

## Administration of Deceased Insolvent Estates

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### Terms of Reference

In 1972, the Committee was asked to consider and report on the law relating to the administration of estates of persons dying insolvent. 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.<sup>1</sup>

### Background of Reference

The reference arose from problems recognised in the law relating to the administration of insolvent estates. The primary problems were the complexity of the law, a personal representative's right of preference over creditors, and the absence of separate provisions to deal with small insolvent estates.

### Nature and Extent of Consultation

In April 1977, the Commission issued a working paper on the subject. The paper was distributed for comment to interested parties, including the Public Trustee, private trustee companies, the Institute of Legal Executives, the Commonwealth Bankruptcy Administration Department, and the state Taxation Department. Submissions were also invited from other interested persons through an advertisement placed in *The West Australian* newspaper.

The paper attracted a number of submissions which informed the preparation of the Commission's final report, delivered in December 1978.<sup>2</sup>

### Recommendations

The Commission recommended that there should only be two ways of administering a deceased insolvent estate: either through formal bankruptcy orders, or informal administration reflecting bankruptcy rules relating to payment of debts and creditors rights. It was also recommended that the right of preference be abolished, giving creditors equal treatment, subject to lawful priorities. Finally, the Commission considered that it was not necessary to create a separate administration procedure for small deceased insolvent estates, as this would lead to increased complexity of the law.

### Legislative or Other Action Undertaken

The *Acts Amendment (Insolvent Estates) 1984 (WA)* which amended the *Administration Act 1903 (WA)*, implemented the Commission's recommendations.

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

<sup>2</sup> Law Reform Commission of Western Australia, *Administration of Deceased Insolvent Estates*, Project No 34(III) (1978).