

**Reprint
as at 8 December 1945**



**John Duncan McGruer Estate Act
1945**

Private Act 1945 No 4
Date of assent 7 December 1945
Commencement 7 December 1945

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An Act to enable the Supreme Court of New Zealand to vary the trusts created by the will of the late John Duncan McGruer, late of Christchurch, importer, by making provision for his son, Eoin Harvey McGruer

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

Preamble

Whereas John Duncan McGruer, late of Christchurch, importer, died on 12 April 1923, having made his last will and testament dated 29 March 1923, which said will was duly proved in the Supreme Court of New Zealand at Christchurch on 27 April 1923:

And whereas the said John Duncan McGruer left him surviving his son Eoin Harvey McGruer, but it appears that there are good grounds for believing that he failed to make adequate provision for the proper maintenance and support of his said son:

And whereas the said Eoin Harvey McGruer has made no application under the Family Protection Act 1908 for such provision:

And whereas the time for his making such an application has expired, and cannot be extended by the Supreme Court of New Zealand under the proviso to subsection (9) of section 33 of that Act by reason of the fact that the estate of the said John Duncan McGruer is now held by his executors as trustees for the beneficiaries under the said will, and is accordingly deemed under the law applicable to that estate to have been finally distributed within the meaning of that proviso:

And whereas the said Eoin Harvey McGruer is in need of such provision, and it is desirable that the Supreme Court of New Zealand should be authorised to inquire into the provision which should be made and to vary the trusts of the said will accordingly:

And whereas the objects of this Act cannot be attained otherwise than by legislation.

1 Short Title

This Act may be cited as the John Duncan McGruer Estate Act 1945.

2 Interpretation

In this Act, if not inconsistent with the context,—

estate means the balance of the estate of the said John Duncan McGruer still in the hands or under the control of the trustees

testator means the said John Duncan McGruer

trustees means Leonard Alfred Bone, of Hawera, draper, and James Barnett, of Wellington, secretary, and the trustee or trustees for the time being acting in lieu of or in addition to the said Leonard Alfred Bone and James Barnett, or either of them

will means the will of the said John Duncan McGruer.

3 Authorising application to Supreme Court to vary trusts of will

- (1) An application to the Supreme Court for an order under section 33 of the Family Protection Act 1908 making such provision for the said Eoin Harvey McGruer out of the estate as the court thinks fit may be made at any time within 12 months after the passing of this Act.
- (2) Subject to the provisions of this Act, an application made under this Act shall be heard and determined by the Supreme Court as if it had been made within the time limited in that behalf by subsection (9) of the said section 33, and the provisions of Part 2 of the Family Protection Act 1908, so far as they are applicable, shall apply accordingly.
- (3) In considering any application under the provisions of this Act the Supreme Court shall not be bound by the strict rules of evidence, but may receive such evidence and draw such conclusions therefrom as it thinks fit, and may have regard to circumstances arising subsequently to as well as those existing at the death of the testator.
- (4) Notwithstanding any appropriation made by the trustees, any provision made by the Supreme Court on an application under this Act shall rank in priority to the bequest of the surplus income of the estate at the discretion of the trustees to or for the benefit of the Salvation Army and other charitable institutions in New Zealand not specifically named, and to the gift of the residuary real and personal estate as made and provided by the will to or for the benefit of the Commissioner for New Zealand of the Salvation Army and the Moderator of the Presbyterian Church of New Zealand, but shall rank after all other bequests

and dispositions bequeathed and provided for by and in the will.

- (5) The costs as between solicitor and client of all parties of and incidental to the promotion of this Act and of any application to the Supreme Court under this Act shall be taxed by the Registrar of the Supreme Court at Wellington and paid out of the estate.

4 Private Act

This Act is hereby declared to be a private Act.

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Notes

1 *General*

This is a reprint of the John Duncan McGruer Estate Act 1945. The reprint incorporates all the amendments to the Act as at 8 December 1945, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*
