



New South Wales

# Protected Estates Amendment (Missing Persons) Act 2004 No 86

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New South Wales

# **Protected Estates Amendment (Missing Persons) Act 2004 No 86**

Act No 86, 2004

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An Act to amend the *Protected Estates Act 1983* to provide for the management of the estates of missing persons; and related matters. [Assented to 24 November 2004]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Protected Estates Amendment (Missing Persons) Act 2004*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Protected Estates Act 1983 No 179**

The *Protected Estates Act 1983* is amended as set out in Schedule 1.

**4 Amendment of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

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## **Schedule 1      Amendment of Protected Estates Act 1983**

(Section 3)

**[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*protected missing person* means a person in respect of whom an order is in force under Division 1A of Part 3 that the estate (or any part of it) of the person be subject to management under this Act.

**[2] Section 4 (1), definition of “protected person”**

Insert “(other than a protected missing person)” after “means a person”.

**[3] Section 7 Expenses of Protective Commissioner**

Insert “or protected missing person” after “protected person” wherever occurring.

**[4] Section 8 Fees**

Insert “or protected missing person” after “protected person” in section 8 (3).

**[5] Section 12 Court may give directions to Protective Commissioner**

Insert “or protected missing person” after “protected person” where secondly occurring.

**[6] Part 3, heading**

Insert “and missing persons” after “affairs”.

**[7] Part 3, Division 1, heading**

Insert “relating to incapable persons” after “management”.

**[8] Part 3, Division 1A**

Insert after Division 1:

### **Division 1A      Orders for management relating to missing persons**

**21C      Declaration and order where person missing**

(1) The Court may declare that a person is a missing person and order that the estate of the person (or any part of it) be subject to management under this Act if the Court is satisfied that:

(a) the person is a missing person, and

- (b) the person's usual place of residence is in this State, and
  - (c) it is in the best interests of the person to do so.
- (2) The Court may be satisfied that a person is a missing person only if it is satisfied that:
- (a) it is not known whether the person is alive, and
  - (b) all reasonable efforts have been made to locate the person, and
  - (c) persons residing at the place where the person was last known to reside, or relatives or friends, with whom the person would be likely to communicate, have not heard from, or of, the person for at least 90 days.
- (3) An application for a declaration and order under this section in relation to a person may be made by any of the following persons:
- (a) the spouse of the person,
  - (b) a relative of the person,
  - (c) a business partner or employee of the person,
  - (d) the Attorney General,
  - (e) the Protective Commissioner,
  - (f) any other person who has an interest in the estate of the person.
- (4) On the hearing of an application for the purposes of this section, evidence may be given to the Court in such form and in accordance with such procedures as the Court thinks fit.

**[9] Section 22 Management of estates of persons other than patients**

Omit "protected person" wherever occurring. Insert instead "person".

**[10] Section 22**

Insert "or 21C" after "section 13".

**[11] Section 24 Powers as to property**

Insert "or protected missing person" after "protected person" wherever occurring.

**[12] Section 25 Power to employ agents**

Insert "or protected missing person" after "protected person" in section 25 (1).

**[13] Section 26 Execution of documents**

Insert after section 26 (1):

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(1A) For the purposes of managing the estate of a protected missing person, the Protective Commissioner has, and may exercise, all the functions that the protected missing person has and can exercise or would have and could exercise if the person were not missing.

**[14] Section 26 (2)**

Insert “or protected missing person” after “protected person” where firstly, secondly and thirdly occurring.

**[15] Section 26 (2)**

Insert “or (1A)” after “subsection (1)”.

**[16] Section 26 (2)**

Omit “to which the protected person”.

Insert instead “to which a protected person”.

**[17] Section 28 Disposition of money in hands of Protective Commissioner**

Insert “or protected missing person” after “protected person” wherever occurring (except where firstly occurring in section 28 (2) (c)).

**[18] Section 28 (1) (b)**

Omit the paragraph. Insert instead:

(b) in the event of the death of the protected person or protected missing person, the person’s funeral expenses,

**[19] Section 28 (1AA)**

Insert after section 28 (1):

(1AA) In addition to the purposes set out in subsection (1), the Protective Commissioner may apply money comprising the whole or part of the estate of a protected person towards the maintenance, clothing, medicine and care, past and future, of the protected person.

**[20] Section 28 (3) (b)**

Omit the paragraph.

**[21] Section 28 (4)**

Insert after section 28 (3):

(4) In addition to the matters set out in subsection (3), for the purposes of ascertaining whether a protected person prefers a

particular form of investment, the Protective Commissioner may have regard to any views expressed to the Protective Commissioner by the protected person regarding the person's preferred form of investment.

- [22] Section 28A Review by ADT of decisions by Protective Commissioner under this Division**  
Omit "the protected person" from section 28A (3) (a).  
Insert instead "a protected person".
- [23] Section 28A (3) (b)**  
Omit "the protected person".  
Insert instead "a protected person or protected missing person in respect of whose estate the decision was made".
- [24] Section 29 Application of Division**  
Insert "or protected missing person" after "protected person".
- [25] Section 30 Protective Commissioner may authorise and direct functions of managers**  
Insert "or protected missing person" after "protected person" wherever occurring in section 30 (1) and (5).
- [26] Section 30A Review by ADT of decisions by Protective Commissioner in relation to managers**  
Insert "or protected missing person" after "protected person" in section 30A (1).
- [27] Section 31 Security in respect of management**  
Insert "or protected missing person" after "protected person" wherever occurring in section 31 (1) and (3).
- [28] Section 31A Managers may lodge estate funds with Protective Commissioner**  
Insert "or protected missing person" after "protected person" wherever occurring in section 31A (1).
- [29] Section 31B Financial plans**  
Insert "or protected missing person" after "protected person" in section 31B (1).

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**[30] Section 32 Orders by Court as to property**

Insert after section 32 (1):

- (1A) The Court may make such orders as appear to it necessary for rendering the property and income of a protected missing person available for the following purposes:
- (a) the payment of the debts of, and otherwise for the benefit of, the protected missing person,
  - (b) the maintenance and benefit of the family of the protected missing person,
  - (c) otherwise as it thinks necessary or desirable for the care and management of the estate of a protected missing person.

**[31] Section 32 (2)**

Insert “or (1A)” after “subsection (1)”.

**[32] Section 32 (2)**

Insert “or protected missing person” after “protected person” wherever occurring.

**[33] Section 32 (2) (a) (i)**

Insert “or protected missing person’s” after “protected person’s”.

**[34] Section 32 (2) (a) (iv)**

Omit the subparagraph.

**[35] Section 32 (3)**

Insert after section 32 (2):

- (3) The Court may make an order under subsection (2) (a) for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied for the payment of, or provision for the expenses of, future maintenance of a protected person.

**[36] Section 33 Orders by Court as to management of estates**

Insert “or protected missing persons” after “protected persons” in section 33 (1).

**[37] Section 34 Termination of management**

Insert after section 34 (1):



- (2) The management of the estate of a protected missing person under this Act is terminated:
  - (a) on the order that the estate be subject to management under this Act being revoked, or
  - (b) on the Protective Commissioner certifying under section 38A that the management is terminated, or
  - (c) on the death of the protected missing person.

**[38] Section 35A**

Insert after section 35:

**35A Orders where person no longer missing**

If, on application to it by a protected missing person or other person, the Court is satisfied that a protected missing person is alive, it may:

- (a) revoke any declaration made that the person is a missing person, and
- (b) revoke the order that the estate of the person be subject to management under this Act, and
- (c) make such orders as appear to it to be necessary to give effect to the revocation of the order, including the release of the estate of the person from the control of the Court, the Protective Commissioner or a manager and the discharge of any manager.

**[39] Section 38A**

Insert after section 38:

**38A Termination by Protective Commissioner where person no longer missing**

- (1) The Protective Commissioner may, if satisfied that a protected missing person is alive, certify that management of the estate of the protected missing person is terminated.
- (2) The regulations may make provision for or with respect to information that the Protective Commissioner may take into account for the purposes of being satisfied that a protected missing person is alive.

**[40] Section 39 Functions of Protective Commissioner on termination of management**

Insert “or protected missing person” after “protected person”.

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- [41] Section 42 Death of protected person or protected missing person**  
Insert “or protected missing person” after “protected person” wherever occurring.
- [42] Section 42 (2) and (3) (a)**  
Insert “or protected missing person’s” after “protected person’s” wherever occurring.
- [43] Section 43 Protective Commissioner may act until notice of death or revocation received**  
Insert “or protected missing person” after “protected person” wherever occurring.
- [44] Section 47 Property exchanged and renewed lease to be to same uses as before**  
Insert “or protected missing person” after “protected person”.
- [45] Section 48 Interest in property of certain persons not to be altered**  
Insert “or protected missing person” after “protected person” wherever occurring in section 48 (1), (3) and (4).
- [46] Section 49 Expenses of improvements may be charged on estate**  
Insert “or protected missing person” after “protected person” wherever occurring.
- [47] Section 49 (3)**  
Insert “or protected missing person’s” after “protected person’s”.
- [48] Section 50 Consultation by Protective Commissioner**  
Insert after section 50 (1):  
(1A) Before the Protective Commissioner takes any action in respect of the estate of a protected missing person, the Protective Commissioner must determine whether the action is of such a nature that the relatives of the protected missing person should be consulted in relation to the action.
- [49] Section 50 (2) and (3)**  
Omit “a protected person” wherever occurring. Insert instead “a person”.
- [50] Section 50 (2) and (3)**  
Omit “the protected person and relatives of the protected person or any of those persons” wherever occurring.

Insert instead “a person referred to in subsection (1) or (1A)”.

**[51] Section 50 (3)**

Omit “those persons” where secondly occurring. Insert instead “the person”.

**[52] Section 51 Personal items to be preserved**

Insert “or protected missing person” after “person” wherever occurring.

**[53] Section 69 Court may dissolve partnership**

Insert “or protected missing person” after “protected person”.

**[54] Section 70 Power to carry orders and directions into effect**

Insert “or protected missing person” after “protected person” wherever occurring in section 70 (1).

**[55] Section 71 Manager may act as trustee or guardian in certain cases**

Insert “or protected missing person” after “protected person” wherever occurring in section 71 (1) and (2).

**[56] Section 72 Temporary provision for maintenance**

Insert “or protected missing person” after “protected person” wherever occurring in section 72 (1) (except where secondly occurring).

**[57] Section 72 (2)**

Insert “or protected missing person’s” after “protected person’s”.

**[58] Section 73 Transfer of stock belonging to certain persons**

Insert “or protected missing person” after “protected person” wherever occurring.

**[59] Section 76 Powers of attorney**

Insert “or protected missing person” after “protected person” in section 76 (11) (a).

**[60] Section 77 Costs may be paid out of estate**

Insert “or protected missing person” after “protected person” in section 77 (2).

**[61] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Protected Estates Amendment (Missing Persons) Act 2004*

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[62] **Schedule 1, Part 4**

Insert after Part 3:

**Part 4 Provisions consequent on enactment of  
Protected Estates Amendment (Missing  
Persons) Act 2004**

**8 Application of amendments to existing missing persons**

A declaration and order may be made under Division 1A of Part 3, as inserted by the *Protected Estates Amendment (Missing Persons) Act 2004*, in relation to a person who became a missing person (as referred to in section 21C (2)) during a period commencing before the commencement of that Division and continuing after that commencement.

## **Schedule 2 Amendment of other Acts**

(Section 4)

### **2.1 Powers of Attorney Act 2003 No 53**

#### **Section 16 Effect of irrevocable powers of attorney**

Insert after section 16 (1) (d):

- (d1) the principal becoming a person who is a protected missing person within the meaning of the *Protected Estates Act 1983*,

### **2.2 Real Property Act 1900 No 25**

#### **Section 74M Withdrawal of caveats**

Insert “or a protected missing person” after “protected person” in section 74M (1) (g).

[Second reading speech made in—

Legislative Assembly on 20 October 2004

Legislative Council on 11 November 2004]

BY AUTHORITY