

# Wills Bill

Government Bill

## Explanatory note

### General policy statement

The current legislation governing wills is set out in several enactments, the first of which dates back to 1837. These enactments are often expressed in archaic terms. Formalities relating to how a will must be executed or revoked, rules concerning interpretation and correction of wills, and restrictions on how property can be disposed of can sometimes make it difficult to give full effect to a will-maker's intentions in some cases. Dissolution of a marriage will currently prevent a former spouse inheriting under a will, but a formal separation order does not, which is anomalous, and there are restrictions on the extent to which minors can make wills.

The aim of this Bill is therefore to—

- restate the existing law in a single statute in plain, modern language that is clearer and more accessible; and
- implement certain reforms to enhance and modernise the substantive law and remove certain anomalies.

The Bill does not constitute a wide-ranging reform of the current law.

### Background

In 1997 the Law Commission published *Succession Law: A Succession (Wills) Act* (NZLC R41), in which it reviewed current wills legislation as part of a more general review of succession law. The Law Commission recommended restating the law in plain language in a single statute and modernising the substantive law of wills in certain minor respects.

## Clause by clause analysis

*Clause 1* states the Bill's title.

*Clause 2* states that the Bill comes into force on 1 July 2007.

### Part 1 Preliminary provisions

*Clause 3* states the Bill's purposes.

*Clause 4* states that the legislation applies to the wills of natural persons who die on or after 1 July 2007.

*Clause 5* provides that the Act binds the Crown.

*Clauses 6 to 8* set out defined terms. Among other terms, "valid" and "will" are defined.

*Clause 8(5)* contains a change to the law on wills. A person who may dispose of property during his or her life by a document creating a valid power or trust may dispose of property by his or her will by creating a power or trust of the same kind.

### Part 2 Wills

#### Subpart 1—Making, changing, revoking, and reviving wills

*Clause 9* draws readers' attention to the fact that there is a relationship between the provision on who may make a will and the provisions on the effect on the will of the start and end of a marriage or civil union and the death of the testator.

*Clause 10* states who may make, change, revoke, or revive a will.

*Clause 10* contains the following changes to the law on wills:

- there is no longer a minimum age at which a person may make a will;
- persons under 18 years may make wills if they are intending to marry or enter a civil union;
- the jurisdiction for approving wills made by young persons is moved from the District Courts and Public Trust to the Family Courts;
- the Family Courts have power to give young persons a general, rather than only a specific, approval to make, change,

revoke, or revive a will and may impose conditions on the approval.

### *Validity*

*Clause 11(3)* states how a will, or a change, revocation, or revival of a will, must be signed and witnessed to make it valid.

*Clause 11* contains a change to the law on wills. The testator's signature is no longer required to be placed at the end of the will.

*Clauses 12 and 13* state the rules on witnesses.

*Clause 13(2)* contains a change to the law on wills. A gift in a will to a witness, or to the witness's husband, wife, civil union partner, or de facto partner, is no longer void, as long as all the other interested parties consent in writing or electronically or the High Court is satisfied that the testator knew of the gift and made it voluntarily.

*Clause 14* empowers the High Court to declare that a will, or a change, revocation, or revival of a will, is valid, even though improperly signed or witnessed, if the court is satisfied that the will expresses the testator's intentions.

*Clause 14* is a change to the law on wills.

### *Changing, revoking, and reviving*

*Clause 15* states the means by which a will may be validly changed.

*Clause 16* states the means by which a will may be validly revoked.

*Clause 16(g)* contains a change to the law on wills. Any action of the testator's that satisfies the High Court that the testator intended to revoke the will may be accepted by the Court as revoking the will.

*Clause 17* states the means by which a will may be validly revived.

### *Effect on wills of marriages and civil unions starting and ending and testators dying*

*Clause 18* states the effect on a will of a testator getting married or entering a civil union.

*Clause 18* contains a change to the law on wills. Currently, a testator's marriage revokes his or her will, unless the will is expressed to be made in contemplation of the marriage. *Clause 18* extends this rule to civil unions.

*Clause 18(4)* contains a change to the law on wills. A will made by a person under 18 years who has agreed with another person to marry,

or enter a civil union with, him or her is recognised by law as a will when the marriage or civil union occurs.

*Clause 19* states the effect on a will of a testator's marriage or civil union ending.

*Clause 19(2)(a)* contains a change to the law on wills. If a marriage or civil union is the subject of a separation order, the testator's spouse or partner cannot take under the testator's will.

*Clause 19(2)(b)* contains a change to the law on wills. Currently, if a marriage is the subject of an order dissolving the marriage, the testator's spouse cannot take under the testator's will. *Clause 19(2)(b)* extends this rule to civil unions.

*Clause 20* provides that a will's words disposing of property apply to circumstances as they are when the testator dies.

### Subpart 2—Administering wills

*Clauses 21 to 24 and 26 to 29* set out rules on dispositions of specific kinds of property or dispositions to specific kinds of beneficiaries.

*Clause 24* clarifies what occurs when a testator leaves property to issue without limiting the disposition only to the testator's children.

*Clause 24* is a change to the law on wills.

*Clause 25* enables a testator to make a disposition to an unincorporated society that is not a charity and does not have a charitable function.

*Clause 25* is a change to the law on wills.

*Clause 28* provides for the distribution of a failed part of a will that leaves all the property or the residuary estate in fractional parts.

*Clause 28* is a change to the law on wills.

*Clause 30* states in statutory form the common law relating to mutual wills.

*Clause 31* empowers the High Court to correct errors in a will in certain circumstances.

*Clause 31* is a change to the law on wills.

*Clause 32* increases the power of the High Court to make use of external evidence when interpreting a will that is meaningless, ambiguous, or uncertain.

*Clause 32* is a change to the law on wills.

### Subpart 3—Military or seagoing persons

*Clauses 33 to 38* restate in plain language the law that allows soldiers and sailors to make informal wills.

### Subpart 4—Transitional and amendment provisions

*Clauses 39 and 40* deal with transitional matters.

*Clause 41 and the Schedule* deal with consequential amendments.

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*Hon Clayton Cosgrove*

## **Wills Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Wills Act **2006**.

**2 Commencement**

This Act comes into force on 1 July 2007.

## Part 1 Preliminary provisions

<b>3</b>	<b>Purposes</b> The purposes of this Act are to—	
	(a) replace the Wills Act 1837 of the United Kingdom Parliament with an Act in plain language; and	5
	(b) change aspects of the law contained in the Wills Act 1837; and	
	(c) provide for other matters relating to wills.	
<b>4</b>	<b>Wills to which this Act applies</b> This Act applies to the wills of natural persons who die on or after 1 July 2007.  Compare: 1977 No 55 ss 2(5), 3(2)	10
<b>5</b>	<b>Act binds the Crown</b> This Act binds the Crown.	15
<b>6</b>	<b>Interpretation</b> In this Act, unless the context requires otherwise,— <b>Armed Forces</b> is defined in <b>section 33</b> <b>disposition</b> includes—	
	(a) the creation by will of a power of appointment; and	20
	(b) the exercise by will of a power of appointment	
	<b>document</b> means any material on which there is writing	
	<b>military or seagoing person</b> is defined in <b>section 33</b>	
	<b>movable property</b> is defined in <b>section 22(1)</b> for the purposes of that section	25
	<b>operational service</b> is defined in <b>section 33</b>	
	<b>personal representative</b> means administrator, executor, or trustee	
	<b>property</b> is defined in <b>section 8(2)</b> for the purposes of <b>section 8(1)</b>	30
	<b>seafarer</b> is defined in <b>section 33</b>	
	<b>testamentary action</b> means—	
	(a) making a will; and	
	(b) changing a will; and	
	(c) revoking a will; and	35



(d) reviving a will

**testamentary document** means—

- (a) a will; and
- (b) a document that changes a will; and
- (c) a document that revokes a will; and
- (d) a document that revives a will

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**valid** is defined in **section 7**

**will** is defined in **section 8**.

## 7 Meaning of valid

- (1) A testamentary document is **valid** if— 10
  - (a) it complies with **section 11**; or
  - (b) it is declared valid under **section 14**.
- (2) An exercise of a power of appointment by a testamentary document that complies with **section 11** is **valid**, even if the exercise does not comply with a particular manner or a particular solemnity required by the power. 15

Compare: Wills Act 1837 (UK) ss 9, 10

## 8 Meaning of will

- (1) A **will** is a document that— 20
  - (a) is made by a natural person; and
  - (b) disposes of some or all of the following kinds of property:
    - (i) property to which the person is entitled when he or she dies; or
    - (ii) property to which the person's personal representative becomes entitled as personal representative after the person's death. 25
- (2) In **subsection (1), property**—
  - (a) includes— 30
    - (i) a contingent, executory, or future interest in property; and
    - (ii) a right of entry to property; and
    - (iii) a right of recovery of property; and
    - (iv) a right to call for the transfer of title to property; and 35
  - (b) does not include property of which the person is a trustee when he or she dies.
- (3) A will may also appoint a testamentary guardian.

- (4) **Will** includes a codicil.
- (5) A natural person who may dispose of property during his or her life by a document creating a valid power or trust may dispose of property by his or her will by creating a power or trust of the same kind. 5
- (6) Section 108 of Te Ture Whenua Maori Act 1993 overrides this section.
- Compare: Wills Act 1837 (UK) ss 1, 3

## Part 2 Wills

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### Subpart 1—Making, changing, revoking, and reviving wills

- 9 Relationship between section 10 and sections 18 to 20**  
**Section 10** describes the persons who may do testamentary actions, which include making a will. **Sections 18 to 20** describe the effect on a will of— 15
- (a) the testator entering a marriage or civil union; and
  - (b) the testator’s marriage or civil union ending; and
  - (c) the testator dying.
- 10 Persons who may do testamentary actions** 20
- (1) A natural person of 18 years or over may do all the testamentary actions.
- (2) A natural person under 18 years may do all the testamentary actions if he or she— 25
- (a) is married, in a civil union, or in a de facto relationship; or
  - (b) has been married, in a civil union, or in a de facto relationship.
- (3) A natural person under 18 years may make a will if he or she and another person have agreed to marry each other or enter a civil union with each other. 30
- (4) A natural person under 18 years may do a testamentary action if he or she— 35
- (a) is not married, in a civil union, or in a de facto relationship; and
  - (b) has never been married, in a civil union, or in a de facto relationship; and

- (c) has not agreed with another person to marry him or her or enter a civil union with him or her; and
  - (d) satisfies a Family Court that he or she understands the effect of doing a specific testamentary action or all the testamentary actions; and 5
  - (e) has an approval given by the Family Court, with or without conditions, to his or her doing a specific testamentary action or all the testamentary actions.
- (5) A natural person under 18 years may do a testamentary action if, on the date on which his or her testamentary document complies with **section 11**, he or she— 10
- (a) is a military or seagoing person; or
  - (b) is about to comply with an order to train for or join the Armed Forces for operational service; or
  - (c) is about to comply with an order to join a ship as a seafarer. 15

Compare: 1955 No 94 s 6; 1969 No 40 s 2(1)–(3)

### *Validity*

- 11 Requirements for validity of testamentary documents** 20
- (1) A testamentary document must be in writing. 20
  - (2) A testamentary document must be signed and witnessed as described in **subsections (3) and (4)**.
  - (3) The testator must—
    - (a) sign the document; or
    - (b) acknowledge that a person directed by the testator signed the document in the testator's presence. 25
  - (4) At least 2 witnesses must—
    - (a) be together in the testator's presence when the testator complies with **subsection (3)**; and
    - (b) each state on the document, in the testator's presence, that the witness was present when the testator complied with **subsection (3)**; and 30
    - (c) each sign the document in the testator's presence.

Compare: Wills Act 1837 (UK) s 9

- 12 Witnesses** 35
- (1) The person appointed as executor of a will may witness the will.

- (2) The validity of a testamentary document is not affected by the fact that a witness did not know that the document he or she was signing was a testamentary document.

Compare: Wills Act 1837 (UK) ss 13, 17

- 13 Witnesses affected by dispositions made to them** 5
- (1) A disposition of property in a testamentary document is void if—
- (a) the disposition is to a witness; or
  - (b) the disposition is to a witness's wife, husband, civil union partner, or de facto partner; or 10
  - (c) the property would go to a person claiming under a person described in **paragraph (a) or (b)**.
- (2) **Subsection (1)** does not apply if—
- (a) the testamentary document has at least 2 witnesses who are not described in the subsection; or 15
  - (b) the disposition is the repayment of a debt to a person described in the subsection; or
  - (c) all the persons who would benefit directly from the avoidance of the disposition—
    - (i) consent in writing or electronically to the distribution of the property; and 20
    - (ii) have legal capacity to give consent; or
  - (d) the High Court is satisfied that the testator—
    - (i) knew and approved of the disposition; and
    - (ii) made the disposition voluntarily. 25

Compare: Wills Act 1837 (UK) ss 15, 16; 1977 No 55 s 3

- 14 High Court may declare testamentary document valid**
- (1) This section applies to a document that—
- (a) appears to be a testamentary document; and
  - (b) does not comply with **section 11**; and 30
  - (c) came into existence in or out of New Zealand.
- (2) The High Court may make an order declaring the document valid, if it is satisfied that the document expresses the deceased person's testamentary intentions.
- (3) The Court may consider— 35
- (a) the document; and
  - (b) evidence on the signing and witnessing of the document; and

- (c) evidence on the deceased person's testamentary intentions; and
- (d) evidence of statements made by the deceased person.

*Changing, revoking, and reviving*

- 15 Changes** 5
- A valid will, or part of a valid will, may be changed, but only by one of the following means:
- (a) the change is—
    - (i) written on the will; and
    - (ii) signed and witnessed as described in **section 11(3) and (4)**, with the signatures written beside, or near to, the change; or
  - (b) the change is described in a note—
    - (i) written on the will; and
    - (ii) signed and witnessed as described in **section 11(3) and (4)**; or
  - (c) the change makes words in the will unreadable or their effect incomprehensible; or
  - (d) the change is declared valid under **section 14**; or
  - (e) the change is done under **section 34(2)**. 20

Compare: Wills Act 1837 (UK) s 21

- 16 Revocation**
- A valid will, or part of a valid will, may be revoked, but only by one of the following means:
- (a) the testator makes a later valid will; or 25
  - (b) the testator writes a document that—
    - (i) makes clear his or her intention to revoke the will or the part; and
    - (ii) complies with **section 11**; or
  - (c) the testator marries or enters a civil union and the will or the part is not saved by any of **section 18(2) to (4)**; or 30
  - (d) the revocation is done under **section 34(2)**; or
  - (e) the testator, with the intention of revoking the will or the part, destroys the will or the part; or
  - (f) the testator, with the intention of revoking the will or the part, directs another person to destroy the will or the part in the testator's presence; or 35

- (g) the testator does anything else in relation to the will that satisfies the High Court that the testator intended to revoke the will; or
- (h) the revocation is declared valid under **section 14**.

Compare: Wills Act 1837 (UK) s 20

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## 17 Revival

- (1) A valid will, or part of a valid will, that has been revoked under any of **section 16(a) to (d)** may be revived, but only by one of the following means:
  - (a) the will or the part complies with **section 11** again; or 10
  - (b) the testator makes a codicil that—
    - (i) makes clear his or her intention to revive the will or the part; and
    - (ii) complies with **section 11**; or
  - (c) the revival is done under **section 34(2)**. 15
- (2) If a will or part of it is revived under **subsection (1)(a)**, the will or part is treated as having been made on the date on which it complied again with **section 11**.
- (3) If a will or part of it is revived under **subsection (1)(b) or (c)**, the will or part is treated as having been made on the date on which it was first made. 20
- (4) If a will or a part is partly revoked and then wholly revoked and then revived, the revival does not apply to the provisions that were partly revoked.
- (5) **Subsection (4)** does not apply if the revival makes it clear that the testator intended the partly revoked provisions to be revived. 25

Compare: Wills Act 1837 (UK) s 22; 1955 No 94 s 16(8); 1977 No 55 s 2(4); 2005 No 25 s 8(2)

## *Effect on wills of marriages and civil unions starting and ending and testators dying* 30

### 18 Effect on will of testator marrying or entering civil union

- (1) A will made by a person of 18 years or over is revoked if the testator marries or enters a civil union. This subsection is overridden by **subsection (2)** and qualified by **subsection (3)**. 35
- (2) **Subsection (1)** does not apply if—

- (a) the will is expressed to be made in contemplation of a marriage or civil union; and
  - (b) the marriage or civil union that occurs is the contemplated one.
- (3) The exercise by will of a power of appointment is not revoked by the testator marrying or entering a civil union if the property appointed would not go to the testator's personal representative if the testator did not exercise the power. 5
- (4) A will made by a person under 18 years who has agreed with another person to marry him or her or to enter a civil union with him or her is recognised by the law as a will when the marriage or civil union occurs. 10
- Compare: Wills Act 1837 (UK) s 18; 1955 No 94 s 13(1)

### 19 Effect on will of testator's marriage or civil union ending 15

- (1) This section applies when—
- (a) a testator makes a will; and
  - (b) after the testator makes the will, an order of a kind described in **subsection (2)** is made to which the testator is a party; and 20
  - (c) the order is in force when the testator dies; and
  - (d) the will contains a provision of a kind described in **subsection (3)**.
- (2) The orders are—
- (a) an order made under Part 3 of the Family Proceedings Act 1980; or 25
  - (b) an order made under section 42 of the Family Proceedings Act 1980; or
  - (c) an order or decree corresponding to an order described in **paragraph (a) or (b)** made under an earlier corresponding enactment; or 30
  - (d) an order, decree, or enactment corresponding to an order described in **paragraph (a) or (b)** made outside New Zealand that is recognised by the courts in New Zealand. 35
- (3) The provisions are—
- (a) the appointment of the testator's spouse or partner as executor or trustee or advisory trustee of the testator's will; or

- (b) the appointment of the testator's spouse or partner as a trustee of property disposed of by the will to trustees on trust for beneficiaries who include the spouse's or partner's children; or
- (c) a disposition to the testator's spouse or partner, except for a power of appointment exercisable by the spouse or partner exclusively in favour of the spouse's or partner's children; or 5
- (d) a disposition for the payment of a debt secured on— 10
- (i) property that belongs to the testator's spouse or partner; or
- (ii) property that devolved by survivorship on the testator's spouse or partner.
- (4) The following apply to a provision of a kind described in **subsection (3)**: 15
- (a) the provision is void; and
- (b) in relation to the provision, the will must be read as if the testator's spouse or partner died immediately before the testator.
- (5) **Subsection (4)** does not apply if the will makes it clear that the testator intended— 20
- (a) the provision to be effective; and
- (b) in relation to the provision, the will not to be read as if the testator's spouse or partner died immediately before the testator. 25

Compare: 1977 No 55 s 2(2)–(4)

## 20 Effect on will of testator dying

- (1) A will's words disposing of property apply to circumstances as they are when the testator dies.
- (2) **Subsection (1)** does not apply if the will makes it clear that the testator intended the words to apply to circumstances as they are at a different time. 30

Compare: Wills Act 1837 (UK) s 24

## Subpart 2—Administering wills

### 21 Disposition of land 35

- (1) A disposition in a will of land must be read as referring to the interest in the land to which the testator is entitled when he or she dies.



- (2) A disposition in a will of land that has not been brought under the Land Transfer Act 1952, if made without any words of limitation, must be read as referring to the fee simple of the land.
- (3) A disposition in a will of an interest that has not been registered under the Land Transfer Act 1952, if made without any words of limitation, must be read as referring to the whole interest to which the testator is entitled when he or she dies. 5
- (4) This section does not apply if the will makes it clear that the testator intended the disposition to be of a particular kind of interest. 10

Compare: Wills Act 1837 (UK) ss 26, 28

## 22 Disposition of movable property

- (1) In this section, **movable property**— 15
- (a) includes—
- (i) a charge on, or an interest in a charge on, land in New Zealand; and
- (ii) an interest in the proceeds of sale of land in New Zealand; and
- (b) does not include a leasehold interest in, or an interest in a leasehold interest in, land in New Zealand. 20
- (2) **Subsection (3)** applies to a disposition of movable property in a will that—
- (a) is made in New Zealand; and
- (b) is made by any person, whatever his or her domicile when— 25
- (i) the will was made; or
- (ii) he or she died.
- (3) The disposition meets the requirements for being admitted to probate in New Zealand if the will— 30
- (a) complies with **section 11**; or
- (b) was made as required by the law of the place where the person was domiciled when the will was made; or
- (c) was made as required by the law of the place where the person was domiciled when he or she died. 35
- (4) **Subsection (5)** applies to a disposition of movable property in a will that—
- (a) is made outside New Zealand; and

- (b) is made by any person, whatever his or her domicile when—
- (i) the will was made; or
  - (ii) he or she died.
- (5) The disposition meets the requirements for being admitted to probate in New Zealand if the will was made as required by—
- (a) the law of the place where the will was made; or
  - (b) the law of the place where the person was domiciled when the will was made; or
  - (c) the law in force, when the will was made, in the place where the person had his or her domicile of origin; or
  - (d) the law of the place where the person was domiciled when he or she died.
- (6) A disposition in a will of movable property in New Zealand is not revoked, does not become void, and is not interpreted differently only because the testator's domicile changes later.
- Compare: 1955 No 94 s 14(1)–(4)

### 23 Disposition to child

- (1) This section applies when—
- (a) a testator makes a will disposing of property to a child (**child**) of the testator; and
  - (b) the disposition is to the child as a named beneficiary or as a member of a class; and
  - (c) the child dies—
    - (i) before or after the testator makes the will; and
    - (ii) before the testator dies; and
  - (d) the child leaves a child (**grandchild**); and
  - (e) the grandchild is alive when the testator dies.
- (2) The will must be read as disposing of the property—
- (a) to the grandchild; or
  - (b) among the grandchildren in equal shares, if more than one is alive when the testator dies.
- (3) **Subsection (2)** does not apply to a disposition—
- (a) that is expressly or impliedly stated to be conditional on the child being alive—
    - (i) at or after the time of the testator's death; or
    - (ii) at a time or event that will occur after the testator dies; or

- (b) that is expressly or impliedly stated to be conditional on the fulfilment of any other contingency, if the contingency has not been fulfilled before the testator dies; or
- (c) that is a specific disposition of personal chattels, as defined in the Administration Act 1969; or 5
- (d) that is to a person as one of 2 or more joint tenants.
- (4) **Subsection (2)** does not apply if the will makes it clear that the testator intended to dispose of the property other than to the grandchild or grandchildren. 10
- Compare: Wills Act 1837 (UK) s 33; 1955 No 94 s 16(1)–(4)
- 24 Disposition to issue**
- (1) This section applies when a will disposes of property to the testator’s issue without limitation as to the remoteness of the issue.
- (2) The property is to be held in the same manner as section 78 of the Administration Act 1969 provides for the issue of an intestate. 15
- (3) **Subsection (2)** does not apply if the will makes it clear that the testator intended the property to be held in a different manner.
- 25 Disposition to unincorporated association of persons** 20
- (1) This section applies when a will disposes of property—
- (a) to an unincorporated association of persons that is not a charity; or
- (b) to or on trust for the purposes of an unincorporated association of persons that is not a charity; or 25
- (c) to or on trust for the present and future members of an unincorporated association of persons that is not a charity.
- (2) The testator’s executor must do one of the following with the property that is the subject of the disposition: 30
- (a) transfer it to the association; or
- (b) pay it into the general funds of the association, if necessary after turning it into money.
- (3) The transfer of the property is an absolute discharge to the executor for the transfer of the property, if all the following apply: 35
- (a) the transfer is to one or more persons; and

- (b) the persons are designated in writing or electronically;  
and
  - (c) the designation is by any 2 persons doing the roles of president, treasurer, or secretary of the association.
- (4) A receipt issued by a person doing the role of treasurer of the association is an absolute discharge to the executor for the payment into the general funds of the association. 5
- (5) **Subsections (3) and (4)** do not apply as follows:
- (a) **subsection (3)** does not apply if the will makes it clear that the testator intended the transfer to be handled in some other way: 10
  - (b) **subsection (4)** does not apply if the will makes it clear that the testator intended the payment to be handled in some other way.
- (6) The following are not objections to the effectiveness of a disposition to an unincorporated association of persons: 15
- (a) that a list cannot be compiled of the association's members at the time when the testator died; or
  - (b) that the association's members have no power to divide the association's assets beneficially amongst themselves. 20
- (7) Section 61B of the Charitable Trusts Act 1957 overrides this section.
- 26 Disposition may encompass power of appointment**
- (1) A disposition in a will that is capable of including property over which the testator has a power of appointment must be read as— 25
- (a) including the property; and
  - (b) being an exercise of the power.
- (2) **Subsection (1)** does not apply if the will makes it clear that the testator— 30
- (a) intended the disposition not to include property over which he or she had a general power of appointment; or
  - (b) intended the disposition not to be an exercise of the power. 35

Compare: Wills Act 1837 (UK) s 27

**27 Disposition of property already disposed of**

- (1) This section applies when a testator—

- (a) makes a will; and
  - (b) later disposes of an interest in property disposed of by the will.
- (2) The will applies to any interest in the property to which the testator is entitled when he or she dies. 5
- (3) **Subsection (2)** does not apply if the will makes it clear that the testator intended the disposition in the will to be void.

Compare: Wills Act 1837 (UK) s 23

## 28 Disposition in fractional parts

- (1) This section applies when— 10
- (a) a will disposes in fractional parts of—
    - (i) all the testator's property; or
    - (ii) the testator's residuary estate; and
  - (b) a part fails.
- (2) The failed part goes— 15
- (a) to the part that does not fail; or
  - (b) if there is more than one part that does not fail, to all those parts proportionately.
- (3) **Subsection (1)** does not apply if the will makes it clear that the testator intended a part that fails to be disposed of differently. 20

## 29 Residuary estate

- (1) If a disposition of property in a will is unable to take effect, the property falls into the residuary estate.
- (2) **Subsection (1)** does not apply to property over which the testator has exercised a power of appointment by will. 25
- (3) **Subsection (1)** does not apply if the will makes it clear that the testator intended the property not to fall into the residuary estate.

Compare: Wills Act 1837 (UK) s 25

## 30 Mutual wills 30

- (1) This section applies when—
- (a) 2 persons make wills in which each—
    - (i) disposes of property on which the 2 persons have agreed; and
    - (ii) makes the disposition in a way on which the 2 35  
persons have agreed; and
  - (b) each promises the other that he or she will not—

- 
- (i) revoke the will without making another will that keeps the agreement in the same or a better way; or
    - (ii) change the will in a way that fails to keep the agreement in the same or a better way; or 5
    - (iii) dispose, during his or her life, of some or all of an item of property that the will specifically disposes of; and
  - (c) the first of them to die (**person A**) keeps the promise; and 10
  - (d) the second of them to die (**person B**) does not keep the promise.
- (2) A person who would have received a benefit from person B's will if person B had kept the promise may claim from person B's estate any part of the benefit that person B's estate does not provide. 15
- (3) The agreements referred to in **subsection (1)(a)**, and the promise referred to in **subsection (1)(b)**, may be made orally, in writing, or electronically.
- 31 Correction** 20
- (1) This section applies when the High Court is satisfied that a will does not carry out the testator's intentions because it—
- (a) contains a clerical error; or
  - (b) does not give effect to the testator's instructions.
- (2) The Court may make an order correcting the will to carry out the testator's intentions. 25
- 32 External evidence**
- (1) This section applies when words used in a will make the will, or part of it,—
- (a) meaningless; or 30
  - (b) ambiguous on its face; or
  - (c) uncertain on its face; or
  - (d) ambiguous in the light of the surrounding circumstances; or
  - (e) uncertain in the light of the surrounding circumstances. 35
- (2) The High Court may use external evidence to interpret the words in the will that make the will or part meaningless, ambiguous, or uncertain.

- (3) External evidence includes evidence of the testator's testamentary intentions.
- (4) The Court may not use the testator's testamentary intentions as surrounding circumstances under **subsection (1)(d) or (e)**.

### Subpart 3—Military or seagoing persons 5

#### 33 Definitions for this subpart

For the purposes of this subpart,—

**Armed Forces** is defined in section 2(1) of the Defence Act 1990

**informal testamentary action** means a testamentary action that produces a testamentary document that is not valid 10

**informal will** means a will that is not valid

**military or seagoing person** means a natural person who, at a material date, was—

- (a) a member of the Armed Forces on operational service; 15  
or
- (b) a seafarer at sea; or
- (c) a prisoner of war who, immediately before he or she was captured or imprisoned, was described by **paragraph (a) or (b)** 20

**operational service** is defined in section 15(3) of the Burial and Cremation Act 1964

**prisoner of war** means a protected prisoner of war as defined in section 2(1) of the Geneva Conventions Act 1958

**seafarer** is defined in section 2(1) of the Maritime Transport Act 1994. 25

Compare: 1955 No 94 ss 3, 4

#### 34 Military or seagoing persons may do informal testamentary actions

- (1) A military or seagoing person of any age may make an informal will containing any provision that may lawfully be contained in a valid will. 30
- (2) A military or seagoing person of any age may change, revoke, or revive a valid will or an informal will by any words, written or oral, as long as they show an intention to change, revoke, or revive the will. 35

- (3) Section 108 of Te Ture Whenua Maori Act 1993 overrides this section.

Compare: 1955 No 94 s 5(1)–(3)

### 35 Oral informal testamentary actions

- (1) **Subsection (2)** applies when a military or seagoing person orally makes, changes, revokes, or revives an informal will. 5
- (2) The will, change, revocation, or revival has effect only if the testator dies within 12 months after doing it.
- (3) **Subsection (4)** applies when—
- (a) a prisoner of war orally makes, changes, revokes, or revives an informal will; or 10
- (b) a person becomes a prisoner of war within 12 months after orally making, changing, revoking, or reviving an informal will.
- (4) The will, change, revocation, or revival has effect only if the testator dies— 15
- (a) while he or she is a prisoner of war; or
- (b) within 12 months after he or she ceases to be a prisoner of war.

Compare: 1955 No 94 s 9

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### 36 Proof of informal testamentary actions

Informal testamentary actions may be proved by any evidence that the High Court considers sufficient, regardless of any provision to the contrary in any other enactment.

Compare: 1955 No 94 s 5(6)

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### 37 Certificate as to application of this subpart

- (1) A certificate may be given under **subsection (2)** as to a fact that has to be proved to establish one of the following:
- (a) that at a material date a person was a military or seagoing person; or 30
- (b) that at the material date a person was entitled under **section 10(5)** to do a testamentary action.
- (2) A certificate given under this subsection must be given,—
- (a) in the case of a person who at the material date was a member of the Armed Forces, by an officer of the Armed Forces; or 35



- (b) in the case of a person who at the material date was a seafarer on a ship or had received orders to join a ship as a seafarer, by an officer of the ship.
- (3) The following apply to a certificate given under **subsection (2)**:
  - (a) the certificate is sufficient evidence of the fact, in the absence of proof to the contrary; and 5
  - (b) judicial notice must be taken of the appointment and signature of the officer giving it.

Compare: 1955 No 94 s 6A

### **38 Modification of provisions in application to wills of military or seagoing persons** 10

- (1) **Section 13(1)(a) and (b)** do not apply to a valid will or an informal will if the testator was a military or seagoing person when he or she made the will.
- (2) **Section 15(a) and (b)** do not apply to a change to a valid will or an informal will if the change is made— 15
  - (a) while the testator is a military or seagoing person; and
  - (b) by—
    - (i) the testator; or
    - (ii) another person directed by the testator who 20
      - makes the change in the testator’s presence.
- (3) **Section 16(f)** applies to the revocation of a valid will or an informal will by a military or seagoing person as if the words “in the testator’s presence” did not appear. 25

Compare: 1955 No 94 s 7

## Subpart 4—Transitional and amendment provisions

- 39 Wills of persons who die before 1 July 2007**
- (1) Schedule 1 of the Imperial Laws Application Act 1988 is amended by omitting “The Wills Act 1837: sections 1, 3, 6, 9, 10, 13 to 31, and 33.” and substituting “The Wills Act 1837: sections 1, 3, 6, 9, 10, 13 to 31, and 33, for persons who die before 1 July 2007.” 30
- (2) Schedule 1 of the Imperial Laws Application Act 1988 is amended by omitting “The Wills Act Amendment Act 1852: sections 1, 3, and 4.” and substituting “The Wills Act Amendment Act 1852: sections 1, 3, and 4, for persons who die before 1 July 2007.” 35

- (3) Amendments to the Wills Act 1837 of the United Kingdom Parliament made by the New Zealand Parliament and in force when this Act commences continue to apply to the wills of persons who die before 1 July 2007.

#### 40 Wills made before 1 July 2007

- (1) The subsections in this section must be applied cumulatively. This means, for example, that **subsections (2), (3), and (4)** apply to a will made in 1969.
- (2) For wills made before 1 July 2007,—
- (a) **section 8(5)** does not apply; and 10
  - (b) **section 10(2)** must be read as if it said “of 16 or 17 years”, not “under 18 years”; and
  - (c) **section 10(3)** does not apply; and
  - (d) **section 10(4)** must be read as if it said “of 16 or 17 years”, not “under 18 years”; and 15
  - (e) **section 10(4)(c)** does not apply; and
  - (f) **section 10(4)(d)** must be read as if—
    - (i) it said “District Court or Public Trust”, not “Family Court”; and
    - (ii) it said “making or revoking a will”, not “doing a specific testamentary action or all the testamentary actions”; and 20
  - (g) **section 10(4)(e)** must be read as if—
    - (i) it said “District Court or Public Trust”, not “Family Court”; and 25
    - (ii) it did not contain the words “, with or without conditions,”; and
    - (iii) it said “making or revoking a will”, not “doing a specific testamentary action or all the testamentary actions”; and 30
  - (h) **section 10(5)** must be read as if it said “of 16 or 17 years”, not “under 18 years”; and
  - (i) **section 11(3)(a) and (b)** must be read as if the words “at its foot or end” appeared at the end of each of them; and
  - (j) **section 13(2)(c) and (d)** do not apply; and 35
  - (k) **section 14** does not apply; and
  - (l) **section 15(d)** does not apply; and
  - (m) **section 16(c)** must be read as if the words “or enters a civil union” did not appear; and
  - (n) **section 16(g) and (h)** do not apply; and 40

- (o) **section 18** must be read as if—
- (i) **subsections (1) to (3)** did not contain the words “or enters a civil union”, “or civil union”, and “or entering a civil union”; and
  - (ii) **subsection (4)** did not appear; and 5
- (p) **section 19** must be read as if—
- (i) **subsection (2)(a)**, and the references to it in **subsection (2)(c) and (d)**, did not appear; and
  - (ii) the words “in relation to the dissolution of a marriage” appeared at the end of **subsection (2)(b)**; 10  
and
  - (iii) **subsections (3) to (5)** did not contain the words “or partner” and “or partner’s”; and
- (q) **sections 24, 25, 28, and 30** do not apply.
- (3) For wills made before 26 April 2005,— 15
- (a) **section 10** must be read as if **subsections (2) and (4)** did not contain the words “, in a civil union, or in a de facto relationship” and “or enter a civil union with him or her”; and
  - (b) **section 13(1)** must be read as if it said “witness’s wife or husband”, not “witness’s wife, husband, civil union partner, or de facto partner”. 20
- (4) For wills made before 1 January 1970,—
- (a) **section 10** must be read as if— 25
    - (i) **subsections (1) and (5)** said “21 years”, not “18 years”; and
    - (ii) **subsections (2) to (4)** did not appear; and
  - (b) **section 18** must be read as if it said “21 years”, not “18 years”.
- (5) For wills made before 1 January 1959, **section 23** must be read 30  
as if—
- (a) **subsections (2)(b) and (3)** did not appear; and
  - (b) **subsection (4)** did not contain the words “or grandchildren”.
- (6) For wills made before 27 October 1955, **section 22** does not 35  
apply.
- (7) For wills made before 5 December 1944, **section 18(2)** does not  
apply.
- Compare: 1955 No 94 ss 13(2), 14(5), 16(6), (7); 1969 No 40 ss 2(4), 5; 1977 No 55  
ss 2(5), 3(2); 2005 No 25 s 8(1) 40

**41 Consequential amendments**

The enactments specified in the Schedule are consequentially amended in the manner indicated in the Schedule.

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## Schedule Consequential amendments

### Evidence Amendment Act 1980 (No 2) (1980 No 27)

Section 12(2): omit and substitute:

“(2) The statement is not admissible to prove that the requirements of the Wills Act **2006** or the Wills Act 1837 of the United Kingdom Parliament have been satisfied.” 5

### Family Courts Act 1980 (1980 No 161)

Section 11(1): insert after paragraph (gc):

“(gd) the Wills Act **2006**.” 10

### Life Insurance Act 1908 (1908 No 105)

Section 66C(1)(a)(iii): omit and substitute:

“(iii) dispose of the policy by will in accordance with **section 10** of the Wills Act **2006** or section 2 of the Wills Amendment Act 1969 or section 6 of the Wills Amendment Act 1955.” 15

### Maori Trustee Act 1953 (1953 No 95)

Section 12A(7): omit and substitute:

“(7) An election may be filed under this section relating to a written informal will to which **subpart 3 of Part 2** of the Wills Act **2006** or the Wills Amendment Act 1955 applies. This section does not apply to any other informal will.” 20

### Property (Relationships) Act 1976 (1976 No 166)

Section 64(a): omit “and the deceased spouse or civil union partner dies intestate” and substitute “when the deceased spouse or civil union partner dies”. 25

### Protection of Personal and Property Rights Act 1988 (1988 No 4)

Section 55(5): omit and substitute:

“(5) The following provisions apply to a testamentary disposition authorised and executed under this section: 30

“(a) it is valid despite—

“(i) **section 11** of the Wills Act **2006**; and

“(ii) sections 9 and 10 of the Wills Act 1837 of the United Kingdom Parliament; and 35

“(b) it has the same effect for all purposes as it would have had if the person subject to the property order—

“(i) had had testamentary capacity; and

**Protection of Personal and Property Rights Act 1988****(1988 No 4)**—*continued*

“(ii) had executed the testamentary disposition in the manner required by the applicable section.”

**Public Trust Act 2001 (2001 No 100)**

Section 93(8): omit and substitute:

5

“(8) An election may be filed under this section relating to a written informal will to which **subpart 3 of Part 2** of the Wills Act **2006** or the Wills Amendment Act 1955 applies. This section does not apply to any other informal will.”

**Simultaneous Deaths Act 1958 (1958 No 37)**

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Section 3(1)(e) to (h): omit and substitute:

“(e) if any of 2 or more possible beneficiaries under a will or trust or other disposition have died as described, and would be given property under the will or trust or other disposition if any of them could be shown to have survived the other or others, the following provisions apply:

15

“(i) the will or trust or disposition takes effect as if the property were given to those possible beneficiaries as tenants in common in equal shares; and

20

“(ii) the property passes accordingly; and

“(iii) **subparagraphs (i) and (ii)** do not apply if the will or trust or disposition shows a contrary intention; and

25

“(iv) **subparagraphs (i) and (ii)** do not apply if paragraph (c) or (f) applies:

“(f) if any of 2 or more persons who have died as described could have exercised a power of appointment over property if any of them could be shown to have survived the other or others, the following provisions apply:

30

“(i) the power may be exercised as if an equal share of the property had been set apart for appointment by each of the persons; and

35

“(ii) the power may be exercised as if each of the persons had the power of appointment over the share of the property set apart for him or her; and

**Simultaneous Deaths Act 1958 (1958 No 37)**—*continued*

- “(iii) the share passes in default of appointment by him or her in the manner in which the property would have passed in default of appointment by him or her if he or she had been the survivor of the persons; and 5
- “(iv) **subparagraphs (i) to (iii)** do not apply if the instrument creating the power shows a contrary intention; and
- “(v) **subparagraphs (i) to (iii)** do not apply if paragraph (c) applies: 10
- “(g) if property is given or appointed by a will or other testamentary instrument to the survivor of 2 or more of the testator’s children or issue, and all or the last survivors of the children or issue are persons who have died as described, **section 23** of the Wills Act **2006** or section 16 of the Wills Amendment Act 1955 takes effect as if the gift or appointment were in equal shares to the children or issue who— 15
- “(i) have died as described; and
- “(ii) have a child or children living at the testator’s death: 20
- “(h) if the persons who have died as described include a testator and 1 or more of the testator’s issue, the following provisions apply for the purposes of section 33 of the Wills Act 1837 of the United Kingdom Parliament: 25
- “(i) the testator is treated as having survived, but died immediately after, all the testator’s issue who have died as described; and
- “(ii) a gift by the testator to any of the testator’s issue who has died as described or has already died in the testator’s life time (**donee**) takes effect under section 33 if any of the donee’s issue is living at the testator’s death and is not a person who has died as described; and 30
- “(iii) **subparagraphs (i) and (ii)** do not apply if the testator’s will shows a contrary intention:”. 35

**Trustee Companies Act 1967 (1967 No 35)**

Section 36(8): omit and substitute:

**Trustee Companies Act 1967 (1967 No 35)**—*continued*

- “(8) An election may be filed under this section relating to a written informal will to which **subpart 3 of Part 2** of the Wills Act **2006** or the Wills Amendment Act 1955 applies. This section does not apply to any other informal will.”