

## WILLS AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Wills Act 1837 for the purposes of the law of New Zealand.

*Clause 1* relates to the Short Title to the Bill.

*Clause 2* gives effect to a recommendation of the Property Law and Equity Reform Committee. It defines the circumstances in which an absolute decree or order or a legislative enactment for the divorce of a person, or for the dissolution or nullity of marriage of the person, nullifies a gift by will to the other partner to the former or purported marriage of the person, or the appointment of that other partner as an executor of the will of the person.

*Clause 3* follows section 1 of the Wills Act 1968 (U.K.), which was designed to remedy a situation such as that disclosed in the decision *In the Estate of Brauda (deceased)* [1968] 2 All E.R. 217. The clause provides that, for the purposes of section 15 of the principal Act (which relates to the avoidance of gifts to attesting witnesses and their spouses), the attestation of a will by a person to whom or to whose spouse there is given or made any such disposition as is described in that section shall be disregarded if the will is duly executed without his attestation and without that of any other such person. The clause applies to the will of any person dying after the Bill receives the Governor-General's assent, whether the will was executed before or after the Bill receives that assent.

*Clause 4* is consequential on section 2 (1) of the Wills Amendment Act 1969, which provides that every minor after his or her marriage or after attaining the age of 18 years shall be competent to make a valid will or to revoke a will. References remain in section 7 of the Wills Amendment Act 1955 to the previous age of testamentary capacity, namely 21 years. The clause corrects these references.

*Hon. Mr Thomson*

## WILLS AMENDMENT

### ANALYSIS

Title	3. Restriction on operation of section 15 of principal Act
1. Short Title	4. Modification of principal Act in re- lation to wills of privileged
2. Effect of divorce, etc., on wills	persons

### A BILL INTITULED

#### An Act to amend the law relating to wills

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

1. **Short Title**—This Act may be cited as the Wills Amend-  
ment Act 1977, and shall, for the purposes of the law of New  
Zealand, be read together with and deemed part of the Wills  
Act 1837\* of the United Kingdom Parliament (hereinafter  
10 referred to as the principal Act).

2. **Effect of divorce, etc., on wills**—(1) Where at the death  
of any person there is in force any absolute decree or order or  
any legislative enactment for the divorce of the person, or for  
the dissolution or nullity of the marriage of the person, and  
15 that decree or order or legislative enactment would be recog-  
nised by the Courts of New Zealand, subject to the following  
subsections of this section,—

\*Reprinted 1968, Vol. 4, p. 3377  
Amendment: 1969, No. 40

- (a) So far as it concerns the other partner to the former or purported marriage of that person and the executor or administrator of that other partner, the following shall be null and void:
- (i) Any beneficial devise, legacy, estate, gift, or appointment of or affecting any real or personal property given or made by the will of that person: 5
  - (ii) Any direction, charge, trust, or provision in the will of that person for the payment of any debt that is charged by way of mortgage on any real or personal property that belongs to that other partner or that devolved by survivorship on that other partner: 10
  - (iii) Any direction, charge, trust, or provision in the will of that person relieving that other partner from liability for the payment of death duty on any part of the dutiable estate of that person that consists of any real or personal property that belongs to that other partner or that devolved by survivorship on that other partner; and 15
- (b) The appointment of that other partner as executor or trustee or advisory trustee of the will of that person shall be null and void; and 20
- (c) The will shall be read and take effect so far as concerns the real and personal property affected by any such devise, legacy, estate, gift, appointment, direction, charge, trust, or provision as if that other partner had died immediately before the person making the will. 25
- (2) Subsection (1) of this section shall not apply to— 30
- (a) Any direction, charge, trust, or provision in the will of any person for the payment of any amount in respect of any debt or liability, including any liability under a promise within the meaning of the Law Reform (Testamentary Promises) Act 1949, of the maker of the will to the other partner to the former or purported marriage of that person or to the executor or administrator of that other partner: 35
  - (b) Any beneficial devise, legacy, estate, gift, appointment, direction, charge, trust, or provision in the will of any person expressed to take effect notwithstanding this section, or notwithstanding (as the case may be) the making of any decree, order, or legislative enactment for the divorce of the person, or for the dissolution or nullity of the marriage of the person: 40 45

(c) Any beneficial devise, legacy, estate, gift, appointment, direction, charge, trust, or provision in the will of any person, if the will is made after the making of any absolute decree or order or any legislative enactment for the divorce, or for the dissolution or nullity of the marriage of that person.

(3) For the purposes of paragraph (c) of subsection (2) of this section, a will that is re-executed or confirmed or revived by any codicil shall be deemed to have been made at the time when it was first made, and not at the time when it was re-executed or confirmed or revived.

(4) This section shall apply in relation to every will, whether made before or after the commencement of this Act, if the maker of the will dies after the commencement of this Act but not otherwise.

**3. Restriction on operation of section 15 of principal Act—**

(1) For the purposes of section 15 of the principal Act (which relates to the avoidance of gifts to attesting witnesses and their spouses), the attestation of a will by a person to whom or to whose spouse there is given or made any such disposition as is described in that section shall be disregarded if the will is duly executed without his attestation and without that of any other such person.

(2) This section applies to the will of any person dying after the commencement of this Act, whether the will was executed before or after the commencement of this Act.

Cf. Wills Act 1968, s. 1 (U.K.)

**4. Modification of principal Act in relation to wills of privileged persons—**(1) Section 7 of the Wills Amendment Act 1955 is hereby amended by omitting from subsection (2) and also from subsection (3) the expression “twenty-one years”, and substituting in each case the expression “18 years”.

(2) This section shall apply in relation to any burning, tearing, or other destruction of a will if it takes place after the commencement of this Act, but not otherwise.