

No. 38 of 1981

AN ORDINANCE

To amend the *Family Provision Ordinance 1969*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this twenty-first day of October 1981.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

P. DURACK
Attorney-General

FAMILY PROVISION (AMENDMENT) ORDINANCE 1981

1. This Ordinance may be cited as the *Family Provision (Amendment) Ordinance 1981*.* Short title

2. In this Ordinance, "Principal Ordinance" means the *Family Provision Ordinance 1969*.† Principal Ordinance

3. Section 4 of the Principal Ordinance is amended by omitting from the definition of "intestate" in sub-section (1) "sub-section (1) of section 44" and substituting "sub-section 44 (1)". Interpretation

4. Section 7 of the Principal Ordinance is amended by omitting from sub-section (6) "the last preceding sub-section" and substituting "sub-section (5)". Persons entitled to apply under this Ordinance

5. Section 8 of the Principal Ordinance is amended—
 - (a) by omitting from sub-section (1) "the last preceding section" and substituting "section 7";
 - (b) by omitting from sub-section (1) "and advancement" and substituting "or advancement"; andOrder for maintenance, &c., out of estate of a deceased person

* Notified in the *Commonwealth of Australia Gazette* on 30 October 1981.
 † Ordinance No. 15, 1969 as amended by No. 46, 1978.

(c) by inserting in sub-section (1) "for the person" after "as the Court thinks fit be made".

Time for making application under sub-section 8 (1)

6. Section 9 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) "the next succeeding sub-section" and substituting "sub-section (2)";
- (b) by omitting from sub-section (1) "the last preceding section" and substituting "section 8";
- (c) by omitting from sub-section (2) "the last preceding section" and substituting "section 8"; and
- (d) by omitting from sub-section (4) "the last preceding section" and substituting "section 8".

7. After section 9 of the Principal Ordinance the following section is inserted:

Variation, suspension and discharge of orders

"9A. (1) In this section, 'previous order' means an order—

- (a) made under this Ordinance; or
- (b) continued in force under sub-section 6 (1),

that has not been discharged.

"(2) Subject to this Ordinance, upon application made by or on behalf of the administrator of the estate of a deceased person or a person beneficially entitled to, or having an interest in, a part of the estate of a deceased person, the Court may, in its discretion and having regard to all the circumstances of the case, by order—

- (a) vary a previous order relating to that estate by reducing the amount of the provision made by that previous order;
- (b) suspend a previous order relating to that estate for a specified period; or
- (c) discharge a previous order relating to that estate.

"(3) Subject to this Ordinance, where by a previous order the Court has directed that provision by way of periodical payments or the benefit of the investment of a lump sum be made for a person out of the estate of a deceased person, upon application made by or on behalf of the person, if the Court is satisfied that the provision is not adequate for the proper maintenance, education or advancement in life of the person, the Court may, in its discretion and having regard to all the circumstances of the case, by order, vary the previous order by increasing the amount of the provision.

"(4) The applicant for an order under sub-section (2) shall cause notice of his application to be served on the person in whose favour the previous order was made.

“(5) Where the Court makes an order under this section, the Court may make such orders as it thinks fit for the purpose of giving effect to the first-mentioned order and such other orders as it considers just.”.

- 8.** Section 10 of the Principal Ordinance is amended—
- (a) by inserting in sub-section (1) “an order under section 8 or 9A for or in relation to” after “for”; and
 - (b) by omitting from paragraph (2) (a) “for provision” and substituting “under section 8 or 9A for or in relation to provision”.
- Service of application for order under section 8 or 9A
- 9.** Section 11 of the Principal Ordinance is amended—
- (a) by omitting from sub-section (1) “of this Ordinance” and substituting “or 9A”;
 - (b) by omitting from sub-section (1) “to be made for the person in whose favour the order is made” and substituting “, if any, to be made”;
 - (c) by omitting from sub-section (2) “the next succeeding sub-section” and substituting “sub-section (3)”;
 - (d) by omitting from sub-section (3) “the last preceding sub-section” and substituting “sub-section (2)”.
- Form of order and burden of provision
- 10.** Section 12 of the Principal Ordinance is amended—
- (a) by omitting from sub-section (2) “for the benefit”; and
 - (b) by omitting from sub-section (3) “the last preceding sub-section” and substituting “sub-section (2)”.
- Class fund
- 11.** Section 13 of the Principal Ordinance is amended—
- (a) by omitting from paragraph (1) (a) “of this Ordinance” and substituting “or 9A”;
 - (b) by omitting from paragraph (2) (c) “sub-section (2) of section 26” and substituting “sub-section 26 (2)”;
 - (c) by omitting from sub-section (2) “sub-paragraph (i) of paragraph (c) of the last preceding sub-section” and substituting “sub-paragraph (1) (c) (i)”;
 - (d) by omitting from paragraph (3) (c) “sub-section (3) of section 26” and substituting “sub-section 26 (3)”;
 - (e) by omitting from sub-section (3) “sub-paragraph (i) of paragraph (c) of sub-section (1) of this section” and substituting “sub-paragraph (1) (c) (i)”.
- Property subject to power of appointment
- 12.** Section 14 of the Principal Ordinance is amended by omitting “of this Ordinance for provision to” and substituting “or 9A that provision”.
- Presumption of death

Exoneration
of part of
estate from
provision

13. Section 15 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “an order under section 8 of this Ordinance or at any time after having made an order under that section” and substituting “, or at any time after having made, an order under section 8 or 9A”;
- (b) by omitting from sub-section (2) “the last preceding sub-section” and substituting “sub-section (1)”;
- (c) by omitting from paragraph (2) (c) “of this Ordinance” and substituting “or 9A”.

Operation
of order for
provision
out of
estate of
deceased
person

14. Section 16 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “the next succeeding sub-section, an order under section 8 of this Ordinance” and substituting “sub-section (2), an order under section 8”; and
- (b) by omitting from sub-section (2) “of this Ordinance”.

Discharge,
variation,
&c., of order

15. Section 17 of the Principal Ordinance is repealed.

Certified
copy of
order

16. Section 18 of the Principal Ordinance is amended by omitting “for provision out of the estate of a deceased person, an order under section 15 or an order under section 17 of this Ordinance” and substituting “under section 8, 9A or 15 in relation to the estate of a deceased person”.

17. Section 20 of the Principal Ordinance is repealed and the following section substituted:

Property
available
for
provision

“20. (1) Subject to sub-section (2), notwithstanding any distribution of property forming part of the estate of a deceased person made by the administrator of the estate, the Court may, in an order under section 8 or 9A in relation to that estate, direct that provision be made for a person out of that property.

(2) In an order under section 8 or 9A, the Court shall not direct that provision be made for a person out of any property that has been the subject of a distribution referred to in sub-section (1) if—

- (a) the distribution was properly made for the purpose of providing for the proper maintenance, education or advancement in life of a person who was totally or partially dependent on the deceased person immediately before the death of the deceased person; or
- (b) the distribution was made—

- (i) more than 12 months after the date on which administration of the estate was granted; and

- (ii) before the administrator had notice of the application for the order or, where an application was made under section 9 for an extension of time within which an application for an order under section 8 may be made, the application under section 9,

and the property that was so distributed has vested in possession of any person.”.

18. Section 21 of the Principal Ordinance is amended by omitting “sub-section (2) of the last preceding section” and substituting “sub-section 20 (2)”. Protection of administrator

19. Section 22 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “of this Ordinance” and substituting “or 9A”; and Relevance of testator's reasons
- (b) by omitting from sub-section (3) “the last preceding sub-section” and substituting “sub-section (2)”.

20. The Principal Ordinance is amended as set out in the Schedule. Further amendments

SCHEDULE

Section 20

1. In this Schedule, “double-year citation” means a citation of an Ordinance that contains figures referring to 2 years.

2. Each of the following provisions of the Principal Ordinance is amended by omitting from each double-year citation in that provision so much of that citation as follows the reference to the first year in that citation:

- Sub-section 4 (1) (definition of “intestate”)
- Sub-section 4 (2)
- Sub-section 5 (2)
- Section 6
- Sub-section 7 (5)
- Sub-section 16 (2)
- Section 21.