

Family Protection Amendment Act 2001

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Family Protection Amendment Act 2001.
- (2) In this Act, the Family Protection Act 1955 is called “the principal Act”.

2 Commencement

This Act comes into force on 1 February 2002.

3 Application

The amendments to the principal Act in sections 4 to 7 apply only in respect of the estates of persons who die on or after 1 February 2002.

4 Interpretation

Section 2 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) In this Act, unless the context otherwise requires,—

“**administration** and **administrator** have the same meanings as they have in section 2(1) of the Administration Act 1969

“**application** means an application made under this Act

“**child of a de facto relationship** includes a child whose parents have a de facto relationship with each other after the child’s birth

“**child of a marriage** includes a child whose parents marry each other after the child’s birth

“**Court** means a Court having jurisdiction in the proceedings by virtue of section 3A

“**de facto partner** has the meaning given to it by section 2 of the Property (Relationships) Act 1976

“**de facto relationship** has the meaning given to it by section 2 of the Property (Relationships) Act 1976

“**stepchild**, in relation to any deceased person, means any child—

“(a) who is not a child of the deceased, but is a child of—

“(i) the deceased’s husband or wife; or

“(ii) a de facto partner who was living in a de facto relationship with the deceased at the date of his or her death and who the Court can make an order under this Act in favour of; and

“(b) who was living at the date of the marriage of the husband or wife to the deceased or, as the case requires, when that de facto partner and the deceased started living in the de facto relationship.”

5 Persons entitled to claim under Act

(1) Section 3(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(aa) a de facto partner who was living in a de facto relationship with the deceased at the date of his or her death:”.

- (2) Section 3(1) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:
- “(e) the parents of the deceased, though a parent of the deceased may not make a claim under this Act unless—
- “(i) the parent was being maintained wholly or partly or was legally entitled to be maintained wholly or partly by the deceased immediately before his or her death; or
 - “(ii) at the date of the claim, no wife or husband of the deceased, and no de facto partner of the deceased who was living in a de facto relationship with the deceased at the date of his or her death and who the Court can make an order under this Act in favour of, and no child of a marriage or child of a de facto relationship of the deceased, is living.”

6 Claims against estate of deceased person for maintenance

- (1) Section 4 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:
- “(1) If any person (referred to in this Act as the **deceased**) dies, whether testate or intestate, and in terms of his or her will or as a result of his or her intestacy adequate provision is not available from his or her estate for the proper maintenance and support of the persons by whom or on whose behalf application may be made under this Act, the Court may, at its discretion on application so made, order that any provision the Court thinks fit be made out of the deceased’s estate for all or any of those persons.
- “(1A) Subsection (1) overrides the Administration Act 1969, but is subject to section 4A.”
- (2) Section 4(3) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:
- “(a) the person is—
- “(i) the wife or husband of the deceased, or a de facto partner of the deceased who was living in a de facto relationship with the deceased at the date of his or her death; or
 - “(ii) a child of a marriage or a child of a de facto relationship of the deceased, or a child of a marriage or a child of a de facto relationship of any such child; or”.

7 New section 4A inserted

The principal Act is amended by inserting, after section 4, the following section:

“4A Restrictions on orders in favour of certain de facto partners

- “(1) This section applies to a de facto partner who was living in a de facto relationship with the deceased at the date of his or her death if the de facto relationship is a relationship of short duration as defined in section 2 of the Property (Relationships) Act 1976.
- “(2) The Court cannot make an order under this Act in favour of a de facto partner to whom this section applies unless—
- “(a) the Court is satisfied—
- “(i) that there is a child of the de facto relationship; or
- “(ii) that the de facto partner has made a substantial contribution to the de facto relationship; and
- “(b) the Court is satisfied that failure to make the order would result in serious injustice to the de facto partner.
- “(3) In subsection (2), **child of the de facto relationship** and **contribution** have the same meanings as they have in section 2 of the Property (Relationships) Act 1976.”

8 Consequential repeal

The Status of Children Act 1969 is amended by repealing so much of the Schedule as relates to sections 2(1), 3(1)(e), and 4(3)(a) of the principal Act.

Legislative history

27 March 2001	Divided from the Property (Relationships) Amendment Bill (Bill 109-4C)
29 March 2001	Third reading
3 April 2001	Royal assent
