

Wills Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Wills Bill and recommends that it be passed with the amendments shown.

Introduction

This bill restates the existing law governing wills, which currently resides in several statutes dating back to 1837, in a single statute in plain, modern language that is clear and accessible. It also implements certain reforms to enhance and modernise the substantive law governing wills and remove certain anomalies. The bill does not propose a wide-ranging reform of the current law.

This commentary focuses on the main amendments we recommend to the bill and outlines the main issues we considered. It does not cover minor or technical amendments.

Terminology simplified

We recommend amending several terms used throughout the bill. One of the key purposes of the bill is to update the existing law in plain, modern language, and we consider therefore that its terminology should be simplified wherever possible. Our recommendations in this respect include omitting the word “natural” from “natural person”; replacing the term “doing a testamentary action” with “making a will” and the term “testamentary document” with “will”; and replacing the term “testator” with “will-maker”. We

consider it important that legislation relating to wills be as uncomplicated as possible, to ensure that it is accessible and useful to anyone who may wish to make a will.

Meaning of “will”

We recommend that clause 8 be amended so that “will” includes documents that change, revoke, or revive wills. In addition we recommend that clause 8 be re-ordered in a more logical sequence. These amendments will ensure that the bill clearly and comprehensively defines the meaning of “will”. We consider that this will help to ensure that the legislation is easy to understand and apply.

Effect of later events on wills

We recommend that clause 9 be deleted from the bill. Clause 9 explains the relationship between clause 10 (persons who may make, change, revoke, and revive wills) and clauses 18 to 20 (the effects on wills of marriages and civil unions starting and ending, and of will-makers dying). We consider this explanation is unnecessary and repetitive.

Age restriction

We recommend that clause 18(1) be amended by removing the age restriction for preserving a will when a will-maker enters a marriage or civil union. We consider that it is anomalous that a will made by a minor remains intact upon marriage or entry into a civil union, but one made by an adult does not.

We recommend amendments to clause 10 to ensure that this clause is consistent with the amended clause 18. We recommend the deletion of clauses 10(3) and 18(4) and the re-expression of the substance of both clauses in a new, simplified clause 10A.

Terms of the will and surrounding circumstances

We recommend that clause 18(2) be amended so that the circumstances when making a will in contemplation of marriage or civil union can be taken into account. At present, a will is revoked if a will-maker enters into a marriage or a civil union. Clause 18(2), as introduced, requires that when a will is made in contemplation of marriage or civil union the will must expressly mention the marriage or civil union contemplated. We consider that this may create unfair and unintended results for will-makers who are not familiar with the

legislative requirements for wills. The recommended amendment would ensure that, where the circumstances show that a will is clearly made in contemplation of marriage or civil union, it will continue to be valid even if the contemplation of marriage or civil union is not expressly referred to in the will.

Appendix

Committee process

The Wills Bill was referred to the Justice and Electoral Committee on 10 October 2006. The closing date for submissions was 27 November 2006. We received and considered ten submissions from interested groups and individuals. We heard six submissions. We received advice from the Ministry of Justice.

Committee membership

Lynne Pillay (Chairperson)

Christopher Finlayson (Deputy Chairperson)

Chris Auchinvole (from 6 December 2006)

Charles Chauvel (from 21 February 2007)

Russell Fairbrother (until 21 February 2007)

Hone Harawira (from 13 December 2006) (non-voting member)

Ann Hartley

Nándor Tánczos

Nicky Wagner

Dr Richard Worth (until 6 December 2006)

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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

- 3 Purposes**
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.
- 4 Wills to which this Act applies** 10
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)
- 5 Act binds the Crown** 15
This Act binds the Crown.
- 6 Interpretation**
(In this Act, unless the context requires otherwise) For the purposes of this Act, unless the context requires another meaning,—
Armed Forces is defined in **section 33** 20
- New (unanimous)**
- de facto relationship** is defined in section 29A of the Interpretation Act 1999
- disposition** includes—
- (a) the creation by will of a power of appointment; and
 - (b) the exercise by will of a power of appointment 25
- document** means any material on which there is writing
- military or seagoing person** is defined in **section 33**
- movable property** is defined in **section 22(1)** for the purposes of that section
- operational service** is defined in **section 33** 30
- personal representative** means administrator, executor, or trustee

property is defined in **section 8(2)(5A)** for the purposes of **(section 8(1))** that section
seafarer is defined in **section 33**

Struck out (unanimous)

testamentary action means—

- (a) making a will; and
- (b) changing a will; and
- (c) revoking a will; and
- (d) reviving a will

5

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

10

valid is defined in **section 7**

will is defined in **section 8**

15

New (unanimous)

will-maker—

- (a) means a person who makes, changes, revokes, or revives a will; and
- (b) is the equivalent of “testator” and “testatrix”.

7 Meaning of valid

20

(1) A (*testamentary document*) will is **valid** if—

- (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*) will 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.

25

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

8 Meaning of will

Struck out (unanimous)

- (1) A **will** is a document that—
- (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.

New (unanimous)

- (1) **Will** means a document that—
- (a) is made by a natural person; and
 - (b) does any or all of the following:
 - (i) disposes of property to which the person is entitled when he or she dies; or
 - (ii) disposes of property to which the person's personal representative becomes entitled as personal representative after the person's death; or
 - (iii) appoints a testamentary guardian.
- (1A) When this Act refers to making, changing, revoking, or reviving a will, it means a will as defined in **subsection (1)**.
- (1B) When this Act refers to a will in any other context, it means whichever is appropriate of the following:
- (a) a will as defined in **subsection (1)**; or
 - (b) a document that changes a will as defined in **subsection (1)**; or
 - (c) a document that revokes a will as defined in **subsection (1)**; or
 - (d) a document that revives a will as defined in **subsection (1)**; or
 - (e) a codicil to a will as defined in **subsection (1)**.

Struck out (unanimous)

- (2) In **subsection (1), property**—
- (a) includes—
 - (i) a contingent, executory, or future interest in property; and
 - (ii) a right of entry to property; and 5
 - (iii) a right of recovery of property; and
 - (iv) a right to call for the transfer of title to property; and
 - (b) does not include property of which the person is a trustee when he or she dies. 10
- (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. 15

New (unanimous)

- (5A) In this section, **property**—
- (a) includes—
 - (i) a contingent, executory, or future interest in property; and 20
 - (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
 - (b) does not include property of which a person is a trustee when he or she dies. 25

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

Compare: Wills Act 1837 (UK) ss 1, 3

Part 2 Wills

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

Struck out (unanimous)

- | | | |
|----------|--|----|
| 9 | Relationship between section 10 and sections 18 to 20 | 5 |
| | 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— | |
| | (a) the testator entering a marriage or civil union; and | |
| | (b) the testator’s marriage or civil union ending; and | 10 |
| | (c) the testator dying. | |

- | | | |
|-----------|--|----|
| 10 | Persons who may (<i>do testamentary actions</i>) <u>make, change, revoke, and revive wills</u> | |
| (1) | A (<i>natural</i>) person of 18 years or over may (<i>do all the testamentary actions</i>) <u>make, change, revoke, and revive a will</u> . | 15 |
| (2) | A (<i>natural</i>) person under 18 years may (<i>do all the testamentary actions</i>) <u>make, change, revoke, and revive a will</u> if he or she— | |
| | (a) is married, in a civil union, or in a de facto relationship;
or | 20 |
| | (b) has been married, in a civil union, or in a de facto relationship. | |

Struck out (unanimous)

- | | | |
|-----|---|----|
| (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. | 25 |
| (4) | A (<i>natural</i>) person under 18 years may (<i>do a testamentary action</i>) <u>make, change, revoke, and revive a will</u> if he or she— | |
| | (a) is not married, in a civil union, or in a de facto relationship; and | 30 |

- (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

New (unanimous)

- | | |
|--|----|
| <ul style="list-style-type: none"> (i) making, changing, revoking, and reviving a will; or (ii) doing whichever of those actions he or she asked the Court to approve; and | 10 |
|--|----|

- (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.)*—

New (unanimous)

- | | |
|--|----|
| <ul style="list-style-type: none"> (i) making, changing, revoking, and reviving a will; or (ii) doing whichever of those actions he or she asked the Court to approve. | 15 |
|--|----|

- (5) A *(natural)* person under 18 years may *(do a testamentary action)* make, change, revoke, and revive a will if, on the date on which his or her *(testamentary document)* will complies with **section 11**, he or she— 20
 - (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 25
 - (c) is about to comply with an order to join a ship as a seafarer.

Compare: 1955 No 94 s 6(b), (c); 1969 No 40 s 2(1)–(3); 2005 No 25 s 6

New (unanimous)

- | | |
|---|----|
| 10A Persons under 18 who agree to marry or enter civil union | |
| (1) A person under 18 years may make, change, revoke, and revive a will if— | |
| (a) he or she and another person have agreed to marry each other or enter a civil union with each other; and | 5 |
| (b) either— | |
| (i) the will expressly says that it is made in contemplation of the marriage or civil union; or | |
| (ii) the will does not expressly say that it is made in contemplation of the marriage or civil union but the circumstances existing when it was made show clearly that it was made in contemplation of the marriage or civil union. | 10 |
| (2) The will is effective if the marriage or civil union occurs. | 15 |

Validity

- 11 Requirements for validity of (testamentary documents) wills**
- | | |
|--|----|
| (1) A (testamentary document) <u>will</u> must be in writing. | |
| (2) A (testamentary document) <u>will</u> must be signed and witnessed as described in subsections (3) and (4) . | 20 |
| (3) The (testator) <u>will-maker</u> must— | |
| (a) sign the document; or | |
| (b) acknowledge that a person directed by the (testator) <u>will-maker</u> signed the document in the (testator's) <u>will-maker's</u> presence. | 25 |
| (4) At least 2 witnesses must— | |
| (a) be together in the (testator's) <u>will-maker's</u> presence when the (testator) <u>will-maker</u> complies with subsection (3) ; and | 30 |
| (b) each state on the document, in the (testator's) <u>will-maker's</u> presence, that the witness was present when the (testator) <u>will-maker</u> complied with subsection (3) ; and | |
| (c) each sign the document in the (testator's) <u>will-maker's</u> presence. | 35 |

Compare: Wills Act 1837 (UK) s 9

12 Witnesses

- (1) The person appointed as executor of a will may witness the will.
- (2) The validity of a *(testamentary document) will* is not affected by the fact that a witness did not know that the document he or she was signing was a *(testamentary document) will*. 5

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

13 Witnesses affected by dispositions made to them

- (1) A disposition of property in a *(testamentary document) will* is void if— 10
- (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
 - (c) the property would go to a person claiming under a person described in **paragraph (a) or (b)**. 15
- (2) **Subsection (1)** does not apply if—
- (a) the *(testamentary document) will* has at least 2 witnesses who are not described in the subsection; or
 - (b) the disposition is the repayment of a debt to a person described in the subsection; or 20
 - (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
 - (ii) have legal capacity to give consent; or 25
 - (d) the High Court is satisfied that the *(testator) will-maker*—
 - (i) knew and approved of the disposition; and
 - (ii) made the disposition voluntarily. 30

Compare: Wills Act 1837 (UK) ss 15, 16; 1977 No 55 s 3(1); 2005 No 25 ss 3, 4, 7

14 High Court may declare *(testamentary document) will* valid

- (1) This section applies to a document that—
- (a) appears to be a *(testamentary document) will*; and
 - (b) does not comply with **section 11**; and 35
 - (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—
- (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 5
 - (d) evidence of statements made by the deceased person.

Changing, revoking, and reviving

15 Changes

A valid will, or part of a valid will, may be changed, but only by one of the following means: 10

- (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 15
- (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 20
- (c) the change (*makes words in the will unreadable or their effect incomprehensible*) is the obliteration of words in the will in such a way as to prevent their effect being apparent; or
- (d) the change is declared valid under **section 14**; or 25
- (e) the change is done under **section 34(2)**.

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: 30

- (a) the *(testator)* will-maker makes a later valid will; or
- (b) the *(testator)* will-maker 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 35
- (c) the *(testator)* will-maker marries or enters a civil union and the will or the part is not saved by any of **section 18(2) to (4)(1A) to (3)**; or
- (d) the revocation is done under **section 34(2)**; or

- (e) the *(testator) will-maker*, with the intention of revoking the will or the part, destroys the will or the part; or
- (f) the *(testator) will-maker*, with the intention of revoking the will or the part, directs another person to destroy the will or the part in the *(testator's) will-maker's* presence; or
- (g) the *(testator) will-maker* does anything else in relation to the will that satisfies the High Court that the *(testator) will-maker* intended to revoke the will; or
- (h) the revocation is declared valid under **section 14**.

Compare: Wills Act 1837 (UK) s 20

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
 - (b) the *(testator) will-maker* 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)**.
- (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.
- (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) will-maker* intended the partly revoked provisions to be revived.

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) will-makers dying

18 Effect on will of (testator)will-maker marrying or entering civil union

- (1) A will (*made by a person of 18 years or over*) is revoked if the (*testator*) will-maker marries or enters a civil union. (*This subsection is overridden by **subsection (2)** and qualified by **subsection (3)***). 5

New (unanimous)

- (1A) **Subsection (1)** is— 10
- (a) overridden by **section 10A**; and
 - (b) overridden by **subsection (2)**; and
 - (c) qualified by **subsection (3)**.

- (2) **Subsection (1)** does not apply if—

Struck out (unanimous)

- (a) the will is expressed to be made in contemplation of a marriage or civil union; and 15

New (unanimous)

- (a) either— 20
- (i) the will expressly says that is it made in contemplation of a particular marriage or civil union; or
 - (ii) the will does not expressly say that it is made in contemplation of a particular marriage or civil union but the circumstances existing when it was made show clearly that it was made in contemplation of a particular marriage or civil union; and

- (b) the marriage or civil union that occurs is the contemplated one. 25

- (3) The exercise by will of a power of appointment is not revoked by the (*testator*) will-maker marrying or entering a civil union if the property appointed would not go to the (*testator's*) will-maker's personal representative if the (*testator*) will-maker did not exercise the power. 30

Struck out (unanimous)

- (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.

Compare: Wills Act 1837 (UK) s 18; 1955 No 94 s 13(1)

5

19 Effect on will of *(testator's)* will-maker's marriage or civil union ending

- (1) This section applies when—
- (a) a *(testator)* will-maker makes a will; and
 - (b) after the *(testator)* will-maker makes the will, an order of a kind described in **subsection (2)** is made to which the *(testator)* will-maker is a party; and 10
 - (c) the order is in force when the *(testator)* will-maker dies; and
 - (d) the will contains a provision of a kind described in **subsection (3)**. 15
- (2) The orders are—
- (a) an order made under Part 3 of the Family Proceedings Act 1980; or
 - (b) an order made under section 42 of the Family Proceedings Act 1980; or 20
 - (c) an order or decree corresponding to an order described in **paragraph (a) or (b)** made under an earlier corresponding enactment; or
 - (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. 25
- (3) The provisions are—
- (a) the appointment of the *(testator's)* will-maker's spouse or partner as executor or trustee or advisory trustee of the *(testator's)* will-maker's will; or 30
 - (b) the appointment of the *(testator's)* will-maker'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 35
 - (c) a disposition to the *(testator's)* will-maker'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
- (d) a disposition for the payment of a debt secured on—
- (i) property that belongs to the *(testator's)* will-maker's spouse or partner; or 5
 - (ii) property that devolved by survivorship on the *(testator's)* will-maker's spouse or partner.
- (4) The following apply to a provision of a kind described in **subsection (3)**:
- (a) the provision is void; and 10
 - (b) in relation to the provision, the will must be read as if the *(testator's)* will-maker's spouse or partner died immediately before the *(testator)* will-maker.
- (5) **Subsection (4)** does not apply if the will makes it clear that the *(testator)* will-maker intended— 15
- (a) the provision to be effective even if an order of the kind described in **subsection (2)** were made; and
 - (b) in relation to the provision, the will not to be read as if the *(testator's)* will-maker's spouse or partner died immediately before the *(testator)* will-maker. 20

Compare: 1977 No 55 s 2((2)-(4))(1)-(3)

20 Effect on will of *(testator)* will-maker dying

- (1) A will's words disposing of property apply to circumstances as they are when the *(testator)* will-maker dies.
- (2) **Subsection (1)** does not apply if the will makes it clear that the *(testator)* will-maker intended the words to apply to circumstances as they are at a different time. 25

Compare: Wills Act 1837 (UK) s 24

Subpart 2—Administering wills

21 Disposition of land 30

- (1) A disposition in a will of land must be read as referring to the interest in the land to which the *(testator)* will-maker 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. 35

(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*) will-maker is entitled when he or she dies. 5

(4) This section does not apply if the will makes it clear that the (*testator*) will-maker intended the disposition to be of a particular kind of interest.

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

22 Disposition of movable property 10

(1) In this section, **movable property**—

(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 15

(b) does not include a leasehold interest in, or an interest in a leasehold interest in, land in New Zealand.

(2) **Subsection (3)** applies to a disposition of movable property in a will that— 20

(a) is made in 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. 25

(3) The disposition meets the requirements for being admitted to probate in New Zealand if the will—

(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 30

(c) was made as required by the law of the place where the person was domiciled when he or she died.

(4) **Subsection (5)** applies to a disposition of movable property in a will that—

(a) is made outside New Zealand; and 35

(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 5
 - (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)* will-maker's domicile changes later. 10

Compare: 1955 No 94 s 14(1)–(4)

23 Disposition to child 15

- (1) This section applies when—
- (a) a *(testator)* will-maker makes a will disposing of property to a child (**child**) of the *(testator)* will-maker; and
 - (b) the disposition is to the child as a named beneficiary or as a member of a class; and 20
 - (c) the child dies—
 - (i) before or after the *(testator)* will-maker makes the will; and
 - (ii) before the *(testator)* will-maker dies; and
 - (d) the child leaves a child (**grandchild**); and 25
 - (e) the grandchild is alive when the *(testator)* will-maker 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)* will-maker dies. 30
- (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)* when the will-maker dies; or 35
 - (ii) at a time or event that will occur after the *(testator)* will-maker 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)* will-maker 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)* will-maker 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)* will-maker's issue without limitation as to the remoteness of the issue. 15
- (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.
- (3) **Subsection (2)** does not apply if the will makes it clear that the *(testator)* will-maker intended the property to be held in a different manner. 20

25 Disposition to unincorporated association of persons

- (1) This section applies when a will disposes of property—
 - (a) to an unincorporated association of persons that is not a charity; or 25
 - (b) to or on trust for the purposes of an unincorporated association of persons that is not a charity; or
 - (c) to or on trust for the present and future members of an unincorporated association of persons that is not a charity. 30
- (2) The *(testator's)* will-maker's executor must do one of the following with the property that is the subject of the disposition:
 - (a) transfer it to the association; or
 - (b) pay it into the general funds of the association, if necessary after turning it into money. 35

- (3) The transfer of the property is an absolute discharge to the executor for the transfer of the property, if all the following apply:
- (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)* duties of president, treasurer, or secretary of the association.
- (4) A receipt issued by a person doing the *(role)* duties of treasurer of the association is an absolute discharge to the executor for the payment into the general funds of the association.
- (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)* will-maker intended the transfer to be handled in some other way;
 - (b) **subsection (4)** does not apply if the will makes it clear that the *(testator)* will-maker 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:
- (a) that a list cannot be compiled of the association's members at the time when the *(testator)* will-maker died; or
 - (b) that the association's members have no power to divide the association's assets beneficially amongst themselves.
- (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)* will-maker has a power of appointment must be read as—
- (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)* will-maker—
- (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.

Compare: Wills Act 1837 (UK) s 27

27 Disposition of property already partly disposed of

- (1) This section applies when a (*testator*) will-maker— 5
- (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*) will-maker is entitled when he or she dies. 10
- (3) **Subsection (2)** does not apply if the will makes it clear that the (*testator*) will-maker intended the disposition in the will to be void.

Compare: Wills Act 1837 (UK) s 23

28 Disposition in fractional parts 15

- (1) This section applies when—
- (a) a will disposes in fractional parts of—
- (i) all the (*testator's*) will-maker's property; or
- (ii) the (*testator's*) will-maker's residuary estate; 20
- and
- (b) a part fails.
- (2) The failed part goes—
- (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. 25
- (3) **Subsection ~~(1)~~(2)** does not apply if the will makes it clear that the (*testator*) will-maker intended a part that fails to be disposed of differently.

29 Residuary estate

- (1) If a disposition of property in a will is unable to take effect, the property falls into the residuary estate. 30
- (2) **Subsection (1)** does not apply to property over which the (*testator*) will-maker has exercised a power of appointment by will.
- (3) **Subsection (1)** does not apply if the will makes it clear that the (*testator*) will-maker intended the property not to fall into the residuary estate. 35

Compare: Wills Act 1837 (UK) s 25

30 Mutual wills

- (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 5
 - (ii) makes the disposition in a way on which the 2 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; 10
 - or
 - (ii) change the will in a way that fails to keep the agreement in the same or a better way; or
 - (iii) dispose, during his or her life, of some or all of an item of property that the will specifically disposes of; and 15
 - (c) the first of them to die (**person A**) keeps the promise; and
 - (d) the second of them to die (**person B**) does not keep the promise. 20
- (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.
- (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. 25

31 Correction

- (1) This section applies when the High Court is satisfied that a will does not carry out the (*testator's*) will-maker's intentions because it— 30
- (a) contains a clerical error; or
 - (b) does not give effect to the (*testator's*) will-maker's instructions.
- (2) The Court may make an order correcting the will to carry out the (*testator's*) will-maker's intentions. 35

32 External evidence

- (1) This section applies when words used in a will make the will, or part of it,—

- (a) meaningless; or
 - (b) ambiguous on its face; or
 - (c) uncertain on its face; or
 - (d) ambiguous in the light of the surrounding circumstances; or 5
 - (e) uncertain in the light of the surrounding circumstances.
- (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)* will-maker's testamentary intentions. 10
- (4) The Court may not use the *(testator's)* will-maker's testamentary intentions as surrounding circumstances under **subsection (1)(d) or (e)**.

Subpart 3—Military or seagoing persons 15

33 Definitions for this subpart

- (1) For the purposes of **section 10(5)** and this subpart,—
Armed Forces is defined in section 2(1) of the Defence Act 1990

Struck out (unanimous)

informal testamentary action means a testamentary action that produces a testamentary document that is not valid 20

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; 25
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)** 30

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

Struck out (unanimous)

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.

New (unanimous)

- (2) For the purposes of this subpart,— 5
- informal testamentary action** means an action that—
- (a) is 1 of the following:
- (i) making a will; or
 - (ii) changing a will; or
 - (iii) revoking a will; or 10
 - (iv) reviving a will; and
- (b) produces an informal will
- informal will** means a will that is not valid
- prisoner of war** means a protected prisoner of war as defined in section 2(1) of the Geneva Conventions Act 1958. 15

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. 20
- (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. 25
- (3) Section 108 of Te Ture Whenua Maori Act 1993 overrides this section.

Compare: 1955 No 94 ss 5(1)–(3), 6(a)

35 Oral informal testamentary actions

- (1) **Subsection (2)** applies when a military or seagoing person orally makes, changes, revokes, or revives an informal will. 30

- (2) The will, change, revocation, or revival has effect only if the **(testator) will-maker** dies within 12 months after **(doing it) making the will or doing the change, revocation, or revival.**
- (3) **Subsection (4)** applies when—
- (a) a prisoner of war orally makes, changes, revokes, or revives an informal will; or 5
 - (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) will-maker** dies— 10
- (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 15

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)

20

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 25
 - (b) that at the material date a person was entitled under **section 10(5)** to **(do a testamentary action) make, change, revoke, or revive a will.**
- (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 30
 - (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. 35
- (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

- (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** 5
- (1) **Section 13(1)(a) and (b)** do not apply to a valid will or an informal will if the *(testator)* will-maker 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— 10
- (a) while the *(testator)* will-maker is a military or seagoing person; and
- (b) by—
- (i) the *(testator)* will-maker; or
- (ii) another person directed by the *(testator)* will-maker who makes the change in the *(testator's)* will-maker's presence. 15
- (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)* will-maker's presence” did not appear. 20

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.” 25
- (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.” 30
- (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. 35

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
 - (b) **section 10(2)** must be read as if it said “of 16 or 17 years”, not “under 18 years”; and

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Struck out (unanimous)

(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

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(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

15

(ii) it said “making or revoking a will”, not (“*doing a specific testamentary action or all the testamentary actions*”; and)—

New (unanimous)

“(i) making, changing, revoking, and reviving a will; or

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“(ii) doing whichever of those actions he or she asked the Court to approve”; and

(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

New (unanimous)

- “(i) making, changing, revoking, and reviving a will;
or
“(ii) doing whichever of those actions he or she asked
the Court to approve”; and

- (h) **section 10(5)** must be read as if it said “of 16 or 17 years”, not “under 18 years”; and 5

New (unanimous)

- (ha) **section 10A** does not apply; 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 10
(k) **section 14** does not apply; and
(l) **section 15(d)** does not apply; and
(m) **section 16(c)** must be read as if it did not contain the words “or enters a civil union” (*did not appear*); and
(n) **section 16(g) and (h)** do not apply; and 15

Struck out (unanimous)

- (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 20

New (unanimous)

- (o) **section 18(1), (2), and (3)** must be read as if they did not contain the words “or enters a civil union”, “or civil union”, and “or entering a civil union”; and
(oa) **section 18(1A)(a)** does not apply; and

- (p) **section 19** must be read as if— 25
(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)**; and
- (iii) **subsections (3) to (5)** did not contain the words “or partner” and “or partner’s”; and 5
- (q) **sections 24, 25, 28, and 30** do not apply.
- (3) For wills made before 26 April 2005,—
 - (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 10
 - (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”.

Struck out (unanimous)

- (4) For wills made before 1 January 1970,— 15
 - (a) **section 10** must be read as if—
 - (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”. 20

New (unanimous)

- (4) For wills made before 1 January 1970, **section 10** must be read as if—
 - (a) **subsections (1) and (5)** said “21 years”, not “18 years”; and 25
 - (b) **subsections (2) to (4)** did not appear.
- (5) For wills made before 1 January 1959, **section 23** must be read as if—
 - (a) **subsections (2)(b) and (3)** did not appear; and
 - (b) **subsection (4)** did not contain the words “or grandchildren”. 30
- (6) For wills made before 27 October 1955, **section 22** does not apply.

- (7) For wills made before 5 December 1944, (**section 18(2) does section 18(1A)(b) and (2)**) do not apply.

Compare: 1955 No 94 ss 11(5), 13(2), 14(5), 16(6), (7); 1969 No 40 ss 2(4), 5; 1977 No 55 ss 2(5), 3(2), 4; 2005 No 25 s 8(1)

41 Consequential amendments

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

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) sections 10 or 10A** 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:

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“(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.”

Legislative history

8 September 2006

Introduction (Bill 78-1)

10 October 2006

First reading and referral to Justice and Electoral Committee