

Western Australia

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

As at 25 Oct 2011

No. 48 of 2011

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Inheritance (Family and Dependants Provision) Amendment Act 2011

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

No. 48 of 2011

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

[Assented to 25 October 2011]

The Parliament of Western Australia enacts as follows:

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;

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6. Section 6A inserted

After section 5 insert:

6A. Crown bound

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

7. Section 6 amended

After section 6(4) insert:

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

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

8. Section 7A inserted

After section 6 insert:

7A. Interim order

- (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 partially dependent on the deceased immediately before the deceased's death.
- (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.

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9. Section 7 amended

(1) In section 7(1):

- (a) in paragraph (c) delete “then *en ventre sa mere*;” and insert:

born within 10 months after the deceased’s death;

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

(d) a grandchild of the deceased —

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

(ea) 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;

(eb) 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 parent of the stepchild otherwise than as a creditor of the deceased parent’s estate;

(c) in paragraph (e) delete “lawful wedlock” and insert:

a legal marriage

(2) After section 7(1) insert:

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

10. Section 11 amended

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

immediately before

11. Section 19 amended

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

effect.

12. Section 20 amended

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

a legal marriage

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

act

13. Sections 21A and 21B inserted

After section 20 insert:

21A. Evidence

- (1) In this section —
statement includes any representation of fact whether or not in writing.
- (2) In any proceedings under this Act, evidence of a statement made by a deceased person is, subject to this section, admissible as evidence of any fact stated in it of which direct oral evidence by the deceased person would, if the person were able to give that evidence, be admissible.
- (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 commissioner or other person authorised to receive evidence for the purpose of the proceedings) by a person who heard or otherwise perceived the statement being made is admissible for the purpose of proving it.
- (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 approved in any manner authorised by the Court.

- (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.
- (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.
- (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.
- (8) In estimating the weight, if any, to be attached to evidence of a statement tendered for admission or admitted under this section, regard must be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, including —
 - (a) the recency or otherwise, at the time when the deceased person made the statement, of any relevant matter dealt with in the statement; and

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- (b) the presence or absence of any incentive for the deceased person to conceal or misrepresent any relevant matter in the statement.
- (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.
- (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.
- (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.
- (12) This section applies notwithstanding the rules against hearsay and notwithstanding 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*.

21B. Regulations

The Governor may make regulations prescribing an amount for the purposes of section 7(1)(eb).

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

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

Family Provision Act 1972,

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

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

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

- (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

17. Wills Act 1970 amended

- (1) This section amends the *Wills Act 1970*.
- (2) In section 41(1)(h) delete “*Inheritance (Family and Dependants Provision) Act 1972*,” and insert:

Family Provision Act 1972,

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