

Article Information

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Will claims - Step-child of former domestic partner succeeds

The Victorian Supreme Court has considered on appeal whether the expression “step-child” includes the child of a deceased domestic (or de-facto) partner.

Scott-MacKenzie v Bail [2017] VSCA 108 (10 May 2017)

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The short answer in Victoria is, yes.

The Respondent, born in 1939, claimed she was the step-child of the deceased (born in 1938) and eligible to make a claim for provision pursuant to Part IV of the *Administration of Probate Act 1958 (Vic)*. The Appellant sought to dismiss the Respondent's claim on the ground that she was not an “eligible person” within the meaning of Section 90 of the Act and that her claim had no real prospects of success. The determination of this question depended on whether the Respondent, as a child of the former domestic partner of the deceased, is a step-child of the deceased.

Section 90 of the Act defines “eligible person” as including “step-child” of the deceased. The Act, however, does not define “step-child”.

The Appellant contended that if the Respondent's mother lived as a domestic partner with the deceased, then the Respondent does not obtain the status of step-child as the deceased was never married to the Respondent's mother and therefore the Respondent never was, and is not, his step-child. The Appeal Court after a long and careful analysis concluded that there was no doubt that Parliament could have put the issue in dispute beyond doubt by defining the word “step-child” to include a child of a deceased former domestic partner. By reference to the context of other definitions of “eligible person” in the Act, the Court concluded that the word “step-child” need not be given some meaning derived from, and referable to earlier times, prior to amendments to the Act to include “step-child”.

Whilst the Court did not consider it necessary to refer to Law Reform Commission reports and the like or the Parliamentary debates, it was fortified in its conclusion by the reference in the Explanatory Memorandum that notes, that in respect of the definition of an eligible person in the current version of the Act, that “step-child is not limited to a deceased spouse but also includes a child of the deceased's domestic partner”.

On that basis, the appeal was dismissed and the step-child was free to pursue her claim for further provision from the estate of the deceased.

Once again, the Courts are seen to be taking a more expansive approach to the classes of persons who may be contemplating claims including long divorced spouses as decided by the NSW Supreme Court in *Lodin v Lodin* [2017].