

**INHERITANCE (FAMILY AND DEPENDANTS PROVISION) AMENDMENT BILL 2012**

*Introduction and First Reading*

Bill introduced, on motion by **Hon Michael Mischin (Parliamentary Secretary)**, and read a first time.

*Second Reading*

**HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary)** [7.48 pm]: I move —

That the bill be now read a second time.

The Inheritance (Family and Dependants Provision) Amendment Bill 2012 amends the Inheritance (Family and Dependants Provision) Amendment Bill 2011, the amending act. As mentioned in the second reading speech at the time the 2011 bill was introduced, the amending act effected changes to the Inheritance (Family and Dependants Provision) Act 1972—the principal act—that reflected recommendations of the state’s working group on succession law reform. On 25 October 2011 the amending act received royal assent; however, the substantive provisions of the amending act will not become operative until a day fixed by proclamation, and different dates may be fixed for different provisions of the amending act. Under the amending act, a stepchild of the deceased will have standing to bring a claim for maintenance, support or education in the following two circumstances: firstly, where the stepchild was being maintained wholly or partly, or was entitled to be maintained wholly or partly, by the deceased immediately before the deceased’s death; or, secondly, where the deceased had received or was entitled to receive property with a value greater than the prescribed amount from the estate of a parent of the stepchild otherwise than as a creditor of the deceased parent’s estate. The “prescribed amount” will be fixed to the median house price, currently approximately \$485 000. These are reflected by section 9(1)(b) of the amending act, which introduced new section 7(ea) and (eb) into the principal act respectively. The policy behind the provision was succinctly stated in the relevant clause note in the explanatory memorandum to the bill, which reads —

Western Australia is the only state or territory that does not provide for stepchildren claims at all. A stepchild can now claim in limited circumstances. A stepchild of the deceased who was being maintained wholly or partly or was entitled to be maintained wholly or partly by the deceased immediately before the deceased’s death is entitled to make a claim. Also, a stepchild of the deceased if the deceased had received or was entitled to receive property above an amount (which will be prescribed by regulation) from the estate of a parent of the stepchild can make a claim for family provision. An example of a stepchild’s claim is where a child’s parent re-partners and, as is common, the partners leave all of their estate to each other. In these situations there may be an understanding, that on the death of the survivor of the partners, the survivor’s stepchild can expect to receive all, or a substantial part of the estate which came to the surviving partner from the child’s parent. However, for various reasons these understandings may not be adhered to.

However, since the bill was passed, the government has become aware that the definition of “stepchild” as it applies to new section 7(eb) of the principal act has the potential to lead to problems with interpretation. The definition of “stepchild” in section 5 of the amending act reads —

*stepchild* means a person —

- (a) who is not a child of the deceased, but who is a child of —
  - (i) the deceased’s spouse; or
  - (ii) a de facto partner of the deceased, if the de facto partner is one in whose favour the Court can make an order under this Act;
- and
- (b) who was living at the date on which the deceased —
  - (i) married that spouse; or
  - (ii) entered into a de facto relationship with that de facto partner;

First, it may be argued that “deceased spouse” may not include a former spouse. This is due to the use of “the” rather than “a” in paragraph (a)(i) of the definition. Clearly, it was the intention of the amending act to include a former spouse, as the remarriage of the step-parent should not of itself disqualify a stepchild from making a claim for family provision against the estate of the deceased step-parent. The second and more significant issue is whether a child of a de facto partner of the deceased—“de facto partner” including a former de facto partner—was “one in whose favour the court can make an order under this Act”.

Under section 7(1) of the principal act, a person who is a de facto partner of a deceased has standing to apply when that person was “living as the de facto partner of the deceased person immediately before the death of the deceased person”. Using the example in the clause note to which I have referred, the parent cannot be living as the de facto partner at the time of the step-parent’s death, as the parent has predeceased the step-parent.

The third issue arises as the amending act does not state that the “prescribed amount” applies at the date of death of the parent of the deceased’s stepchild. Although it is arguable that these issues of interpretation may be dealt with by the Supreme Court, the government considers that it is more prudent to clarify the position by amending the legislation. The government intends to delay the proclamation of the amending act until the amendments proposed by this bill are ready to be proclaimed and to proceed expeditiously with this amendment.

The issues I have identified have been addressed by, firstly, amending the definition of stepchild to —

*stepchild* means a person who was alive on the date on which the deceased married or entered into a de facto relationship with a parent of the person but who is not a child of the deceased;

Secondly, by stating that the prescribed amount applies at the date of death of the parent of the deceased’s stepchild.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill; it does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party, nor does this bill by reason of its subject matter introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 4530.]

Debate adjourned, pursuant to standing orders.