

Inheritance (Family and Dependants Provision) Amendment Bill 2007

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Western Australia

LEGISLATIVE ASSEMBLY

**Inheritance (Family and Dependants Provision)
Amendment Bill 2007**

A Bill for

An Act to amend the *Inheritance (Family and Dependants Provision) Act 1972* and other Acts, and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Inheritance (Family and Dependants Provision) Amendment Act 2007*.

5 **2. Commencement**

This Act comes into operation as follows:

- 10 (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. The Act amended

The amendments in this Act are to the *Inheritance (Family and Dependants Provision) Act 1972*, unless otherwise indicated.

Part 2 — *Inheritance (Family and Dependants Provision) Act 1972* amended

4. Short title amended

5 Section 1 is amended by deleting “*Inheritance (Family and Dependants Provision) Act 1972.*” and inserting instead —
“ *Family Provision Act 1972.* ”.

5. Section 4 amended

10 Section 4(1) is amended by inserting in the appropriate alphabetical positions —

“

“**Aboriginal person**” means a person who is wholly or partly descended from the original inhabitants of Australia;

“**stepchild**” means a person —

15

(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;

20

and

(b) who was living at the date on which the deceased —

25

(i) married that spouse; or

(ii) entered into a de facto relationship with that de facto partner;

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“Torres Strait Islander” means person who is wholly or partly descended from the original inhabitants of the Torres Strait Islands;

”.

5 **6. Section 5A inserted**

After section 5 the following section is inserted —

“

5A. Crown bound

10 This Act binds the Crown in right of the State and, subject to the limits of the legislative power of the State, the Crown in all its other capacities.

”.

7. Section 6 amended

After section 6(4) the following subsections are inserted —

15 “

- 20 (5) If an order has been made or could have been made under subsection (1) in favour of a person (the **“eligible person”**), the Court may, on application by an eligible person, make an order under subsection (1) in favour of the eligible person in relation to the estate only if at the time an order was made or could have been made in favour of the eligible person —
- 25 (a) the evidence about the nature and extent of the estate did not reveal the existence of certain property (the **“undisclosed property”**); and
 - (b) the value of the undisclosed property would have materially affected the provision that the Court ordered or could have ordered be made out of the estate in favour of the eligible person.
- 30 (6) Despite section 12(1), notice of an application under subsection (5) in respect of an order that has been made shall be served on all persons taking any benefit under

the order and on such other persons as the Court may direct.

”.

8. Section 6A inserted

5 After section 6 the following section is inserted —

“

6A. Interim order

10 (1) Before making an order under section 6(1), the Court may make an interim order if it is of the opinion that such an order is necessary for the purpose of providing those things immediately necessary for the maintenance, support or education (including past maintenance, support or education provided after the death of the deceased) of any person who was totally or

15 partially dependent on the deceased immediately before the deceased’s death.

20 (2) If the Court makes an interim order, the Court must proceed to determine an application under section 6(1) by confirming, revoking or altering the interim order.

”.

9. Section 7 amended

Section 7(1) is amended as follows:

(a) in paragraph (c) by deleting “then *en ventre sa mere*;” and inserting instead —

25

“

born within 10 months after the deceased’s death;

”;

s. 9

(b) by deleting paragraph (d) and inserting instead —

“

(d) a grandchild of the deceased —

- 5 (i) who was being maintained wholly or partly by the deceased immediately before the deceased's death; or
- 10 (ii) who, at the date of the deceased's death, was living and one of whose parents was a child of the deceased who had predeceased the deceased; or
- (iii) who was born within 10 months after the deceased's death and one of whose parents was a child of the deceased who had predeceased the deceased;
- 15 (da) 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;
- 20 (db) a stepchild of the deceased if the deceased had received or was entitled to receive property with a value greater than the prescribed amount from the estate of a natural parent of the stepchild;
- 25 (dc) an Aboriginal person or Torres Strait Islander who, immediately before the deceased's death —
- (i) was in a kinship relationship with the deceased recognised under the customary law of the deceased; and
- 30 (ii) was being maintained wholly or partly by the deceased;

”;

- (c) in paragraph (e) by deleting “lawful wedlock” and inserting instead —
“ a legal marriage ”.

10. Section 11 amended

5 Section 11 is amended by deleting “at the time of” and inserting instead —
“ immediately before ”.

11. Section 12 amended

10 After section 12(2) the following subsection is inserted —
“
(3) Proceedings under this Act in relation to a deceased’s estate with a value less than the prescribed amount are to be conducted speedily and with as little formality and technicality as is practicable, and so as to minimise the costs to parties.
15 ”.

12. Section 19 amended

20 Section 19 is amended by deleting “; and no such mortgage, charge, or assignment given after the order of the Court is made shall be of any force, validity, or effect unless it is given with the permission of the Court or the Court at the time of making the order otherwise directs”.

13. Sections 20A and 20B inserted

25 After section 20 the following sections are inserted —
“
20A. Evidence

- (1) In this section —
“**document**” includes any record of information;

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“statement” includes any representation of fact
whether or not in writing.

- 5
- (2) In any proceedings under this Act, evidence of a statement made by a deceased person shall, subject to this section, be admissible as evidence of any fact stated therein of which direct oral evidence by the deceased person would, if the person were able to give that evidence, be admissible.
- 10
- (3) Subject to subsection (4) and unless the Court otherwise orders, where a statement was made by a deceased person during the person’s lifetime otherwise than in a document, no evidence other than direct testimony (including oral evidence, evidence by affidavit and evidence taken before a person directed to take an examination or to whom any question or issue of fact is referred for the purpose of the proceedings) by a person who heard or otherwise perceived the statement being made shall be admissible for the purpose of proving it.
- 15
- (4) Where a statement was made by a deceased person during the person’s lifetime while giving oral evidence in a legal proceeding (being a civil or criminal proceeding or inquiry in which evidence is or may be given, or an arbitration), the statement may be proved in any manner authorised by the Court.
- 20
- (5) Where a statement made by a deceased person during the person’s lifetime was contained in a document, the statement may be proved by the production of the document or, whether or not the document is still in existence, by leave of the Court, by the production of a copy of the document, or of the material part of the document, authenticated in such manner as the Court may approve.
- 25
- 30

- 5 (6) Where, under this section, a person proposes to tender, or tenders, evidence of a statement contained in a document, the Court may require that any other document relating to the statement be produced and, in default, may reject the evidence or, if it has been received, exclude it.
- 10 (7) For the purpose of determining questions of admissibility of a statement under this section, the Court may draw any reasonable inference from the circumstances in which the statement was made or from any other circumstances including, in the case of a statement contained in a document, the form or content of the document.
- 15 (8) In estimating the weight, if any, to be attached to evidence of a statement tendered for admission or admitted under this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, including the recency or otherwise, at 20 the time when the deceased person made the statement, of any relevant matter dealt with in the statement and the presence or absence of any incentive for the deceased person to conceal or misrepresent any relevant matter in the statement.
- 25 (9) Subject to subsection (11), where evidence of a statement of a deceased person is admitted under this section, evidence is admissible for the purpose of destroying or supporting the credibility of the deceased person.
- 30 (10) Subject to subsection (11), where evidence of a statement of a deceased person is admitted under this section, evidence is admissible for the purpose of showing that the statement is inconsistent with another statement made at any time by the deceased person.

s. 13

- 5 (11) No evidence of a matter is admissible under subsection (9) or (10) in relation to a statement of a deceased person where, if the deceased person had been called as a witness and had denied the matter in cross-examination, evidence would not be admissible if adduced by the cross-examining party.
- 10 (12) This section applies notwithstanding the rules against hearsay and that a statement is in such a form that it would not be admissible if given as oral testimony, but does not make admissible a statement of a deceased person which is otherwise inadmissible.
- (13) The exceptions to the rules against hearsay set out in this section are in addition to the exceptions to the hearsay rule set out in the *Evidence Act 1906*.

15 **20B. Regulations**

The Governor may make regulations prescribing an amount for the purposes of sections 7(1)(db) and 12(3).

”.

Part 3 — Other Acts amended

14. Administration Act 1903 amended

(1) The amendments in this section are to the *Administration Act 1903*.

5 (2) After section 7 the following section is inserted —

“

7A. Probate or administration for purpose of *Family Provision Act 1972*

10 (1) The Court shall have jurisdiction to grant administration in respect of the estate of a deceased person in order to permit an application to be made under the *Family Provision Act 1972* if it is satisfied that it is proper to make the grant, whether or not the deceased person left property in this State.

15 (2) A grant of administration made under subsection (1) shall be for the purposes only of making an application under the *Family Provision Act 1972*.

20 (3) The Court may grant administration under subsection (1) to any person who it is satisfied is an eligible person under the *Family Provision Act 1972* section 7(1) or to any person who it is satisfied intends to make application under that Act on behalf of such an eligible person.

25 (4) The granting of administration or probate in respect of the estate of a deceased person under this or any other provision of this Act shall not prevent the Court from making a grant of administration under subsection (1) or, unless expressly provided by the Court, affect any such grant previously made.

s. 15

(5) Except in so far as the context or subject matter otherwise indicates or requires —

(a) a reference in this Act to a grant of administration of the estate of a deceased person shall include a reference to a grant of administration made under subsection (1); and

(b) a reference in this Act to an Administrator shall include a reference to a person to whom administration has been granted under subsection (1).

”.

(3) Section 60A is amended by deleting “*Inheritance (Family and Dependants Provision) Act 1972.*” and inserting instead —

“ *Family Provision Act 1972.* ”.

15. Trustees Act 1962 amended

(1) The amendments in this section are to the *Trustees Act 1962*.

(2) Section 65(5) is amended by deleting paragraph (a) and “or” after it and inserting instead —

“

(a) where the claim is an application for an order under the *Family Provision Act 1972*, unless —

(i) the application is made within the period specified in section 7(2)(a) of that Act; or

(ii) leave to file out of time has been given under section 7(2)(b) of that Act;

or

”.

- (3) In each place listed in the Table to this subsection “*Inheritance (Family and Dependants Provision) Act 1972*” is deleted and the following is inserted instead —

“ *Family Provision Act 1972* ”.

5

Table

s. 63(10)(a)	s. 65(2)(a)
s. 64(5)	

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