked only —

- (a) by a later will, including a document that is a will by operation of Part X;
- (b) subject to Part X, by some writing declaring an intention to revoke it, executed in the manner in which a will is required or permitted to be executed by this Act; or
- (c) by the testator, or some person in the testator’s presence and by the testator’s direction, burning, tearing or otherwise destroying it to give effect to the intention of the testator of revoking it.

”.

**s. 15**

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**15. Section 16 amended**

- (1) Section 16(1) is repealed and the following subsection is inserted instead —

“

- 5 (1) Subject to Part X, a will or any part of a will that has been revoked is revived only by the re-execution of that will or by execution of a later will, including a document that is a will by operation of Part X, showing an intention to revive that will or part.

10

”.

- (2) Section 16(2) is amended by deleting “revoked,” and inserting instead —

“ revoked ”.

- (3) After section 16(2) the following subsection is inserted —

15

“

- (3) A will that has been revoked and later revived, either wholly or partly, is taken to have been executed on the day on which the will is revived.

”.

20 **16. Sections 17, 18 and 19 replaced by section 17**

Sections 17, 18 and 19 are repealed and the following section is inserted instead —

“

25

**17. Saving for wills and revocations made under former provisions**

- (1) The repeal of sections 17, 18 and 19 of this Act by section 16 of the *Wills Amendment Act 2006* (“**the repeal**”) does not affect —

30

- (a) a will made under section 18 before the repeal;  
or

- (b) the revocation of such a will under section 19 before the repeal.
- (2) A will referred to in subsection (1)(a), or part of such a will, that was not revoked before the repeal has effect as if the repeal had not occurred, but may only be revoked after the repeal in accordance with section 15.

”.

**17. Sections 20, 21, 22 and 23 replaced by sections 20 and 21**

Sections 20, 21, 22 and 23 are repealed and the following sections are inserted instead —

“

**20. General rules as to formal validity**

- (1) A will is taken to be properly executed if its execution conforms to the internal law in force in the place —
  - (a) where it was executed;
  - (b) that was the testator’s domicile or habitual residence, either at the time the will was executed, or at the testator’s death; or
  - (c) of which the testator was a national, either at the date of execution of the will, or at the testator’s death.
- (2) The following wills are also taken to be properly executed —
  - (a) a will executed on board a vessel or aircraft, if the will has been executed in conformity with the internal law in force in the place with which the vessel or aircraft may be taken to have been most closely connected having regard to its registration and other relevant circumstances;
  - (b) a will, so far as it disposes of immovable property, if it has been executed in conformity

**s. 17**

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with the internal law in force in the place where the property is situated;

- 5 (c) a will, so far as it revokes a will or a provision of a will that has been executed in accordance with this Act, or that is taken to have been properly executed by this Act, if the later will has been executed in conformity with any law by which the earlier will or provision would be taken to have been validly executed;
- 10 (d) a will, so far as it exercises a power of appointment, if the will has been executed in conformity with the law governing the essential validity of the power.

**21. Ascertainment of system of internal law**

- 15 (1) If the internal law in force in a place is to be applied to a will, but there is more than one system of internal law in force in the place that relates to the formal validity of wills, the system to be applied is determined as follows —
- 20 (a) if there is a rule in force throughout the place that indicates which system of internal law applies to the will, that rule must be followed;
- (b) if there is no rule, the system of internal law is that with which the testator was most closely
- 25 connected either —
- (i) at the time of the testator's death, if the matter is to be determined by reference to circumstances prevailing at the testator's death; or
- 30 (ii) in any other case, at the time of execution of the will.

- 5 (2) In determining whether a will has been executed in conformity with a particular internal law, regard must be had to the formal requirements of that law at the time of execution, but account may be taken of a later alteration of the law affecting wills executed at that time, if the alteration enables the will to be treated as properly executed.
- 10 (3) If a law in force outside this State is applied to a will, a requirement of that law that special formalities must be observed by testators of a particular description or that the witnesses to the execution of a will must have certain qualifications, is to be taken to be a formal requirement only, despite any rule of that law to the contrary.
- 15 ”.

**18. Section 25 replaced**

Section 25 is repealed and the following section is inserted instead —

- 20 “
- 25. Disposition of interest in property after making of will**
- If —
- 25 (a) a testator has made a will disposing of property; and
- (b) after the making of the will and before the testator’s death, the testator disposes of an interest in that property,
- the will operates to dispose of any remaining interest the testator has in that property.
- 30 ”.

**19. Section 26 amended**

(1) Section 26 is amended as follows:

- (a) by inserting before “Unless the contrary” the subsection designation “(1)”;
- 5 (b) in paragraph (b), by inserting after “of a disposition” —  
“  
    , other than the exercise of a power of  
    appointment,  
    ”;
- 10 (c) in paragraph (d) —
  - (i) by deleting “his” and inserting instead —  
    “ the testator’s ”; and
  - (ii) by deleting “he” and inserting instead —  
    “ the testator ”;
- 15 (d) at the end of paragraph (e), by deleting the full stop and inserting a semicolon;
- (e) after paragraph (e), by inserting the following paragraphs —  
“
- 20 (f) a disposition of the residue of the estate of a testator, or of the whole of the estate of a testator, that refers only to —
  - (i) the real estate of the testator; or
  - (ii) the personal estate of the testator,is to be construed to include both the real and  
25 personal estate of the testator;
- 30 (g) if any part of a disposition in fractional parts of the whole or of the residue of the estate of a testator fails, the part that fails accrues to the part that does not fail, and, if there is more than one part that does not fail, to all those parts proportionately.  
”.



(2) At the end of section 26 the following subsection is inserted —

“

(2) Subsection (1)(f) and (g) apply to the will of a person dying on or after the day on which section 19(1)(e) of the *Wills Amendment Act 2006* comes into operation, whether the will was executed or made before, on or after that day, and the will of a person who died before that day is to be construed as if section 19(1)(e) of that Act had not come into operation.

”.

**20. Section 27 amended**

Section 27(1) is repealed and the following subsection is inserted instead —

“

(1) Unless the contrary intention appears by the will, where —

- (a) there is a disposition in a will to a person who is a child or other issue of the testator, for an estate or interest not determinable at or before the death of that person; and
- (b) that person dies in the lifetime of the testator leaving a child or children who survive the testator,

the disposition does not lapse but takes effect as a substitutional disposition to such of the children of that person as survive the testator and if more than one in equal shares.

”.

**21. Section 28 amended**

Section 28 is amended as follows:

- (a) in subsection (1) —
  - (i) by deleting “his will” and inserting instead —  
“ will ”; and

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- (ii) by deleting “his death” and inserting instead —  
“ the testator’s death ”;
- (b) in subsection (2)(a) by deleting “his” in each place  
where it occurs and inserting instead —  
5 “ the testator’s ”.

**22. Section 28A inserted**

After section 28 the following section is inserted in Part VIII —

“

**28A. Use of extrinsic evidence to clarify a will**

- 10 (1) In proceedings to construe a will, evidence, including  
evidence of the testator’s intention, is admissible to the  
extent that the language used in, or other content of, the  
will renders the will or any part of the will —
  - (a) meaningless;
  - 15 (b) ambiguous on the face of the will; or
  - (c) ambiguous in the light of the surrounding  
circumstances.
- (2) Evidence of a testator’s intention is not admissible to  
20 establish any of the circumstances referred to in  
subsection (1)(c).
- (3) Nothing in this section prevents evidence that is  
otherwise admissible at law from being admissible in  
proceedings to construe a will.
- 25 (4) This section applies to the will of any person dying on  
or after the day on which section 22 of the *Wills  
Amendment Act 2006* comes into operation, whether  
the will was made or executed before, on or after that  
day, but does not apply to the will of a person who died  
before that day.

30

”.

23. **Sections 32, 33, 34, 35, 36 and 37 replaced by sections 32 and 33**

Sections 32, 33, 34, 35, 36 and 37 are repealed and the following sections are inserted instead —

5 “

**32. Court may dispense with formal requirements**

(1) In this section and section 33 —

“document” means any record of information including —

10

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or

15

(d) a map, plan, drawing or photograph, and includes any part of a document within the meaning given by this subsection.

20

(2) A document purporting to embody the testamentary intentions of a deceased person, even though it has not been executed in the manner required by this Act, constitutes —

25

- (a) a will of the person;
- (b) an alteration to a will of the person;
- (c) the revocation of a will of the person; or
- (d) the revival of a will or part of a will of the person,

30

if the Supreme Court is satisfied that the person intended the document to constitute the person’s will, an alteration to the person’s will, the revocation of the

**s. 24**

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person's will or the revival of a will or part of a will of the person, as the case may be.

5 (3) In forming its view, the Supreme Court may have regard (in addition to the document) to any evidence relating to the manner of execution or testamentary intentions of the person, including evidence (whether admissible before the commencement of this section or otherwise) of statements made by the person.

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

**33. Application of section 32**

15 (1) Section 32 applies only to persons dying on or after the day on which section 23 of the *Wills Amendment Act 2006* comes into operation, but in respect of persons so dying extends to any document that came into existence before that day.

20 (2) For persons dying before the day referred to in subsection (1), this Part has effect as if section 23 of the *Wills Amendment Act 2006* had not come into operation.

”.

**24. Parts XI and XII inserted**

After section 38 the following Parts are inserted —

“

25 **Part XI — Wills of persons who lack testamentary capacity**

**Division 1 — Jurisdiction of Supreme Court to authorise the making, alteration and revocation of wills**

**39. Interpretation**

30 (1) In this Part —  
“**Court**” means the Supreme Court;

“**person concerned**” has the meaning given by section 40(1);

“**Principal Registrar**” means the person for the time being holding or acting in the office designated under the *Supreme Court Act 1935* as the “Principal Registrar of the Supreme Court”.

- (2) For the purposes of sections 6, 9(1), 10(2) and 15(b), a will or instrument signed in accordance with section 40(4) is to be taken to be executed by the person concerned in a manner permitted by this Act.

**40. Jurisdiction of Court to make, alter or revoke will**

- (1) The Court may, on application made by any person, make an order authorising —
- (a) the making or alteration of a will in specific terms approved by the Court; or
  - (b) the revocation of the whole or any part of a will,

on behalf of a person who lacks testamentary capacity (the “**person concerned**”).

- (2) The Court is not to make an order under subsection (1) unless, at the time when the order is made, the person concerned —
- (a) is living; and
  - (b) has reached the age of 18 years.
- (3) An order under subsection (1) may authorise —
- (a) the making or alteration of a will that deals with the whole, or with only part, of the property of the person concerned; or
  - (b) the alteration of only part of the person’s will.

- (4) A will or instrument authorised under subsection (1) must be signed by the Principal Registrar and sealed with the seal of the Court.

**41. Content of application under section 40**

- 5 (1) In an application under section 40, the applicant must furnish the following to the Court, except to the extent that the Court otherwise allows —
- 10 (a) a written statement of the nature of the application and the reasons for it;
- (b) an estimate of the nature and value of the assets of the person concerned and of the nature and amount of the person's liabilities, so far as that information is known to the applicant;
- 15 (c) a suggested draft of the proposed will or alteration or of the instrument of revocation;
- (d) any evidence available to the applicant as to the wishes of the person concerned;
- (e) evidence as to the likelihood of the person concerned having testamentary capacity at a later time;
- 20 (f) any will, or a copy of any will, of the person concerned in the possession of the applicant, or details known to the applicant of the contents of any will of the person concerned, and evidence that the applicant has made reasonable enquiry to locate such wills, or details of the contents of such wills, as may have been made by the person concerned;
- 25 (g) evidence that the applicant has made reasonable enquiry concerning the interests of any person who would be entitled to receive any part of the estate of the person concerned either under a previous will or if the person were to die intestate, and any evidence of those interests so far as they are known to the applicant;
- 30
- 35

- 5 (h) evidence that the applicant has made reasonable enquiry concerning the likelihood of an application being made under the *Inheritance (Family and Dependants Provision) Act 1972*, and evidence of any facts known to the applicant indicating such a likelihood;
- 10 (i) evidence that the applicant has made reasonable enquiry concerning the circumstances of any person for whom the person concerned might reasonably be expected to make provision under a will, and any evidence of those circumstances so far as they are known to the applicant;
- 15 (j) a reference to any gift to a body, whether charitable or not, or for a charitable purpose, that the person concerned might reasonably be expected to make by will;
- (k) evidence of any other facts that the applicant considers to be relevant to the application.

- 20 (2) In subsection (1) —
- “**previous will**”, in paragraph (g), means a will made before a will furnished to the Court, or details of which are furnished to the Court, in accordance with paragraph (f);
- 25 “**will**”, in paragraphs (f) and (g), includes a document that is a will by operation of Part X.

**42. Certain criteria to be applied by Court**

- (1) In exercising its powers under section 40 the Court must refuse an application if it is not satisfied that —
- 30 (a) the person concerned is incapable of making a valid will or of altering or revoking the person’s will, as the case may be;

- 5
- (b) the suggested will, alteration or revocation, or that will, alteration or revocation as revised under section 43(1)(b), is one which could be made by the person concerned if the person were not lacking testamentary capacity;
- (c) the applicant is an appropriate person to make the application; and
- 10 (d) adequate steps have been taken to allow all persons with a legitimate interest in the application, including persons who have reason to expect any benefit from the estate of the person concerned, to be represented in the proceedings.
- (2) Subsection (1) does not prevent the Court from
- 15 refusing an application for any other reason.

**43. Further powers of Court**

- (1) In proceedings under section 40 the Court may —
- 20 (a) give directions, including directions about the attendance of any person as a witness and, if it thinks fit, the attendance of the person concerned;
- (b) revise the terms of the suggested draft of the proposed will, alteration or revocation furnished to the Court under section 41(1)(c);
- 25 (c) inform itself as to any matter in any manner it thinks fit; and
- (d) make any order it thinks fit as to the costs of and incidental to the proceedings.
- (2) The Court is not bound by the rules of evidence in
- 30 proceedings under section 40.



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**44. Deposit of wills made under this Part with Principal Registrar**

- 5 (1) After a will or instrument has been signed by the Principal Registrar under section 40(4) —
- (a) it must be deposited in the office of the Principal Registrar; and
- 10 (b) the fee prescribed under section 171(1)(c) of the *Supreme Court Act 1935* must be paid by the person who made the relevant application under section 40.
- (2) A will or instrument deposited in the office of the Principal Registrar under subsection (1) must be in a sealed envelope that has written on it —
- 15 (a) the name and address of the person concerned, as they appear in the will or instrument;
- (b) the name and address of any executor as they appear in the will or instrument; and
- (c) the date of the will or instrument.
- 20 (3) If the Court has made an order authorising the revocation of a will deposited under subsection (1), the Principal Registrar must release the will to the person who made the relevant application under section 40.
- 25 (4) If the person concerned has acquired or regained testamentary capacity to the satisfaction of the Court, the Principal Registrar must release to that person a will deposited under subsection (1).

**45. Court may allow access to will**

- 30 (1) A person may, with the leave of the Court and in accordance with the terms of the leave, request the Principal Registrar to provide the person with a copy of a will deposited in the office of the Principal Registrar

under section 44, and the Principal Registrar must comply with a request so made.

(2) The Court may, on the application of any person, grant leave to the person for the purposes of subsection (1) on such terms as it thinks fit, but only if —

(a) the Court is satisfied that adequate steps have been taken to allow all persons with a legitimate interest in the application to be represented in the proceedings; and

(b) it appears to the Court to be necessary or desirable for the proper carrying out of the provisions of the will that leave be granted.

**46. Alteration or revocation of will authorised under this Part**

(1) This section applies if —

(a) a will has been made on behalf of a person under this Part; and

(b) the person acquires or regains testamentary capacity.

(2) The will —

(a) may be altered by the person in accordance with section 10 or by a document that has effect under Part X;

(b) may be revoked in whole or in part by the person in accordance with section 15 or by a document that has effect under Part X; and

(c) is subject to revocation under section 14(1) or 14A(2),

as if it were a will executed in accordance with section 8.

**47. Protection of privacy of persons to whom applications relate**

- 5 (1) In proceedings under section 40, the Court may do any or all of the following, either on its own initiative or on the application of a party to the proceedings —
- (a) order that the whole or any part of the proceedings be heard in closed court;
- 10 (b) order that only persons or classes of persons specified by the Court may be present during the whole or any part of the proceedings;
- (c) make an order prohibiting the publication of a report of —
- (i) the whole or any part of the proceedings; or
- 15 (ii) any information derived from or relating to the proceedings,
- including any order made by the Court.
- (2) Instead of making an order described in subsection (1)(c), the Court may make such an order
- 20 but with exceptions allowing the publication, in the manner or to the persons specified in the order, of particulars or information, or particulars or information of a kind, so specified.

**Division 2 — Wills of persons who lack testamentary capacity made under the law of another place**

**48. Recognition of wills**

- 25 (1) In this section —
- “**statutory will**” means a will executed by virtue of a
- 30 statutory provision on behalf of a person who, at the time of execution, lacked testamentary capacity, and includes an alteration to and a revocation of a statutory or other will.

- 5
- (2) A statutory will made according to the law of the place where the deceased was resident at the time of execution is to be regarded as a valid will of the deceased or a valid alteration or revocation of a will, as the case may be, for the purposes of the law of this State.
- (3) The application of subsection (2) extends to a statutory will made before the commencement of section 24 of the *Wills Amendment Act 2006*.

10

**Part XII — Rectification of wills by  
Supreme Court**

**49. Definition**

In this Part —

“**Court**” means the Supreme Court.

15

**50. Court may rectify a will**

- (1) The Court may make an order rectifying a will to carry out the intentions of a deceased testator if the Court is satisfied that the will does not carry out the testator’s intentions because —
- 20
- (a) a clerical error was made; or
- (b) the will does not give effect to the testator’s instructions.
- (2) Any application for an order under this section must be made within 6 months after the death of the testator.
- 25
- (3) The Court may extend the period of time for making an application, even if the original period has expired, but not if the final distribution of the estate has been made.
- (4) A certified copy of an order under this section must be attached to the original will and to the probated copy of
- 30
- the will.

- (5) Subject to subsection (2), the power conferred by subsection (1) extends to the will of a person who died before the commencement of section 24 of the *Wills Amendment Act 2006*.

5

”.

**25. Consequential amendments to other Acts**

Schedule 1 has effect.

**Schedule 1 — Consequential amendments to other Acts**

[s. 25]

**1. Guardianship and Administration Act 1990 amended**

5 (1) The amendments in this clause are to the *Guardianship and Administration Act 1990*\*.

[\* *Reprint 3 as at 1 April 2005.*

*For subsequent amendments see Acts Nos. 34, 59 and 84 of 2004.]*

(2) Section 45 is amended as follows:

- 10 (a) by deleting subsection (3)(b);  
(b) by inserting after subsection (3) the following subsection —

“

15 (4) A plenary guardian may not make a will or other testamentary disposition on behalf of a represented person but this subsection does not affect the operation of section 111A.

”.

(3) After section 71(2) the following subsection is inserted —

“

20 (2a) Despite subsection (2), a plenary administrator may not make a will or other testamentary disposition on behalf of a represented person, but this subsection does not affect the operation of section 111A.

”.

(4) After section 111 the following section is inserted —

25 “

**111A. Applications under section 40 of the *Wills Act 1970***

30 Subject to sections 43(3) and 64(3)(a), a plenary guardian or a plenary administrator may, in accordance with Part XI of the *Wills Act 1970*, make an application to the Supreme Court for an order under section 40 of that Act if the plenary guardian or the plenary



**cl. 5**

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**5. Public Trustee Act 1941 amended**

- (1) The amendments in this clause are to the *Public Trustee Act 1941*\*.

[\* *Reprinted as at 4 May 2001.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 370.]*

- (2) Section 32 is amended as follows:

(a) by inserting before “The Public Trustee” the subsection designation “(1)”;

(b) by inserting at the end of the section the following subsection —

“

- (2) In subsection (1) —

“**document**” has the meaning given to that term by section 32(1) of the *Wills Act 1970*.

”.

**6. Stamp Act 1921 amended**

- (1) The amendments in this clause are to the *Stamp Act 1921*\*.

[\* *Reprint 15 as at 3 June 2005.*

*For subsequent amendments see Acts Nos. 11, 12, 34, 35, 36 and 38 of 2005.]*

- (2) Section 76D(2)(a) is amended by deleting “instrument” in both places where it occurs and inserting instead —

“ disposition ”.

**7. Supreme Court Act 1935 amended**

- (1) The amendment in this clause is to the *Supreme Court Act 1935*\*.

[\* *Reprint 7 as at 19 August 2005.*

*For subsequent amendments see Acts Nos. 20 and 24 of 2005.]*



- (2) Section 171(1)(c) is amended by inserting after “Court” —

“

or depositing a will or instrument under  
section 44 of the *Wills Act 1970*

5

”.

**8. *Trustee Companies Act 1987* amended**

- (1) The amendments in this clause are to the *Trustee Companies Act 1987*.\*.

[\* *Reprint 2 as at 6 February 2004.*

10

*For subsequent amendments see Western Australian Legislation  
Information Tables for 2004, Table 1, p. 466 and Gazette dated  
21 March 2006 p. 1082-3.]*

- (2) Section 3(1) is amended by deleting the definition of “will” and  
inserting instead —

15

“

“**will**” includes a codicil and any other testamentary  
instrument or disposition.

”.

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