

CONCURRENCE COPY

TESTATOR'S FAMILY MAINTENANCE AND GUARDIANSHIP OF INFANTS (FAMILY PROVISION) AMENDMENT BILL, 1982

EXPLANATORY NOTE

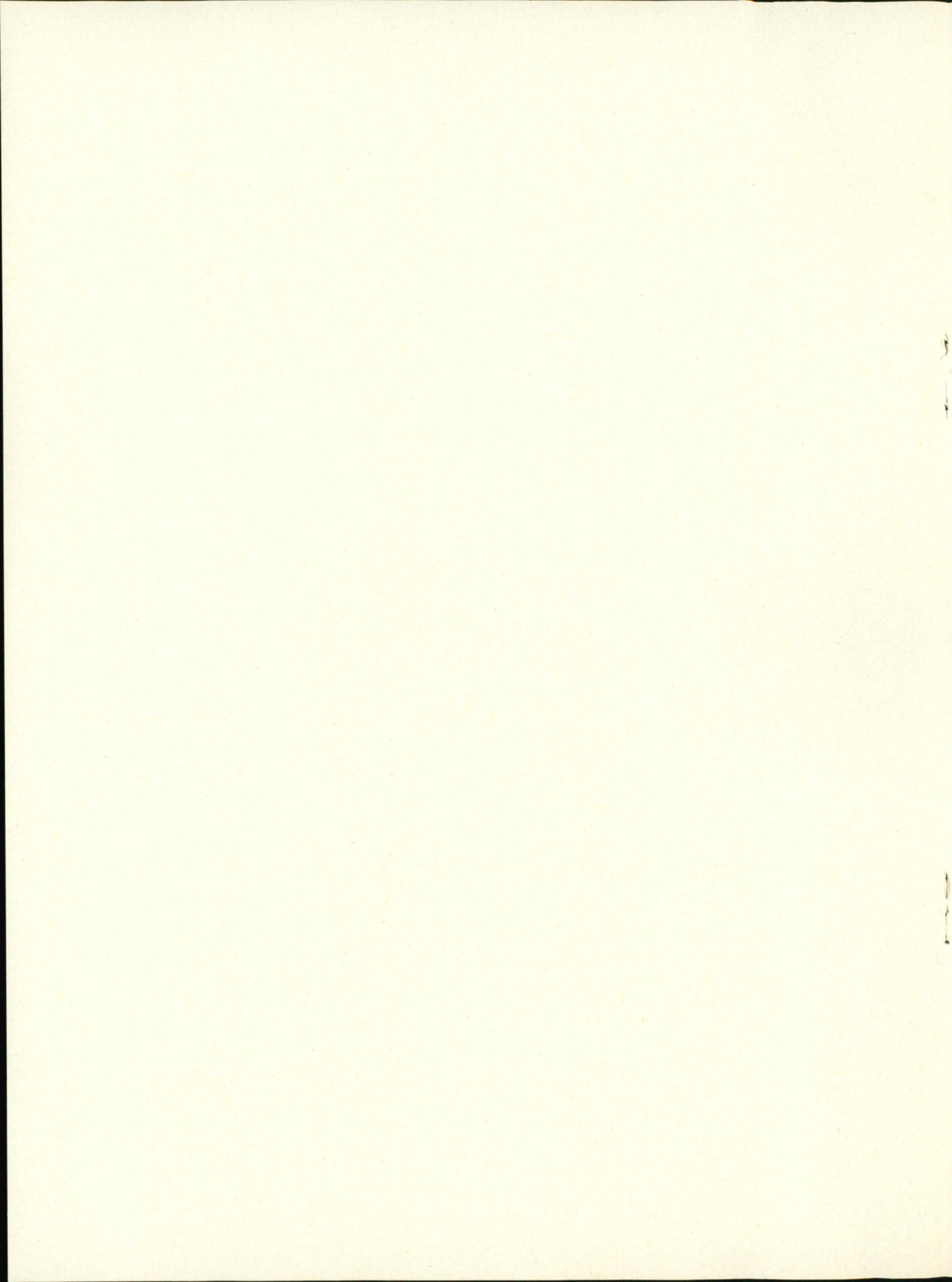
(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Family Provision Bill, 1982.

The object of this Bill is to amend the Testator's Family Maintenance and Guardianship of Infants Act, 1916, so as to—

- (a) limit the application of that Act (Schedule 1 (1));
- (b) provide that an interim order making provision for a spouse or child of a deceased person out of his estate may be made under that Act and to make consequential provision relating to the confirmation, rescission or alteration of an interim order (Schedule 1 (2)); and
- (c) provide that an order may be made under that Act to increase the provision made by a previous order (Schedule 1 (3)),

as a consequence of the enactment of the Family Provision Act, 1982.



**TESTATOR'S FAMILY MAINTENANCE AND GUARDIANSHIP
OF INFANTS (FAMILY PROVISION) AMENDMENT BILL, 1982**

No. , 1982.

A BILL FOR

An Act to amend the Testator's Family Maintenance and Guardianship of Infants Act, 1916, in relation to interim orders and orders to increase provision and to limit the application of that Act consequentially upon the enactment of the Family Provision Act, 1982.

[MR WALKER—23 November, 1982.]

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

BE it enacted by the Queen'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:—

5 Short title.

1. This Act may be cited as the "Testator's Family Maintenance and Guardianship of Infants (Family Provision) Amendment Act, 1982".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

10 (2) Except as provided in subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Family Provision Act, 1982.

Amendment of Act No. 41, 1916.

3. The Testator's Family Maintenance and Guardianship of Infants Act, 15 1916, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE TESTATOR'S FAMILY MAINTENANCE
AND GUARDIANSHIP OF INFANTS ACT, 1916.

20 (1) Section 1A—

After section 1, insert:—

Application of Act.

1A. This Act does not apply in respect of the estate of any deceased person in relation to whom the Family Provision Act, 1982, applies.

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

SCHEDULE 1—*continued.*AMENDMENTS TO THE TESTATOR'S FAMILY MAINTENANCE AND
GUARDIANSHIP OF INFANTS ACT, 1916—*continued.*

(2) Section 3 (4), (5), (6)—

5 After section 3 (3), insert:—

(4) On an application made under this section, the court may make an interim order in favour of a person before it has fully considered the application where it is of the opinion that no less provision than that proposed to be made by the interim order would be made in favour of the person after full consideration of the application.

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(5) Where, on an application made under this section, the court has made an interim order as referred to in subsection (4), it shall, in due course, proceed to make a final determination of the application, which determination shall confirm, rescind or alter the order so made.

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(6) Where an interim order making provision is rescinded or altered pursuant to subsection (5), the court may rescind or alter any other orders made by it as a consequence of, or in relation to, the interim order to such extent as may be necessary as a result of the rescission or alteration and make such other orders (other than an order making provision) as may be so necessary.

20

(3) Section 6A—

After section 6, insert:—

25 **Increase in provision.**

6A. (1) Notwithstanding any other provision of this Act, on an application made by or on behalf of a person in whose favour provision out of the estate of a deceased person has been made by an order under this Act, if the court is satisfied that there has been, since the date of the order, a substantial detrimental change in the circumstances of the person, it may make a further order under section 3 making additional provision in favour of the person.

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

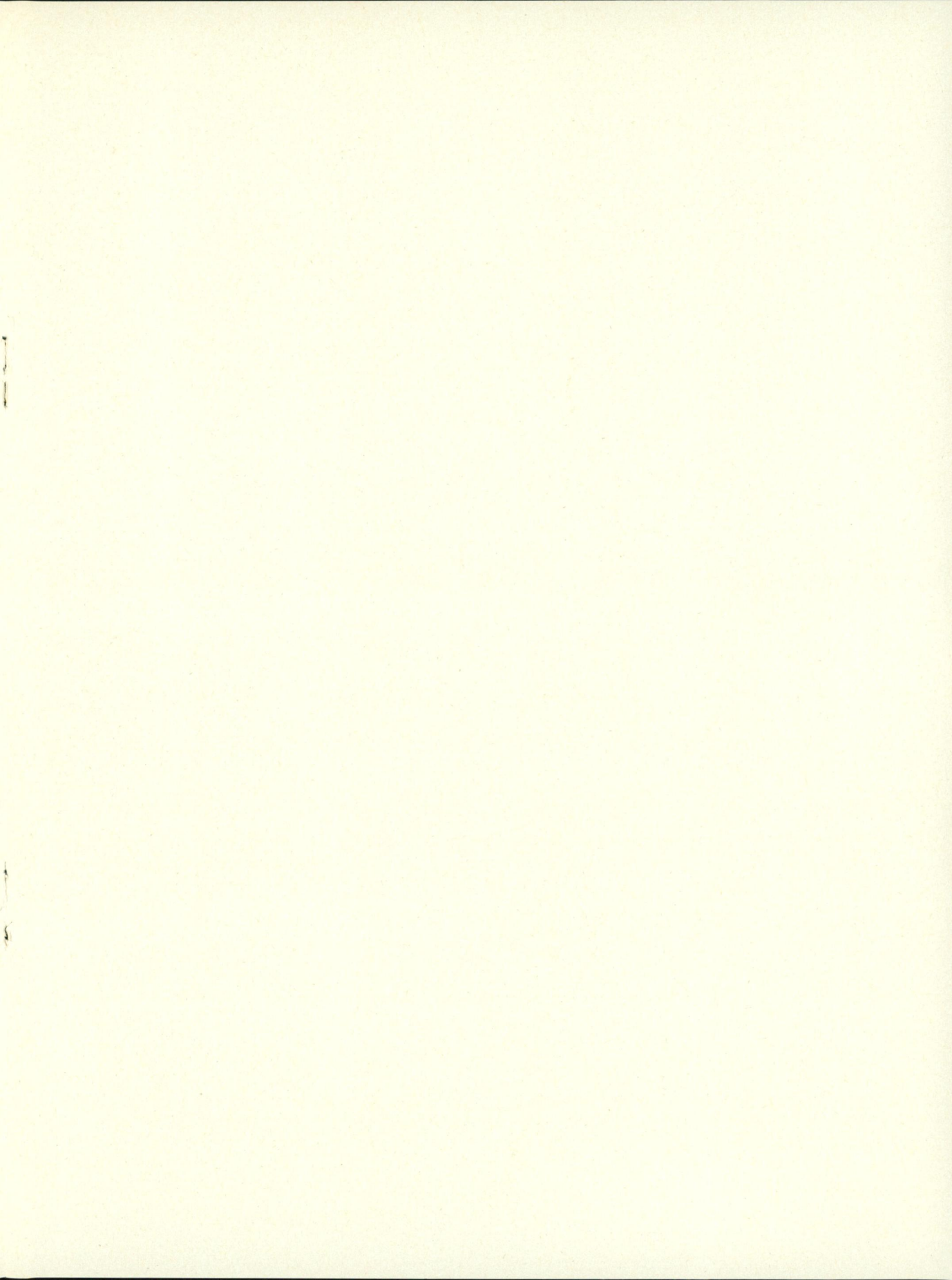
SCHEDULE 1—*continued.*

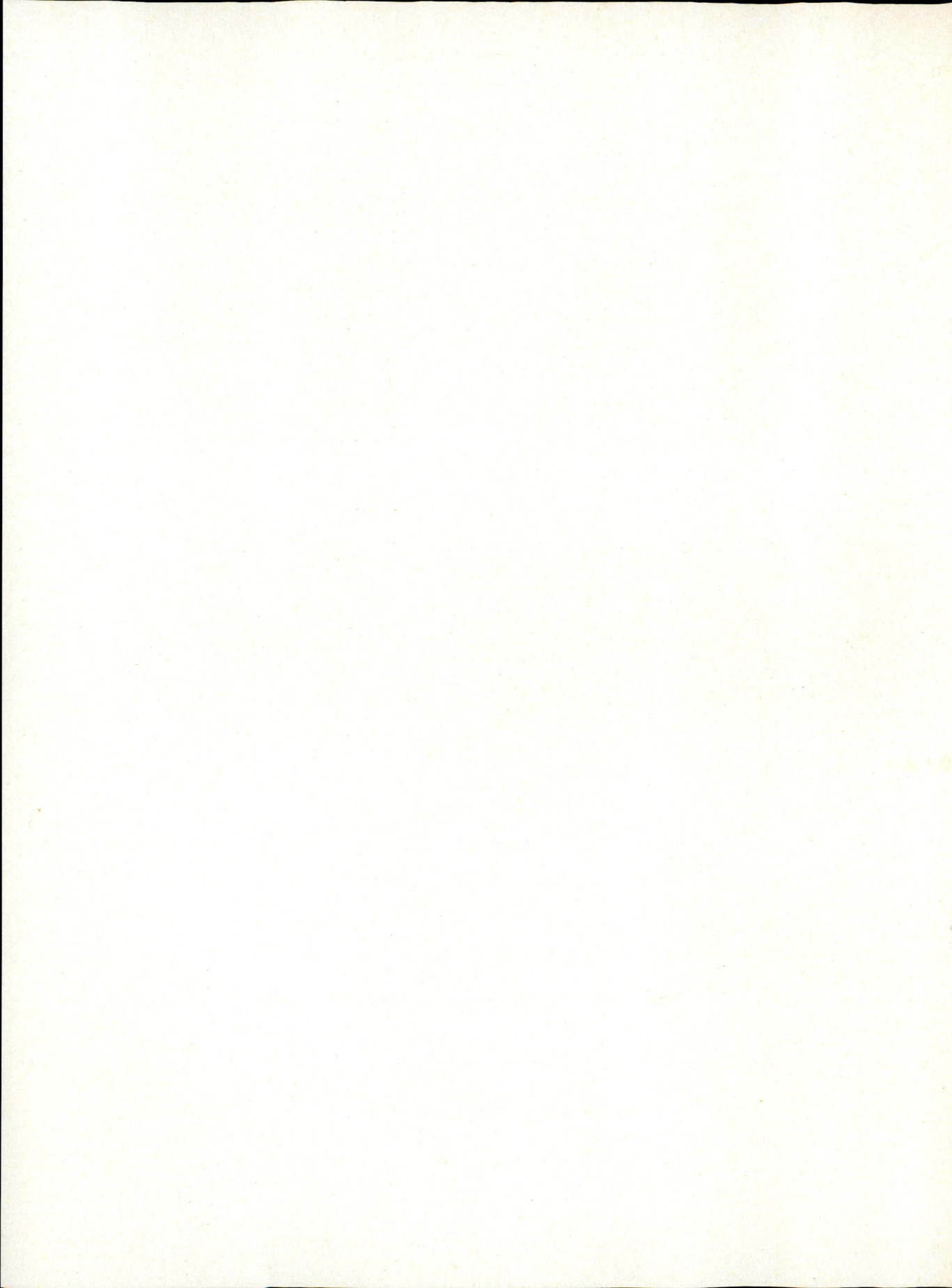
AMENDMENTS TO THE TESTATOR'S FAMILY MAINTENANCE AND
GUARDIANSHIP OF INFANTS ACT, 1916—*continued.*

5 (2) An order made as referred to in subsection (1) shall not order that provision be made out of assets of the estate of a testator or an intestate distributed before notice of the application for increased provision is given to the executor or administrator, as the case may be, unless the court is satisfied that there are special circumstances which justify the making of such an order.

10 (3) For the purposes of subsection (2), an asset of the estate of a testator or an intestate is not distributed unless the asset is vested in interest in a person.

(4) Subsection (1) applies to any order for provision made under this Act since 18th September, 1916.





**TESTATOR'S FAMILY MAINTENANCE AND
GUARDIANSHIP OF INFANTS (FAMILY PROVISION)
AMENDMENT ACT, 1982, No. 161**

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 161, 1982.

An Act to amend the Testator's Family Maintenance and Guardianship of Infants Act, 1916, in relation to interim orders and orders to increase provision and to limit the application of that Act consequentially upon the enactment of the Family Provision Act, 1982. [Assented to, 24th December, 1982.]

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

BE it enacted by the Queen'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:—

Short title.

1. This Act may be cited as the "Testator's Family Maintenance and Guardianship of Infants (Family Provision) Amendment Act, 1982".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Family Provision Act, 1982.

Amendment of Act No. 41, 1916.

3. The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE TESTATOR'S FAMILY MAINTENANCE
AND GUARDIANSHIP OF INFANTS ACT, 1916.

(1) Section 1A—

After section 1, insert:—

Application of Act.

1A. This Act does not apply in respect of the estate of any deceased person in relation to whom the Family Provision Act, 1982, applies.

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TESTATOR'S FAMILY MAINTENANCE AND
GUARDIANSHIP OF INFANTS ACT, 1916—*continued.*

(2) Section 3 (4), (5), (6)—

After section 3 (3), insert:—

(4) On an application made under this section, the court may make an interim order in favour of a person before it has fully considered the application where it is of the opinion that no less provision than that proposed to be made by the interim order would be made in favour of the person after full consideration of the application.

(5) Where, on an application made under this section, the court has made an interim order as referred to in subsection (4), it shall, in due course, proceed to make a final determination of the application, which determination shall confirm, rescind or alter the order so made.

(6) Where an interim order making provision is rescinded or altered pursuant to subsection (5), the court may rescind or alter any other orders made by it as a consequence of, or in relation to, the interim order to such extent as may be necessary as a result of the rescission or alteration and make such other orders (other than an order making provision) as may be so necessary.

(3) Section 6A—

After section 6, insert:—

Increase in provision.

6A. (1) Notwithstanding any other provision of this Act, on an application made by or on behalf of a person in whose favour provision out of the estate of a deceased person has been made by an order under this Act, if the court is satisfied that there has been, since the date of the order, a substantial detrimental change in the circumstances of the person, it may make a further order under section 3 making additional provision in favour of the person.

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

SCHEDULE 1—*continued.*

AMENDMENTS TO THE TESTATOR'S FAMILY MAINTENANCE AND
GUARDIANSHIP OF INFANTS ACT, 1916—*continued.*

(2) An order made as referred to in subsection (1) shall not order that provision be made out of assets of the estate of a testator or an intestate distributed before notice of the application for increased provision is given to the executor or administrator, as the case may be, unless the court is satisfied that there are special circumstances which justify the making of such an order.

(3) For the purposes of subsection (2), an asset of the estate of a testator or an intestate is not distributed unless the asset is vested in interest in a person.

(4) Subsection (1) applies to any order for provision made under this Act since 18th September, 1916.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 24th December, 1982.*