

ADMINISTRATION AMENDMENT BILL

EXPLANATORY NOTE

This Bill amends the Administration Act 1952.

Clause 1 relates to the Short Title.

Clause 2: At present any person may lodge with the Registrar of the Supreme Court a caveat against an application for the administration of the estate of a deceased person. However, there is no provision in the law for such a caveat to lapse unless an application for administration is filed, nor is there provision for a caveat to be withdrawn.

This clause provides for all future caveats to lapse one year after lodging unless an application for administration is filed within that year. It also provides for all previous caveats to lapse one year after the date of the passing of this Bill, unless application for administration is filed within that year.

The clause also provides that a caveat may be withdrawn at any time by the person who lodged it.

In addition the clause provides that lapse or withdrawal of a caveat does not prevent the lodging of a subsequent caveat.

Clause 3 makes provision for the effect of lapse or withdrawal of a caveat.

At present when a caveat has been lodged the Supreme Court may make an order *nisi* for the grant of administration. Subsequently, if the caveator appears, the Court must conduct a hearing to determine whether the order *nisi* should be made absolute or discharged.

As *clause 2* provides for caveats to lapse or be withdrawn provision is now made for a caveat to be disregarded if it lapses before an application for administration is filed or if it is withdrawn before an order *nisi* is made. If the caveat is withdrawn after an order *nisi* is made, the order may be made absolute at any time thereafter.

The clause also provides for the Court order to name a place as well as a time for the hearing. At present there is no provision for naming a place.

Clause 4 increases the statutory share of a surviving spouse on intestacy from £1,000 to £6,000. In addition the surviving spouse will continue to take the personal chattels and a share in the residue of the estate.

Clause 5 provides that where a person dies partially intestate the beneficial interest taken by the surviving spouse under the will is to go towards satisfaction of his or her entitlement to the amount of £6,000 payable to the survivor under section 56 of the Act.

Clause 6 provides that *clauses 4 and 5* shall apply to the estates of all persons dying on or after the date of the passing of the Bill.

Hon. Mr Hanan

ADMINISTRATION AMENDMENT

ANALYSIS

Title	
1. Short Title	4. Increasing share of surviving husband or wife on intestacy
2. Lapse and withdrawal of caveats	5. Partial intestacy
3. Effect of lapse or withdrawal of caveat	6. Commencement of intestacy provisions

A BILL INTITULED

An Act to amend the Administration Act 1952

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

1. **Short Title**—This Act may be cited as the Administration Amendment Act 1965, and shall be read together with and deemed part of the Administration Act 1952* (hereinafter referred to as the principal Act).
- 10 2. **Lapse and withdrawal of caveats**—Section 38 of the principal Act is hereby amended by adding, as subsections (2), (3), and (4), the following subsections:
- 15 of—“(2) Every such caveat shall, unless application for administration is sooner made, lapse upon the expiration

*1957 Reprint, Vol. 1, p. 39
Amendments: 1958, No. 55; 1960, No. 100; 1964, No. 24

- “(a) One year from the date of the lodging of the caveat in the case of a caveat lodged after the commencement of this subsection; or
- “(b) One year from the date of the commencement of this subsection in the case of a caveat lodged before the commencement of this subsection, whether it was lodged under the foregoing provisions of this section or under the corresponding provisions of any previous Act. 5
- “(3) Any such caveat may be withdrawn by the caveator at any time by notice in writing lodged with the Registrar. A copy of every such notice shall be served on any person who has applied for administration or to whom an order *nisi*, under the provisions of section 39 of this Act, has been granted. 10
- “(4) Nothing in this section shall prevent any person who has lodged a caveat from lodging a subsequent caveat, whether or not any caveat previously lodged has lapsed or been withdrawn.” 15

3. Effect of lapse or withdrawal of caveat—(1) Section 39 of the principal Act is hereby amended by omitting the words “is lodged” where they first appear, and substituting the words “has been lodged, and has neither lapsed nor been withdrawn.” 20

(2) Section 39 of the principal Act is hereby further amended by inserting in paragraph (a), after the words “shall name a time”, the words “and place”. 25

(3) Section 39 of the principal Act is hereby further amended by inserting, after paragraph (b), the following paragraph:

“(bb) If before the day named in the order *nisi* or the day to which the order is enlarged the caveat is withdrawn, the order *nisi* may be made absolute at any time thereafter.” 30

(4) Section 39 of the principal Act is hereby further amended by inserting in paragraph (c), before the words “If on the day”, the words “In any case to which paragraph (bb) of this section does not apply,”. 35

4. Increasing share of surviving husband or wife on intestacy—Section 56 of the principal Act is hereby amended by omitting from paragraph (a) of subsection (1) the words “one thousand pounds”, and substituting the words “six thousand pounds”. 40

5. Partial intestacy—(1) Section 59 of the principal Act is hereby amended by adding the words “and subject to the provisions of subsection (2) of this section”.

5 (2) Section 59 of the principal Act is hereby further amended by adding, as subsections (2), (3), and (4), the following subsections:

10 “(2) Where the deceased leaves a husband or wife who acquires a beneficial interest under the will of the deceased, the references in section 56 of this Act (as amended by section 4 of the Administration Amendment Act 1965) to a sum of six thousand pounds payable to a surviving husband or wife, and to interest on that sum, shall be taken as references to that sum diminished by the value of the said beneficial interest at the date of death, and to interest on that sum as so diminished, and, accordingly, where the said value exceeds 15 that sum, section 56 of this Act shall have effect as if references to that sum and to interest thereon were omitted.

20 “(3) References in the foregoing provisions of this section to a beneficial interest acquired under a will shall be construed—

“(a) As including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment, but not a special power of appointment:

25 “(b) As not including a reference to a beneficial interest in any personal chattels.

30 “(4) For the purposes of the foregoing provisions of this section the administrator may ascertain and fix the value of the said beneficial interest in accordance with section 28 of the Trustee Act 1956.”

6. Commencement of intestacy provisions—Sections 4 and 5 of this Act shall apply to the estates of all persons dying on or after the date of the passing of this Act, but shall not apply to the estates of persons dying before that date.