

## The Administration Act 1903

### Terms of Reference

In 1989 the Commission was asked to review the *Administration Act 1903* (WA) (“the Act”).

### Background of Reference

The Act governs the rights of inheritance of property.<sup>1</sup> It provides a regime for the orderly winding up of a deceased person’s affairs and the administration of his or her property in the interests of creditors and beneficiaries. Much of the day-to-day operation of the Act in non-contentious matters is governed by the *Non-Contentious Probate Rules 1967* (WA), which are made under the authority of the Act. The operation of the Act in contentious matters is governed by the *Rules of the Supreme Court 1971* (WA), in particular Order 73. However the Commission’s terms of reference did not extend to either of these.

The Commission’s preliminary review of the Act revealed that nine decades of legislative changes had resulted in a statute that was illogically arranged and featured a variety of drafting styles. Further, certain sections of the Act contained provisions that were either inconsistent or had fallen into desuetude, and were therefore misleading, at least to the non-expert reader of the Act.<sup>2</sup> The meaning of several provisions was also obscure, which in some cases arose from textual inadequacy, and in others, from an allusion to an obscure rule of the general law.<sup>3</sup>

In addition the Commission found that the title of the Act did not reflect its substance and that some sections dealt with more or less routine procedural matters that might more appropriately be contained in the Rules.

### Nature and Extent of Consultation

Because of the technical nature of the subject matter, the Commission did not issue a discussion paper, however, the report was distributed in draft form to the Chief Justice, judicial officers of the Supreme Court, trustee companies, the Law Society of Western Australia, a number of solicitors and others with experience in the area. The draft report was also made available to the public and comment was sought with the aid of advertising in *The West Australian*.

The final report containing the Commission’s recommendations was released in August 1990.<sup>4</sup> The Commission considered the content of corresponding legislation in other Australian jurisdictions, in England and in New Zealand, and was significantly influenced by the comprehensive reforms made in Queensland in 1981.<sup>5</sup>

### Recommendations

The Commission’s primary recommendation was that the Act should be repealed and that a new statute, to be entitled the *Probate and Administration Act*, should be enacted to replace it. Amongst other things, the Commission suggested that the new legislative regime should have the following features:

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- 1 See also the *Executors Act 1830* (Imp) 11 Geo. IV & 1 Will. IV c.40 (1830) (Imp): Adopted by 6 Will. IV No. 4 (1836), which deals with undisposed residues of testator’s effects.
  - 2 Specifically ss 8, 43, 44 and 47A.
  - 3 See for example s 3, relating to the definition of a will; ss 25, 36 and 37, which deal with entitlement to administration in cases of intestacy and with the will annexed. In both cases they fail to adequately identify the order of persons so entitled, and the conditions of their entitlement. Sections 9 and 141(2) are, for practical purposes, meaningless.
  - 4 Law Reform Commission of Western Australia *Report on the Administration Act 1903*, Project No 88 (1990).
  - 5 *Succession Act 1981* (Qld); see also Queensland Law Reform Commission, *The Law Relating to Succession*, Report No 22 (1978).

- The classes of persons entitled to grants of administration, both upon intestacy and with the will annexed, should be clearly set out in order of priority.
- The system of administration sureties should be abolished.
- Provision should be made for executorship by representation, subject to the right of renunciation in appropriate cases.
- The legal consequences of the revocation of a grant of representation should be defined in such a way as to be consistent with the provisions of the *Trustees' Act 1962* (WA).
- There should be a statutory regime governing testamentary gifts to unincorporated associations.
- Testamentary powers of appointment or trusts to distribute property should be deemed to be valid if they would be valid if contained in a deed inter vivos.

The Commission revisited its earlier reports on *Recognition of Interstate and Foreign Grants of Probate and Administration* and *The Administration of Assets of the Solvent Estates of Deceased Persons in the Payment of Debts and Legacies* and recommended that the reforms suggested by those reports should be implemented in the new Act.<sup>6</sup>

The Commission also recommended that a review of the *Non-Contentious Probate Rules* should be undertaken by a suitably qualified person, partly to determine whether an efficient system of personal applications for grants of representation could be instituted, on a court fees or economic fee-for-service basis, in cases where there are no complicating factors, but regardless of the value of the estate.

#### Legislative or Other Action Undertaken

The recommendations of the Commission have not been legislatively implemented.

#### Currency of Recommendations

The recommendations remain current.

#### Action Required

Implementation of the Commission's recommendations requires that the existing *Administration Act* be repealed and replaced.

#### Priority — Low

This area of law is currently the subject of discussions aimed at unifying the law in all Australian jurisdictions. The Uniform Succession Law Project Committee, coordinated by the Queensland Law Reform Commission, presently has representatives from every jurisdiction except Western Australia.<sup>7</sup> In June 1999 the Project Committee issued a discussion paper, which addresses the general area of law comprehensively.<sup>8</sup> The Project Committee is yet to consider the submissions made in response to the discussion paper and estimates that the final report incorporating recommendations for uniform succession laws should be released by 2003.

<sup>6</sup> See Law Reform Commission of Western Australia *Recognition of Interstate and Foreign Grants of Probate and Administration*, Project No 34 (IV) (1984); Law Reform Commission of Western Australia *Administration of Assets*, Project No 34(VII) (1988).

<sup>7</sup> The Commission's Executive Officer Dr Peter Handford represented Western Australia from 1995 to 1997 until the government of the day withdrew its support.

<sup>8</sup> Queensland Law Reform Commission, *National Committee for Uniform Succession Laws: Administration of Estates of Deceased Persons*, Discussion Paper MP 37 (1999).