

AGED AND INFIRM PERSONS PROTECTION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Aged and Infirm Persons Protection Act 1912. Under that Act the Supreme Court may make a protection order appointing a manager to administer the estate of a person who, by reason of age, illness, or physical or mental infirmity, is unable to manage his own affairs.

The amendments are for three main purposes. The first is to extend the jurisdiction of the Supreme Court to enable it to make a protection order in respect of the New Zealand estate of a person resident or domiciled overseas. The second purpose is to enable other persons to be appointed jointly with the Public Trustee to manage an estate. (At present the Public Trustee is one of the persons who may be appointed manager, but the Act expressly forbids his appointment jointly with other persons.) The third purpose is to enable a Magistrate to make an interim protection order where urgent provision should be made for the protection of all or any part of the estate of any person (for example, in the case of sudden and temporary illness, or the admission of a patient to a psychiatric hospital as an informal patient who, because he is not committed, does not become a protected patient under the Mental Health Bill).

Clause 1 relates to the Short Title and commencement of the Bill. *Clauses 8 and 9* will come into force on 1 April 1970 (being the date of the commencement of the Mental Health Bill). The rest of the Bill will come into force on its passing.

Clause 2 rewrites section 3 of the principal Act. The only change in substance is that the Court's jurisdiction is extended to apply to the New Zealand estate of a person domiciled or resident outside New Zealand.

Clause 3: Section 4 of the principal Act empowers the Court to make protection orders in certain circumstances arising out of age, disease, "illness, or physical or mental infirmity". This clause substitutes for the quoted words the phrase "physical or mental illness or infirmity or mental subnormality".

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Clause 4: Section 6 of the principal Act specifies the persons who may apply for a protection order. These are the person whose property is sought to be protected, his or her husband or wife, a near relation, the Public Trustee, or any other person in circumstances considered by the Court to make his application a proper one. This clause adds a new paragraph under which the Public Trustee may apply jointly with any of the other persons mentioned. The clause will bring the principal Act into line with the Public Trust Office Act 1957 (as amended in 1968), under which the Public Trustee may now be appointed jointly with other persons as an executor, administrator, trustee, or manager etc.; and also with Part VII of the Mental Health Bill, under which the Public Trustee may be appointed as joint manager, with other persons, of the estate of a protected patient.

Clause 5 similarly amends section 7 of the principal Act to allow the Court to appoint the Public Trustee as manager jointly with other persons. It also repeals section 8, which expressly forbids such an appointment.

Clause 6: Under section 18 (2) of the principal Act a manager must supply to the Public Trustee a duplicate of the statement as to the estate which he is required to file with the Court. *Subclause (1)* of this clause exempts from that provision a trustee company or a manager who is acting jointly with the Public Trustee or with a trustee company.

Under section 18 (3) of the principal Act a manager who fails to file such a statement is liable to a fine of up to \$100. *Subclause (2)* of this clause increases the maximum fine to \$200, thus bringing the penalty into line with that provided for under the corresponding provisions of clause 90 (3) of the Mental Health Bill.

Clause 7: Under section 19 of the principal Act, where a manager other than the Public Trustee is appointed, there is payable out of the protected estate by the manager to the Public Trustee, for the services rendered by him in respect of the estate, such remuneration as the Court directs, with a prescribed limit. This clause exempts from that provision a trustee company or a manager who is acting jointly with the Public Trustee or with a trustee company.

Clause 8 redrafts section 26A of the principal Act, which at present applies sections 119A to 119G of the Mental Health Act 1911 (as to the notional preservation of the character of assets of a protected estate, and settlements thereof) to the protected estate of a protected person. The new section refers to the corresponding provisions of the Mental Health Bill.

Clause 9 inserts a new section 29A in the principal Act. The purpose is to provide a simple procedure for the making of an interim protection order where there is a need for urgent provision to be made. Such interim protection may be required when, for example, a person suffers a sudden physical illness, such as a stroke or a head injury, or rapid mental deterioration.

Subsections (1) and (2) of the new section provide that where it is made to appear to the satisfaction of a Magistrate (on the application of any person who is entitled under section 6 of the principal Act to apply to the Supreme Court for a protection order) that the person whose property is sought to be protected is one to whom the principal Act applies, and that urgent provision for protection is necessary, he may make an interim protection order in respect of the estate or part of the estate.

Under subsection (3) the application need not be served on the person whose property is sought to be protected, unless the Magistrate so directs.

Subsection (4) provides that the Magistrate may appoint a trustee corporation or such other person or persons as he thinks fit to be the interim manager. The term "trustee corporation" is defined in the Trustee Act 1956 to mean the Public Trustee or the Maori Trustee or a corporation authorised by Act to administer trust estates.

Subsection (5) empowers the Magistrate to give directions as to which of the powers and duties of a manager under the principal Act may be exercised by the interim manager.

Subsection (6) limits the period of an interim order to a maximum of 2 months, with power for a Magistrate to extend the period from time to time, with a 2-months' limit in each case.

Subsection (7) provides that if while an interim order is in force an application for a protection order is made to the Supreme Court and is refused, the interim order is to cease to have effect on the expiry of the period for which it is then current.

Subsection (8) provides that an interim order is to cease to have effect if the Supreme Court makes a protection order in its place.

Subsection (9) provides for the payment out of the estate of the protected person of expenses properly incurred by the interim manager in the maintenance of the protected person or the administration of the protected estate. It also provides for remuneration to the interim manager to be allowed by the Supreme Court if a protection order is later made by that Court, or by a Magistrate if a protection order is not made by the Supreme Court; but the powers of a trustee corporation to charge commission or fees authorised by any enactment are not affected.

Subsections (10) to (12) apply certain relevant sections of the principal Act to interim managers.

Subsection (13) preserves the operation of Part X of the Maori Affairs Act 1953, which relates to persons under disability.

Right Hon. Mr Marshall

**AGED AND INFIRM PERSONS PROTECTION
AMENDMENT**

ANALYSIS

Title	6. Manager to file statement as to estate
1. Short Title and commencement	7. Percentage to be paid to Public Trustee
2. Jurisdiction of Court	8. Notional preservation of character of assets of protected estate, and settlements thereof
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4. Application for protection order	
5. Court to appoint manager	

A BILL INTITULED

An Act to amend the Aged and Infirm Persons Protection Act 1912

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same,
as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Aged and Infirm Persons Protection Amendment Act 1969, and shall be read together with and deemed part of
10 the Aged and Infirm Persons Protection Act 1912* (hereinafter referred to as the principal Act).

(2) Sections 8 and 9 of this Act shall come into force on the 1st day of April 1970.

(3) Except as provided in subsection (2) of this section,
15 this Act shall come into force on its passing.

*1957 Reprint, Vol. 1, p. 115

2. Jurisdiction of Court—The principal Act is hereby amended by repealing section 3, and substituting the following section:

“3. (1) The Court shall have jurisdiction to make protection orders, in accordance with this Act, in the following cases, and in no other case: 5

“(a) Where the person in respect of whom the order is sought is domiciled or resident in New Zealand; or

“(b) Where the person in respect of whom the order is sought is domiciled or resident outside New Zealand, in respect of any property in New Zealand of that person, whether the property is movable or immovable. 10

“(2) The jurisdiction of the Court under this Act may be exercised either by the Court or by a Judge in Chambers.” 15

3. Court may make protection order—Section 4 of the principal Act is hereby amended by omitting the words “illness, or physical or mental infirmity”, and substituting the words “physical or mental illness or infirmity or mental subnormality”. 20

4. Application for protection order—(1) Section 6 of the principal Act is hereby amended by adding to subsection (1) the following paragraph:

“(f) By the Public Trustee together with any one or more of the persons entitled to apply under the provisions of paragraphs (a), (b), (c), and (e) of this subsection.” 25

(2) Subsection (1) of the said section 6 is hereby further amended—

(a) By omitting from paragraph (d) the word “or”: 30
(b) By adding to paragraph (e) the word “; or”.

5. Court to appoint manager—(1) Section 7 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words “or the Public Trustee alone”: 35

(b) By inserting in subsection (1), after the words “of the protected person”, where those words first appear, the words “or the Public Trustee”.

(2) Section 8 of the principal Act is hereby repealed.

6. Manager to file statement as to estate—(1) Section 18 of the principal Act is hereby amended by omitting from subsection (2) the words “is not the Public Trustee”, and substituting the words “is not the Public Trustee or a trustee company within the meaning of the Trustee Companies Act 1967, or a person appointed to act jointly with the Public Trustee or such a trustee company,”.

(2) The said section 18 is hereby further amended by omitting from subsection (3) (as amended by section 7 (1) of the Decimal Currency Act 1964) the words “one hundred dollars”, and substituting the figures “\$200”.

7. Percentage to be paid to Public Trustee—Section 19 of the principal Act is hereby amended by omitting the words “other than the Public Trustee”, and substituting the words “other than the Public Trustee or a trustee company within the meaning of the Trustee Companies Act 1967, or a person appointed to act jointly with the Public Trustee or such a trustee company,”.

8. Notional preservation of character of assets of protected estate, and settlements thereof—(1) The principal Act is hereby further amended by repealing section 26A (as inserted by section 2 of the Aged and Infirm Persons Protection Amendment Act 1957), and substituting the following section:

“26A. Sections 97 to 101 and 107 and 108 of the Mental Health Act 1969 shall apply, so far as they are applicable and with all necessary modifications, to the protected estate of every protected person as if—

“(a) Every reference in those sections to a protected patient were a reference to a protected person; and

“(b) Every reference in those sections (except in the said section 107) to a mentally disordered person or to a mentally defective person were a reference to a protected person; and

“(c) Every reference in those sections to capital money or money or property were a reference to capital money or money or property forming part of the protected estate; and

“(d) Every reference in those sections (except in paragraph (a) of subsection (5) of the said section 100) to the Mental Health Act 1969 were a reference to this Act.”

(2) The Aged and Infirm Persons Protection Amendment Act 1957 is hereby consequentially repealed.

9. Interim protection order—The principal Act is hereby further amended by inserting, after section 29, the following section:

“29A. (1) Where it is made to appear to the satisfaction of a Magistrate that section 4 or section 5 of this Act applies in respect of any person, and that urgent provision should be made for the protection of the estate or any part of the estate of that person, the Magistrate may make an interim protection order in respect of the estate or part of the estate of that person. 5 10

“(2) The application may be made by any person who, under subsection (1) of section 6 of this Act, is entitled to apply to the Court for a protection order.

“(3) Where the application is made by any person other than the person whose property is sought to be protected, the application need not be served on the last-mentioned person unless the Magistrate so directs. 15

“(4) If the Magistrate grants the application he shall, by the interim protection order, appoint a trustee corporation (as defined in subsection (1) of section 2 of the Trustee Act 1956) or such other person or persons as he thinks fit to be the interim manager to take possession of and to control and manage all or such part or parts of the estate of the protected person as the Magistrate may direct. 20

“(5) In making an interim protection order the Magistrate— 25

“(a) Shall direct which of the powers specified in section 10 of this Act may be exercised by the interim manager:

“(b) May confer on the interim manager all or any of the powers that the Court could confer on a manager pursuant to sections 11 and 12 of this Act: 30

“(c) Shall direct how and to whom the interim manager shall, on the expiry of the order, account for any money and other property that he has taken possession of pursuant to the order. 35

“(6) Every interim protection order shall specify a period, not exceeding 2 months, during which it shall continue in force; but the period so specified may from time to time be extended by a Magistrate, on the application of the interim manager, for a further period not exceeding 2 months at any one time. 40

5 “(7) If at any time while an interim protection order is in force an application is made to the Supreme Court under section 4 or section 5 of this Act for a protection order, and that application is refused by the Court, the interim protection order shall cease to be in force on the expiry of the period specified in it or, as the case may be, the period for which it was last extended before the application to the Court was finally determined.

10 “(8) If at any time while an interim protection order is in force a protection order is made in its place by the Supreme Court under section 4 or section 5 of this Act, the interim protection order shall cease to be in force on the taking effect of the protection order made by the Court.

15 “(9) All expenses properly incurred by the interim manager in respect of the maintenance of the protected person or the administration of the protected estate shall be payable out of that estate. In addition, there shall be payable in respect of all money forming part of the protected estate and coming under the control of the interim manager such
20 remuneration by way of commission or otherwise to the manager, and such other charges, as are allowed by the Supreme Court if a protection order is made by that Court in place of the interim protection order, or as are allowed by a Magistrate if a protection order is not made by the Court:

25 “Provided that this subsection shall not limit the powers of a trustee corporation (as defined in subsection (1) of section 2 of the Trustee Act 1956) to charge any commission or fees authorised by any enactment.

30 “(10) An interim protection order shall not be made in respect of the estate or part of the estate of a person who is a protected patient within the meaning of the Mental Health Act 1969. Subject to the foregoing provisions of this subsection, section 27 of this Act shall apply with respect to any interim protection order under this section as if in that section
35 references to a manager were references to an interim manager and references to the Court were references to a Magistrate.

40 “(11) Where an interim protection order is made under this section, sections 16, 20, 22, and 23 of this Act shall apply as if in those sections references to a manager were references to an interim manager and references to the Court were references to a Magistrate.

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“(12) Except as provided in this section, the provisions of this Act, other than section 2, shall not apply to an interim protection order made under this section or to an interim manager.

“(13) Nothing in this section shall limit or affect the provisions of Part X of the Maori Affairs Act 1953.” 5