THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA

Project No 34 – Part II

Administration Bonds and Sureties

REPORT

MARCH 1976

The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

The Commissioners are -

Mr. D.K. Malcolm, Chairman
Mr. E.G. Freeman
Professor R.W. Harding

The Executive Officer of the Commission is Mr. C.W. Ogilvie, and the Commission's offices are on the 11th floor, R. & I. Bank Building, 593 Hay Street, Perth, Western Australia, 6000 (Tel: 25 6022).

CONTENTS

TERMS OF REFERENCE

1. The Commission was asked to consider and report on the law relating to administration bonds and sureties.

2. The Commission has also been asked to consider and report on other aspects of the law relating to the administration of deceased estates. The Commission will submit reports on these other aspects in due course.

WORKING PAPER

3. The Commission issued a working paper on 27 June 1975. A copy of the paper is attached as Appendix I. The names of those who commented on the paper are listed in Appendix II.

HISTORICAL BACKGROUND

4. The administration bond in its present form was introduced into the law of England by the *Statute of Distribution 1670* (22 and 23 Chas. 11 Ch. 10) with the object of ensuring that the estate of an intestate was distributed to those persons entitled to it. Before the statute, the law relating to intestacy and the administration of an intestate estate was in a chaotic state and there were many legal difficulties in the way of compelling the administrator to distribute the surplus in the estate after payment of debts. In Western Australia, it is still necessary for an administrator to execute a bond despite the fact that a comparable state of law to that which existed in England before 1670 does not exist today in this State.

PRESENT LAW IN WESTERN AUSTRALIA

5. Under the *Administration Act 1903*, before an administrator can obtain a grant of letters of administration of a deceased estate, he is required to execute an administration bond to Her Majesty the Queen in an amount equal to the gross amount of the estate: ss.26 and 27. The bond must be in accordance with Form 2 of the *Non-contentious Probate Rules 1967* (see the Appendix to the working paper), unless otherwise ordered by the Master of the Supreme Court: s.26; *Non-contentious Probate Rules 1967*, rule 27. However,

(a) No bond is required from the public Trustee or a person obtaining administration to the use or for the benefit of the Crown: s.26(2).

(b) The court may dispense with a bond where the applicant for the grant is a trustee company: s.26(3). The court in fact always dispenses with a bond in these cases.

(c) The court may reduce the amount of the bond in any case: s.27.

The court, however, has no general power to dispense with the bond altogether.

6. Normally the bond must be supported by two persons as sureties: ss.26 and 27; rule 27. However,

(a) The court may dispense with one or both sureties or limit the liability of any surety: s.27. This is commonly done where there are no debts and the applicant for the grant is the sole beneficiary or the other beneficiaries being of full legal capacity consent to dispensing with sureties.

(b) No sureties are required where the estate does not exceed $5,000 and administration is granted to the spouse of the deceased: s.28(1).

(c) It appears that the court can at any time reduce the liability of any surety: s.29.

7. The condition in the prescribed form of bond (see paragraph 5 above and the Appendix to the working paper) is that the intended administrator shall collect, get in, administer and distribute according to law the real and personal property of the deceased and punctually comply with all duties and obligations imposed on him by law in relation to the estate of the deceased. If the administrator breaks a condition of the bond, the court may order its assignment to any person, who may sue upon the bond as trustee for those interested: s.30.

A more complete summary of the provisions of the *Administration Act* and of the *Non-contentious probate Rules* relating to administration bonds and sureties is contained in paragraphs 3 to 7 of the working paper.

These requirements of the Act and rules do not apply to executors.

THE LAW ELSEWHERE

Australia and New Zealand

8. The law relating to administration bonds and sureties in the other Australian jurisdictions and New Zealand is basically the same as that applying in this State with some variations in matters of detail. The relevant enactments in those jurisdictions are listed in paragraph 8 of the working paper, and some of their salient features are referred to in paragraph 9 of that paper.

England

9. The law in England was also similar to that applying in this State until it was amended in 1971, following the report of the English Law Commission, *Administration Bonds, Personal Representatives' Rights of Retainer and Preference and related matters* (Law Com. No. 31, (1970) Cmnd. 4497).

Section 8 of the *Administration of Estates Act 1971* substituted a new s.167 for the former s.167 of the *Supreme Court of Judicature (Consolidation) Act 1925* to give effect to most of the recommendations of that report. Administration bonds have been abolished. In their place the Act provides that one or more sureties may be required in those circumstances specified in the rules, to guarantee any loss arising from the breach by an administrator of his duties and within any limit of liability imposed by the court. The guarantee has effect as if under seal and enures, for the benefit of each of the persons interested in the administration of the estate but no action can be brought upon the guarantee without leave of the High Court. Paragraph 19 below contains a detailed account of the circumstances where sureties are required in England.

DISCUSSION AND RECOMMENDATIONS

Administration bonds

10. The administration bond has three purposes -

(a) it sets out the duties of the administrator;

(b) it affords an aggrieved creditor or beneficiary an additional remedy against a defaulting administrator;

(c) where there are sureties to the bond, it affords an aggrieved creditor or beneficiary a remedy against the sureties in the event of default by the administrator.

11. With respect to the first of these purposes, it is unnecessary to retain the bond in order to set out the duties of an administrator, particularly as the bond only expresses those duties in vague and general terms. It would be preferable to set out these duties in statutory form (see paragraph 15 below).

12. The second purpose of the bond is to afford a remedy against a defaulting administrator. However, an administrator is liable to a creditor or beneficiary under the general law for any breach of his duties irrespective of whether there is a bond or not. The effect of a bond is to render the administrator contractually liable to carry out his duties as defined in the bond. A bond may therefore have the anomalous result of depriving the court of its power under s.75 of the *Trustees Act 1962* to relieve an administrator wholly or in part from personal liability for breach of his duties when he has acted honestly and reasonably and ought fairly to be excused. If this is correct, it would seem to be an unfair result.

13. The third and last purpose of the administration bond is to provide a remedy against sureties (if there are any) in the event of an administrator's default. If an administrator defaults in his duties, for example, by fraudulently misappropriating funds, any beneficiary or creditor who has been injured by the breach may apply to the court which, if satisfied that a condition of the bond has been broken, may order the assignment of the bond to the aggrieved person who may sue upon it in his own name. In practice, this occurs only when the aggrieved party wishes to enforce the bond against a surety. If he alleges maladministration by the administrator and wishes to sue him, he will normally do so by starting an action against the administrator based on his liability under the general law and not on his liability under the bond.

Recommendation to abolish bonds

14. In the light of the foregoing, the Commission has concluded that the only real value of the bond appears to be the provision of a remedy against sureties. The Commission considers that it is possible to provide adequate protection without retaining the artificiality of a bond by means of a guarantee by sureties in appropriate cases. Accordingly, it recommends that administration bonds be abolished.

Specifying duties of personal representatives by statute

15. Whether or not administration bonds are abolished, it would make for clarity if the duties of administrators were specified by statute. This has been done in England. Section 25 of the English *Administration of Estates Act 1925*, as substituted by s.9 of the *Administration of Estates Act 1971*, specifies the duties of a personal representative. The section provides -

"The personal representative of a deceased person shall be under a duty to -

(a) collect and get in the real and personal estate of the deceased and administer it according to law;
(b) when required to do so by the court, exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court;
(c) when required to do so by the High Court, deliver up the grant of probate or administration to that court."

In Western Australia, the first of these duties is specifically set out in the administration bond (see paragraph 7 above) and the second is set out in s.43 of the *Administration Act*. The third of the duties, which could arise, for example, where administration has been granted on the basis of intestacy and a will is later discovered, depends on the inherent powers of the Supreme Court of Western Australia. The Commission is of the opinion that it would make for simplicity and would aid understanding if the *Administration Act* were amended so as to set out in the one section the duties of personal representatives. In their comments on the working paper both the Master of the Supreme Court and the Public Trustee considered it was desirable to specify in statutory form all the duties of an administrator. The Commission accordingly recommends that the *Administration Act* be amended by enacting a new section to the same effect as s.25 of the English *Administration of Estates Act 1925*. The new section

would apply to personal representatives generally whether they be executors or administrators.

Sureties

General

16. In paragraph 14 above, the Commission recommended that administration bonds be abolished. A more difficult question is to decide whether it is desirable to retain a general requirement of a guarantee by sureties for the due administration of the estate.

There are a number of arguments against retaining sureties. One is that the general requirement that sureties be obtained puts the estate to additional expense which may arise in a number of ways -

(a) Where sureties are required there is the cost of preparing and having executed a separate legal document.

(b) There is expense involved in documentation where it is thought desirable to apply to dispense with sureties.

(c) Where sureties are required and no private sureties can be obtained, it is necessary to obtain the security of an approved insurance company. Applicants are often unable to find private sureties, especially as the sureties must each have net assets at least equal in value to the amount of the liability which they are to assume under the bond. The Master of the Supreme Court has informed the Commission that in 1974 there were 419 grants of administration to applicants other than the Public Trustee and that an insurance company acted as surety in sixty-five of these cases. A survey of approved insurance companies undertaken by the Commission showed that the premium charged varied from 0.1% to 1.125% of the gross value of the estate, depending on the number and status of the beneficiaries, the length of the administration and other matters.

17. Other arguments against sureties are -

(i) An executor is not required to provide any sureties. It is hard to see any logical basis for the distinction in this regard between an executor and an administrator. There seems to be no particular reason why it should be thought necessary to give creditors the protection of sureties when the deceased's personal representative happens to be an administrator when the same protection has not been thought necessary in the case of an executor. Furthermore, as regards beneficiaries, the need for protection may sometimes be less in the case of an intestacy than if there is a will: the administrator would normally be one of the principal beneficiaries but an executor appointed by will might not.

(ii) Applications by a creditor or beneficiary to have the bond assigned to him (see paragraph 7 above) are very rare. The Master of the Supreme Court has informed the Commission that he can only recall one instance in the past fifteen years where such action has been taken.

(iii) In some cases, the protection of a surety is an illusory protection to a beneficiary. The Commission's survey (referred to in (c) of paragraph 16 above), found that some companies which act as surety require an immediate release from adult beneficiaries, thus collecting a premium without being at risk of action by those beneficiaries. At least one company required an indemnity from each adult-beneficiary, thus making each such beneficiary liable to recompense the company in the event of it being obliged to meet a claim by any other beneficiary or creditor of the estate.

18. The Commission considers that the arguments against the requirement of sureties carry considerable weight and is of the opinion that the automatic requirement of sureties in most cases is unjustifiable. On the other hand, the Commission is of the view that it is desirable to retain a power to require sureties in special circumstances. However, if this is to be a practical solution the new law must be framed in such a way that applicants for grants of letters of administration will know where they stand. Any amendments to the present law

would be of little benefit unless one could predict in nearly all cases whether or not sureties would be demanded by the court.

Details of English law regarding sureties

19. As mentioned in paragraph 9 above, in England the new s.167 of the *Supreme Court of Judicature (Consolidation) Act 1925* abolished administration bonds but provided that one or more sureties may be required in those circumstances specified in the rules, to guarantee any loss arising from the breach by an administrator of his duties. The English *Non-contentious Probate Rules 1954* were also amended in 1971 so as to specify the circumstances when one or more sureties may be required. Rule 38(1) provides that the Registrar shall not require a guarantee as a condition of granting administration except where it is proposed to grant it -

> "(a) by virtue of rule 19(v) or rule 21(4) to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
> (b) under rule 27 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;
> (c) under rule 30 to the attorney of a person entitled to a grant;
> (d) under rule 31 for the use and benefit of a minor;
> (e) under rule 33 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;
> (f) to an applicant who appears to the registrar to be resident elsewhere than in the United Kingdom;
>
> or except where the registrar considers that there are special circumstances making it desirable to require a guarantee."

Notwithstanding the above, rule 38(2) specifies that, except in special circumstances, a guarantee shall not be required where the applicant or one of the applicants is -

> (a) a trustee company;
> (b) a solicitor holding a current practising certificate;
> (c) a servant of the Crown acting in his official capacity;
> (d) a nominee of a public department or a local authority.

Rule 38(1) therefore specifies the circumstances in which, save where the applicant (or one of the applicants) is in one of the categories set out in Rule 38(2), a guarantee may be required,

and in addition gives the Registrar a discretion to require a guarantee in other unspecified circumstances. It is to be noted that even in the circumstances specified in paragraphs (a) to (f) of Rule 38(1), it is not mandatory for sureties to be required. The Registrar may still dispense with sureties under the discretion given him under the new s.167 of the *Supreme Court of Judicature (Consolidation) Act 1925* (see paragraph 9 above).

Rule 38(5) provides that, unless the Registrar otherwise directs, if it is decided to require a guarantee, it shall be given by two sureties except where the gross value of the estate does not exceed five hundred pounds or the proposed surety is a corporation, in which case one will suffice.

The sureties must be resident in the United Kingdom, and the limit of their liability is the sworn gross amount of the estate.

Recommendations as to sureties

When sureties should normally be required

20. In paragraph 18 above, the Commission expressed the opinion that the imposition of the requirement of sureties in most cases where there was an administration was unjustifiable, but that any amendments to the present law would be of little benefit unless one could predict in nearly all cases whether or not sureties would be demanded by the court.

Because under the new English provisions applicants for administration would normally be able to predict with certainty whether sureties would be required, the Commission agrees with the English approach.

The Commission therefore recommends that the *Administration Act* be amended to provide that as a condition of granting administration the Supreme Court may, subject to and in accordance with probate rules, require one or more sureties to guarantee that they will make good, within any limit imposed by the court on the total liability of the surety or sureties, any loss which any beneficiary or creditor may suffer in consequence of a breach by the administrator of his duties. The Commission also recommends that the new provision should provide that the guarantee shall enure for the benefit of every person interested in the

administration of the estate as if contained in a deed made by the surety or sureties with every such person.

21. The Commission agrees that sureties should be required in the circumstances specified in (c) to (f) of Rule 38(1) of the English Rules (see paragraph 19 above) and recommends accordingly.

However, (a) and (b) of Rule 38(1) should not be adopted in their existing form. The order of entitlement to a grant of administration is different in England from that in Western Australia and the circumstances in which a person who is not a beneficiary can obtain a grant are also different. For the English position, see Rules 19, 21 and 27 of the *Non-contentious Probate Rules 1954* (the text of which is set out in Appendix III to this report). For the Western Australian position, see s.25 of the *Administration Act* (set out in Appendix IV) for the order of entitlement on intestacy, and *Tristram & Coote's Probate Practice* 15th ed. 90 to 98 for the order of entitlement with the will annexed which depends on rules laid down by the courts.

The Commission considers that instead of (a) and (b) of Rule 38(1) of the English *Non-contentious Probate Rules*, the appropriate provision in this State would be one which simply specified that sureties would be required (with power to exempt) in those cases where the applicant does not have a beneficial interest in the estate. This, of course, would include a person making an application as a creditor. The Commission recommends accordingly.

22. The Commission recommends that the rules should also provide that the Master may require sureties where -

(a) The grant of administration is limited, for example, *ad colligenda bona* (limited to administration of specific goods) and *ad litem* (representing the estate in court proceedings). (This was also the view of the Chief Justice's Law Reform Committee of Victoria: see the report of the subcommittee on Administration Bonds dated 27 May 1971.)

(b) One or more of the beneficiaries are not of full age or capacity.

(c) One or more of the beneficiaries are not resident in Western Australia and they have no agent or attorney in this State.

There would be a significant percentage of intestate estates where a beneficiary is residing outside Western Australia but within the Commonwealth of Australia. The Commission gave consideration to recommending that the requirement should apply only where one or more of the beneficiaries is resident outside the Commonwealth of Australia. However, it decided against this because a beneficiary living in another Australian State or an Australian Territory would normally have more difficulty in protecting and enforcing his rights than a beneficiary who lives in Western Australia. The latter would usually have easier access to the administrator and to a solicitor who practices in Western Australia. In any case, a beneficiary who is residing in another Australian State or Territory could consent to the dispensation of sureties if he wished to do so. If he did so the Master would doubtless take this into account in deciding whether or not to dispense with sureties.

23. The Commission considers that, as in England (see paragraph 19 above), the Master should be given a residual power to require a guarantee for the due performance of the duties of an administrator for cases not falling within the circumstances specified in paragraphs 21 and 22 above. This residual power is a necessary one as the circumstances where it might be reasonable to ask for sureties would defy complete classification.

24. In paragraph 21 of the working paper, the Commission suggested that perhaps sureties should normally be required where the gross value of the estate is very large. However, it may be that a demand for sureties would very often be justified in the case of large estates but perhaps not so often as to justify a general rule that sureties should be required in such cases. If, as has been recommended by the Commission (see paragraph 23 above), there is enacted an equivalent to the English provision which provides that a guarantee can be required "where the registrar considers that there are special circumstances making it desirable to require a guarantee", then in the case of a very large estate, the Master could decide in the light of all the circumstances whether there should be sureties.

Cases where sureties should not be required

25. The Commission recommends that, a provision be inserted in the Western Australian probate rules that except in special circumstances, no guarantee should be required from -

(a) a trustee company; or
(b) a solicitor holding a current practice certificate; (cf. the English position - see paragraph 19 above).

In practice, at present, trustee companies are not required to enter into an administration bond, and consequently are not required to provide sureties (see paragraph 5 above).

The Commission expects that in deciding whether special circumstances exist in the case of a solicitor, the Master would, among other things, have regard to the question of whether the solicitor is one who has been operating a trust account under the *Legal Practitioners Act*.

Section 26(2) of the *Administration Act* provides that no bond is required from the Public Trustee. The Commission considers that the effect of this provision should be retained, and accordingly recommends that no guarantee should be required from the Public Trustee. Section 26(2) also provides that no bond shall be required from a person obtaining administration to the use or for the benefit of the Crown. The Commission is unaware of any instance where a grant of administration has been made to such a person. In this State, where the Crown is involved in a deceased estate, for example as a creditor, the Public Trustee applies for administration if no application is made by the spouse or next of kin. However, it seems unwise to repeal the provision merely because of its apparent lack of use and the commission accordingly recommends that the Rules should provide that no guarantee is required from a person obtaining administration to the use or for the benefit of the Crown.

Number of sureties and amount of surety

26. Under Rule 27(1) of the Western Australian *Non-contentious Probate Rules*, two sureties are required unless the surety is an approved guarantee company or the applicant is a trustee company or where the Master otherwise orders. The Commission is not aware of any

criticism of this provision and recommends that the same principles should apply in those circumstances where a guarantee may be required.

27. At present the surety must be an amount equal to the gross value of the estate (as certified by the administrator for death duty purposes) provided that the court may limit the liability of any surety to such amount as it thinks reasonable. The Commission recommends no change in this provision except that, following the English approach (see Rule 38(5) of the *Non-contentious Probate Rules 1954*), the Master should be empowered to increase the amount of the surety, as well as to reduce it. This power could be used, for example, when the estate has been shown to be worth more than the administrator originally certified.

28. It is provided in s.28(2) of the *Administration Act* that where the claim of any creditor of the estate is secured by a mortgage of the deceased's real estate, sureties are only required as to the net value of the estate after deducting the mortgage debt. The Commission recommends that the same principle should apply in those circumstances where a guarantee may be required.

29. The Commission considers that where the sureties are individuals they should be required to justify (i.e. to satisfy the Master that they have net assets which are at least equal in value to the amount of the liability which they are to assume under the bond) unless the Master otherwise orders. The Commission recommends accordingly.

30. In England, even where the Registrar may require a guarantee, he cannot do so without giving the applicant an opportunity of being heard: Rule 5(4) of the English *Non-contentious probate Rules 1954*. The Commission considers that a similar rule should be adopted in Western Australia and recommends accordingly.

No action without leave

31. The proposed form of guarantee, unlike the administration bond (see paragraph 5 above) could be sued on by a creditor or beneficiary without assignment by the court. The Commission considers that the court's control over actions against the surety should be retained. The Commission agrees with the view taken by the English Law Commission which was that the -

> " ..need to obtain leave, which may be refused in the court's discretion, fulfils a useful function since it prevents the sureties being harassed by an unreasonable creditor or beneficiary and enables the court, either by refusing leave or imposing conditions, to deal fairly with unusual situations such as that in which the various claims exceed the amount of the [guarantee]." (Report No. 31, paragraph 17).

The Commission accordingly recommends the enactment of a provision to provide that no action may be taken on the guarantee except with the leave of the Supreme Court or of the Master and on such terms as the Court or the Master may direct.

Insurance companies

32. In paragraph 23 of the working paper, the Commission said that it may be desirable to prohibit the practice of some approved insurance companies requiring an immediate release from adult beneficiaries when providing the administrator with a surety. See also paragraph 17 above. However, the Commission does not now consider that it is necessary to go so far as to prohibit the practice by statute. If the Commission's recommendations are accepted, the circumstances in which sureties will be required will be fewer than formerly. In those cases where sureties would still be required, the Commission considers that the practice of requiring an immediate release from adult beneficiaries can be adequately controlled by the Master in the exercise of his powers to approve or disapprove of a company as surety.

Resealed grants of administration

33. The Commission recommends that the foregoing recommendations should also apply to cases where grants of administration made in any other part of Her Majesty's dominions are resealed by the Supreme Court of Western Australia under s.61 of the *Administration Act*. At present, by virtue of s.62 of that Act, letters of administration will not be resealed unless the administrator or his attorney enters into the same bond as would have been required had the administration been originally granted by the Supreme Court of Western Australia. The Commission recommends that s.62 of the *Administration Act* be repealed and instead a new section be enacted and a new probate rule made to the effect that the Master would be empowered to require a guarantee when the circumstances are such that he would have done so if the application had been for an original Western Australian grant.

34. The second conference of Australian law reform agencies held in Sydney in April 1975 proposed that the law relating to the resealing of grants originally granted outside a particular Australian State or Territory be examined with a view to securing uniformity throughout Australia. If this proposal were implemented, it may be necessary to further amend the law relating to cases where grants are resealed.

Stamp duty

35. At present the stamp duty on an administration bond where the gross value of the estate exceeds $200 is one dollar (see *Stamp Act 1921*, Second Schedule, item headed: Bond for Administration). Where the value of the estate is $200 or less the bond is exempt from stamp duty (ibid). The Commission considers that if the guarantee is to be subject to duty, the rate of stamp duty payable thereon should not be more than the duty payable in regard to the bond. However, the cost to the Government of collecting the nominal duty involved would almost certainly be greater than the revenue obtained. In addition, it is necessary to have the duty impressed on the document by the Commissioner of State Taxation or a person appointed under the *Stamp Act* to cancel duty stamps. If the guarantee were exempt, it would not be necessary for the solicitor for the estate to attend at the office of the Commissioner or of a person appointed under the Act in order to have the duty impressed. This would result in a saving of costs. The Commission recommends that consideration be given to the exemption of the guarantee from stamp duty.

SUMMARY OF RECOMMENDATIONS

36. The Commission recommends that -

(1) administration bonds should be abolished;

(paragraph 14)

(2) the duties of personal representatives should be specified by statute;

(paragraph 15)

(3) the *Administration Act* should be amended to provide that the Supreme Court may, subject to and in accordance with probate rules, require one or more sureties to guarantee the due administration of the estate;

(paragraph 20)

(4) the *Non-contentious Probate Rules* should be amended to provide that no guarantee will be required except where -

(a) it is proposed to grant administration -

(i) to a person who does not have a beneficial interest in the estate;

(ii) to the attorney of a person entitled to a grant;

(iii) for the use and benefit of a minor;

(iv) for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;

(v) to an applicant who appears to the Master to be resident elsewhere than in Western Australia; or

(b) it is proposed to grant administration -

(i) in a limited way e.g. *ad colligenda bona* or *ad litem*;

(ii) where one or more of the beneficiaries are not of full age or capacity;

(iii) where one or more of the beneficiaries are not resident in Western Australia and they have no agent or attorney in this state; or

(c) except where the Master considers that there are special circumstances making it desirable to require a guarantee;

(paragraphs 21 to 23)

(5) except in special circumstances, no guarantee should be required from -

(a) a trustee company; or

(b) a solicitor holding a current practice certificate;

(paragraph 25)

(6) no sureties should be required from the Public Trustee or a person obtaining administration to the use or for the benefit of the Crown;

(paragraph 25)

(7) where it is required, the guarantee should be by two sureties unless the surety is a company approved by the court or the applicant is a trustee company or where the Master otherwise orders;

(paragraph 26)

(8) where it is required, the guarantee should be to an amount equal to the gross value of the estate or such reduced or increased amount as the Master orders;

(paragraph 27)

(9) where a guarantee is required and the claim of any creditor of the estate is secured by a mortgage of the deceased's real estate, the guarantee should only be to an amount equal to the net value of the estate after deducting the mortgage debt;

(paragraph 28)

(10) where the sureties are individuals, they should, unless the Master otherwise orders, be required to satisfy the Master that they have net assets at least equal to the liability involved;

(paragraph 29)

(11) the decision to require a guarantee should only be made after the applicant has had an opportunity of being heard;

(paragraph 30)

(12) no action should be able to be taken on sureties except with the leave of the Supreme Court or of the Master and on such terms as the Court or the Master may direct;

(paragraph 31)

(13) the foregoing recommendations should also apply where grants of administration made in other parts of Her Majesty's dominions are resealed by the Supreme Court of Western Australia under s.61 of the *Administration Act*;

(paragraph 33)

(14) in the case of a reseal of letters of administration, the Master should be empowered to require a guarantee when the circumstances are such that he would have done so if the application had been for an original Western Australian grant;

(paragraph 33)

(15) consideration be given to the exemption of the guarantee from stamp duty.

(paragraph 35)

(Signed) DAVID K. MALCOLM *Chairman*

ERIC FREEMAN Member

R.W. HARDING Member

16 March 1976