



[VIEW SUMMARY](#)

The legislation that is being viewed is valid for 6 Jul 2008.

## **Perpetuities and Accumulations Act 1992 (No. 23 of 1992)**

**Requested:** 7 Nov 2012

**Consolidated:** 6 Jul 2008

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## TASMANIA

# Perpetuities and Accumulations Act 1992

An Act to effect reforms in the rule of law commonly known as the rule against perpetuities, to abolish the rule of law commonly known as the rule against accumulations and to repeal the *Accumulations Act 1800* and for other purposes

[Royal Assent 7 August 1992]

### Preamble

Whereas –

(a) it is a rule of the common law in force in Tasmania in relation to dispositions of property by will or by settlement that no interest is valid unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest; and

(b) that rule of law is commonly known as the rule against perpetuities or the rule against remoteness of vesting; and

(c) the application of the rule against perpetuities has been found to be harsh and capricious and to have defeated the reasonable intentions of testators, settlors and other persons dealing with property; and

(d) it is considered that the law should continue to exercise a measure of control over dispositions of property, whether by will, by settlement or otherwise, to ensure that there are reasonable time limits for the vesting of future interests but that it is desirable to modify the rigidity of the application of the rule against perpetuities; and

(e) it is expedient to effect other reforms in the law relating to accumulations of property and otherwise:

Be it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## PART 1 - Preliminary

### 1. Short title

This Act may be cited as the *Perpetuities and Accumulations Act 1992*.

### 2. Commencement

This Act commences on a day to be fixed by proclamation.

### 3. Interpretation

(1) In this Act, unless the contrary intention appears –  
*court* includes a person acting judicially;

*disposition* includes the conferring or exercise of a power of appointment or any other power or authority to dispose of an interest in, or a right over, property and any other disposition of an interest in, or a right over, property;

*instrument* includes a will and any other instrument, whether testamentary or not, by which a power of appointment, whether general or special is exercised, but does not include an Act of Parliament;

*perpetuity period*, in the application of the rule against perpetuities to a disposition, means –

(a) a period determined in accordance with this Act as the perpetuity period applicable to that disposition;

or

(b) if there is no period so determined, the period applicable to that disposition by virtue of the rule against perpetuities;

*power of appointment* includes a discretionary power to transfer, grant or create a beneficial interest in property without valuable consideration;

*property* includes any interest in real or personal property and any thing in action;

*spouse* includes the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the *Relationships Act 2003*;

*the Supreme Court* includes a judge of that Court;

*will* includes a codicil to a will.

(2) For the purposes of the application of the rule against perpetuities –

(a) a disposition contained in a will is taken to be made at the death of the testator; and

(b) a person is taken to be –

(i) a member of a class if all the conditions identifying a member of the class are satisfied in the case of that person; and

(ii) a potential member of a class if only one or some of those conditions are satisfied in the case of that person but there is a possibility that the remainder of those conditions will in time be satisfied; and

(c) a person *en ventre sa mère* but subsequently born alive is treated as a person who was alive at the relevant time.

#### **4. Application of Act to wills and other instruments**

(1) Except as provided in this Act –

(a) this Act, so far as it applies to wills, applies only to wills of testators who die after the commencement of this Act; and

(b) this Act, so far as it applies to instruments other than wills, applies only to instruments executed after the commencement of this Act.

(2) Where a provision of this Act applies to a will or other instrument by which a power of appointment is exercised, that provision so applies in relation to the exercise of that power, whether or not it applies to the will or other instrument creating the power.

(3) The application of this Act extends to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument, other than a will, executed when the disposition was made.

(4) The application of this Act does not disturb the effect of a judgment or an order of a court given or made before the commencement of this Act.

#### **5. Application of Act and rule against perpetuities to the Crown**

(1) Except as provided in [subsection \(2\)](#), this Act and the rule against perpetuities bind the Crown not only in right of Tasmania but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act or in the rule against perpetuities affects a disposition of property made by the Crown.

## **PART 2 - DETERMINATION OF PERPETUITY PERIOD**

### **6. Power to specify perpetuity period**

(1) Except as provided in this Act, where the instrument by which any disposition is made expressly provides that the perpetuity period applicable to the disposition under the rule against perpetuities is to be such number of years as is specified in the instrument, the perpetuity period, instead of being of any other duration, is the period so specified or a period of 80 years, whichever is the lesser period, from the date on which the disposition takes effect.

(2) [Subsection \(1\)](#) does not apply in relation to a disposition made in the exercise of a special power of appointment but, if a period is specified under [subsection \(1\)](#) in the instrument creating the power, that period applies in relation to any disposition under that power as it applies in relation to the power itself.

(3) If no period of years is specified in an instrument by which a disposition is made as the perpetuity period applicable to the disposition but a date certain is specified in the instrument as the date on which the disposition is to vest, the instrument is taken, for the purposes of this section, to specify as the perpetuity period applicable to the disposition a number of years equal to the number of years from the date of the taking effect of the instrument to the specified vesting date.

(4) If no perpetuity period is applicable to a disposition by virtue of this section, the perpetuity period is to be determined by the rule against perpetuities as affected by this Act.

### **7. Unborn husband or wife**

The spouse of a deceased person who is a life in being for the purposes of the rule against perpetuities is

treated as a life in being for the purpose of the application of that rule to –

(a) a disposition in favour of that spouse; and

(b) a disposition in favour of –

(i) a charity that attains; or

(ii) a person who attains; or

(iii) a class the members of which attain –

according to the terms of the disposition, a vested interest on or after –

(iv) the death of the survivor of a person who is a life in being and his or her spouse; or

(v) the death of his or her spouse; or

(vi) the happening of any contingency during the lifetime of his or her spouse.

### **PART 3 - RULES TO BE APPLIED IN DETERMINING VALIDITY OF INTERESTS**

#### **8. Powers of appointment**

(1) For the purposes of the rule against perpetuities, a power of appointment is to be treated as a special power unless –

(a) in the instrument creating the power it is expressed to be exercisable by one person only; and

(b) the power could, at all times during its currency when that person is of full age and capacity, be exercised by him or her so as immediately to transfer to or otherwise vest in himself or herself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition that is not a formal condition relating only to the mode of exercise of the power.

(2) For the purpose of determining whether a disposition made under a power of appointment exercisable by will only is void for remoteness, the power is treated as a general power where it would have fallen to be so treated if exercisable by deed.

#### **9. "Wait and see" rule**

(1) Where, but for this section and [section 11](#), a disposition would be void on the ground that the interest disposed of might not become vested until too remote a time, the disposition is treated until such time, if any, as it is established that the vesting must occur, if at all, after the perpetuity period as if the disposition were not subject to the rule against perpetuities.

(2) Where it is established that a vesting must occur after the perpetuity period as mentioned in [subsection \(1\)](#), nothing in that subsection affects the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

(3) Where, but for this section and [section 11](#), a disposition consisting of the conferring of a general power of appointment would be void on the ground that the power might not become exercisable until too remote a time, the disposition is treated as if it were not subject to the rule against perpetuities until such time, if any, as it is established that the power will not be exercisable within the perpetuity period.

(4) Where, but for this section and [section 11](#), a disposition consisting of the conferring of a power or right that is not an option to which [section 15\(2\)](#) or [\(4\)](#) refers would be void on the ground that the power or right might be exercised at too remote a time, the disposition is to be treated –

(a) with regard to any exercise of the power or right within the perpetuity period, as if it were not subject to the rule against perpetuities; and

(b) subject to this section and [section 11](#), as void for remoteness only if and so far as the power or right is not fully exercised within that period.

(5) In the application of this section to a disposition where the duration of the perpetuity period is not determined by virtue of [section 6](#) or [15](#), that period is to be determined as follows:

(a) where it is provided in the instrument making the disposition that only a particular person is, or only particular persons are, to be treated as the measuring life or lives, the duration of the perpetuity period is to be determined by reference to his or her life or their lives and no other lives;

(b) where any persons referred to in [subsection \(6\)](#) as measuring lives are individuals in being and ascertainable at the commencement of the perpetuity period, the duration of the perpetuity period is to be determined by reference to their lives and no other lives, but so that the lives of any description of persons referred to in that subsection are to be disregarded if the number of persons of that description is such as to render it impracticable to ascertain the date of death of the survivor;

(c) where there are no such measuring lives, the perpetuity period is 21 years.

(6) For the purposes of subsection (5), the persons who are to be treated as measuring lives are as follows:

- (a) a person who is specified in the instrument making the disposition as being a measuring life for the purposes of the disposition;
- (b) the person or persons by whom the disposition was made;
- (c) a person to whom or in whose favour the disposition was made, namely –
  - (i) in the case of a disposition to a class of persons, any member or potential member of the class; or
  - (ii) in the case of an individual disposition to a person taking only on certain conditions being satisfied, a person as to whom some of the conditions are satisfied and the other conditions may in time be satisfied; or
  - (iii) in the case of a disposition made in exercise of a special power of appointment –
    - (A) the donee of the power; or
    - (B) where the power is exercisable in favour of members of a class, a member or potential member of the class; or
    - (C) where the power is exercisable in favour of one person only, that person or, where the object of the power is ascertainable only on certain conditions being satisfied, a person in respect of whom some of the conditions are satisfied and the other conditions may in time be satisfied; or
- (d) a spouse who is treated as a life in being by virtue of section 7;
- (e) a person having a child or grandchild referred to in paragraph (c) or any of whose children or grandchildren, if subsequently born, would by virtue of his or her descent fall within that paragraph;
- (f) where a disposition is expressly limited to take effect –
  - (i) during the life of a person; or
  - (ii) on the death of a person, whether as an individual or as a survivor of a group of persons, or on the failure or determination of his or her prior interest – that person;
- (g) a parent or grandparent of a person referred to in paragraph (f).

#### **10. Presumptions and evidence as to future parenthood**

(1) Where there arises, in the application of the rule against perpetuities to a disposition or in determining the right of a person to put an end to a trust or an accumulation, a question that depends on the capacity of a person to procreate a child at a future time –

- (a) it is presumed, subject to paragraph (b), that –
  - (i) a male person can procreate a child at the age of 12 years or over but not under that age; and
  - (ii) a female person can procreate a child at the age of 12 years or over but not under that age or over the age of 55 years; but
- (b) in the case of a living person, evidence may be given in any proceedings to show that he or she will, or will not, be capable of procreating a child at the time in question.

(2) Where, by virtue of subsection (1), a person is treated as incapable of procreating a child at a particular time and he or she in fact procreates a child at that time, the Supreme Court may make such order as it thinks fit for placing the persons interested in the property comprised in a disposition, so far as may be just, in the position they would have held if subsection (1) were not applicable to the disposition, trust or accumulation concerned.

(3) Subject to an order made under subsection (2), where in any proceedings relating to a disposition, a person is treated by virtue of subsection (1) as capable or incapable of procreating a child at a particular time, that person is to be so treated for the purpose of any question that may arise in the application of the rule against perpetuities to the same disposition in any subsequent proceedings.

(4) This section, except subsection (1)(b), has effect in relation to the possibility that a person may at any time become a parent of another person by adoption or the operation of any law, whether in force in Tasmania or not.

#### **11. Reduction of age and exclusion of class members to avoid remoteness**

(1) Where a disposition is limited by reference to the attainment by any person or persons of a specified age exceeding 21 years and it is apparent at the time the disposition is made or becomes apparent at a subsequent time –

(a) that the disposition would, but for this section, be void for remoteness; and  
(b) that it would not be so void if the specified age had been 21 years –  
the disposition is to be treated for all purposes as if, instead of being limited by reference to the age in fact specified, it had been limited by reference to the age nearest to that age that would, if specified instead, have prevented the disposition from being void for remoteness.

(2) Where, in the case of any disposition, different ages exceeding 21 years are specified in relation to different persons –

(a) the reference in subsection (1)(b) to the specified age is to be construed as a reference to all the specified ages; and

(b) subsection (1) operates to reduce each such age so far as is necessary to save the disposition from being void for remoteness.

(3) Where the inclusion of –

(a) a person who is a potential member of a class; or

(b) an unborn person who at birth would become a member or potential member of a class –  
would prevent this section from operating to save a disposition from being void for remoteness, that person is to be treated as excluded from the class for all the purposes of the disposition.

(4) Where, in the case of a disposition to which subsection (3) does not apply, it is apparent at the time the disposition is made or becomes apparent at a subsequent time that, but for this subsection, the inclusion of –

(a) a person who is a potential member of a class; or

(b) an unborn person who at birth could become a member or potential member of a class –  
would cause the disposition to be treated as void for remoteness, that person, unless his or her exclusion would exhaust the class, is to be treated for all the purposes of the disposition as excluded from the class.

(5) Where this section has effect in relation to a disposition to which section 9 applies, the operation of this section does not affect the validity of any thing previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

## **12. Dependent dispositions**

(1) A disposition that complies with the rule against perpetuities is not invalidated solely by reason that it is preceded by an invalid disposition, whether or not it expressly or by implication takes effect after, or subject to, or is dependent on, that invalid disposition.

(2) Where a disposition is invalid by virtue of the rule against perpetuities, any subsequent valid disposition is accelerated.

## **13. Mitigation of rule of remorseless construction**

(1) Where a court construes a will or other instrument, whether made before or after the commencement of this Act, and the will or instrument makes a disposition of any property, the court may have regard to the fact that, while under one possible construction the disposition would or might be void by virtue of the rule against perpetuities, under another possible construction it would or might be valid.

(2) In considering which of those constructions is to be preferred, the court may take into account that the testator would probably have intended the construction under which the disposition would be valid.

(3) In the application of this section a court must not –

(a) render any trustee or other person liable for any acts done before the commencement of this Act for which the trustee or person would not have been liable if this Act had not been passed; or

(b) enable any trustee or person to recover any money distributed or paid under any trust, if the trustee or person could not have recovered that money apart from subsection (1).

## **PART 4 - APPLICABILITY OF RULE AGAINST PERPETUITIES**

### **14. Administrative powers of trustees**

(1) The rule against perpetuities –

(a) does not operate, and is taken never to have operated, to invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property for full consideration, or to do any other act in the administration of any property; and

(b) does not prevent, and is taken never to have prevented, the payment to trustees or other persons of reasonable remuneration for their services.

(2) Subsection (1) does not –

- (a) render any trustee or other person liable for any acts done before the commencement of this Act for which the trustee or person would not have been liable if this Act had not been passed; or
- (b) enable any trustee or person to recover any money distributed or paid under any trust if the trustee or person could not have recovered that money apart from that subsection.

(3) For the purposes of subsection (1), the administration of trust property is taken not to include a power to appoint, pay, transfer, advance, apply, distribute or otherwise deal with trust property in or towards satisfaction of –

- (a) the interest of a beneficiary under the trust; or
- (b) a purpose of the trust.

### **15. Options**

(1) The rule against perpetuities does not apply to a disposition consisting of the conferring of an option to acquire for valuable consideration an interest reverting to the lessor on the termination of a lease of land if –

- (a) the option is exercisable only by the lessee or the lessee's successors in title; and
- (b) it ceases to be exercisable at or before the expiration of one year following the termination of the lease.

(2) An option to acquire an interest in land that is not an option to which subsection (1) refers is void and a right of pre-emption in respect of land is void if the option or right according to its terms is, or may be, exercisable –

- (a) in the case of an instrument that provides for the price to be regulated by reference to the market price of the land at the date of the exercise of the option or right, at a date more than 21 years after the date of its grant; or
- (b) in the case of any other instrument, at a date more than 6 years after the date of its grant.

(3) Subsection (2) does not apply to an option or right of pre-emption conferred by a will and nothing in that subsection affects an option for renewal of a lease or a right to purchase the reversion, whether by way of option or pre-emption, contained in a lease.

(4) An option to acquire an interest in personal property that is capable of being enforced by specific performance is void and a right of pre-emption in respect of any such property is void if the option or right according to its terms is, or may be, exercisable at a date more than 21 years after the date of its grant.

(5) An option or right that is void by virtue of subsection (2) or (4) is not exercisable by any person and no remedy lies in contract or otherwise for giving effect to it or making restitution for its lack of effect.

(6) For the purposes of this section, a reference to a lease includes a reference to an agreement for a lease, a tenancy agreement, a licence or some other written document for, or relating to, occupancy.

### **16. Determinable interests**

(1) The rule against perpetuities applies and is taken always to have applied to a possibility of reverter in land on the determination of a determinable fee simple, and in any such case, if the fee simple does not determine within the perpetuity period, it continues after that period as a fee simple absolute.

(2) The rule against perpetuities applies and is taken always to have applied to a possibility of a resulting trust on the determination of any other determinable interest in property, and in any such case, if that determinable interest does not determine within the perpetuity period, it continues as an absolute interest.

(3) The rule against perpetuities applies and, except as provided by subsection (4), is taken always to have applied to a right of entry for conditions broken, the exercise of which may determine a fee simple subject to a condition subsequent and to an equivalent right in the case of property other than land, and in any such case, if the right of entry or other right is not exercised within the perpetuity period –

- (a) the fee simple continues after that period as an absolute interest; and
- (b) any such other interest in property continues free from the condition.

(4) Subsection (3) does not apply in relation to a right arising from a disposition made on or after the commencement of the *Conveyancing and Law of Property Act 1962* and before the commencement of this Act.

(5) This section applies whether the determinable or conditional disposition is charitable or not, but the rule against perpetuities does not apply to a gift over from one charity to another charity.

(6) Where a disposition is subject to –

- (a) a provision that causes an interest to which subsection (1) or (2) applies to be determinable; or
- (b) a condition subsequent giving rise on breach to a right of re-entry or an equivalent right in the case of



property other than land; or

(c) an exception or reservation –

the disposition is treated, for the purposes of this Act, as including a separate disposition of any rights arising by virtue of the provision, condition subsequent, exception or reservation.

### **17. Superannuation funds and other benefits**

(1) The rule against perpetuities does not apply and is taken never to have applied so as to render void –

(a) a trust or fund established for the purpose of making provision for any of the purposes specified in subsection (2) for –

(i) the servants or employees of any employer; or

(ii) the spouses, children, grandchildren, parents, dependants or legal personal representatives of any such servants or employees; or

(iii) any persons duly selected or nominated for that purpose by any such servants or employees pursuant to the provisions of that trust or fund; or

(b) a trust or fund established for the purpose of making provision for any of the purposes specified in subsection (2) for –

(i) persons, other than employees, engaged in any lawful profession, trade, occupation or calling or the spouses, children, grandchildren, parents, dependants or the legal personal representatives of any of those persons; or

(ii) any persons duly selected or nominated for that purpose pursuant to the provisions of the trust or fund.

(2) Subsection (1) applies to a trust or fund established for any of the following purposes:

(a) superannuation;

(b) pensions;

(c) retiring allowances;

(d) long service leave payments or payment in place of long service leave;

(e) bonuses and other payments based on service;

(f) scholarships and other provisions for the education of children;

(g) payments in the event of death, sickness or incapacity;

(h) any other assistance, benefits, allowances or gratuities.

(3) This section does not render any trustee liable for any act done –

(a) before the commencement of the *Trustee Act 1964*; or

(b) on or after that commencement but before the commencement of this Act –  
for which that trustee would not have been liable but for this section.

(4) This section does not enable any person to recover –

(a) any money distributed or paid under any trust before the commencement of the *Trustee Act 1964*; or

(b) any money distributed or paid under any trust on or after that commencement but before the commencement of this Act –

if that person could not have recovered that money but for this section.

### **18. Non-charitable purpose trusts**

(1) Except as provided in subsection (2), nothing in this Act affects the operation of the rule of law rendering –

(a) a non-charitable purpose trust; or

(b) a trust for the benefit of a corporation that is not a charity –

void for remoteness where the trust property may be applied for the purposes of the trust after the perpetuity period.

(2) If a trust referred to in subsection (1) is not otherwise void, sections 6 and 9 apply to it and the property subject to the trust may be applied for the purposes of the trust during the perpetuity period but not after that period.

### **19. Remedies for recovery of annual sums charged on land**

The rule against perpetuities does not apply, and is taken never to have applied, to any powers or remedies for recovering or compelling the payment of an annual sum to which section 56 of the *Conveyancing and Law of Property Act 1884* applies.

### **20. Restrictions on the perpetuity rule**

The rule against perpetuities does not apply, and is taken never to have applied –

- (a) to a power to distrain on, or to take possession of, land or the income from land by way of indemnity against a rent, whether charged on, or payable in respect of, a part of that land or not; or
- (b) to a rentcharge created only as an indemnity against another rentcharge, although the indemnity rentcharge may arise or become payable only on breach of a condition or stipulation; or
- (c) to a power, whether exercisable on breach of a condition or stipulation or not, to retain or withhold payment of any instalment of a rentcharge as an indemnity against another rentcharge; or
- (d) to a grant, exception or reservation of and right of entry on, or user of, the surface of land or of any easements, rights or privileges over or under land for the purpose of –
  - (i) winning, working, inspecting, measuring, converting, manufacturing, carrying away or disposing of mines or minerals; or
  - (ii) inspecting, grubbing up, felling or carrying away timber, other trees or parts of trees; or
  - (iii) executing repairs, alterations or additions to any adjoining land, or the buildings or structures on land; or
  - (iv) constructing, laying down, altering, repairing, renewing, cleansing or maintaining sewers, watercourses, cesspools, gutters, drains, water-pipes, gas-pipes, electric wires or cables or other similar works; or
- (e) to a grant, exception or reservation of an easement to carry away sewage, sullage, stormwater or other surplus water through a sewer or drain that may be made at an indefinite future time although the owner of the dominant tenement has no right to make or enforce the making of that sewer or drain; or
- (f) where an easement as referred to in paragraph (e) has been created, to the right for the owner of the dominant tenement and the owner's surveyors and workers from time to time and at all times after the sewer or drain has been made to enter on the land through which it passes and to inspect, repair, cleanse and alter the sewer or drain without doing unnecessary damage to the land.

## **PART 5 - RULES OTHER THAN THE RULE AGAINST PERPETUITIES**

### **21. Abolition of the double possibility rule and the *cy-près* doctrine**

(1) The rule of law prohibiting the limitation after a life interest to an unborn person of an interest in land to the unborn child or other issue of an unborn person is abolished but without prejudice to any other rule relating to perpetuities.

(2) The doctrine of *cy-près* or approximation relating to a disposition of a kind referred to in subsection (1), when contained in a will, is abolished.

(3) This section applies only in relation to dispositions or trusts created by an instrument coming into operation after the commencement of this Act.

### **22. Accumulation of income**

(1) Where property is settled or disposed of so that the income of the property may be, or is directed to be, accumulated wholly or in part, the power or direction to accumulate that income is valid only if the disposition of the accumulated income is, or may be, valid.

(2) Nothing in this section affects –

- (a) the power of any person to terminate an accumulation that is for his or her benefit; or
- (b) any jurisdiction or power of the Supreme Court to maintain or advance out of accumulations; or
- (c) any power of a trustee under the *Trustee Act 1898*, any other Act or law or any instrument creating a trust or making a disposition.

(3) This section does not apply where property is settled on trusts for a general charitable intent.

## **PART 6 - APPLICATIONS TO THE SUPREME COURT**

### **23. Power to apply to Supreme Court for declaration as to validity, &c.**

(1) An executor or trustee of property, or a person interested under, or in the invalidity of, a disposition of property, whether made before or after the commencement of this Act, may at any time apply to the Supreme Court for a declaration as to the validity, in respect of the rule against perpetuities, of a disposition of that property.

(2) The Supreme Court may, on an application under subsection (1), make a declaration, having regard to facts existing and events that have occurred at the time the declaration is made, as to the validity or otherwise of the disposition in respect of which the application is made.

(3) The Supreme Court must not make a declaration under subsection (2) in respect of a disposition the validity of which cannot be determined at the time when the Court is asked to make the declaration.

(4) If the Supreme Court refuses to make a declaration under subsection (2) relating to a disposition, the Court may give such directions as it thinks fit on any of the following matters:

- (a) the construction of the instrument by which the disposition is made;
- (b) the determination of a person who is a measuring life for the purposes of the disposition;
- (c) whether a person who is a measuring life is to be presumed dead;
- (d) whether, before the determination of the perpetuity period applicable to the disposition, an interest is to be treated as incapable of vesting during that period;
- (e) any other matter on which an application could properly be made to the Court apart from this Act.

#### **24. *Cy-près* modification in certain cases**

(1) Subject to this section, where –

- (a) the Supreme Court has, under section 23, declared a disposition of property to be invalid; or
- (b) it appears to the Court that a disposition, whether made before or after the commencement of this Act, would be invalid solely on the ground that it conflicts with the rule against perpetuities – and the general intentions originally governing the disposition can be ascertained, the Supreme Court must reform the disposition so as to give effect as far as possible to those general intentions within the limits permitted under the rule against perpetuities as affected by this Act.

(2) A disposition of property that was made before the commencement of this Act is not to be reformed under subsection (1) –

- (a) if the disposition has been declared invalid before that commencement by an order or judgment made or given in legal proceedings; or
- (b) if any property comprised in the disposition has, before that commencement, been paid or transferred to, or applied for the benefit of, or set apart for, a person entitled by reason of the invalidity of the disposition; or
- (c) so as to prejudice a person who has, before that commencement, reasonably altered his or her position in reliance on the invalidity of the disposition if, in the opinion of the Supreme Court, having regard to all possible implications in respect of other persons, it is inequitable to reform the disposition wholly or in part.

(3) In hearing an application to reform a disposition under this section, the Supreme Court –

- (a) may admit extrinsic evidence of the general intentions originally governing the disposition and must apply liberal rules of construction for the purpose of ascertaining them; and
- (b) must have no regard to the rights of any person other than –
  - (i) a person born or *en ventre sa mère* when the disposition was made; and
  - (ii) a person entitled on the death of any such person –and in reforming the disposition the Supreme Court may specify the perpetuity period in accordance with section 6.

(4) An application for reformation under this section may be made by –

- (a) a trustee of any property comprised in the disposition; or
- (b) the settlor or the settlor's personal representative; or
- (c) a person having an interest, whether vested or contingent, under the disposition or the personal representative of that person to whom the interest passes.

(5) Where a trustee of property comprised in a disposition becomes aware that the disposition requires to be reformed under subsection (1), the trustee has a duty to make an application under this section.

(6) A disposition that has been reformed under this section –

- (a) is valid notwithstanding that it would have been invalid under any rule of law or construction if it had been effected in any other way; and
- (b) is to be construed as if it had not been effected under this section.

#### **25. Vesting orders arising from resulting trusts**

(1) Where the Supreme Court has refused to reform a disposition under section 24, the Supreme Court may, if satisfied that the person who made the disposition, or his or her personal representative, has become entitled under a resulting trust, make an order vesting the property comprised in the disposition absolutely in that person or, if that person has died, in his or her personal representative on the trusts of the estate of the deceased person.

(2) In the case of a disposition referred to in subsection (1), where a person other than a donor of

property that was given to the trustee on trust, has sold other property to the trustee, or has assisted the trustee, by loan, guarantee or otherwise, to acquire other property –

(a) the power of the Supreme Court to make a vesting order under that subsection is restricted to so much of the property comprised in the disposition as was given by that donor or fairly attributable to the donor's gift; and

(b) the Court may make such order as it considers just and equitable regarding the remainder of the property comprised in the disposition.

(3) An application for a vesting order under this section in respect of property comprised in a disposition may be made by –

(a) a trustee of that property; or

(b) a vendor of that property to that trustee or the personal representative of any such vendor; or

(c) a person who assisted that trustee, by loan, guarantee or otherwise, to acquire that property or the personal representative of that person.

## **PART 7 - MISCELLANEOUS**

### **26. Rules of Court**

(1) The judges of the Supreme Court, or a majority of them, may make Rules of Court for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Rules may provide for reformation of a disposition to be made by an order specifying the alterations to the disposition that are necessary to provide for its reformation in accordance with section 24.

### **27. Repeal and amendments**

(1) The *Accumulations Act 1800* of the United Kingdom, so far as it has effect in Tasmania, is repealed.

(2) The Acts specified in Schedule 1 are amended as specified in that Schedule.

### **28. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Justice; and

(b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

## **SCHEDULE 1 - Amendment of Acts**

Section 27(2)

*The amendments effected by this Schedule have been incorporated into the authorised version of the following Acts:*

(a) *Conveyancing and Law of Property Act 1884*;

(b) *Limitation Act 1974*;

(c) *Trustee Act 1898*.