

New Zealand



ANALYSIS

Title.

1. Short Title. Commencement.

Application of Act.

2. Interpretation.

3. Application to Crown.

4. Power of sale on intestacy.

5. Abolition of escheat.

6. Succession to real and personal estate on intestacy.

7. Statutory trusts in favour of issue and other classes of relatives of intestate.

8. Right of illegitimate child and mother of illegitimate child to succeed on intestacy.

9. Application to cases of partial intestacy.

10. Construction of documents.

11. Application of Part II of Family Protection Act, 1908.

12. Repeals.

1944, No. 19

Title.

AN ACT to amend the Administration Act, 1908.

[5th December, 1944

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

Short Title.

1. (1) This Act may be cited as the Administration Amendment Act, 1944, and shall be read together with and deemed part of the Administration Act, 1908 (hereinafter referred to as the principal Act).

See Reprint of Statutes, Vol. III, p. 128

Commencement.

(2) This Act shall come into force on the first day of January, nineteen hundred and forty-five.

Application of Act.

(3) This Act does not apply in any case where the death occurred before the commencement of this Act.

2. For the purposes of the principal Act, unless the context otherwise requires,—

“ Intestate ” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate:

“ Legitimated person ” means a person deemed to be legitimated under the Legitimation Act, 1939:

“ Personal chattels ” means carriages, horses, stable furniture and effects, motor-cars and accessories, garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors, and consumable stores; but does not include any chattels used exclusively or principally at the death of the intestate for business purposes nor money or securities for money:

“ Securities ” includes stocks, funds, or shares:

“ Will ” includes codicil:

References to a child or issue living at the death of any person include a child or issue *en ventre sa mere* at the death.

3. The principal Act shall bind the Crown.

Application
to Crown.

4. (1) On the death of a person intestate as to any real or personal estate, his administrator shall have power to sell the real estate and to call in, sell, and convert into money such part of the personal estate as may not consist of money, with power to postpone such sale and conversion for such a period as the administrator, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the administrator sees special reason for sale, and so also that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold except for special reason.

Power of sale on
intestacy.

(2) This section shall have effect notwithstanding that the administrator has ceased to hold the real or personal estate as administrator and holds it as trustee.

(3) Where the deceased leaves a will this section shall have effect subject to the provisions contained in the will.

5. Escheat to the Crown for want of heirs or successors shall be abolished.

Abolition
of escheat.
Cf. 15 Geo. V,
c. 23, s. 45
(1) (*d*) (Imp.)

6. (1) Where any person dies intestate as to any real or personal estate, such estate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:—

Succession to
real and
personal estate
on intestacy.
Ibid., s. 46
(Imp.)

(a) If the intestate leaves a husband or wife, the surviving husband or wife shall take the personal chattels absolutely, and, in addition, the residue of the estate shall stand charged with the payment of a sum of one thousand pounds to the surviving husband or wife with interest thereon from the date of the death at the rate of four per centum per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residue of the estate shall be held,—

(i) If the intestate leaves issue, in trust as to one-third for the surviving husband or wife absolutely, and as to the other two-thirds on the statutory trusts for the issue of the intestate:

(ii) If the intestate leaves no issue, in trust as to two-thirds for the surviving husband or wife absolutely, and as to the other one-third, if the intestate leaves both parents, in trust for the father and mother in equal shares absolutely or, if the intestate leaves only one parent, in trust for the surviving father or mother absolutely:

(iii) If the intestate leaves no issue or parent, in trust for the surviving husband or wife absolutely:

(b) If the intestate leaves issue but no husband or wife, the estate shall be held on the statutory trusts for the issue of the intestate:

- (c) If the intestate leaves no husband or wife or issue but both parents, the estate shall be held in trust for the father and mother in equal shares absolutely:
- (d) If the intestate leaves no husband or wife or issue but one parent, the estate shall be held in trust for the surviving father or mother absolutely:
- (e) If the intestate leaves no husband or wife or issue or parent, the estate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely—

Firstly, on the statutory trusts for the brothers and sisters (whether of full or of half blood) of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Secondly, in trust for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Thirdly, on the statutory trusts for the uncles and aunts of the intestate, being brothers and sisters (whether of full or of half blood) of a parent of the intestate:

- (f) In default of any person taking an absolute interest under the foregoing provisions, the estate shall belong to the Crown as *bona vacantia*, and in lieu of any right to escheat. The Crown may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(2) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.

Statutory trusts in favour of issue and other classes of relatives of intestate.
Cf. 15 Geo. V, c. 23, s. 47 (Imp.)

7. (1) Where under this Act the estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely:—

(a) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years or marry under that age of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking:

(b) The statutory power of advancement, and the statutory provisions which relate to maintenance and accumulation of surplus income, shall apply, but when an infant marries such infant shall be entitled to give valid receipts for the income of the infant's share or interest:

(c) The administrator may permit any infant contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the administrator may consider reasonable, and without being liable to account for any consequential loss.

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest—

(a) The estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve,

and be held under the provisions of this Act as if the intestate had died without leaving issue living at the death of the intestate:

(b) References in this Act to the intestate "leaving no issue" shall be construed as "leaving no issue who attain an absolutely vested interest":

(c) References in this Act to the intestate "leaving issue" or "leaving a child or other issue" shall be construed as "leaving issue who attain an absolutely vested interest".

(3) Where under this Act the estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of the relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate as if such trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

8. For the purposes of the foregoing provisions of this Act the relationship of a mother to her illegitimate child and of an illegitimate child to its mother shall be deemed to be a legitimate relationship, whether or not the child is a legitimated person:

Right of illegitimate child and mother of illegitimate child to succeed on intestacy.

Provided that this section shall not apply in any case where the child has been adopted, whether in New Zealand or elsewhere.

9. Where any person dies leaving a will effectively disposing of part of his estate, the provisions of this Act shall have effect in respect of the part of his estate not so disposed of subject to the provisions contained in the will.

Application to cases of partial intestacy.
Cf. 15 Geo. V, c. 23, s. 49 (Imp.)

10. (1) References to any Statutes of Distribution in an instrument *inter vivos* made, or in a will coming into operation, after the commencement of this Act, shall be construed as references to this Act; and references in such an instrument or will to statutory next-of-kin shall be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Act.

Construction of documents.
Ibid., s. 50 (Imp.)

(2) Trusts declared in an instrument *inter vivos* made, or in a will coming into operation, before the commencement of this Act, by reference to the Statutes of Distribution, or to the statutes relating to the distribution of intestates' estates, shall, unless the contrary thereby appears, be construed as referring to the enactments relating to the distribution of estates of intestates which were in force immediately before the commencement of this Act.

Application
of Part II
of Family
Protection Act,
1908.

1939, No. 39

Repeals.

11. Nothing in this Act shall affect or derogate from the provisions of section twenty-two of the Statutes Amendment Act, 1939.

12. (1) Part III of the principal Act and paragraph (b) of section eleven of the principal Act are hereby repealed, but only so far as they apply to deaths occurring after the commencement of this Act.

(2) The Statute of Distributions, being an Act passed in the twenty-second and twenty-third years of the reign of Charles the Second, chapter ten, and all Imperial Acts heretofore in force in New Zealand modifying or amending the same, shall cease to be in force in New Zealand in respect of deaths occurring after the commencement of this Act.