

# TESTATOR'S FAMILY MAINTENANCE ORDINANCE 1930.<sup>(1)</sup>

No. 15 of 1930.

## An Ordinance to assure to the Family of a Testator adequate provision out of his Estate.

**B**E it ordained by the Deputy of the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920-1926*, as follows:—

1. This Ordinance may be cited as the *Testator's Family Maintenance Ordinance 1930*.<sup>(1)</sup> Short title  
and citation.

2. In this Ordinance, unless the contrary intention appears— Definitions.

“Executer” means executor of the will of a testator, and includes administrator with the will annexed;

“Order” means order made by the Court under section three of this Ordinance;

“The Court” means the Central Court<sup>(2)</sup> or a Judge thereof.

3.—(1.) If any person (in this Ordinance called “the testator”) disposes of or has disposed of his property by will in such a manner that the wife, husband or children of the testator, or any of them, are left without proper maintenance, education or advancement in life, the Court may, at its discretion, on application by or on behalf of the wife, husband or children, or any of them, order that such provision as to the Court seems proper having regard to all the circumstances of the case shall be made out of the estate of the testator for the maintenance, education and advancement of the wife, husband or children, or any of them. Power to make  
order for  
maintenance,  
&c., of wife,  
husband, or  
children.

(2.) In making the order the Court may, if it thinks fit, order that the provision shall consist of a lump sum, or periodic payments.

(1) Particulars of this Ordinance are as follows:—

Date on which made by Gov. Gen. in Council.	Date on which notified in <i>Cwlth. Gaz.</i>	Date on which took effect.
21.7.1930	24.7.1930	24.7.1930 ( <i>Cwlth. Gaz.</i> of 24.7.1930)

(2) See Section 7A of the *Judiciary Ordinance 1921-1938*.

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Application to be by summons in chambers.

4.—(1.) Every application for an order shall be made by summons in chambers entitled “In the matter of the *Testator’s Family Maintenance Ordinance* 1930, and in the matter of the will and estate of the deceased person”.

(2.) The summons shall be taken out by the applicant and served on the executor, on all persons beneficially entitled to the estate of the testator, and on such other persons as the Court directs.

(3.) The Judge may, if he thinks fit, adjourn the summons into Court.

Powers of Court.

5. At the hearing of the application for an order, the Court shall inquire fully into the testator’s estate, and for that purpose may—

- (a) summon and examine all such witnesses as to the Court seems proper; and
- (b) require the executor to furnish full particulars of the testator’s estate.

Power to attach conditions to or refuse order.

6. The Court may attach such conditions to the order as it thinks fit, or may refuse to make an order in favour of any person on the ground that his character or conduct is such as, in the opinion of the Court, disentitles him to the benefit of any provision under this Ordinance, or on any other ground which the Court thinks sufficient.

Time within which application to be made.

7. An application for an order shall not be heard by the Court unless the application is made within nine months after the date of the grant of probate of the will, or letters of administration with the will annexed of the estate, of the testator.

Contents of order.

8. Every order shall specify *inter alia*—

- (a) the amount and nature of the provision thereby made;
- (b) the part or parts of the estate of the testator out of which the provision made by order shall be raised or paid and the manner of raising and paying the provision; and
- (c) any conditions, restrictions or limitations imposed by the Court.

Adjustment of burden upon beneficiaries.

9. The burden of the provisions made by any order shall, as between the persons beneficially entitled to the estate of the testator, be borne by those persons in proportion to the values of their respective estates and interests in the estate:

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Provided that the estates and interests of persons successively entitled to any property which is settled by the will of the testator, shall not, for the purpose of this section, be separately valued, but the proportion of the provision to be borne by the property shall be raised out of or charged against the corpus of the property.

10. The Court shall, in every case in which an order is made, direct that a certified copy of the order be made upon the probate of the will, or letters of administration with the will annexed of the estate, of the testator, and for that purpose may require the production of the probate or letters of administration.

Certified copy of order to be made on probate.

11. The Court may, at any time and from time to time, on the application by motion of the executor, or any person beneficially entitled to or interested in any part of the estate of the testator, rescind or alter any order, and notice of the motion shall be served on all persons taking any benefit under the order sought to be rescinded or altered.

Power to vary or revoke order.

12. Upon any order being made under this Ordinance, the portion of the estate comprised therein or affected thereby shall be held subject to the provisions of the order.

Estate to be held subject to order.

13. Every provision made by an order shall, subject to this Ordinance, operate and take effect as if it had been made by a codicil to the will of the testator executed immediately before his death.

Provision to operate as codicil.

14. The Court shall have power at any time to fix a periodic payment or lump sum to be paid by any legatee or devisee, to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate to which he is entitled under the will of the testator, and to exonerate that portion from further liability, and to direct in what manner the periodic payment shall be secured, and to whom the lump sum shall be paid, and in what manner it shall be invested for the benefit of the person to whom the commuted payment was payable.

Power to fix periodic payment or lump sum.

15. Where the Court has ordered periodic payments, or has ordered a lump sum to be invested for the benefit of any person, it shall have power to inquire whether at any subsequent date the party benefited by the order has otherwise become possessed of or entitled to provision for his proper maintenance, education, and advancement, and into the adequacy of that provision, and may

Power to vary or discharge order made under section 14.

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discharge, vary, or suspend the order, and make such other order as is just in the circumstances.

Mortgage or assignment of provision invalid.

16.—(1.) A mortgage, charge or assignment of any kind of or over the provision made by an order shall, if the mortgage, charge or assignment was made before the making of the order, be void and of no effect.

(2.) Any such mortgage, charge or assignment as is referred to in the last preceding sub-section shall, if made after the making of the order, be void and of no effect unless made with the permission of the Court.

Costs.

17. The Court may make such order as to the costs of any proceeding under this Ordinance as it deems just.

Distribution of estate of a testator.

18.—(1.) Where an executor has given notices such as would have been given by the Court in an administration suit for creditors, beneficiaries and others to send in to the executor their claims against the estate of the testator, the executor may, at the expiration of the time named in the notices for sending in those claims, distribute the estate of the testator, or any part thereof, amongst the persons entitled thereto, having regard only to any application under this Ordinance of which the executor has then notice.

(2.) The executor shall not be liable for the estate, or any part thereof, so distributed, to any person of whose application under this Ordinance he has not had notice at the time of distribution.

(3.) Nothing in this section shall prevent the Court from making an order that any provision shall be made out of the estate, or any part thereof, distributed by the executor.

Adjustment of duty.

19. For the purpose of apportioning the duty payable on the estate of the testator, any provision made under this Ordinance by an order shall be deemed to be a bequest made by the testator by a codicil executed immediately before his death and payable in the manner provided by this Ordinance.

When Curator deemed to be executor.

20. When an order has been made under the *Probate and Administration Ordinance, 1913-1915*,<sup>(3)</sup> of the Territory of Papua, in its application to the Territory, authorizing the Curator to administer the estate of a deceased person who has died leaving a will, then for the purpose of this Ordinance—

(3) As from 1.1.1938 the *Probate and Administration Ordinance, 1913-1915*, of the Territory of Papua ceased to apply to the Territory of New Guinea: see the *Laws Repeal and Adopting Ordinance 1937*. The relevant Ordinance is now the *Administration and Probate Ordinance 1937-1940*.

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- (a) the Curator shall be deemed to be the executor of the will of the deceased person; and
- (b) the order made under the *Probate and Administration Ordinance, 1913-1915*,<sup>(3)</sup> referred to in this section shall be deemed to be the grant of probate of the will, or letters of administration with the will annexed of the estate, of the deceased person.

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(3) As from 1.1.1938 the *Probate and Administration Ordinance, 1913-1915*, of the Territory of Papua ceased to apply to the Territory of New Guinea: see the *Laws Repeal and Adopting Ordinance 1937*. The relevant Ordinance is now the *Administration and Probate Ordinance 1937-1940*.

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