

Succession Rights of Adopted Children

Terms of Reference

In 1971 the Committee was asked to consider if it was desirable to alter the law in respect to the succession rights of adopted children.

Background of Reference

At the time of the reference, the law¹ in respect to rights of adopted children upon intestacy differentiated between their rights in respect to the family of their adoptive and natural parents. Specifically, it preserved their full rights of succession in relation to the relatives of their natural parents but acknowledged no such rights in relation to their adoptive parents. This demarcation ran counter to the general social aim of ensuring that adopted children become members of their adopted family in the fullest sense by ensuring that they were treated equally to children born of the marriage. Government agencies, academics and commentators all held the opinion that this legal position was unsatisfactory and legislation was required to rectify the situation. The specific measures to be taken were the subject of various dissenting opinions.

Nature and Extent of Consultation

The Committee issued a working paper in April 1971 stating the Committee's provisional views that the *Adoption of Children Act 1896 (WA)* ("the Act") should be amended to provide for the complete assimilation of the legal position of adopted children and those born from the marriage. Comments on the paper were received from the Hon Justice Burt, the Council of the Law Society of Western Australia, the Acting Director of the Child Welfare Department and the Perpetual Executors, Trustees & Agency Company (WA) Ltd. The Committee submitted its final report in July 1971.²

Recommendations

The principal recommendation confirmed the tentative view expressed in the working paper; that the Act should be amended to provide for equality in the legal positions of adopted children and children of a marriage. Specifically the Committee recommended that:

- Sections 7 and 8 of the Act be repealed and in their place be enacted provisions corresponding to s 33(1), s 34 and s 37 of the *Adoption of Children Ordinance 1965 (ACT)*.
- Section 9 of the Act be amended along the lines of s 23(4) and (5) of the *Adoption of Children Ordinance 1965 (ACT)* relating to the effect of discharge of an adoption order.
- Section 5(1) (8b) of the Act be amended so as to require the Child Welfare Department's report to include reference to the child's financial prospects.
- Section 102 of the *Property Law Act 1969 (WA)* be amended to include adopted children.

Legislative or Other Action Undertaken

The Act was amended by the *Adoption of Children Amendment Act 1971 (WA)* which equalised the position of natural and adopted children in respect to succession rights upon intestacy. The *Adoption Act 1994 (WA)* later repealed the Act but carried through the reform by the stipulation in s 75 that the relationship between the adoptee and their adoptive parent is to be that of "child" and "parent". Together with legislative changes to the *Property Law Act 1969 (WA)*, these amendments implemented the Committee's recommendations.

¹ *Adoption of Children Act 1896 (WA)*.

² Law Reform Committee of Western Australia, *Succession Rights of Adopted Children*, Project No 24 (1971).