



## ANALYSIS

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1991, No. 64

**An Act to amend the Law Reform (Testamentary Promises) Act 1949**

[12 July 1991]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Law Reform (Testamentary Promises) Amendment Act 1991, and shall be read together with and deemed part of the Law Reform (Testamentary Promises) Act 1949 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1992.

**2. Interpretation**—The principal Act is hereby amended by repealing section 2, and substituting the following section:

“2. In this Act, unless the context otherwise requires,—

“‘Court’ means a Court having jurisdiction in the proceedings by virtue of section 5 of this Act;

“‘Promise’ includes any statement or representation of fact or intention.”

**3. Courts to have concurrent jurisdiction**—The principal Act is hereby amended by repealing section 5, and substituting the following section:

“5. (1) Subject to the succeeding provisions of this section, the High Court and a Family Court shall each have jurisdiction in respect of proceedings under this Act.

“(2) A Family Court shall not have jurisdiction in respect of any application under this Act if, at the date of the filing of the

application, proceedings relating to the same matter have already been commenced in the High Court.

“(3) If a Family Court Judge is of the opinion that any proceedings under this Act, or any question in any such proceedings, would be more appropriately dealt with in the High Court, the Judge may, upon application by any party to the proceedings or without any such application, refer the proceedings or the question to the High Court.

“(4) The High Court, upon application by any party to any proceedings pending under this Act in a Family Court, shall order that the proceedings be removed into the High Court unless it is satisfied that the proceedings would be more appropriately dealt with in a Family Court. Where the proceedings are so removed, they shall be continued in the High Court as if they had been properly and duly commenced in that Court.”

**4. Right of appeal**—The principal Act is hereby amended by inserting, after section 5 (as substituted by section 3 of this Act), the following section:

“5A. (1) Where a Family Court or a District Court has made or has refused to make an order in any proceedings under this Act, or has otherwise finally determined or has dismissed any proceedings under this Act, a party to the proceedings or any other person prejudicially affected may, within 28 days after the making of the order or decision or within such further time as the Court may allow in accordance with section 73 (1) of the District Courts Act 1947, appeal to the High Court in accordance with the provisions of Part V of that Act (except subsections (1), (3), and (5) of section 71A), and those provisions shall apply with any necessary modifications.

“(2) The Court appealed from may, on the ex parte application of the appellant, order that security under section 73 (2) of the District Courts Act 1947 shall not be required to be given under that section.

“(3) The provisions of the Judicature Act 1908 relating to appeals to the Court of Appeal against decisions of the High Court shall apply with respect to any order or decision of the High Court under this section.

“(4) Subject to the rules governing appeals to Her Majesty in Council against a decision of the Court of Appeal or of the High Court, such an appeal may be made in proceedings under this Act to Her Majesty in Council.

“(5) The High Court or (as the case may be) the Court of Appeal may, in its discretion, rehear the whole or any part of the evidence, or may receive further evidence, if it thinks that the interests of justice so require.”

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This Act is administered in the Department of Justice.

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