

Inheritance (Family and Dependants Provision) Amendment Bill 2011

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Western Australia

LEGISLATIVE ASSEMBLY

**Inheritance (Family and Dependants Provision)
Amendment Bill 2011**

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:

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Part 1 — Preliminary

1. Short title

This is the *Inheritance (Family and Dependants Provision) Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (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.

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

3. Act amended

This Part amends the *Inheritance (Family and Dependants Provision) Act 1972*.

4. Section 1 amended

In section 1 delete “*Inheritance (Family and Dependants Provision) Act 1972*.” and insert:

Family Provision Act 1972.

5. Section 4 amended

In section 4(1) insert in alphabetical order:

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;

s. 6

1 **6. Section 6A inserted**

2 After section 5 insert:

3

4 **6A. Crown bound**

5 This Act binds the State and, so far as the legislative
6 power of Parliament permits, the Crown in all its other
7 capacities.

8

9 **7. Section 6 amended**

10 After section 6(4) insert:

11

12 (5) If an order has been made or could have been made
13 under subsection (1) in favour of a person (the *eligible*
14 *person*), the Court may, on application by an eligible
15 person, make an order under subsection (1) in favour of
16 the eligible person in relation to the estate only if at the
17 time an order was made or could have been made in
18 favour of the eligible person —

- 19 (a) the evidence about the nature and extent of the
20 estate did not reveal the existence of certain
21 property (the *undisclosed property*); and
22 (b) the value of the undisclosed property would
23 have materially affected the provision that the
24 Court ordered, or could have ordered, be made
25 out of the estate in favour of the eligible person.

26 (6) Despite section 12(1), notice of an application under
27 subsection (5) in respect of an order that has been made
28 must be served on all persons taking any benefit under
29 the order and on such other persons as the Court may
30 direct.

- 1 (7) The Court cannot hear an application for an order
2 under subsection (5) unless —
3 (a) the application is made within 6 months from
4 the date on which the applicant became aware
5 of the existence of the undisclosed property; or
6 (b) the Court is satisfied that the justice of the case
7 requires that the applicant be given leave to file
8 out of time.
- 9 (8) A motion for leave to file out of time may be made at
10 any time notwithstanding that the period specified in
11 subsection (7)(a) has expired.
12

13 **8. Section 7A inserted**

14 After section 6 insert:
15

16 **7A. Interim order**

- 17 (1) Before making an order under section 6(1), the Court
18 may make an interim order if it is of the opinion that
19 such an order is necessary for the purpose of providing
20 those things immediately necessary for the
21 maintenance, support or education (including past
22 maintenance, support or education provided after the
23 death of the deceased) of any person who was totally or
24 partially dependent on the deceased immediately
25 before the deceased's death.
- 26 (2) If the Court makes an interim order, the Court must
27 proceed to determine an application under section 6(1)
28 by confirming, revoking or altering the interim order.
29

s. 9

1 **9. Section 7 amended**

2 (1) In section 7(1):

3 (a) in paragraph (c) delete “then *en ventre sa mere*,” and
4 insert:

5

6 born within 10 months after the deceased’s
7 death;

8

9 (b) delete paragraph (d) and insert:

10

11 (d) a grandchild of the deceased —

12 (i) who was being maintained wholly or
13 partly by the deceased immediately
14 before the deceased’s death; or

15 (ii) who, at the date of the deceased’s death,
16 was living and one of whose parents
17 was a child of the deceased who had
18 predeceased the deceased; or

19 (iii) who was born within 10 months after
20 the deceased’s death and one of whose
21 parents was a child of the deceased who
22 had predeceased the deceased;

23 (ea) a stepchild of the deceased who was being
24 maintained wholly or partly or was entitled to
25 be maintained wholly or partly by the deceased
26 immediately before the deceased’s death;

27 (eb) a stepchild of the deceased if the deceased had
28 received or was entitled to receive property
29 with a value greater than the prescribed amount
30 from the estate of a parent of the stepchild
31 otherwise than as a creditor of the deceased
32 parent’s estate;

33

1 (c) in paragraph (e) delete “lawful wedlock” and insert:
2
3 a legal marriage
4

5 (2) After section 7(1) insert:
6

7 (2A) An application is not to be made under this Act by or
8 on behalf of a person referred to in subsection (1)(ea)
9 or (eb) unless the deceased person died on or after the
10 day on which the *Inheritance (Family and Dependants*
11 *Provision) Amendment Act 2011* section 9(1)(b) came
12 into operation.
13

14 **10. Section 11 amended**

15 In section 11 delete “at the time” and insert:
16

17 immediately before
18

19 **11. Section 19 amended**

20 In section 19 delete the passage that begins with “effect; and no
21 such mortgage,” and continues to the end of the section and
22 insert:
23

24 effect.
25

26 **12. Section 20 amended**

27 (1) In section 20(3) delete “lawful wedlock” and insert:
28

29 a legal marriage
30

s. 13

1 (2) In section 20(5) delete “Act” and insert:

2

3 act

4

5 **13. Sections 21A and 21B inserted**

6 After section 20 insert:

7

8 **21A. Evidence**

9 (1) In this section —

10 *statement* includes any representation of fact whether
11 or not in writing.

12 (2) In any proceedings under this Act, evidence of a
13 statement made by a deceased person is, subject to this
14 section, admissible as evidence of any fact stated in it
15 of which direct oral evidence by the deceased person
16 would, if the person were able to give that evidence, be
17 admissible.

18 (3) Subject to subsection (4) and unless the Court
19 otherwise orders, where a statement was made by a
20 deceased person during the person’s lifetime otherwise
21 than in a document, no evidence other than direct
22 testimony (including oral evidence, evidence by
23 affidavit and evidence taken before a commissioner or
24 other person authorised to receive evidence for the
25 purpose of the proceedings) by a person who heard or
26 otherwise perceived the statement being made is
27 admissible for the purpose of proving it.

28 (4) Where a statement was made by a deceased person
29 during the person’s lifetime while giving oral evidence
30 in a legal proceeding (being a civil or criminal
31 proceeding or inquiry in which evidence is or may be

- 1 given, or an arbitration), the statement may be
2 approved in any manner authorised by the Court.
- 3 (5) Where a statement made by a deceased person during
4 the person's lifetime was contained in a document, the
5 statement may be proved by the production of the
6 document or, whether or not the document is still in
7 existence, by leave of the Court, by the production of a
8 copy of the document, or of the material part of the
9 document, authenticated in such manner as the Court
10 may approve.
- 11 (6) Where, under this section, a person proposes to tender,
12 or tenders, evidence of a statement contained in a
13 document, the Court may require that any other
14 document relating to the statement be produced and, in
15 default, may reject the evidence or, if it has been
16 received, exclude it.
- 17 (7) For the purpose of determining questions of
18 admissibility of a statement under this section, the
19 Court may draw any reasonable inference from the
20 circumstances in which the statement was made or
21 from any other circumstances, including, in the case of
22 a statement contained in a document, the form or
23 content of the document.
- 24 (8) In estimating the weight, if any, to be attached to
25 evidence of a statement tendered for admission or
26 admitted under this section, regard must be had to all
27 the circumstances from which any inference can
28 reasonably be drawn as to the accuracy or otherwise of
29 the statement, including —
- 30 (a) the recency or otherwise, at the time when the
31 deceased person made the statement, of any
32 relevant matter dealt with in the statement; and

s. 13

- 1 (b) the presence or absence of any incentive for the
2 deceased person to conceal or misrepresent any
3 relevant matter in the statement.
- 4 (9) Subject to subsection (11), where evidence of a
5 statement of a deceased person is admitted under this
6 section, evidence is admissible for the purpose of
7 destroying or supporting the credibility of the deceased
8 person.
- 9 (10) Subject to subsection (11), where evidence of a
10 statement of a deceased person is admitted under this
11 section, evidence is admissible for the purpose of
12 showing that the statement is inconsistent with another
13 statement made at any time by the deceased person.
- 14 (11) No evidence of a matter is admissible under
15 subsection (9) or (10) in relation to a statement of a
16 deceased person where, if the deceased person had
17 been called as a witness and had denied the matter in
18 cross-examination, evidence would not be admissible if
19 adduced by the cross-examining party.
- 20 (12) This section applies notwithstanding the rules against
21 hearsay and notwithstanding that a statement is in such
22 a form that it would not be admissible if given as oral
23 testimony, but does not make admissible a statement of
24 a deceased person which is otherwise inadmissible.
- 25 (13) The exceptions to the rules against hearsay set out in
26 this section are in addition to the exceptions to the
27 hearsay rule set out in the *Evidence Act 1906*.
- 28 **21B. Regulations**
- 29 The Governor may make regulations prescribing an
30 amount for the purposes of section 7(1)(eb).
31

Part 3 — Other Acts amended

14. Administration Act 1903 amended

- (1) This section amends the *Administration Act 1903*.
- (2) In section 60A delete “section 6 of the *Inheritance (Family and Dependants Provision) Act 1972*.” and insert:

Family Provision Act 1972 section 6.

Note: The heading to amended section 60A is to read:

Application of *Family Provision Act 1972*

15. Duties Act 2008 amended

- (1) This section amends the *Duties Act 2008*.
- (2) Delete section 139(2)(c) and insert:
- (c) a vesting of dutiable property by, or as a consequence of, a court order made —
- (i) under the *Family Provision Act 1972*; or
- (ii) under the *Trustees Act 1962* section 65 on an application under the *Family Provision Act 1972*.

16. Trustees Act 1962 amended

- (1) This section amends the *Trustees Act 1962*.
- (2) Delete section 63(10)(a) and insert:
- (a) any claim under the *Family Provision Act 1972*;
or

s. 17

1 (3) In section 64(5) delete “*Inheritance (Family and Dependants*
2 *Provision) Act 1972*,” and insert:

3

4 *Family Provision Act 1972*,

5

6 (4) Delete section 65(2)(a) and insert:

7

8 (a) an application under the *Family Provision*
9 *Act 1972*; or

10

11 (5) Delete section 65(5)(a) and insert:

12

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

15

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

18

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

20

21

21

22 **17. *Wills Act 1970* amended**

23 (1) This section amends the *Wills Act 1970*.

24 (2) In section 41(1)(h) delete “*Inheritance (Family and Dependants*
25 *Provision) Act 1972*,” and insert:

26

27 *Family Provision Act 1972*,

28

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