

Queensland



**SUCCESSION AND OTHER  
ACTS AMENDMENT BILL  
2000**



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**SUCCESSION AND OTHER ACTS  
AMENDMENT BILL 2000**

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**2000**

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**A BILL**

**FOR**

**An Act to amend the *Succession Act 1981* and other Acts**

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**The Parliament of Queensland enacts—**

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## **PART 1—PRELIMINARY**

2

### **Short title**

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Clause **1.** This Act may be cited as the *Succession and Other Acts Amendment Act 2000*.

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### **Commencement**

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Clause **2.** This Act, other than part 4, is taken to have commenced on 23 March 2000.

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## **PART 2—AMENDMENT OF SUCCESSION ACT 1981**

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### **Act amended in pt 2**

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Clause **3.** This part amends the *Succession Act 1981*.

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### **Insertion of new pt 5A**

12

Clause **4.** After section 61—  
*insert—*

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**‘PART 5A—TESTAMENTARY APPOINTMENT OF  
GUARDIANS OF CHILDREN**

*‘Division 1—Preliminary*

**‘Definitions for pt 5A**

**‘61A.** In this part—

**“child”** means an individual under 18 years who is not, and has never been, married.

**“guardian”**, of a child, does not include a person who has guardianship of the child, under another Act, in the person’s capacity as the chief executive of a department of government of the Commonwealth or a State or as a Minister of the Commonwealth or a State.

**“parent”**, of a child—

(a) includes—

(i) for an Aboriginal child—a person who, under Aboriginal tradition, is regarded as a parent of the child; and

(ii) for a Torres Strait Islander child—a person who, under Island custom, is regarded as a parent of the child; but

(b) does not include a parent whose parental responsibility for the child has been ended by—

(i) a decision or order of a federal court or a court of a State; or

(ii) a decision or order of another court that has effect in Queensland.

**“testamentary guardian”**, of a child, means a person who is a guardian of the child under an appointment by will.

**‘Application of pt 5A**

**‘61B.(1)** This part applies to a child—

(a) whether the child was born in Queensland or elsewhere; and

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(b) whether the child was born before or after the commencement of this part.	1 2
‘(2) This part applies to an appointment made by will whether the will was made before or after the commencement of this part.	3 4
<b><i>‘Division 2—Appointment of testamentary guardian</i></b>	5
<b>‘Appointment of guardian by will</b>	6
‘61C.(1) A parent or guardian of a child may, by will, appoint a person as a guardian of the child.	7 8
‘(2) The appointment is of no effect if the appointor is not a parent or guardian of the child immediately before the appointor’s death.	9 10
<b>‘When the appointment takes effect</b>	11
‘61D.(1) This section provides for when an appointment by will of a person as a guardian of a child takes effect.	12 13
‘(2) If the appointor is not survived by a parent of the child, the appointment takes effect on the appointor’s death.	14 15
‘(3) If the appointor is survived by 1 or more parents of the child, the appointment takes effect as follows—	16 17
(a) if the will shows that the appointor intended the appointment to take effect on the appointor’s death, the appointment takes effect on the appointor’s death;	18 19 20
(b) otherwise, the appointment takes effect on the death of the last surviving parent.	21 22
<b>‘Effect of appointment</b>	23
‘61E.(1) A testamentary guardian of a child has all the powers, rights and responsibilities, for making decisions about the long-term care, welfare and development of the child, that are ordinarily vested in a guardian.	24 25 26



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<i>Examples of matters concerned with a child's long term care, welfare and development—</i>	1 2
The child's education and religious upbringing.	3
‘(2) The appointment of a person as testamentary guardian of a child gives the person daily care authority for the child if and only if—	4 5
(a) the child has no surviving parent; and	6
(b) no-one else has daily care authority for the child (however described) under a decision or order of a federal court or a court of a State.	7 8 9
‘(3) In this section—	10
<b>“daily care authority”</b> , for a child, means—	11
(a) the right to have the child's daily care; and	12
(b) the right and responsibility to make decisions about the child's daily care.	13 14
<b>‘Testamentary guardian to act jointly with other guardians</b>	15
‘61F.(1) This section applies to a testamentary guardian of a child if the child has 1 or more other guardians.	16 17
‘(2) The testamentary guardian must discharge his or her rights and responsibilities, and exercise his or her powers, as testamentary guardian of the child jointly with the other guardian or guardians.	18 19 20
<b><i>‘Division 3—Applications to the Supreme Court</i></b>	21
<b>‘Application by testamentary guardian</b>	22
‘61G.(1) This section applies to a person appointed as a testamentary guardian of a child if the appointor has died and the appointment has not taken effect.	23 24 25
‘(2) The person may apply to the Supreme Court for an order that the appointment take effect immediately.	26 27

<b>‘Application by parent</b>	1
<b>‘61H.(1)</b> This section applies to a parent of a child if a person has been appointed as a testamentary guardian of the child and the appointment has taken effect.	2 3 4
<b>‘(2)</b> The parent may apply to the Supreme Court for an order that the appointment be revoked, suspended until the parent’s death or suspended for another period stated in the application.	5 6 7
<b>‘Supreme Court decision on application</b>	8
<b>‘61I.</b> On receiving an application under this division, the Supreme Court may make the orders it considers appropriate.	9 10
<b>‘Supreme Court’s powers not limited</b>	11
<b>‘61J.</b> This division does not limit the powers of the Supreme Court under another law.’.	12 13
<b>PART 3—AMENDMENT OF COMMONWEALTH POWERS (FAMILY LAW—CHILDREN) ACT 1990</b>	14 15
<b>Act amended in pt 3</b>	16
Clause <b>5.</b> This part amends the <i>Commonwealth Powers (Family Law—Children) Act 1990</i> .	17 18
<b>Amendment of s 3 (Reference of certain matters relating to children)</b>	19
Clause <b>6.(1)</b> Section 3, ‘schedule 1’—	20
<i>omit, insert—</i>	21
‘the schedule’.	22
<b>(2)</b> Section 3—	23
<i>insert—</i>	24

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‘(4) A reference in this section to an Act specified in the schedule includes a reference to a part of an Act specified in the schedule.’ 1  
2

**Amendment of sch 1** 3

Clause 7.(1) Schedule 1, heading— 4  
*omit, insert—* 5  
 ‘SCHEDULE’. 6  
 (2) Schedule 1— 7  
*insert—* 8  
 ‘*Succession Act 1981*, part 5A’. 9

**PART 4—AMENDMENT OF CHILD PROTECTION  
ACT 1999** 10  
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**Act amended in pt 4** 12

Clause 8. This part amends the *Child Protection Act 1999*. 13

**Insertion of new s 259A** 14

Clause 9. After section 259— 15  
*insert—* 16

**‘Appointment of guardian by deed under s 90 of repealed Act** 17

‘259A.(1) This section applies to a deed, made under section 90 of the repealed Act,<sup>1</sup> appointing a person as guardian of a child, if the deed was in force immediately before the commencing day. 18  
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‘(2) The deed has effect to the same extent as if the repealed Act had not been repealed. 21  
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<sup>1</sup> *Children’s Services Act 1965*, section 90 (Power of father and mother of an infant to appoint guardians)

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‘(3) Subsection (2) does not limit the *Acts Interpretation Act 1954*,  
section 20.<sup>2</sup>

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‘(4) This section has effect from 23 March 2000.’

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<sup>2</sup> *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)