

Wills Amendment Act 1955

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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, as follows:

1 Short Title

This Act may be cited as the Wills Amendment Act 1955.

2 Act to be read with the Wills Act 1837 (UK)

- (1) This Act, and the Wills Act Amendment Act 1852 of the United Kingdom Parliament so far as it has effect as part of the law of New Zealand in accordance with the Imperial Laws Application Act 1988, 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 referred to as the principal Act).
- (2) It is hereby declared that the provisions of the Acts Interpretation Act 1924, so far as they are applicable and with the necessary modifications, shall apply with respect to the said Acts of the United Kingdom Parliament, so far as they have effect as part of the law of New Zealand, as if the said Acts were Acts of the Parliament of New Zealand.

Part 1

Wills of servicemen and sailors

3 Interpretation

In this Part of this Act, unless the context otherwise requires,—
Allied armed force includes any armed force which is co-operating with any part of the New Zealand armed forces, and

any armed force for which the Government of New Zealand has agreed to raise or supply members

Commonwealth means the British Commonwealth of Nations; and includes every territory for whose international relations any country of the Commonwealth is responsible

Emergency force means any part of the New Zealand armed forces which is for the time being an emergency force in accordance with section 8 of this Act

Enemy means an enemy within the meaning of the Defence Act 1990

Enemy: The Defence Act 1990, being the corresponding enactment in force, has been substituted for the repealed Defence Act 1971 and the New Zealand Army Act 1950.

Formal revocation, in relation to any will, means a revocation thereof made by a formal will or by some writing declaring an intention to revoke the same and executed in accordance with section 9 of the principal Act

Formal will means a will made in accordance with section 9 of the principal Act

Informal will means a will which is expressed in any form of words whether written or spoken and which is not made in accordance with section 9 of the principal Act

New Zealand armed forces means the New Zealand Navy, the New Zealand Army, and the Royal New Zealand Air Force; and includes all persons for the time being subject to the law established by the Armed Forces Discipline Act 1971

New Zealand armed forces: The definition of this term was substituted, as from 1 December 1983, for the original definition by section 208(1) of the Armed Forces Discipline Act 1971

Prisoner of war means a person belonging to the armed forces of a belligerent, or a mariner or seaman of a ship of a belligerent, who has been captured by the enemy of that belligerent in the course of operations of war on land or sea or in the air and is in consequence for the time being held captive by that enemy; and includes a person belonging to the armed forces of a belligerent who is for the time being interned in another country because he belongs to those forces

Privileged person means a person who is declared by section 4 of this Act to be a privileged person.

Naval Discipline Act: A definition of this term was repealed, as from 1 December 1983, by section 208(1) of the Armed Forces Discipline Act 1971. *See* SR 1983/232.

4 Persons who are privileged under this Part of this Act in respect of making wills

Without restricting the powers conferred by the principal Act or any other enactment, it is hereby declared that every person, whether male or female, shall be a privileged person for the purposes of this Part of this Act at any material date, if at that date,—

- (a) New Zealand is engaged in any war and the person is outside New Zealand as a member of the New Zealand armed forces or of any Commonwealth or Allied armed forces which was raised or partly raised in New Zealand; or
- (b) The person is—
 - (i) A member of any emergency force; or
 - (ii) A member of any part of the New Zealand armed forces, or of any Commonwealth or Allied armed force, who is serving in operations against an enemy; or
 - (iii) A member of any armed force who is in actual military service or who is so circumstanced that if he were a soldier he would be in actual military service; or
 - (iv) A mariner or seaman who is at sea; or
 - (v) A prisoner of war who was a privileged person immediately before his capture or internment.

Compare: Wills Act 1837, s 11 (UK); 1916 No 13 s 34; SR 1939/276, reg 6, SR 1952/184, reg 4

5 Privileged persons may make informal wills

- (1) Subject to the provisions of this Part of this Act, any privileged person may make an informal will.
- (2) Without limiting the general power conferred by subsection (1) of this section, it is hereby declared that, subject to the provisions of this Part of this Act, any privileged person may, by an informal will,—

- (a) Dispose of the whole or any part of his real and personal estate which devolves in accordance with the law of New Zealand:
 - (b) Exercise any power of appointment that may in accordance with the law of New Zealand be lawfully exercised by a formal will:
 - (c) Revoke wholly or in part any previous formal or informal will:
 - (d) Appoint any person as guardian of his infant children:
 - (e) Make any other provision whatsoever which may lawfully be made by a formal will.
- (3) It is hereby declared that any privileged person may revoke any previous formal or informal will by any words whether written or spoken declaring an intention to revoke the same.
- (4) Subject to the provisions of this Part of this Act, all the provisions of the principal Act which have effect as part of the law of New Zealand (except section 9), and all the provisions of any other enactment relating to wills which has effect as part of the law of New Zealand, shall apply to informal wills.
- (5) Section 111 of the Maori Affairs Act 1953 shall not apply to any formal or informal will made under this Part of this Act by a privileged person who is a Maori, but nothing in this Part of this Act shall restrict the operation of section 114 of that Act.
- (6) Notwithstanding anything to the contrary in any other enactment, an informal will may be proved upon such evidence as the Court may consider sufficient.

Compare: 1916 No 13 s 34(1); SR 1939/276, regs 8, 9

In subsection (5), sections 111 and 114 of the Maori Affairs Act 1953 were repealed by section 88(1) of the Maori Affairs Amendment Act 1967.

As to the power of the Maori Trustee to elect to administer small estates without grant of administration of an informal will, see section 12A(7) of the Maori Trustee Act 1953.

6 Wills of minors who are or are about to become privileged persons and revocations thereof

Notwithstanding anything to the contrary in section 2 of the Wills Amendment Act 1969,—

- (a) An informal will made by a privileged person who is under the age of 18 years shall be as valid as it would have been if the testator had been over that age:
- (b) A formal will made by a testator who is under the age of 18 years shall be as valid as it would have been if the testator had been over that age, if at the date of the making of the will the testator—
 - (i) Is a privileged person; or
 - (ii) Has received orders to train for or join any emergency force; or
 - (iii) Has received orders to train for or join any part of the New Zealand armed forces, or of any Commonwealth or Allied armed force which was raised or partly raised in New Zealand, for service outside New Zealand in connection with any war in which New Zealand is engaged; or
 - (iv) Has received orders to train for or join any part of the New Zealand armed forces, or of any Commonwealth or Allied armed force, for service in operations against an enemy; or
 - (v) Has received orders to join any ship as a mariner or seaman; or
 - (vi) Is a member of the New Zealand Army or the Royal New Zealand Air Force and is deemed, under the Defence Act 1990 to be on active service; or
 - (vii) Is a member of the Regular Field Force of the New Zealand Army:
- (c) A formal revocation of a will which depends for its validity on this Part of this Act, or a burning, tearing, or other destruction of any such will by or by direction and in the presence of the testator with the intention of revoking the same, shall, notwithstanding that the formal revocation, burning, tearing, or other destruction is made or occurs, or the direction is given, while the testator is under the age of 18 years, be as effective as a revocation of the will as it would have been if the testator had been over that age.

Compare: 1918 No 10 s 23; SR 1939/276, reg 3; SR 1952/184, reg 3

In the third line the words “2 of the Wills Amendment Act 1969” were substituted for the words “seven of the principal Act” by section 3(1)(a) of the Wills Amendment Act 1969. See section 5 of that Act.

In paras (a), (b), and (c) the words “18 years”, wherever they occur, were substituted for the words “twenty-one years” by section 3(1)(b) of the Wills Amendment Act 1969. See section 5 of that Act.

In paragraph (b), the word “or” was added to subpara (v), and subparas (vi) and (vii) were added, by section 2 of the Wills Amendment Act 1962.

In paragraph (b)(vi) the Defence Act 1971, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed New Zealand Army Act 1950 and the repealed Royal New Zealand Air Force Act 1950.

6A Evidence of privilege, etc

- (1) A certificate in connection with any fact which has to be proved to establish that at any material date any person was a privileged person, or was entitled under paragraph (b) of section 6 of this Act to make a formal will while under the age of 18 years shall, in the absence of proof to the contrary, be sufficient evidence of the matters stated in the certificate regarding that fact, if the certificate is given,—
- (a) In the case of any person who at the material date was a member of the New Zealand Naval Forces, by an officer of those forces:
 - (b) In the case of any person who at the material date was a member of the New Zealand Army, by an officer of that Army:
 - (c) In the case of any person who at the material date was a member of the Royal New Zealand Air Force, by an officer of that Air Force:
 - (d) In the case of any person who at the material date was a mariner or seaman on any ship or had received orders to join any ship as a mariner or seaman, by an officer on that ship.
- (2) Notice shall be taken judicially without further proof of the appointment and signature of any such officer.

This section was inserted by section 3 of the Wills Amendment Act 1962.

In subsection (1) the words “18 years” were substituted for the words “twenty one years” by section 3(1)(b) of the Wills Amendment Act 1969. See section 5 of that Act.

In subsection (1)(a) the words “New Zealand Naval Forces” and “those forces” were substituted for the words “Royal New Zealand Navy” and “that Navy” by

section 89(1) of the Defence Act 1971 which came into force on 1 April 1972. See SR 1972/70.

7 Modifications of principal Act in relation to wills of privileged persons

- (1) Nothing in section 15 of the principal Act shall cause to be null and void any devise, legacy, estate, interest, gift, or appointment to any person who attests the execution of any will or to the wife, husband, civil union partner, or de facto partner of any such person, if at the date of the execution of the will the testator was a privileged person.
- (2) Notwithstanding anything to the contrary in section 20 of the principal Act, where any testator who is a privileged person, whether or not he has attained the age of 18 years, directs or authorises (either in writing or orally) any other person to burn or tear or otherwise destroy any will of the testator with the intention of revoking the same, any burning, tearing, or other destruction effected pursuant to the direction or authority shall (notwithstanding that it does not take place in the testator's presence) be as effective to revoke the will as it would have been if it had taken place in his presence.
- (3) Nothing in section 21 of the principal Act shall require any obliteration, interlineation, or alteration made in any formal or informal will to be executed in accordance with section 9 of the principal Act if the obliteration, interlineation, or alteration was made—
 - (a) By the testator or by some person in his presence and by his direction; and
 - (b) While the testator was a privileged person, whether or not he had attained the age of 18 years.

Subsection (1) was amended, as from 26 April 2005, by section 5 Wills Amendment Act 2005 (2005 No 25) by substituting the words “wife, husband, civil union partner, or de facto partner” for the words “wife or husband”. See section 8 of that Act as to the savings provision.

In subsections (2) and (3) the words “18 years” were substituted, as from 1 July 1978, for the words “21 years” by section 4(1) of the Wills Amendment Act 1977. See section 4(2) of that Act.

8 Declaration of emergency force

The Minister of Defence may, by notice in the *Gazette*, declare that, from any date specified in the notice (whether the date is before or after the date of the commencement of this Act or before or after the date of the notice) any part of the New Zealand armed forces shall be, or shall cease to be, an emergency force for the purposes of this Part of this Act.

Compare: SR 1952/184, reg 2

9 Will by oral declaration to become void unless testator dies within 12 months

(1) Where any testator who dies after the commencement of this Act has (whether before or after the commencement of this Act) made a valid informal will which has not been validly revoked and which was not either expressed in writing and signed by the testator, or wholly written by the testator, at a time when he could make a valid informal will, the will shall not have any force or effect unless,—

(a) In a case where the testator was a prisoner of war when he made the will or became a prisoner of war within 12 months after he had made the will, the testator dies while he is a prisoner of war or within 12 months after he ceased to be a prisoner of war:

(b) In any other case, the testator dies within 12 months after he made the will.

(2) In this section the term **will** includes any words declaring an intention to revoke a will.

Compare: 1916 No 13 s 34(2)

10 Special provisions in respect of wills of seamen and naval ratings

(1) Nothing in this Part of this Act shall affect the provisions of section 110 of the Shipping and Seamen Act 1952.

(2) The Minister of Defence, after considering a report from the Secretary of Defence, may issue a certificate in respect of any informal will made either before or after the commencement of this Act by any rating of the New Zealand Naval Forces (whether for the time being employed therein or transferred for employment with any Commonwealth or Allied armed force)

declaring that, unless the High Court (on application in solemn form made within 3 months after the date of the issue of the certificate) grants probate of the will, the will shall be invalid in respect of all money and effects of the rating on board his ship or in his personal custody, and of all wages, allowances, and other money due to him from the Crown in respect of his service in the Naval Forces; and where the Minister of Defence issues such a certificate in respect of any will and probate of the will is not thereafter granted on an application in solemn form made within 3 months after the date of the issue of the certificate, the will shall not have any force or effect to pass any such money, effects, wages, or allowances:

Provided that no such certificate shall be issued in respect of any will unless the Minister of Defence is satisfied that the validity of the will in respect of the said assets is to be determined according to the law of New Zealand.

Compare: Navy and Marines (Wills) Act 1865, ss 5, 6 (UK); Navy and Marines (Wills) Act 1939, s 1 (UK)

In subsection (2), the words “Secretary of Defence” were substituted for the words “Naval Board of the New Zealand Defence Council” (as substituted by section 26(2) of the Defence Act 1964), the words in the third set of square brackets were substituted for the words “any Naval Authority” by section 89(1) of the Defence Act 1971 which came into force on 1 April 1972 (see SR 1972/70), and the reference to the High Court was substituted for a reference to the Supreme Court by section 12 of the Judicature Amendment Act 1979.

11 Repeals, revocations, and savings

- (1)
- (2) For the avoidance of doubt it is hereby declared that the following enactments of the United Kingdom Parliament shall not have effect as part of the law of New Zealand:
 - (a) The Navy and Marines (Wills) Acts 1865 to 1939:
 - (b) Section 12 of the principal Act and the enactments therein mentioned.
- (3) The War Legislation Amendment Act 1916 and section 23 of the War Legislation and Statute Law Amendment Act 1918 are hereby repealed.
- (4) The Soldiers’ Wills Emergency Regulations 1939 and the Soldiers’ Wills Emergency Regulations 1939, Amendment No 2, are hereby revoked.

- (5) Except as provided in section 9 of this Act, all wills which were made before the commencement of this Act shall, so far as they are subsisting or in force immediately before the commencement of this Act, enure thereafter as fully and effectually as they would if this Part of this Act had not been passed:
Provided that this Part of this Act shall apply, and the enactments mentioned in subsections (1) to (4) of this section shall not apply, to any amendment or revocation of any such will if the amendment or revocation is made after the commencement of this Act.
- (6) The Kayforce Wills Notice 1953 shall continue and have effect as if it had been given under section 8 of this Act.

Part 2

Miscellaneous

12

Section 12 was repealed, as from 1 January 1970, by section 3(1)(c) Wills Amendment Act 1969 (1969 No 40).

13 **Wills in contemplation of marriage**

- (1) Notwithstanding anything in section 18 of the principal Act or any other enactment or rule of law, a will expressed to be made in contemplation of a marriage shall not be revoked by the solemnisation of the marriage contemplated.
- (2) This section applies only to wills made on or after the 5th day of December 1944 (being the date of the passing of the Law Reform Act 1944).
- (3) Section 39 of the Property Law Act 1952 is hereby consequentially repealed.

Compare: 1952 No 51 s 39

14 **Law which determines validity of will of movable property**

- (1) Every will and other testamentary instrument made out of New Zealand by any person (whatever may be his domicile at the time of making the same or at the time of his death) shall, as regards movable property, be held to be well executed for the purpose of being admitted in New Zealand to probate if made as required by—

- (a) The law of the place where the person was domiciled at the time of his death; or
 - (b) The law of the place where the same was made; or
 - (c) The law of the place where the person was domiciled when the same was made; or
 - (d) The law in force when the same was made in the place where the person had his domicile of origin.
- (2) Every will and other testamentary instrument made within New Zealand by any person (whatever may be his domicile at the time of making the same or at the time of his death) shall, as regards movable property, be held to be well executed for the purpose of being admitted in New Zealand to probate if made as required by—
 - (a) The law of the place where the person was domiciled at the time of his death; or
 - (b) The law of New Zealand; or
 - (c) The law of the place where the person was domiciled when the same was made.
- (3) No will or other testamentary instrument of any person shall, so far as it relates to movable property in New Zealand, be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason only of any subsequent change of domicile of the person making the same.
- (4) In this section—

Land means land in New Zealand; and includes any estate or interest in land in New Zealand

Movable property includes a mortgage of land, a rentcharge or annuity or legacy charged on land, and any interest in the proceeds of sale of land contracted to be sold or held upon trust for sale; but does not include a leasehold estate or interest in land.
- (5) This section shall apply to all wills made on or after the date of the commencement of this Act. The validity of all other wills shall be determined as if this section had not been passed.
- (6) Section 40 of the Administration Act 1952 is hereby consequentially repealed.

Compare: 1952 No 56 s 40

15 Declaration that certain spent provisions of principal Act shall cease to have effect as part of law of New Zealand

It is hereby declared that sections 2, 4, 5, 8, 32, and 36 of the principal Act shall cease to have effect as part of the law of New Zealand.

The words in square brackets were substituted for the words “and 32” by section 2 of the Wills Amendment Act 1958.

16 Statutory substitutional gift

- (1) Unless a contrary intention appears by the will, where any person is a child or other issue of the testator to whom (whether as a named or designated person or as a member of a class) any property is devised or bequeathed or appointed in terms that would enable that person to take the property for any estate or interest not determinable at or before the death of that person if that person survived the testator, and that person dies in the lifetime of the testator (whether before or after the testator makes the will) leaving any child or children living at the time of the death of the testator, the devise or bequest or appointment shall take effect as if the will had contained a substitutional gift devising or bequeathing or appointing the property to such of the children of that person as are living at the time of the testator’s death and if more than one in equal shares.
- (2) Without restricting the manner in which a testator may show an intention to negative the operation of subsection (1) of this section, it is hereby declared that that subsection shall not apply—
 - (a) To a devise or bequest or appointment to any person which is in any way expressed to be conditional on the person being alive at or after the time of the death of the testator or any time or event which in the events that happen is subsequent to the time of the death of the testator; or
 - (b) Where any devise or bequest or appointment is in any way expressed to be conditional on the fulfilment of any other contingency and that contingency has not been fulfilled before the time of the testator’s death.
- (3) Subsection (1) of this section shall not apply to—

- (a) Any specific bequest or specific appointment of any personal chattels:
- (b) Any devise or bequest or appointment to any person as one of 2 or more joint tenants.

(4) In this section—

Appointment means an appointment made by will in exercise of a general power of appointment; and also means an appointment made by will in exercise of a special power of appointment if every child in whose favour this section would operate is an object of the power; and the terms **appointed** and **appointing** have corresponding meanings

Child,—

- (a) In relation to a testator, means any child of the testator:
- (b) In relation to any person to whom any property is devised or bequeathed or appointed as aforesaid, means a child of that person:

In subsection (4) the definition of the term child was substituted for the original definition by section 12(2) of the Status of Children Act 1969, and in the definition of the term “issue” the words “(whether legitimate or illegitimate in any generation)” were omitted by that section of that Act.

Issue, in relation to a testator, means any issue of the testator

In subsection (4) the definition of the term child was substituted for the original definition by section 12(2) of the Status of Children Act 1969, and in the definition of the term issue the words “(whether legitimate or illegitimate in any generation)” were omitted by that section of that Act.

Personal chattels means personal chattels within the meaning of the Administration Act 1969

In subsection (4), in the definition of the term personal chattels, the Administration Act 1969, being the corresponding enactment in force, has been substituted for the repealed Administration Act 1952.

Property includes any real and personal property, and any estate or interest in any property, and any debt, and any thing in action, and any other right or interest.

(5)

(6) This section shall not apply to any will made before the 1st day of January 1959.

(7) For the purposes of the law of New Zealand, section 33 of the principal Act shall not apply to any will made on or after the 1st day of January 1959.

- (8) For the purposes of this section every will which 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.

This section was added by section 3 of the Wills Amendment Act 1958.

In subsection (3) the words “Subsection (1)” of were inserted by section 2 of the Wills Amendment Act 1960.

See section 3(1)(g) of the Simultaneous Deaths Act 1958.

Subsection (5) was repealed, as from 1 January 1970, by section 12(2) Status of Children Act 1969 (1969 No 18).