

ADMINISTRATION AMENDMENT BILL 2021

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.R. QUIGLEY (Butler — Attorney General) [12.33 pm]: I move —

That the bill be now read a second time.

It gives me great pleasure to reintroduce this bill. A version of this bill, the Administration Amendment Bill 2018, was passed in the Legislative Assembly and transmitted to the Legislative Council on 3 April 2019. However, the bill lapsed with the proroguing of Parliament in 2020. This bill will increase the current amounts of the statutory legacies payable on intestacy. These amounts were last adjusted in 1982 and are now grossly inadequate. It also provides a formula for calculating the amount of the statutory legacies in the future.

The process for reforming the law relating to succession began in 1991 when the Standing Committee of Attorneys-General of Australia resolved to develop uniform succession laws across all Australian states and territories. The project was coordinated by the Queensland Law Reform Commission, with a national committee comprising representatives from each jurisdiction preparing a report and proposed model bills for adoption by the states and territories.

In late 2003, Western Australia established a working group to examine the law of succession in Western Australia and made recommendations for legislative reform for consideration by the government. The working group was constituted by experts in the area and drawn from the Supreme Court of Western Australia, the legal profession, academia, the Public Trustee and the independent bar. The model bills, together with reports of the Law Reform Commission of Western Australia, have informed the process of the working group's review of the law of succession in Western Australia. However, there have been significant differences in the proposed reforms and the model bills. Although the working group is aware of the rationale for uniformity, it does not consider that the benefits contained in the Administration Act 1903 of Western Australia should be surrendered for that purpose alone. From the work done by the working group, there have been reforms to the law relating to wills and family and dependants' inheritance provisions. The working group continued with the above review process when considering the reform of intestacy law in Western Australia.

The bill deals with entitlements arising upon an intestacy as presently contained in sections 14 and 15 of the Administration Act 1903 of Western Australia. Intestacy occurs when the whole or part of the estate of a deceased person is not disposed of by a will. The property that has not been dealt with effectively by will is usually distributed according to a regime established by statute. A partner's legacy is the fixed net sum to which the deceased's surviving spouse and/or de facto partner is entitled from the estate when the deceased died intestate and in circumstances in which there are surviving family members.

The most significant of the proposed reforms is to increase the statutory legacy from the intestate estate passing to the surviving spouse or de facto partner. Currently, a partner's legacy in Western Australia is as low as \$50 000 when the intestate dies leaving issue—a person's children or other lineal descendants—and as high as \$75 000 when the intestate dies leaving no issue. The statutory legacy aims to remove financial hardship for the surviving spouse or de facto partner and tries to ensure that he or she can live in the manner to which he or she had become accustomed. The bill amends the Administration Act 1903 to set the amount of the partner's statutory legacy at \$472 000 when the intestate dies leaving issue and \$705 000 when the intestate dies leaving no issue. The lapsed bill contained lump sum amounts that had been determined when that bill was drafted—namely, in 2017. Given the time that has elapsed since then, this bill contains lump sum amounts that are up to date. Those amounts have been calculated by applying the formula contained in clause 5 of the lapsed bill.

The parental statutory legacy applies when the deceased has living parents and/or siblings or siblings' issue but does not have a surviving husband, wife, partner or issue. The parental statutory legacy was last reviewed prior to 1982 and is currently \$6 000. Consideration has been given to whether to increase the \$6 000 to a sum that is financially beneficial or to abolish this statutory legacy.

The reasons for preferring to increase the parental statutory legacy include that the \$6 000 has little beneficial financial impact; it makes the distribution of an intestate estate more complicated than this small amount warrants; and it is appropriate that the deceased parents participate in the distribution of their child's intestate estate because the death of a child is a very tragic event for parents, and money, though it cannot compensate for the loss, may provide some help to those parents. The bill amends the Administration Act 1903 to set the amount of the parental statutory legacy at \$56 500.

In 1973, the Law Reform Commission of Western Australia noted that fixing the statutory legacy by legislation had proved unsuccessful, given that Parliament had adjusted the statutory legacy on only three occasions in the preceding 25 years. The bill inserts a new provision into the Administration Act 1903, setting out a formula for calculating the amount of statutory legacies from time to time in the future.

I commend the bill to the house.

Debate adjourned, on motion by **Mr P.J. Rundle**.