

FAMILY PROTECTION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Family Protection Act 1955.

Clause 1 relates to the Short Title to the Bill.

Clause 2 amends subsection (5) of section 2 of the principal Act, which subsection relates to gifts made in anticipation of death (*donationes mortis causa*). Paragraph (b) of the subsection provides that, subject to the qualifications specified in paragraph (a), the principal Act is to apply to these gifts. Since the principal Act was passed, section 10 thereof has been repealed by the Administration Amendment Act 1960, and its provisions have been included in the wider code set out in sections 30A and 30B of the Administration Act 1952. These sections now need to be included in the provisions which apply to gifts of this nature, and the clause provides accordingly.

Clause 3 re-writes the provisions in section 3 of the principal Act governing claims by grandchildren. The class entitled to claim under the Act is to include the grandchildren of the deceased living at his death, being children (whether legitimate or illegitimate) of any child (whether legitimate or illegitimate) of the deceased. It is provided that, in considering any application by a grandchild of any deceased person for provision out of the estate of that person, the Court, in considering the moral duty of the deceased at the date of his death, shall have regard to all the circumstances of the case, and shall have regard to any provision made by the deceased, or by the Court in pursuance of the Act, in favour of either or both of the grandchild's parents.

Clause 4 brings up to date a cross reference to section 10 in section 12 (2) of the principal Act.

Hon. Mr Hanan

FAMILY PROTECTION AMENDMENT

ANALYSIS

Title
1. Short Title

2. Gifts made in anticipation of death
3. Claims of grandchildren
4. Variation of orders

A BILL INTITULED

An Act to amend the Family Protection Act 1955

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

1. **Short Title**—This Act may be cited as the Family Protection Amendment Act 1967, and shall be read together with and deemed part of the Family Protection Act 1955* (hereinafter referred to as the principal Act).

10 2. **Gifts made in anticipation of death**—Section 2 of the principal Act is hereby amended by inserting in paragraph (b) of subsection (5), after the words “this Act”, the words “and of sections 30A and 30B of the Administration Act 1952 (which sections were inserted by section 2 of the Administration Amendment Act 1960)”.
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*1957 Reprint, Vol. 4, p. 839
Amendment: 1959, No. 24

3. Claims of grandchildren—(1) Section 3 of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) The grandchildren of the deceased living at his death, being children (whether legitimate or illegitimate) of any child (whether legitimate or illegitimate) of the deceased:” 5

(2) Section 3 of the principal Act is hereby further amended by adding, as subsection (2), the following subsection: 10

“(2) In considering any application by a grandchild of any deceased person for provision out of the estate of that person, the Court, in considering the moral duty of the deceased at the date of his death, shall have regard to all the circumstances of the case, and shall have regard to any provision made by the deceased, or by the Court in pursuance of this Act, in favour of either or both of the grandchild’s parents.” 15

(3) This section shall apply in all cases where the deceased person died after the commencement of this Act. In all other cases the principal Act shall apply as if this section had not been passed. 20

4. Variation of orders—Section 12 of the principal Act is hereby amended by omitting from subsection (2) the words “section ten of this Act”, and substituting the words “sections 30A and 30B of the Administration Act 1952 (which sections were inserted by section 2 of the Administration Amendment Act 1960)”. 25