

ADMINISTRATION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Administration Act 1952.

Clause 2 provides for the insertion in the principal Act of new sections 30A and 30B.

The new *section 30A* incorporates the provisions now contained in section 10 of the Family Protection Act 1955 relating to the power of an administrator to distribute before the normal limitation period has expired, and extends those provisions to applications and orders under the Law Reform (Testamentary Promises) Act 1949 or arising out of contracts to make a will containing certain provisions, or not to revoke an existing will or specified provisions therein, or not to make a will.

The new *section 30B* incorporates the remaining provisions contained in section 10 of the Family Protection Act 1955. These provisions relate to the following of assets that have been distributed by an administrator or trustee, and to claims against persons into whose hands they can be followed. The provisions are being extended to all cases to which the new *section 30A* applies, and to all cases where the Court can make an order on any claim to which section 35 of the Trustee Act applies. The new *subsection (1)* gives a statutory right to follow assets into the hands of the person to whom they were distributed or his administrator or any person who received any interest in the assets from either of them otherwise than in good faith and for valuable consideration. The person to whom the assets were distributed or his administrator can be ordered to pay a sum not exceeding the value of the assets; and any person who received an interest in the assets from either of them, otherwise than in good faith and for valuable consideration, can be ordered to pay a sum not exceeding the value of his interest. The remedies given by the new *subsection (1)* are in addition to existing remedies, and limitations are imposed in respect of the periods during which they can be exercised. The new *subsection (5)* extends provisions now contained in section 10 (6) of the Family Protection Act 1955 to all cases, and requires that a claimant who has remedies against an administrator or trustee who has made a premature distribution of assets must exhaust all rights which he has to follow the assets and all other rights and remedies available to him before he exercises his rights and remedies against the administrator or trustee. The new *subsection (6)* gives a measure of protection to persons into whose hands assets can be followed by providing that relief against those persons may be denied wholly or in part if they have received the assets in good faith and have so altered their position in reliance on having received an

indefeasible interest in the assets that in the opinion of the Court, having regard to all possible implications in respect of the administrator or trustee and other persons, it is inequitable to grant relief or to grant relief in full, as the case may be. Compare section 94B of the Judicature Act 1908, set out in section 2 of the Judicature Amendment Act 1958.

Clause 3 makes consequential amendments to the Family Protection Act 1955.

Clause 4 provides that probate or letters of administration may not be granted after 1 January 1963 to a company other than a trust company. Wills existing at that date are not affected.

Hon. Mr Mason

ADMINISTRATION AMENDMENT

ANALYSIS

Title	
1. Short Title	30B. Following of assets, etc.
2. New sections inserted	3. Consequential amendments
30A. Protection of administrator against certain claims	4. Administration not to be granted to companies other than trust companies

A BILL INTITULED

An Act to amend the Administration Act 1952

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

1. Short Title—This Act may be cited as the Administration Amendment Act 1960, and shall be read together with and deemed part of the Administration Act 1952* (hereinafter referred to as the principal Act).

2. New sections inserted—The principal Act is hereby amended by inserting, after section 30, the following sections:

“30A. Protection of administrator against certain claims—
(1) This section shall apply to applications and orders under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, or arising out of contracts to make a will containing certain provisions or not to revoke an existing will or a specified provision therein or not to make a will.

*1957 Reprint, Vol. 1, p. 39
Amendment: 1958, No. 55

“(2) No action shall lie against the administrator or trustee of the estate of any deceased person by reason of his having distributed any part of the estate, and no application or order to which this section applies shall disturb the distribution, if it was properly made by the administrator or trustee for the purpose of providing for the maintenance, support, or education of any person who was totally or partially dependent on the deceased immediately before the death of the deceased, whether or not the administrator or trustee had notice at the time of the distribution of any application or intention to make an application that would affect the estate, being an application to which this section applies. 5 10

“(3) No person who may have made or may be entitled to make an application to which this section applies shall be entitled to bring an action against the administrator or trustee by reason of his having distributed any part of the estate if the distribution was properly made by the administrator or trustee after the person (being of full legal capacity) has advised the administrator or trustee in writing that the person either— 15 20

“(a) Consents to the distribution; or

“(b) Does not intend to make any such application that would affect the proposed distribution.

“(4) No action shall lie against the administrator or trustee by reason of his having distributed any part of the estate if the distribution was properly made by the administrator or trustee after the expiration of six months from the date of the grant in New Zealand of administration in the estate of the deceased, and without notice of any application or intention to make any application that would affect the estate, being an application to which this section applies. 25 30

“(5) Without limiting the foregoing provisions of this section, it is hereby declared that no action by any person whose relationship to the deceased is in any degree not traced through lawful wedlock shall lie against the administrator or trustee by reason of his having prejudiced any claim of that person under the Family Protection Act 1955 by distributing any part of the estate, if the distribution was properly made by the administrator or trustee without notice of any application or intention to make any application under that Act in respect of the estate. 35 40

“(6) For the purposes of this section notice to an administrator or trustee of an intention to make any application to which this section applies shall lapse and shall be incapable of being renewed, and the administrator or trustee may act as if he had not received the notice, unless, before the expiration of three months after the date on which he first receives notice of the intention to make the application, the administrator or trustee receives notice that the application has been made to the Court:

10 “Provided that nothing in this subsection shall prevent the subsequent making of the application within the period allowed by law.

“(7) For the purposes of this section a distribution by an administrator or trustee of any part of the estate shall be deemed to be properly made if it is made in accordance with any trust, power, or authority which is subsisting when the distribution is made and would justify the distribution if each application to which this section applies in connection with the estate (being an application on which no order had been made prior to the distribution) were disallowed by the Court:

20 “Provided that nothing in this subsection shall restrict the provisions in subsections (4) and (5) of this section requiring that the distribution shall have been made without notice of the matters therein specified.

25 “(8) In this section and in section 30B of this Act—

“‘Application’ includes an action and every other form of legal proceedings; and the terms ‘apply’ and ‘applicant’ have corresponding meanings:

30 “‘Order’ includes a judgment.”

“30B. **Following of assets, etc.**—(1) In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust and there is nothing in any Act to prevent the distribution from being disturbed, the Court may—

35 “(a) Make, in respect of any interest in any such assets that is for the time being retained by the person to whom those assets were distributed or his administrator or any person who has received any interest in those assets from either of them otherwise than in good faith and for valuable consideration, any order to which section 30A of this Act applies, or an order on any claim to which section 35 of the Trustee Act 1956 applies:

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“(b) Order that any person to whom any assets were so distributed or his administrator shall pay to any applicant for an order to which section 30A of this Act applies or for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee, a sum not exceeding the value of the assets: 5

“(c) Order that any person who has received any interest in any such assets from the person to whom they were distributed or his administrator, otherwise than in good faith and for valuable consideration, shall pay to any applicant for an order to which section 30A of this Act applies, or for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee, a sum not exceeding the value of that interest: 10 15

“(d) For the purpose of giving effect to any such order, make such further order as it thinks fit.

“(2) The remedies given to any person by subsection (1) of this section are in addition to all other rights and remedies (if any) available to that person, and nothing in that subsection shall restrict any such other rights and remedies.

“(3) No application for an order under subsection (1) of this section shall be heard by the Court,— 25

“(a) In the case of an application for an order under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, unless the application for an order under the said subsection (1) is made within twelve months from the date of the grant in New Zealand of administration in the estate: 30

“Provided that, in the case of an application for an order under the Family Protection Act 1955 made by an administrator on behalf of a person who is not of full age or mental capacity, an application for an order under the said subsection (1) may be made within two years from the date of the grant in New Zealand of administration in the estate: 35 40

“(b) In any other case, unless the application for an order under the said subsection (1) is made within the time within which the applicant could have enforced his claim in respect of the estate without special leave of the Court if the assets had not been distributed: 45

5 “Provided that, with the special leave of the Court, the application may be heard by the Court on an application made within the time within which the applicant could have enforced his claim in respect of the estate with special leave of the Court if the assets had not been distributed.

10 “(4) Notwithstanding anything to the contrary in subsection (3) of this section, in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, and any person who is entitled to apply for an order under subsection (1) of this section has, within the time specified in the said subsection (3), made an application to the Court for any order to which section 30A of this Act applies or an 15 order on any claim to which section 35 of the Trustee Act 1956 applies, and that person was not aware of the distribution at the time when he made that application, an application by that person under the said subsection (1) may be heard by the Court after the expiration of the period prescribed by 20 the said subsection (3) if it is made within six months after the date on which the person first became aware of the distribution.

25 “(5) Notwithstanding any rule of law to the contrary, in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust—

30 “(a) Any person may exercise the remedies (if any) given to him by subsection (1) of this section and all other rights and remedies available to him (including all rights which he may have to follow assets and any money or property into which they have been converted) without first exercising the rights and remedies (if any) available to him against the administrator or the trustee in consequence of the making of the distribution:

35 “(b) No person shall exercise any remedy which may be available to him against the administrator or the trustee in consequence of the making of the distribution until he has exhausted all other remedies available to him, whether under subsection (1) of this 40 section or in equity or otherwise.

“(6) In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, relief (whether under subsection (1) of this section or in equity or otherwise) against any person other than the administrator or trustee or in respect of any interest of any such person in any assets so distributed and in any money or property into which they have been converted, shall be denied wholly or in part if the person from whom relief is sought received the assets or interest in good faith and has so altered his position in reliance on his having an indefeasible interest in the assets or interest that in the opinion of the Court, having regard to all possible implications in respect of the administrator or trustee and other persons, it is inequitable to grant relief or to grant relief in full, as the case may be.”

3. Consequential amendments—The Family Protection Act 1955 is hereby consequentially amended—

(a) By inserting in the second proviso of subsection (1) of section 9, after the word “Court”, the words “and after every notice (if any) of an intention to make an application has lapsed in accordance with subsection (6) of section 30A of the Administration Act 1952”:

(b) By repealing section 10.

4. Administration not to be granted to companies other than trust companies—(1) The principal Act is hereby amended by inserting, after section 42, the following section:

“42A. (1) After the commencement of this section, no grant of probate of the will of any deceased person or letters of administration of the estate of a deceased person, either with or without the will annexed, shall be made to any company unless the company is expressly authorised by an Act of Parliament to apply for and obtain the grant.

“(2) For the purposes of this section a grant of probate or letters of administration to a syndic of a company shall be deemed to be a grant to that company; and where a power is granted to a company or to the Directors of a company by will to nominate any person as executor of the will, a grant to a person so nominated shall be deemed to be a grant to the company.

“(3) Nothing in this section shall—

5 “(a) Prevent the grant of probate of the will of any deceased person to any company or to a syndic of the company in any case where the company is appointed as executor of the will by any testamentary instrument made before the date of the commencement of this section:

10 “(b) Prevent the grant of probate of the will of any deceased person to any person nominated as executor of the will by a company or the directors of a company pursuant to a power granted by any testamentary instrument made before the date of the commencement of this section:

15 “(c) Prevent the resealing in New Zealand of probate or letters of administration granted to a company in any other country:

“(d) Affect any grant of probate or letters of administration subsisting at the date of the commencement of this section.”

20 (2) This section shall come into force on the first day of January, nineteen hundred and sixty-three.