

Legislative Council.

No. , 1920.

A BILL

To amend the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and the Wills, Probate and Administration Act, 1898; and for purposes consequent thereon or incidental thereto.

[MR. SPROULE;—13 October, 1920.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Testator's Family Maintenance and Guardianship of Infants (Amendment) Act, 1920," and shall be read and construed with the Testator's Family Maintenance and Guardianship of Infants Act, 1916, hereinafter called the Principal Act.

Short title
and construction.

Amendments of
Principal Act.
Sec. 2. New
definition.

“Child.”

2. The Principal Act is amended as follows:—

(1) by inserting in section two before the definition of “Court” the following new definition:—

“Child” includes—

- (a) a child adopted by a testator; and 5
- (b) an illegitimate child of a testator—
 - (i) who has in his lifetime or by his will acknowledged that he is the father of such child; or
 - (ii) against whom an order for the 10 maintenance and education of such child has been made under the provisions of the Infant Protection Act, 1904, and any Act amending the same; 15

Sec. 2. New
definition.

“Engaged on
war service.”

(2) by inserting in section two after the definition of “Court” the following new definition:—

“Engaged on war service” shall mean—

- (a) engaged on active service in connection with the late war as a member of the 20 military or naval forces of the Crown or of any of His Majesty’s allies; or
- (b) engaged on active service abroad in connection with the late war as a member of the Medical Corps Nursing Service of 25 the military or naval forces of the Crown or of any of His Majesty’s allies; or
- (c) engaged on active service abroad in connection with the late war as a member of the Army Medical Service of the Crown 30 or of any of His Majesty’s allies; or
- (d) engaged on service in any work abroad, in connection with the late war, of the British or Australian Red Cross Society, or the Saint John Ambulance Association, 35 or of any religious or patriotic organisation; or
- (e) being in connection with the late war a prisoner of war in the enemy’s country or being interned in the country of a 40 neutral power; or (f)

- (f) engaged abroad in making munitions, or in any other service in connection with the late war;
- 5 (3) by inserting at the end of section five the following new proviso :—
- 10 “ Provided further that where any applicant has been engaged on war service, his application shall be heard if made within *six* months of his obtaining his discharge or of the termination of such service, or twelve months from the date of the grant or resealing aforesaid, or *three* months from the date of the passing of the Testator's Family Maintenance and Guardianship of Infants (Amendment) Act, 1920, whichever shall last happen, unless such application would already have been barred under the provisions of the first paragraph of this section before he commenced such service”;
- 15 (4) by inserting after section five the following new sections :—
- 20 5A. (1) Every applicant for probate of a will or for letters of administration with the will annexed shall lodge with the Public Trustee—
- 25 (a) an affidavit setting forth the names, ages, and addresses of all children of the testator, him surviving, who are under the age of twenty-one years;
- 30 (b) a copy of such will annexed to such affidavit and certified therein to be a correct copy; and
- (c) a copy of the stamp affidavit so annexed and certified as aforesaid.
- 35 (2) Such applicant shall, before the grant of probate or of letters of administration with the will annexed, lodge with the Registrar of Probates an affidavit of due compliance with the provisions of subsection one.
- 40 (3) Any such applicant who—
- (a) fails to comply with any of the provisions of this section; or
- (b)

Sec. 5. New proviso.

Applications by persons who have been engaged on war service.

Sec. 5. New sections.

Affidavits to be lodged with the Public Trustee and Registrar of Probates.

(b) makes any wilfully false or misleading statement as to any of the matters specified in subsection one—

shall be liable for such failure to a penalty not exceeding *fifty* pounds, and for such false or misleading statement to a penalty not exceeding *one hundred* pounds or to imprisonment for a term not exceeding *six* months or to both penalty and imprisonment. 5

Applications
by Public
Trustee on
behalf of
infant
children.

5B. In any case where the Public Trustee is of opinion that any such child has been left without adequate provision for his proper maintenance, education, or advancement in life, as the case may be, he may on behalf of such child— 10

(a) compromise or compound with the executor; or 15

(b) make application to the court under section three of this Act.

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

W. L. S. COOPER,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 25th November, 1920.*

New South Wales.



ANNO UNDECIMO

GEORGIUS V REGIS.

Act No. , 1920.

An Act to amend the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and the Wills, Probate and Administration Act, 1898; and for purposes consequent thereon or incidental thereto.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Testator's Family Maintenance and Guardianship of Infants (Amendment) Act, 1920," and shall be read and construed with the Testator's Family Maintenance and Guardianship of Infants Act, 1916, hereinafter called the Principal Act.

Short title
and construction.

*Testator's Family Maintenance and Guardianship of
Infants (Amendment).*

2. The Principal Act is amended as follows :—

(1) by inserting in section two after the definition of "Court" the following new definition :—

Amendments of
Principal Act.
Sec. 2. New
definition.

"Engaged on war service" shall mean—

"Engaged on
war service."

- 5 (a) engaged on active service in connection with the late war as a member of the military or naval forces of the Crown or of any of His Majesty's allies ; or
- 10 (b) engaged on active service abroad in connection with the late war as a member of the Medical Corps Nursing Service of the military or naval forces of the Crown or of any of His Majesty's allies ; or
- 15 (c) engaged on active service abroad in connection with the late war as a member of the Army Medical Service of the Crown or of any of His Majesty's allies ; or
- 20 (d) engaged on service in any work abroad, in connection with the late war, of the British or Australian Red Cross Society, or the Saint John Ambulance Association, or of any religious or patriotic organisation ; or
- 25 (e) being in connection with the late war a prisoner of war in the enemy's country or being interned in the country of a neutral power ; or
- (f) engaged abroad in making munitions, or in any other service in connection with the late war ;

30 (2) by inserting at the end of section five the following new proviso :—

Sec. 5. New
proviso.

"Provided further that where any applicant has been engaged on war service, his application shall be heard if made within six months of his obtaining his discharge or of the termination of such service, or twelve months from the date of the grant or resealing aforesaid, or three months from the date of the passing of the Testator's Family Maintenance and Guardianship of Infants (Amendment)

Applications
by persons
who have
been engaged
on war
service.

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Act,

Testator's Family Maintenance and Guardianship of Infants (Amendment).

Act, 1920, whichever shall last happen, unless such application would already have been barred under the provisions of the first paragraph of this section before he commenced such service”;

5 (3) by inserting after section five the following new sections:— Sec. 5. New sections.

10 5A. (1) Every applicant for probate of a will or for letters of administration with the will annexed shall lodge with the Public Trustee— Affidavits to be lodged with the Public Trustee and Registrar of Probates.

(a) an affidavit setting forth to the best of the deponent's knowledge and ability the names, ages, and addresses of all children of the testator, him surviving, who are under the age of twenty-one years;

15 (b) a copy of such will annexed to such affidavit and certified therein to be a correct copy; and

(c) a copy of the stamp affidavit so annexed and certified as aforesaid.

20 (2) Such applicant shall, before the grant of probate or of letters of administration with the will annexed, lodge with the Registrar of Probates an affidavit of due compliance with the provisions of subsection one.

25 (3) Any such applicant who—

(a) fails to comply with any of the provisions of this section; or

30 (b) makes any wilfully false or misleading statement as to any of the matters specified in subsection one—

shall be liable for such failure to a penalty not exceeding fifty pounds, and for such false or misleading statement to a penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding six months or to both penalty and imprisonment.

35 5B. In any case where the Public Trustee is of opinion that any such child has been left without adequate provision for his proper maintenance, Applications by Public Trustee on behalf of infant children.

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*Testator's Family Maintenance and Guardianship of
Infants (Amendment).*

maintenance, education, or advancement in life, as the case may be, he may on behalf of such child—

- 5 (a) compromise or compound with the executor; or
(b) make application to the court under section three of this Act.
- (4) by inserting after section twelve the following short heading and new sections :—

10 *Maintenance of illegitimate children.*

15 12A. If any person dies after the commencement of the Testator's Family Maintenance and Guardianship of Infants (Amendment) Act, 1920, either testate or intestate, or partly testate and partly intestate, and leaving illegitimate children him or her surviving, who are under the age of twenty-one years, the court, if satisfied that such children or any of them are left without adequate provision for their proper maintenance, education, or advancement in life as the case may be, may at its discretion, and taking into account all the circumstances of the case, on application by or on behalf of such children or any of them, order that such provision for such maintenance, education, and advancement as the court thinks fit shall be made out of the estate of such person. Where such person dies partly testate and partly intestate, the court may order that such provision be made out of the testate or the intestate estate or both.

Applications by or on behalf of illegitimate children of testators and intestates.

20 12B. For the purposes of the last preceding section an illegitimate child shall only be deemed to be an illegitimate child of a testator, testatrix, or intestate—

Meaning of illegitimate child.

- 25 (a) against whom an order in respect of such child has been made under the provisions of Part II of the Infant Protection Act, 1904; or

(b)

*Testator's Family Maintenance and Guardianship of
Infants (Amendment).*

(b) who has acknowledged that he is the father or that she is the mother of such child :

5 Provided that an illegitimate child shall not be deemed to have been so acknowledged, unless such acknowledgment is proved to the satisfaction of the court by the writing of the testator, testatrix, or intestate.

10 12c. The provisions of this Act, other than sections 5A and 5B, relating to applications by or on behalf of legitimate children and to orders made thereon shall apply, *mutatis mutandis*, to applications and orders made under the provisions of the last two preceding sections.

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Applications by illegitimate children to be governed, *mutatis mutandis*, by the provisions relating to applications by legitimate children.

Section 1501. (a) The court shall have jurisdiction to determine the proper maintenance, education, and support of the child of the parties to a divorce or annulment, and to make such orders as may be necessary to carry out its duty.

(b) The court shall have jurisdiction to determine the proper maintenance, education, and support of the child of the parties to a divorce or annulment, and to make such orders as may be necessary to carry out its duty.

(c) The court shall have jurisdiction to determine the proper maintenance, education, and support of the child of the parties to a divorce or annulment, and to make such orders as may be necessary to carry out its duty.

(d) The court shall have jurisdiction to determine the proper maintenance, education, and support of the child of the parties to a divorce or annulment, and to make such orders as may be necessary to carry out its duty.

(e) The court shall have jurisdiction to determine the proper maintenance, education, and support of the child of the parties to a divorce or annulment, and to make such orders as may be necessary to carry out its duty.

(f) The court shall have jurisdiction to determine the proper maintenance, education, and support of the child of the parties to a divorce or annulment, and to make such orders as may be necessary to carry out its duty.

(g) The court shall have jurisdiction to determine the proper maintenance, education, and support of the child of the parties to a divorce or annulment, and to make such orders as may be necessary to carry out its duty.

(h) The court shall have jurisdiction to determine the proper maintenance, education, and support of the child of the parties to a divorce or annulment, and to make such orders as may be necessary to carry out its duty.