

South Australia



**LAW OF PROPERTY (PERPETUITIES AND ACCUMULATIONS)
AMENDMENT ACT 1996**

No. 7 of 1996

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ELIZABETHAE II REGINAE

A.D. 1996

No. 7 of 1996

An Act to amend the Law of Property Act 1936.

[Assented to 4 April 1996]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Law of Property (Perpetuities and Accumulations) Amendment Act 1996*.

(2) The *Law of Property 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. 7—Interpretation

3. Section 7 of the principal Act is amended—

(a) by inserting after the definition of "instrument" the following definition:

"interest" in property means a legal or equitable interest; ;

(b) by inserting after the definition of "trust for sale" the following definition:

"vest", in relation to property, means to vest in interest or possession.

Example—

For example, an interest in remainder vests in interest when—

(a) the persons who are to take the interest are ascertainable; and

(b) the vesting in possession of the interest is dependent only on the determination of prior interests and no other contingency.

Substitution of Part 6

4. Part 6 of the principal Act is repealed and the following Part is substituted:

**PART 6
CLASS CLOSURE, PERPETUITIES AND ACCUMULATIONS**

DIVISION 1—PRELIMINARY

Application of Part

59. (1) This Part applies to—

- (a) dispositions of property made before or after the commencement of this Part; and
- (b) rights and powers granted or conferred before or after the commencement of this Part.

(2) However, this Part does not validate a disposition of property if, before the commencement of this Part, property subject to the disposition had been wholly or partly distributed on the basis that the disposition is invalid.

(3) This Part applies to land whether or not it has been brought under the provisions of the *Real Property Act 1886*.

DIVISION 2—RULES FOR CLASS ASCERTAINMENT

Class ascertainment

60. For the purpose of ascertaining whether the membership of a class is presently ascertainable and, if so, the membership of the class—

- (a) the possibility that a person might, while under the age of 12 years, become the natural or adoptive parent of a child is to be ignored; and
- (b) the possibility that a male or female over the age of 55 years might become the adoptive parent of a child is to be ignored; and
- (c) the possibility that a female over the age of 55 years might bear a child is to be ignored; and
- (d) the possibility that a child might be born to a living person is to be ignored if it is established to the satisfaction of the court that there is no real prospect that the possibility will be realised; and
- (e) the possibility of biological parentage arising from an artificial reproductive procedure involving the use of reproductive material from a person who is dead at the time of the procedure is to be ignored.

Court's power to reverse statutory limitation on class membership

60A. (1) The court may, on application by an interested person, expand the membership of a class by including in the class a living person who would, but for this Division, have been a member of the class.

(2) A new member included in a class under this section becomes entitled, subject to any conditions stated in the court's order, to share in a distribution of property to members of the class made after the date of the order.

(3) The inclusion of a new member in the class under this section does not affect a distribution of property made before the date of the court's order.

DIVISION 3—PERPETUITIES AND ACCUMULATIONS

Abolition of rules against perpetuities and excessive accumulations

61. (1) A disposition of property is not invalid—

- (a) because of the remoteness from the date of the disposition of the time an interest will, or may, vest in pursuance of the disposition; or
- (b) because, under the terms of the disposition, an interest is limited, for life, to a person who was unborn at the date of the disposition, with a remainder over to a child or other issue of that person; or
- (c) because it provides for or permits the accumulation of income.

(2) A right or power in respect of property is not invalid because of the remoteness of the time it is to be, or may be, exercised.

(3) A purported exercise of a right or power in respect of property is not invalid because of its remoteness from the time the right or power was created.

Court may order vesting of interests

62. (1) If, 80 years or more after the date of a disposition of property, there remain interests in the property that have not vested, the court may, on application under this section, vary the terms of the disposition so that the interests vest immediately.

(2) The court may, on application under this section, vary the terms of a disposition of property so that interests that cannot vest, or are unlikely to vest, within 80 years after the date of the disposition, will vest within that period.

(3) If a disposition provides for the accumulation, or partial accumulation, of income from property over a period that will or may terminate 80 years or more after the date of the disposition, the court may, on application under this section, vary the terms of the disposition so that both capital and income will vest within 80 years from the date of the disposition.

(4) In varying the terms of a disposition under this section the court should give effect to the spirit of the original disposition insofar as that is possible given that interests are to vest earlier than contemplated by the person who made the disposition.

(5) An application under this section may be made by—

- (a) the Attorney-General; or
- (b) a trustee of property to which the disposition relates; or
- (c) the next-of-kin of a deceased person to whose estate the disposition relates; or

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- (d) a person who has, under the terms of the disposition, an actual or potential interest in property subject to the disposition; or
 - (e) a person who would, assuming the existence and continuance of lineal issue, be the ancestor of a person (as yet unborn) who would have an actual or potential interest in property subject to the disposition.
- (6) This section does not apply to—
- (a) a trust constituted by statute or letters patent; or
 - (b) a trust of which the purposes are wholly charitable; or
 - (c) a trust wholly for the provision of benefits of the following kinds, or of any one or more of the following kinds:
 - (i) superannuation or retirement benefits; or
 - (ii) medical, hospital or funeral benefits; or
 - (iii) other benefits payable in the event of death, sickness or incapacity;
or
 - (d) a trust for the benefit of the members of an unincorporated association.

(7) A disposition of property by will is, for the purposes of this section, taken to have been made at the date of death of the testator or testatrix.

Preservation of rule in *Saunders v Vautier*

62A. This Part does not affect the principle under which a beneficiary who is *sui juris* may put an end to an accumulation and require distribution of his or her presumptive share of property subject to the accumulation¹.

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

ROMA MITCHELL Governor

¹ The rule in *Saunders v Vautier* applies where there is more than one beneficiary, even though their several interests are not immediate but successive, provided they are unanimous in wishing to end the trust—See *Jacobs on Trusts*, 5th ed. para 2308.