

LAW REFORM (TESTAMENTARY PROMISES) AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill provides for amendments to the Law Reform (Testamentary Promises) Act 1949.

Clause 1 relates to the Short Title and commencement of the Bill.

Clause 2: Subclause (1) rewrites subsection (1) of section 3 of the principal Act so as to give the Court a discretion as to the amount it will award in all cases where claims are made under the principal Act, including cases where the claims relate to promises in respect of specified amounts.

Subclause (2) authorises the Court, when making an order, to vary the incidence of debts, testamentary expenses, and duty.

Subclause (3) adds a new subsection (8) to section 3 of the principal Act so as to make it clear that the section does not affect any remedy which a claimant may have apart from the Act in respect of the promise. Where a claimant has such a remedy he may at his option exercise that remedy or his remedy under the Act but not both.

Clause 3 rewrites subsection (2) of section 4 of the principal Act so as to provide that for all purposes other than the computation of the estate duty payable in respect of the estate of the deceased—

- (a) Any amount awarded by the Court under the Act is to rank as a legacy unless the Court orders that it shall rank as a debt:
- (b) Property given to the claimant under the Court order is to be deemed to be a devise or bequest.

Clause 4 is consequential on the passing of section 2 of the Administration Amendment Act 1960, and contains provisions affecting the limitation of actions parallel to those in section 3 (a) of that Act.

Clause 5 clarifies the procedure in connection with actions under the principal Act. It declares that every such action shall be commenced by writ of summons; and that, with every such writ of summons, the plaintiff shall file a notice of motion for directions as to service. The rules of the Code of Civil Procedure then apply as if the motion were filed with an originating summons.

Clause 6 makes it clear that the provisions of the Bill apply to promises and claims made before the commencement of the Bill. It clarifies the application of the Bill to proceedings pending at its commencement, and makes it clear that the provisions of the Bill do not apply in cases where orders have been made before its commencement and do not affect distributions of assets made before that date.

Hon. Mr Hanan

**LAW REFORM (TESTAMENTARY PROMISES)
AMENDMENT**

ANALYSIS

Title	
1. Short Title and commencement	3. Effect of order of Court
2. Liability to remunerate for work done under promise of testamentary provision	4. Limitation of actions 5. Procedure 6. Transitional provision

A BILL INTITULED

**An Act to amend the Law Reform (Testamentary Promises)
Act 1949**

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

1. **Short Title and commencement**—(1) This Act may be
cited as the Law Reform (Testamentary Promises) Amend-
ment Act 1961, and shall be read together with and deemed
10 part of the Law Reform (Testamentary Promises) Act 1949
(hereinafter referred to as the principal Act).

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

2. **Liability to remunerate for work done under promise of
15 testamentary provision**—(1) Section 3 of the principal Act is
hereby amended by repealing subsection (1), and substituting
the following subsection:

“(1) Where in the administration of the estate of any
deceased person a claim is made against the estate founded

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upon the rendering of services to or the performance of work for the deceased in his lifetime, and the claimant proves an express or implied promise by the deceased to reward him for the services or work by making some testamentary provision for the claimant, whether or not the provision was to be of a specified amount or was to relate to specified real or personal property, then, subject to the provisions of this Act, the claim shall, to the extent to which the deceased has failed to make that testamentary provision or otherwise remunerate the claimant (whether or not a claim for such remuneration could have been enforced in the lifetime of the deceased), be enforceable against the personal representatives of the deceased in the same manner and to the same extent as if the promise of the deceased were a promise for payment by the deceased in his lifetime of such amount as may be reasonable, having regard to all the circumstances of the case, including in particular the circumstances in which the promise was made and the services were rendered or the work was performed, the value of the services or work, the value of the testamentary provision promised, the amount of the estate, and the nature and amounts of the claims of other persons in respect of the estate, whether as creditors, beneficiaries, wife, husband, children, next-of-kin, or otherwise.”

(2) Section 3 of the principal Act is hereby further amended by repealing subsection (6), and substituting the following subsection:

“(6) The Court shall have power, after hearing such of the parties as may be affected as it thinks necessary, to exonerate any part of the estate of the deceased from the incidence of any such payment or payments, and to make such provision as it thinks fit as to the incidence of the whole or any part of the debts, testamentary expenses, and duty in respect of the estate of the deceased. For the purposes of this subsection the Court may direct any executor or administrator to represent, or appoint any person to represent, any such party.”

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

“(8) Nothing in this section shall affect any remedy which a claimant may have apart from this Act in respect of any promise to which this section relates, and where a claimant has any such remedy he may at his option enforce that remedy or his remedy under this section, but not both:

“Provided that nothing in this section shall prevent alternative claims in respect of those remedies from being made in the one action.”

3. Effect of order of Court—Section 4 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) Where an order is made under this Act—

10 “(a) The provisions of the Estate and Gift Duties Act 1955 shall, in respect of the estate of the deceased, apply as if the provisions of the order had been part of the will of the deceased, or, if the deceased died without leaving a will, as if he had died leaving a will containing the provisions of the order; and estate duty shall be chargeable and recoverable accordingly.

15 “(b) For all purposes other than those of the Estate and Gift Duties Act 1955—

20 “(i) Any amount which by the order is awarded to any person shall be deemed to have been bequeathed by the deceased to that person:

25 “Provided that, if the Court (having regard to all the circumstances of the case) so orders, any amount so awarded or any part of any such amount shall be deemed to be a debt owing by the deceased to that person:

30 “(ii) Any property which by the order is vested in or directed to be transferred or assigned to any person shall be deemed to have been devised or bequeathed by the deceased to that person.

35 “(3) Any estate duty paid in excess of the amount required to be paid under paragraph (a) of subsection (2) of this section shall on application, and without further appropriation than this section, be refunded by the Commissioner of Inland Revenue or a District Commissioner of Stamp Duties to the person entitled to receive it.”

4. Limitation of actions—Section 6 of the principal Act is hereby amended by omitting from the proviso, as substituted by section 2 of the Law Reform (Testamentary Promises) Amendment Act 1953, the words “the date of the applica-
40 tion shall be disturbed by reason of the application or of an order made thereon”, and substituting the words “the administrator receives notice that the application for extension has been made to the Court, and after every notice (if any) of an intention to make an application under this Act has

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lapsed in accordance with subsection (6) of section 30A of the Administration Act 1952, as inserted by section 2 of the Administration Amendment Act 1960, shall be disturbed by reason of the application for extension, or of an order made on that application, or of any action or order that is consequential thereon”.

5. Procedure—Section 5 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) Every such action shall be commenced by writ of summons. With every such writ of summons the plaintiff shall file a notice of motion for directions as to service; and the rules of the Code of Civil Procedure shall apply as if the motion were filed with an originating summons.”

6. Transitional provision—This Act shall apply to all promises and claims to which the principal Act applies, whether the promises or claims were made, or the deceased died, or proceedings under the principal Act were commenced, before or after the commencement of this Act:

Provided that nothing in this Act shall affect any order, or any distribution of any part of the estate of any deceased person, made before the commencement of this Act or any promise or claim to which any such order relates:

Provided also that subsection (2) of section 5 of the principal Act, as added by section 5 of this Act, shall not apply to any proceedings commenced before the commencement of this Act.