Western Australia

Family Provision Act 1972

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Defined terms

Western Australia

Family Provision Act 1972

An Act to make provision for the maintenance and support of the family and dependants of deceased persons out of the assets of the deceased's estate, and for other purposes incidental thereto.

1. Short title

This Act may be cited as the *Family Provision Act 1972*.

[Section 1 amended: No. 48 of 2011 s. 4.]

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation.

3. Repeal

(1) On the coming into operation of this Act the *Testator's Family Maintenance Act 1939* is repealed.

[(2), (3) Omitted under the Reprints Act 1984 s. 7(4)(e).]

4. Terms used

(1) In this Act, unless a contrary or other intention appears —

administration has the same meaning as it has in the *Administration Act 1903*;

administrator means any person to whom probate of the will of a deceased person is granted, or to whom administration is granted; and includes the Public Trustee, in any case where he is deemed to be an executor or administrator by reason of having filed an election to administer, and any administrator appointed by direction of the Court in accordance with section 18;

child in relation to any person or persons includes an illegitimate child;

Court means the Supreme Court, or a judge;

grandchild in relation to any person or persons includes an illegitimate child of a child of that person;

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;

will includes a codicil and any testamentary disposition.

(2) In any proceedings under this Act a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(3) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it is sufficient if the Court is reasonably satisfied of the existence of that ground or fact or as to that other matter.

(4) For the purposes of this Act, other than for the purposes of section 7(1)(e), the relationship between a parent and a child and any other relationship traced in any degree through that relationship, shall be recognised only if parentage is admitted by or established against the parent in the parent's lifetime.

(4a) Subsection (4) does not apply to or in relation to a relationship established by the *Artificial Conception Act 1985*.

[Section 4 amended: No. 3 of 2002 s. 80; No. 28 of 2003 s. 92; No. 27 of 2007 s. 25; No. 48 of 2011 s. 5 (as amended: No. 41 of 2012 s. 4).]

5. Application of Act

(1) The provisions of this Act apply in all cases, whether the deceased died before or after the coming into operation of this Act, but so that no distribution of any part of the estate of a deceased person that has been made before the coming into operation of this Act shall be disturbed in favour of any person by reason of any application or order made under this Act if it could not have been disturbed in favour of that person by reason of any application or order made under the *Testator's Family Maintenance Act 1939*, now repealed.

(2) The provisions of sections 15, 16 and 17 of this Act apply to orders made before the coming into operation of this Act under section 11 of the *Guardianship of Infants Act 1920* [1].

(3) Notwithstanding the repeal of the *Testator's Family Maintenance Act 1939*, effected by section 3(1) of this Act —

(a) every order that is, under or by virtue of that Act, still in force on the coming into operation of this Act, continues to have effect as though made under this Act;

(b) every proceeding that has been commenced under that Act and not completed shall be continued as though this Act had been in operation when the proceeding was so commenced.

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.

[Section 6A inserted: No. 48 of 2011 s. 6.]

6. Court's powers to order deceased's estate to provide for s. 7 applicant

(1) If any person (in this Act called the ***deceased***) dies, then, if the Court is of the opinion that the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the

combination of his will and that law, is not such as to make adequate provision from his estate for the proper maintenance, support, education or advancement in life of any of the persons mentioned in section 7 as being persons by whom or on whose behalf application may be made under this Act, the Court may, at its discretion, on application made by or on behalf of any such person, order that such provision as the Court thinks fit is made out of the estate of the deceased for that purpose.

(2) The Court in considering for the purposes of subsection (1) whether the disposition of the deceased's estate effected by the law relating to intestacy, or by the combination of the deceased's will and that law, makes adequate provision for the purposes of this Act shall not be bound to assume that the law relating to intestacy makes adequate provision in all cases.

(3) 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 to disentitle him to the benefit of an order, or on any other ground which the Court thinks sufficient.

(4) In making any such order the Court may, if it thinks fit, order that the provision may consist of a lump sum or a periodical or other payment.

(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.

[Section 6 amended: No. 48 of 2011 s. 7.]

7A. Interim order, Court may make

(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.

[Section 7A inserted: No. 48 of 2011 s. 8.]

7. Who can apply for provision from deceased's estate

(1) An application for provision out of the estate of any deceased person may be made under this Act by or on behalf of all or any of the following persons —

(a) a person who was married to, or living as the de facto partner of, the deceased person immediately before the death of the deceased person;

(b) a person who at the date of the death of the deceased was receiving or entitled to receive maintenance from the deceased as a former spouse or former de facto partner of the deceased whether pursuant to an order of any court, or to an agreement or otherwise;

(c) a child of the deceased living at the date of the death of the deceased, or born within 10 months after the deceased's death;

(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 —

(i) the deceased received or was entitled to receive property from the estate of a parent of the stepchild, otherwise than as a creditor of that estate; and

(ii) the value of that property, at the time of the parent's death, is greater than the prescribed amount;

(e) a parent of the deceased, whether the relationship is determined through a legal marriage or otherwise, where the relationship was admitted by the deceased being of full age or established in the lifetime of the deceased.

(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.

(2) No application under subsection (1) shall be heard by the Court unless —

(a) the application is made within 6 months from the date on which the administrator becomes entitled to administer the estate of the deceased in Western Australia; or

(b) the Court is satisfied that the justice of the case requires that the applicant be given leave to file out of time.

(3) A motion for leave to file out of time may be made at any time notwithstanding that the period specified in subsection (2)(a) has expired.

[Section 7 amended: No. 75 of 1986 s. 2; No. 3 of 2002 s. 81; No. 48 of 2011 s. 9 (as amended: No. 41 of 2012 s. 5).]

8. Orders after distribution of estate

(1) On an application for an order under this Act, the Court may make an order under section 65 of the *Trustees Act 1962*, in lieu

of an order under this Act, in any case where the estate of the deceased, or part thereof, has been distributed among the persons entitled under the will or intestacy.

(2) Where the Court, in exercise of the power conferred by subsection (1), makes an order under section 65 of the *Trustees Act 1962*, it shall have the same powers in respect of that order as it has in respect of an order made under this Act.

9. Order not to be inequitable as to assets already distributed

In determining whether, and in what way, provision ought to be made by an order, the Court shall have regard to the provisions of section 65(8) of the *Trustees Act 1962*.

10. Order to take effect as codicil or as a devolution on intestacy

Every provision made by an order shall, subject to this Act, operate and take effect either as if the same had been made by a codicil to the will of the deceased executed immediately before his death or, in the case of intestacy, as a modification of the applicable rules of distribution.

11. Distributions made for urgent purposes, administrator etc. protected in case of

Where 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 his death, an administrator distributes the whole or any part of the estate to any such person, being a person entitled thereto, an action shall not lie against him in respect of such distribution and no order made under this Act or under section 65 of the *Trustees Act 1962*, shall disturb such distribution, whether or not the administrator had notice at the time of the distribution of any application, or intention to make an application, that would affect the estate.

[Section 11 amended: No. 48 of 2011 s. 10; No. 6 of 2017 s. 10(2).]

12. Application, notice to administrator and effect of

(1) Notice of an application under this Act shall be served by the applicant on the administrator but it shall not be necessary to serve any notice of an application on any other person, or to make provision for the representation of any person on any application, by reason only of the person being entitled to apply, unless the Court, either at the time the direction is sought or subsequently considers that there are circumstances which render it desirable that the person be served or represented and so directs.

(2) Where an application has been filed by or on behalf of any person, it may be treated by the Court as an application made on behalf of all persons who might apply, and as regards the question of limitation it is to be deemed to be an application on behalf of all persons on whom notice of the application is served and all persons who the Court has directed shall be represented by persons on whom the notice of the application is served.

13. Class fund for 2 or more people, Court may order etc.

(1) The Court may, if it thinks fit, order that an amount specified in the order shall be set aside out of the estate and held on trust as a class fund for the benefit of 2 or more persons specified in the order, being persons for whom provision may be made under this Act.

(2) Where an amount is ordered to be held on trust as a class fund for any persons under subsection (1), that amount shall be invested and the trustee may at his discretion, but subject to such directions and conditions as the Court may give or impose, apply the income and capital of that amount, or so much thereof as the trustee from time to time thinks fit, for or towards the maintenance, support or education (including past maintenance, support or education provided after the death of the deceased) or

the advancement or benefit of those persons, or any one or more of them to the exclusion of the other or others of them in such shares and proportions and generally in such manner as the trustee from time to time thinks fit; and may so apply the income and capital of that amount notwithstanding that only one of those persons remains alive.

(3) For the purposes of this section the term ***trustee*** means the administrator, unless the Court appoints any other trustee, whether by the order creating the class fund or subsequently, in which case it means the trustee so appointed.

(4) If the trustee is not the administrator, then the Court may give such directions as it thinks fit relating to the payment to the trustee of the amount which is to be held on trust as a class fund and may exercise any power under section 89 of the *Trustees Act 1962*, either on the creation of the class fund or from time to time during the continuance of the trusts thereof.

14. Order for provision, terms of etc.

(1) Every order in which provision is made or altered shall specify the part or parts of the estate of the deceased or, where applicable, the part or parts of the distributed estate out of which such provision shall be raised or paid, and prescribe the manner of raising and paying such provision.

(2) Subject to subsection (3), and unless the Court otherwise orders, the burden of any provision shall, as between the persons beneficially entitled to the estate of the deceased, be borne by those persons in proportion to the value of their respective interests in such estate.

(3) The estates and interests of persons successively entitled to any property which is settled by the will of a testator shall not, for the purposes of this section, be separately valued, but the proportion of the provision to be borne by such property shall be raised or charged against the corpus of such property.

(4) The Court, in every case in which an order is made or altered or in which an administrator is appointed in accordance with section 18, shall direct that a certified copy of the order or alteration be made upon the probate of the will or the letters of administration of the estate of the deceased, as the case may be, and for that purpose may require the production of the probate or letters of administration.

(5) Upon any order being made, the portion of the estate comprised therein or affected thereby shall be held subject to the provisions of the order.

(6) The Court may make such order as to the costs of any proceeding under this Act as it deems just.

(7) The Court may give such consequential directions as it thinks fit for the purpose of giving effect to an order made under this Act.

15. Order for provision causing hardship, rescission etc. of

(1) On the application by or on behalf of —

(a) the administrator; or

(b) any person beneficially entitled to or interested in the estate of the deceased; or

(c) a person for whom provision may be made under this Act,

and having regard to the hardship that would be caused to any person taking benefit under the order and to all the circumstances of the case, the Court may rescind or suspend any order, or reduce the provision made under it.

(2) Notice of any application made under subsection (1) shall be served on all persons taking any benefit under the order in question and on such other persons as the Court may direct.

16. Increased provision after order for provision, Court may order

(1) Where it would not be inequitable to grant relief having regard to all possible implications in respect to other persons, and an application for increased provision is made by or on behalf of a person in respect of whom an order has been made under this Act on the ground that since the date of that order circumstances have so changed that undue hardship will be caused if increased provision is not made, the Court may make an order for increased provision.

(2) Notice of any application made under subsection (1) shall be served on the administrator and on such other persons as the Court may direct.

17. Order for provision burdening portion of estate, Court's powers in case of

Where the burden of any provision ordered to be made falls upon the portion of the estate to which any person would, apart from that order, be entitled under the will or on intestacy, the Court may determine that a periodic payment or a lump sum shall be set aside or appropriated to represent or in commutation of such proportion of the provision ordered to be made as falls upon that portion of the estate, and thereupon —

(a) the Court may exonerate such portion from all or any further liability;

(b) the Court may direct in what manner the periodic payment shall be secured and to whom any lump sum shall be paid;

(c) the Court may give directions as to the manner in which any moneys accruing shall be invested for the benefit of the person in whose favour the provision is made.

18. Administrator, Court may appoint in some cases

(1) On any application made under this Act, where it is proved to the satisfaction of the Court —

(a) that the executor or executors or any of them appointed by the testator; or

(b) that any person to whom administration has been granted or who has been appointed as an administrator or receiver under the *Administration Act 1903*; or

(c) that any person who has been appointed administrator for the purposes of this Act,

is guilty of abuse of office or dereliction of duty, the Court may direct that one or more persons be appointed administrator for the purposes of this Act either in addition to or in substitution for the person so found guilty.

(2) Where, in accordance with subsection (1), the Court gives directions for the appointment of an administrator the Court shall make such order as may be necessary or convenient for giving effect to those directions and, thereupon, the property, rights, powers, authorities, functions and discretions vested in the person so found guilty and the liabilities properly incurred by him in the due administration of the estate become and are vested in and transferred to the administrator so appointed (either jointly or severally as the case may require) without any further conveyance, transfer or assignment.

19. Mortgage etc. of provision made before Court order, effect of

No mortgage, charge, or assignment of any kind whatsoever which is given of or over any provision out of the estate of any deceased person granted by any order of the Court under this Act and which is given before the order of the Court is made shall be of any force, validity or effect.

[Section 19 amended: No. 48 of 2011 s. 11.]

20. Administrator, protection of etc.

(1) No action shall lie against the administrator by reason of his having distributed any part of the estate, if the distribution was properly made without notice of any application or intended application under this Act in respect of the estate.

(2) For the purposes of the administration or distribution of any estate or any property no executor or administrator or trustee shall be under any obligation to inquire as to the existence of any person who could claim an interest in the estate or the property by virtue only of the provisions of this Act.

(3) No action by any person whose relationship to the deceased is not determined through a legal marriage or adoption shall lie against the administrator, or any trustee appointed pursuant to this Act, by reason of his having prejudiced any claim of that person under this Act by distributing any part of any estate, or any property, if the distribution was made without notice of any application or intended application by that person under this Act in respect of that estate or property.

(4) A person who makes or is entitled to make an application under this Act and who, being of full legal capacity, advises the administrator in writing that he —

(a) consents to a proposed distribution; or

(b) does not intend to make any application under this Act that would affect a proposed distribution,

shall not bring an action against the administrator by reason of his having thereafter distributed any part of the estate.

(5) Notice to an administrator of an intended application shall lapse and shall be incapable of being renewed, and the administrator may act as if he had not received the notice, if, before the expiration of three months after the date on which he first receives notice of the intention to make the application or before the sooner expiration of 12 months from the date on which the administrator became entitled to administer the estate of the

deceased in Western Australia, the administrator does not receive notice that the application has been made to the Court; but nothing in this subsection shall prevent the subsequent making of the application.

[Section 20 amended: No. 48 of 2011 s. 12.]

21A. Evidentiary matters

(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

(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*.

[Section 21A inserted: No. 48 of 2011 s. 13.]

21B. Regulations

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

[Section 21B inserted: No. 48 of 2011 s. 13.]

21. Rules of court

The powers to make, alter, and annul rules conferred by Part X of the *Supreme Court Act 1935*, shall be read as including power to make such rules as may be necessary or convenient for regulating the practice and procedure of the Supreme Court to be adopted for the purposes of this Act, and to alter and annul any such rules.

[Schedule omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

This is a compilation of the *Family Provision Act 1972* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Inheritance (Family and Dependants Provision) Act 1972 [3]	57 of 1972	31 Oct 1972	1 Jan 1973 (see s. 2 and *Gazette* 17 Nov 1972 p. 4379)
Inheritance (Family and Dependants Provision) Amendment Act 1986	75 of 1986	4 Dec 1986	1 Jan 1987
Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 13 [2]	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and *Gazette* 20 Sep 2002 p. 4693)
Acts Amendment (Equality of Status) Act 2003 Pt. 32	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579)
Reprint 1: The *Inheritance (Family and Dependants Provision) Act 1972* as at 5 Sep 2003 (includes amendments listed above)			
Wills Amendment Act 2007 s. 25	27 of 2007	26 Oct 2007	9 Feb 2008 (see s. 2 and *Gazette* 8 Feb 2008 p. 313)
Inheritance (Family and Dependants Provision) Amendment Act 2011 Pt. 2	48 of 2011 (as amended by No. 41 of 2012 s. 4-5)	25 Oct 2011	16 Jan 2013 (see s. 2(b) and *Gazette* 15 Jan 2013 p. 79)
Reprint 2: The *Family Provision Act 1972* as at 22 Feb 2013 (includes amendments listed above)			
Statutes (Minor Amendments) Act 2017 s. 10	6 of 2017	12 Sep 2017	13 Sep 2017 (see s. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Short title	Number and year	Assent	Commencement
Evidence Act 2025 s. 492(1)	15 of 2025	25 Sep 2025	18 Sep 2027 (see s. 2(e) and SL 2026/190 cl. 2)
Assisted Reproductive Technology and Surrogacy Act 2025 Pt. 17 Div. 7	19 of 2025	18 Dec 2025	To be proclaimed (see s. 2(c))

Other notes

[1] Repealed by the *Guardianship of Children Act 1972* which was repealed by the *Family Court Act 1975* (as amended by the *Family Court Act Amendment and Acts Repeal Act 1979*) which was repealed by the *Family Court Act 1997*.

[2] The *Acts Amendment (Lesbian and Gay Reform) Act 2002* s. 82 reads as follows:

> **82. Applications regarding the estates of persons who died before the commencement of this Part**
>
> An application under the *Inheritance (Family and Dependants Provision) Act 1972* for provision out of the estate of a person who died before the commencement of this Part is to be dealt with under that Act as if this Part had not commenced.

[3] Now known as the *Family Provision Act 1972;* short title changed (see note under s. 1).

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
administration	4(1)
administrator	4(1)
child	4(1)
Court	4(1)
deceased	6(1)
eligible person	6(5)
grandchild	4(1)
statement	21A(1)
stepchild	4(1)
trustee	13(3)
undisclosed property	6(5)
will	4(1)

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