

## Succession Rights of Illegitimate Children

### Terms of Reference

In 1968, the Committee was asked to consider whether any alterations were desirable in the law of succession in Western Australia in relation to illegitimate children.

### Background of Reference

In 1968 a minute prepared for Parliament by the Legal Officer for the Public Trust Office drew attention to specific examples of apparent injustice caused by the existing law of succession in Western Australia. One such example was of a woman who had died at the age of 82 years. She had three sons, one of whom survived her. The other two sons had pre-deceased her, leaving five grandchildren. In the course of winding up her estate the surviving son became aware that his mother and father had never married and that therefore he and her surviving grandchildren had no legitimate claim on the estate.

The subject of illegitimate succession was touched upon by the Committee in its report on Project No 2,<sup>1</sup> which recommended that legislation apply to intestacies and that illegitimacy no longer be a bar to application under the Act.

### Nature and Extent of Consultation

The Committee issued a working paper in December 1968 which was distributed for comment to the Chief Justice, judges and the Master of the Supreme Court, the Law Society of Western Australia, the Public Trustee, private Western Australian trustee companies and law reform agencies. Submissions were received from the Law Society expressing general support for the proposals suggested in the Committee's working paper. The Committee published its final report in August 1970.<sup>2</sup>

### Recommendations

After consideration of the issues the Committee made a number of recommendations, including that:

- the relationship of an illegitimate child to its parents be deemed legitimate for all purposes relating to intestate succession, so as not only to give the illegitimate the right to succeed to the property of either parent and vice versa, but also to establish the usual and corresponding rights of succession between the child and all other lineal and collateral kindred;
- the terms 'children', 'issue' and other words of relationship, where used in a will or other disposition, be deemed to include illegitimates and persons claiming through illegitimates, unless a contrary intention appears;
- special protection be given to personal representatives and trustees in the case of claims based on illegitimate relationships; and
- section 27 of the *Wills Act 1970 (WA)* be extended to give illegitimates the benefit of the provision.

A comprehensive outline of the Committee's recommendations may be found in the final report at paragraphs 32–45.

### Legislative or Other Action Undertaken

In 1971, Parliament enacted the *Administration Act Amendment Act 1971 (WA)*, the *Property Law Act Amendment Act 1971 (WA)* and the *Wills Act Amendment Act 1971 (WA)* to implement the Committee's recommendations.<sup>3</sup>

<sup>1</sup> Law Reform Committee of Western Australia, *The Protection to be Given to the Family and Dependents of a Deceased Person*, Project No 2 (1970). Project No 2 is more commonly known as the *Testators Family Maintenance Act*.

<sup>2</sup> Law Reform Committee of Western Australia, *Succession Rights of Illegitimate Children*, Project No 3 (1970). The reference was originally known as *Illegitimate Succession*.

<sup>3</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 18 November 1971, 112–113 (Mr TD Evans, Attorney-General).