

## TESTATOR'S FAMILY MAINTENANCE.

11<sup>o</sup> Elizabeth II., No. LXXXI.

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No. 81 of 1962.

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### AN ACT to amend the Testator's Family Maintenance Act, 1939-1944.

[Assented to 6th December, 1962.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Testator's Family Maintenance Act Amendment Act, 1962.*

Short title  
and citation.

(2) In this Act the Testator's Family Maintenance Act, 1939-1944, is referred to as the principal Act.

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(3) The principal Act as amended by this Act may be cited as the Testator's Family Maintenance Act, 1939-1962.

Commence-  
ment.

2. This Act shall come into operation on the first day of January, one thousand nine hundred and sixty-three.

S. 8A added.

3. The principal Act is amended by adding, after section eight, the following section:—

Orders after  
distribution  
of estate.

8A. (1) On any application for an order under this Act, the Court may, where the estate of the testator, or part thereof, has been distributed among the persons entitled under the will, make an order under section sixty-five of the Trustees Act, 1962, in lieu of an order under this Act.

(2) Where the Court, in exercise of the power conferred by subsection (1) of this section, makes an order under section sixty-five of the Trustees Act, 1962, it shall have the same powers, in respect of that order, of directing the securing of a periodic payment or the payment and investment of a lump sum, and of discharging, varying, suspending or replacing that order, as it has under sections seven and eight, and under subsection (4) of section five, of this Act in respect of an order made under this Act.

S. 9A  
added.

4. The principal Act is amended by adding, after section nine, the following section:—

Protection of  
executor  
against  
claims.  
Cf. N.Z.  
Admin. Act,  
s. 30A  
(amended  
1960).

9A. (1) An action shall not lie against an executor by reason of his having distributed any part of the estate, and no application or order made under this Act shall disturb the distribution, if the distribution was properly made by the executor for the purpose of providing for the maintenance, support or education of any person who was totally or partially dependent on the testator immediately before the death of the testator, whether or not the executor had notice at the time of the distribution of any application, or intention to make an application, that would affect the estate.

(2) A person, who may have made or may be entitled to make an application under this Act, shall not be entitled to bring an action against the executor by reason of his having distributed any part of the estate, if the distribution was properly made by the executor after that person (being of full legal capacity) has advised the executor in writing that he—

- (a) consents to the distribution; or
- (b) does not intend to make any application that would affect the proposed distribution.

(3) An action shall not lie against an executor by reason of his having distributed any part of the estate, if the distribution was properly made by the executor after the expiration of six months from the date of the grant in Western Australia of probate of the will, or letters of administration with the will annexed, of the testator, and without notice of any application under this Act that would affect the estate.

(4) For the purposes of this section, a distribution by an executor of any part of the estate shall be deemed to be properly made, if it is made in accordance with any trust, power or authority that is subsisting when the distribution is made and that would justify the distribution if any application made under this Act (being an application on which no order has been made prior to the distribution) were disallowed by the Court; but nothing in this subsection restricts the requirements in subsection (3) of this section that the distribution shall have been made without notice of the matters specified in that subsection.

5. The principal Act is amended by repealing section ten. S. 10  
repealed

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