

South Australia



**WILLS (EFFECT OF TERMINATION OF MARRIAGE) AMENDMENT
ACT 1996**

No. 39 of 1996

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ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 39 of 1996

An Act to amend the Wills Act 1936.

[Assented to 6 June 1996]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Wills (Effect of Termination of Marriage) Amendment Act 1996*.

(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.

Insertion of s. 20A

3. The following section is inserted after section 20 of the principal Act:

Effect of termination of marriage on will

20A. (1) If, after making a will, the testator's marriage is terminated, the following provisions apply:

- (a) a disposition of a beneficial interest in property by the will in favour of the testator's former spouse is revoked;
- (b) an appointment by the will of the testator's former spouse as executor, trustee or guardian is revoked;
- (c) a grant by the will of a power of appointment exercisable by or in favour of the testator's former spouse is revoked;
- (d) the will is to have effect with respect to the revocation of such a disposition, appointment or grant of a power as if the former spouse had died on the date of termination of the marriage.

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- (2) This section does not affect—
- (a) a disposition or grant of a power in accordance with a contract between the testator and the former spouse under which the testator is or was bound to dispose of property by will in a particular way; or
 - (b) a disposition, appointment or grant of a power if it appears from the terms of the will that the testator intended that the disposition, appointment or grant would have effect despite the termination of the marriage; or
 - (c) a disposition, appointment or grant of a power if the will is re-executed, or a codicil is made to the will, after termination of the marriage and the will or codicil shows no intention of the testator to revoke the disposition, appointment or grant; or
 - (d) the right of a former spouse to make a claim under the *Inheritance (Family Provision) Act 1972*.
- (3) For the purposes of this section—
- (a) a marriage is terminated—
 - (i) when a decree of dissolution of a marriage becomes absolute under the *Family Law Act*;
 - (ii) on the making of a decree of nullity under the *Family Law Act* in respect of a purported marriage;
 - (iii) on the termination or annulment of a marriage or purported marriage in accordance with the law of a place outside Australia if the termination or annulment is recognised in Australia under the *Family Law Act*;
 - (b) "disposition" of property by a will includes an appointment of property by will under a power of appointment conferred on the testator;
 - (c) "Family Law Act" means the *Family Law Act 1975* of the Commonwealth, as amended from time to time, or an Act of the Commonwealth enacted in substitution of that Act;
 - (d) "spouse" includes a party to a purported marriage.

Amendment of s. 22—In what cases wills may be revoked

4. Section 22 of the principal Act is amended by inserting in paragraph (a) "or termination of marriage" after "marriage".

Application

5. The amendments made to the principal Act by this Act apply in relation to a will of a person dying after the commencement of this Act whether the will was made or the marriage terminated before or after the commencement.

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

ROMA MITCHELL Governor