

Clarity for trusts, stepchildren and de facto partners

Changes under the *Court and Civil Legislation Amendment Act 2017*

Queensland Law Society has tirelessly advocated for reforms to the *Trusts Act 1973* (Qld), and championed clarity around the stepchild relationship for family provision applications relating to de facto relationships within the *Succession Act 1981* (Qld).

On 5 June, the omnibus *Court and Civil Legislation Amendment Act 2017* (Qld) (Amendment Act) was passed, amending more than 30 separate Acts including the *Trusts Act 1973* (Qld) and the *Succession Act 1981* (Qld).

So, what exactly does this Amendment Act do, and what does it mean for how we practise law?

For succession law, there have been a number of omissions and insertions for the *Succession Act 1981*, the most important being the insertion of s15B¹ – the effect of the end of a de facto relationship on a will – and the amendments to s40A² – the meaning of a stepchild.

Section 15B is a new section inserted under s15A of the Act. It provides for the effect of the end of a de facto relationship on a will and says that the ending of a testator's de facto relationship revokes:

- a disposition to the testator's former de facto partner made by a will in existence when the relationship ends³
- an appointment, made by will, of the former de facto partner as an executor, trustee, advisory trustee or guardian⁴
- any grant, made by will, of a power of appointment exercisable by, or in favour of, the testator's former de facto.⁵

This inserted section also provides that the ending of a testator's de facto relationship does not revoke:

- the appointment of the testator's former de facto partner as trustee of property left by the will on trust for beneficiaries that include the former de facto partner's children,⁶ or
- the grant of a power of appointment exercisable by the testator's former de facto partner only in favour of children of whom both the testator and the former de facto partner are parents.⁷

These insertions and amendments have certainly provided clarity in relation to how a de facto relationship operates in terms of a will, and how certain dispositions in a will upon the end of a de facto relationship are revoked.

In relation to the amendments of s40A,⁸ these alterations focus primarily on clarifying when a stepchild relationship ends in relation to family provision applications.

The amendments incorporate other means of spousal relationships extending to civil partnerships and de facto partners. Section 40A(2) and (3) are omitted, with a new s40A(2) and (3) inserted. The new s40A(2) now provides for the relationship of a stepchild to stop upon:⁹

- divorce of the deceased and the step-parent
- termination of a civil partnership between the deceased and the step-parent
- ending of a de facto relationship between the deceased and the step-parent.

Also, the new s40A(3) now provides clarification as to when a relationship between a stepchild and a step-parent does not stop. These circumstances include:

- if the step-parent dies before the deceased person when the marriage, civil partnership or de facto relationship between the deceased and the parent subsisted when the parent died,¹⁰ and
- when the deceased person remarried, entered into a civil partnership or formed a de facto relationship after the death of a stepchild's parent, if the marriage, civil partnership or de facto relationship between the deceased person and the parent subsisted when the parent died.¹¹

The legislature provides an additional subsection in relation to the definition of 'termination' of a civil partnership under s40A(4).¹² This definition is to take the same meaning as under s14(1)(b) or s19 of the *Civil Partnerships Act 2011* (Qld).



with Christine Smyth

In relation to the *Trusts Act 1973*, there are a number of amendments, some relating to the power to delegate trusts. However, one of the most important amendments impacting the way in which practitioners carry out their work is that of s67.¹³ This section is best recognised as the creditors' notice in relation to the protection of trustees by means of advertisements during notices of intention to apply for a grant of representation, be that probate or letters of administration.

This amendment omits s67(1)(a) and (b), and inserts new paragraphs that a trustee or executor may give notice by advertisement in a publication approved by the Chief Justice under a practice direction, or a newspaper circulating throughout the state, and sold at least once each week.¹⁴ These amendments remove the requirement to calculate the 150 kilometres between a deceased's last known address and Brisbane, and removes

the requirement for publication to occur within a newspaper approved for the area of the deceased's last known address.

Other amendments to the *Trusts Act* relate to achieving consistency within the *Powers of Attorney Act 1998* (Qld) by removing the requirement that the delegation of the administration of a trust is to be made by power of attorney executed as a deed.

I encourage all to consider this Amendment Act and the clauses that give rise to amendments to the *Trusts Act* and *Succession Act* so that you may become familiar with the updates in the legislation.

Notes

- ¹ *Court and Civil Legislation Amendment Act 2017* (Qld), s246.
- ² *Ibid*, s247.
- ³ *Succession Act* s15B(1)(a).
- ⁴ *Ibid*, s15B(1)(b).
- ⁵ *Ibid*, s15B(1)(c).
- ⁶ *Ibid*, s15B(2)(a).
- ⁷ *Ibid*, s15B(2)(b).
- ⁸ *Court and Civil Legislation Amendment Act 2017* (Qld), s247.
- ⁹ *Succession Act*, s40A(2)(a),(b),(c).
- ¹⁰ *Ibid*, s40A(3)(a).
- ¹¹ *Ibid*, s40A(3)(b).
- ¹² *Ibid*, s40A(4).
- ¹³ *Court and Civil Legislation Amendment Act 2017* (Qld), s252.
- ¹⁴ *Trusts Act 1973* (Qld), s67(1)(a),(b).

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