



Western Australia

## **Legitimation Act 1909**

Compare between:

[04 Apr 1962, 01-a0-03] and [14 Apr 1999, 01-b0-05]



## Legitimation Act 1909

**An Act to amend the Law by making provision for the Legitimation of Children born before Marriage, by the Subsequent Marriage of the Parents.**

~~[Reserved 21st December 1909.]<sup>1</sup>~~

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

**1. Short Title**

This Act may be cited as the *Legitimation Act 1909*.

*[Section 1 amended by No. 39 of 1940 s.3.]*

**2. Interpretation**

In the construction of this Act the word “**Registrar**” means and includes the Registrar General, appointed under the *Registration of Births, Deaths, and Marriages Act 1894*,<sup>2</sup> his deputies, and all district registrars and assistant district registrars.

**3. Legitimation of illegitimate children on registration after marriage of parents**

Any child born before the marriage of his or her parents (and whether before or after the passing of this Act), whose parents have intermarried or shall hereafter intermarry, shall be deemed on the registration of such child as hereinafter provided to have

been legitimated by such marriage from birth, and shall be entitled to all the rights of a child born in wedlock.

Provided that such child shall be entitled only to receive, or share and participate in, the real and personal property remaining undistributed at the date of the registration of such child as legitimate, and which real and personal property is the subject of any disposition or of any devolution by law, wholly or partly on or in favour of children or their issue, or in which such children or issue may have any claim, on the death of any person, whether such disposition or devolution takes effect before or after the registration of such child as legitimate, or whether before or after the passing of this Act, and under which such child would not have been entitled to any share or interest unless legitimate:

Provided further, that nothing herein contained shall prejudice or affect the interest of any *bona fide* purchaser or encumbrancer for value.

*[Section 3 amended by No. 29 of 1926 s.2.]*

**4. Issue of legitimated child dying before marriage of parents**

The issue of any such legitimated child who has died or may hereafter die before the marriage of his or her parents shall take, by operation of law, the same real and personal property which would have accrued to such issue if the parent had been born in wedlock.

**5. Certain estates, rights, or interests not affected**

Nothing in this Act shall affect any estate, right, or interest in any real or personal property to which any person has become or may become entitled, either mediately or immediately in possession, or expectancy by virtue of any disposition made before the passing of this Act, or by virtue of any devolution by law on the death of any person dying before the passing of this Act except so far as to permit, in accordance with section three, any child legitimated in accordance with the provisions of this

Act receiving or sharing and participating in any real and personal property remaining undistributed at the date of registration of such child as legitimate.

*[Section 5 amended by No. 29 of 1926 s.3.]*

**6. Registrar to register such child**

(1) If —

- (a) any man, who claims to be the father of an illegitimate child whose mother he has married since the birth of such child, produces to a registrar a statutory declaration in the form set out in the schedule to this Act; or
- (b) any man, having married the mother of an illegitimate child since the birth of such child, and before he shall have made or produced to a registrar a statutory declaration as provided for in paragraph (a) hereof, dies or becomes insane or of such a condition of mental disability as to render him in the opinion of the Judge hearing an application hereinafter provided for incapable of making such a declaration, and it shall be proved to the satisfaction of a Judge in Chambers, upon the application of the mother of such child that the said man was or is her husband, and that he was or is the father of the said child, or during his lifetime or before he became insane or mentally disabled as aforesaid acknowledged himself as the father of the child, and upon production of a certified copy of the order of the Judge so finding —

it shall be the duty of the registrar to register such child, whether dead or alive, as the lawful issue of such man and his wife; and the registrar shall make a note in the entry to the effect that such registration has been made under the authority of this Act.

- (1A) A copy of any application under paragraph (b) of subsection (1) hereof, and of the evidence by affidavit to be used in support thereof, shall be served upon the man alleged to be insane or mentally disabled as aforesaid, or upon the committee (if any) of such man, within the same periods prior to the hearing of the

application as are provided by the *Rules of the Supreme Court 1909*, to be limited in a writ of summons for the appearance of any defendant.

- (2) If the child has been previously registered as illegitimate, he shall also make in the register on the page on which the previous entry was made a note of the entry made under this Act, and shall intimate to the Registrar General, if he is a deputy or district registrar, that such entries have been made.
- (3) If such deputy or district registrar has not in his possession the register containing the entry of illegitimacy, it shall be sufficient for him to intimate to the Registrar General the fact of the new entry having been made.

*[Section 6 amended by No. 29 of 1926 s.4; No. 39 of 1940 s.2.]*

**7. Regulations**

The Governor may make regulations for carrying this Act into effect and prescribing forms for use under this Act.

**Schedule**

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DECLARATION

I, \_\_\_\_\_, of \_\_\_\_\_, do solemnly  
and sincerely declare that —

- (1) I am the father of a certain child named \_\_\_\_\_  
born on the \_\_\_\_\_ day  
of \_\_\_\_\_, 1\_\_\_\_, at \_\_\_\_\_ ;
- (2) I was married to \_\_\_\_\_, the mother of  
the said child, on the \_\_\_\_\_ day  
1\_\_\_\_, at \_\_\_\_\_, and I am desirous of  
having the birth of the said child registered as that of the  
lawful issue of myself and the said \_\_\_\_\_ ;
- (3) the document hereunto annexed is a certified copy of the  
certificate of my marriage with the said \_\_\_\_\_ .

And I make this solemn declaration by virtue of section one hundred  
and six of the *Evidence Act 1906*.

Taken at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 1\_\_\_\_,  
before me,

J.P.

### Notes

- <sup>1</sup> This is a compilation of the *Legitimation Act 1909* and includes all amendments effected by the other Acts referred to in the following Table.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Legitimation Act 1909</i>	44 of 1909	Reserved for Royal Assent 21 Dec 1909 Assented to 5 Mar 1910	5 Mar 1910 (see <i>Gazette</i> 29 Apr 1910 p.794)
<i>Legitimation Act Amendment Act 1926</i>	29 of 1926	8 Dec 1926	8 Dec 1926
<i>Legitimation Act Amendment Act 1940</i>	39 of 1940	30 Dec 1940	30 Dec 1940

[This Act was repealed by the Acts Repeal and Amendment \(Births, Deaths and Marriages Registration\) Act 1998 s. 4 \(No. 40 of 1998\) as at 14 Apr 1999 \(see s. 2 and Gazette 9 Apr 1999 p. 1433\)](#)

- <sup>2</sup> Now *Registration of Births Deaths, and Marriages Act 1961*.