

Update Wills and Succession

Service 78 — March 2022

Legislative amendments

Secondary Legislation Act 2021 (2021 No 7)

This Act amended the following Acts on 28 October 2021:

- ss 18, 71 and 82A of the Administration Act 1969
- s 73 of the Estate and Gift Duties Act 1968
- ss 2D, 21E, 53 and 53A of the Property (Relationships) Act 1976
- sch 2 of the Protection of Personal and Property Rights Act 1988
- ss 160 and 184 of the Trusts Act 2019
- s 6 of the Wills Act 2007

New Zealand Forms and Precedents

Probate Precedents

NZFP Precedent Numbers 48.1000 to 48.1015 have been reviewed and updated by Carolyn Ranson in October 2021. These precedents were originally from *Dobbie's Probate and Administration Practice* 6th edition.

Law Commission Report — Review of Succession Law

The Law Commission published its final report on 15 December 2021 after its review of succession law in New Zealand.

Law Commission He arotake i te āheinga ki ngā rawa a te tangata ka mate ana / Review of Succession Law: Rights to a person's property on death (NZLC R145, 2021) <https://www.lawcom.govt.nz/our-projects/review-succession-law> recommends, inter alia, a number of significant changes to the distribution of estates, including the introduction of a new statute titled Inheritance (Claims Against Estates) Act. See [1.3].

Case commentary

Chapter 2 — Nature of a will — mirror wills

Re Ellis (dec'd); Clarke v Clements [2021] NZHC 2716 concerned a husband and wife with mirror wills that left their estates to the survivor of them. The husband died first. The widow left an amended will. Osborne J held these arrangements did not constitute an agreement to have a mutual will. See [2.16].

Chapter 3 — Testamentary capacity

Re Huurdeman (dec'd) [2021] NZHC 3256 is another example where the deceased had had a stroke but was found to have capacity. See [3.1].

Chapter 3 — Testamentary capacity — onus of proof

Dennerly v Craig [2021] NZHC 2605 is an example where a caveator failed to discharge the low threshold under s 61 of the Administration Act 1969 to establish a tenable case that the will-maker lacked testamentary capacity or had been subject to undue influence. See [3.2].

Chapter 4 — Formal requirements — validation of wills by High Court — s 14, Wills Act 2007

Sun v Sun [2020] NZHC 2414 is an example of an application for the validation of a will that was initially unsuccessful but later validated on appeal in *Sun v Sun* [2021] NZCA 489. The case concerned whether the will-maker knew and approved of the contents of a document written in English. The Court of Appeal heard additional evidence and held that the deceased knew and understood the terms of the will. See [4.7.3].

Chapter 4 — Formal requirements — letter of instruction validated — s 14, Wills Act 2007

In *Re Mihinui* [2021] NZHC 1991, a letter of instruction was sought to be declared valid as a will. See [4.7.3].

Chapter 4 — Formal requirements — validation of wills by High Court — s 14, Wills Act 2007

Successful recent cases of validation of wills under s 14 of the Wills Act 2007 include:

- *Re Public Trust* [2021] NZHC 3134
- *Re Supra* [2021] NZHC 3138
- *Re Ashworth (dec'd)* [2021] NZHC 3210
- *Re Huurdeman (dec'd)* [2021] NZHC 3256
- *Re Dunne (dec'd)* [2021] NZHC 2682

See [4.7.3].

Chapter 4 — Formal requirements — validation of codicil by High Court — s 14, Wills Act 2007

Section 14 of the Wills Act 2007 successfully validated a document as a codicil in *Re Wheeler* [2021] NZHC 3437. See [4.7.3].

Chapter 6 — Construction of wills — s 32, Wills Act 2007 — external evidence

In *Re Andrews (dec'd)* [2021] NZHC 3179, a mother left the residue of her estate to her three sons on condition that if any of them owed money to her at the time of her death, then that amount should be charged against their share. The third son argued, having been made bankrupt before the will was executed, that the condition did not apply to him. The Court took into account extrinsic evidence under s 32 of the Wills Act 2007. Gordon J held it was not necessary to correct the will under s 31. See [6.3].