

Distribution on Intestacy

Terms of Reference

In 1972, the Committee was asked to consider and report on the law relating to the distribution of estates of persons dying intestate. This reference was part of a general reference to review the law of trusts and the administration of estates, and was adopted by the Commission upon its inception.¹

Background of Reference

The reference arose as a result of concerns that the laws in Western Australia relating to intestacy did not adequately reflect prevailing social attitudes. Further, it was considered that the law should be more readily ascertainable, with a focus on brevity and simplicity.

Nature and Extent of Consultation

A working paper was issued in December 1972 and distributed to parties with an interest in the administration of estates, including the Public Trustee, trustee companies, the judges of the Supreme and District Courts, and the Law Society of Western Australia. Submissions were also invited from other interested persons through an advertisement placed in *The West Australian* newspaper.

Responses to the working paper were received from a variety of sources including the Citizens' Advice Bureau, the Law Society of Western Australia, the Public Trustee, and members of the community. The Commission delivered its final report in February 1974.²

Recommendations

The Commission recommended that legislation be enacted to provide for the distribution of intestate estates to specified relatives of the deceased. The entitlement that a beneficiary would receive from an intestate estate differed depending upon the identity of the relative who survived the deceased.³ Where there was no surviving relative,⁴ the Commission recommended that the estate pass to the Crown.

Legislative or Other Action Undertaken

The *Administration Act Amendment Act 1976* (WA) implemented many of the Commission's recommendations.⁵ The legislation deviated from the recommendations with respect to the value of entitlement to spouses, and the estate passing to the Crown where no listed relatives survived.⁶ The remaining recommendations were implemented by the *Administration Amendment Act 1984* (WA).

¹ The Law Reform Committee of Western Australia was formally reconstituted as a Commission on 19 January 1973.

² Law Reform Commission of Western Australia, *Distribution on Intestacy*, Project No 34(I) (1973).

³ For instance, where an intestate was survived by a spouse and children, the Commission recommended that the spouse receive the household chattels; first \$25,000 + 5% interest thereon + 1/3 residue (1/2 residue if only one child or issue of one child); right to purchase the matrimonial home and other personal chattels at market value with the balance to the children per stirpes. Where an intestate was survived by a spouse alone the whole estate passed to the spouse. Where the intestate was survived by multiple children the estate was to be divided equally among them.

⁴ The Commission's definition of "relative" included: parents, siblings, grandparents, aunts, uncles and cousins.

⁵ The *Administration Act Amendment Act 1976* (WA) also incorporated recommendations from the Commission's report *Administration Bonds and Sureties*, Project 34(II) (1976).

⁶ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Assembly, 21 October 1976, 3354 (Mr IG Medcalf, Attorney-General).