

**BRIEFING PAPER**

**AMENDING THE  
*ADMINISTRATION  
ACT 1903 (WA)* TO  
INCREASE THE  
STATUTORY LEGACY**

**THE **ESSENTIAL** MEMBERSHIP FOR  
THE LEGAL PROFESSION**

Prepared by the Law Society of Western Australia

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# AMENDING THE *ADMINISTRATION ACT 1903* (WA) TO INCREASE THE STATUTORY LEGACY

## Issue

The Law Society of Western Australia is concerned that the legacy for a husband or wife, which may include a de facto partner as defined in the *Administration Act 1903 (WA)*<sup>1</sup> (the Act), usually referred to as the statutory legacy, is manifestly inadequate leading to hardship in already difficult circumstances for many Western Australian community members whose partners die intestate.

The current statutory legacy in Western Australia is \$50,000 or \$75,000.<sup>2</sup> This statutory legacy has not been amended since 1982<sup>3</sup> in order to increase the amount it is necessary to amend section 14 of the Act.

## Background

If a person's property is not disposed of by a will when they die, that person has died intestate. Intestacy can occur if the person does not have a will, if their will is not valid or if their will only disposes of some of their property. Sections 14 and 15 of the Act provide a statutory scheme for the distribution of the intestate's property. Please see Appendix A.

Attempts at reforming the statutory legacy include the 1990 Law Reform Commission of Western Australia's *Project 88 – The Administration Act 1903*<sup>4</sup> (the Law Reform Commission Report) and the Report of the Bredmeyer Committee in 2002 (the Bredmeyer Report).<sup>5</sup>

The Law Reform Commission Report noted that in the case of the statutory legacy for widowed spouses whose partners died intestate the provisions of the Act operate by reference to a specified sum of money and that the effect of inflation had reduced these entitlements. The last review of the Act in relation to these entitlements was in 1982, when the basic sums of \$50,000 where there are issue, and \$75,000 where there are no issue, were fixed.<sup>6</sup>

Historically, the statutory legacy was a means by which the spouse could acquire the matrimonial home. The Law Reform Commission Report noted that on 6 August 1990 the then Premier of Western Australia issued a press release which advised:

*The Government intended to introduce legislation seeking to have the basic sum increased from \$50,000 to \$125,000 and \$75,000 to \$175,000 respectively and intended to introduce legislation seeking to amend the Administration Act so that future changes to the basic sums in the Table in section 14 could be prescribed by regulation.<sup>7</sup>*

The Law Reform Commission Report also recommended a review of the *Non-Contentious Probate Rules 1967 (WA)* be undertaken. In 2000 the then Chief Justice appointed a committee of legal practitioners under the chairmanship of Master TR Bredmeyer to report on how these Rules could be revised. The Bredmeyer Report also made recommendations for amendments to the Act, particularly in relation to updating the statutory legacy.<sup>8</sup>

The Bredmeyer Report recommended that the statutory legacy be increased to \$150,000 and that the Act be further amended to allow the fixing of the amount by proclamation.<sup>9</sup>

In 2019, 29 years later, the statutory legacy remains the same. Nowadays the amounts should be closer to \$500,000 to meet the cost of even a modest house.

Throughout Australia legislation prescribing the statutory legacy has been amended in a number of different ways to benefit widowed spouses whose partners have died intestate by either including a minimum statutory legacy, the lowest currently being \$100,000, a calculation to ameliorate the effect of inflation or to provide for the prescribed amount to be set by Regulation. Please see the inter-jurisdictional table at Appendix B.

In no other State or Territory of Australia is the statutory legacy as low as it is in Western Australia. The current statutory legacy is simply insufficient where the surviving husband, wife or de facto partner does not have an interest in the residence. This means that the survivor is often put in the position of coming to an arrangement with his or her children and/or stepchildren, or in some cases bringing proceedings under the *Family Provision Act 1972*.<sup>10</sup> If any of those children and/or stepchildren are minors this further complicates matters as the children cannot reach any agreement without the approval of the Supreme Court.

Therefore, the *Administration Amendment Bill 2018* (WA) (the Bill) was introduced in June 2018, with the purpose of amending the Act. The Bill is currently before Parliament. The Bill's proposed amendments set the amount of the partner's statutory legacy at \$435,000 where the intestate dies leaving issue, and \$650,000 when there is no issue. It also amends the parental statutory legacy, where the deceased has living parents and/or siblings or siblings' issue, but no surviving partner or issue.<sup>10</sup>

## NOTES

1. *Administration Act 1903* (WA).
2. *ibid* s14.
3. law reform commission of Western Australia's *Project 88 – the Administration Act 1903*, p22.
4. *ibid*.
5. Final report on the revision of the non-contentious Probate rules 1967 (WA), dated 10 June 2002.
6. law reform commission of Western Australia's *Project 88 – the Administration Act 1903*, p 22.
7. *ibid* p 23.
8. Final report on the revision of the non-contentious Probate rules 1967 (WA), dated 10 June 2002, paragraph 9.1.
9. *ibid*.
10. *Family Provision Act 1972* (WA).
11. Explanatory Memorandum, *Administration Amendment Bill 2018* (WA), clause 4.

## Recommendation

The Law Society of Western Australia supports the increase of statutory legacy, as proposed by the *Administration Amendment Bill 2018* (WA).

# APPENDIX A

## SECTION 14 AND 15 OF THE ADMINISTRATION ACT 1903

### 14. Entitlements on intestacy

1. subject to this section and section 15, where any person (in this section called the *intestate*) dies intestate as to all or any of his property, the property as to which he dies intestate (in this section called the *intestate property*) shall be distributed according to the entitlements set out in the following table (in this section called the *Table*): —

**Table**

If the intestate —

1. dies leaving a husband or wife (whether or not other persons mentioned in item 2 or 3 also survive)	the surviving husband or wife shall be entitled, absolutely, to all household chattels included in the intestate property;
2. dies leaving a husband or wife and issue (note provisions of subsection (3))	<ol style="list-style-type: none"> <li>a. where the net value of the intestate property (other than the household chattels) does not exceed the sum of \$50,000 — the surviving husband or wife shall be entitled to the whole of the intestate property;</li> <li>b. where the net value of the intestate property (other than the household chattels) exceeds the sum of \$50,000 — the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of \$50,000, absolutely, together with interest on that sum in accordance with subsection (4) and, of the residue, the surviving husband or wife shall be entitled to one third and the issue shall be entitled in accordance with subsection (2b) to the other two-thirds;</li> </ol>

3. dies leaving a husband or wife and one or more of the following, namely, a parent, a brother or sister, or child of a brother or sister, but leaving no issue
  - a. where the net value of the intestate property (other than the household chattels) does not exceed the sum of \$75,000 — the surviving husband or wife shall be entitled to the whole of the intestate property;
  - b. where the net value of the intestate property (other than the household chattels) exceeds the sum of \$75,000 — the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of \$75,000, absolutely, together with interest on that sum in accordance with subsection (4), and, of the residue, the surviving husband or wife shall be entitled to one-half and, as to the other half -
    - i. where the intestate is survived by one parent or both parents —
      - A. if the value of that other half does not exceed the sum of \$6,000 or if no brother, sister or child of a brother or sister survives the intestate — the parent or parents shall be entitled (in equal shares where both survive the intestate) to that other half;
      - B. in any other case — the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of \$6,000, absolutely, and of the remainder, the parent or parents shall be entitled (in equal shares where both survive the intestate) to one-half and the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half;
    - ii. where neither parent survives the intestate — the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half;

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4. dies leaving a husband or wife but no issue, parent, brother, sister or child of a brother or sister the surviving husband or wife shall be entitled to the whole of the intestate property;

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5. dies leaving issue but no husband or wife the issue shall be entitled in accordance with subsection (2b) to the whole of the intestate property;

- |   |   |
|---|---|
| 6. dies leaving a parent or parents and one or more of the following, namely, a brother or sister, or a child of a brother or sister, but leaving no husband or wife and no issue   | a. where the net value of the intestate property does not exceed the sum of \$6,000 — the parent or parents shall be entitled (in equal shares where both survive the intestate) to the whole of the intestate property;<br>b. where the net value of the intestate property exceeds the sum of \$6,000 — the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of \$6,000, absolutely, and of the residue, the parent or parents shall be entitled (in equal shares where both survive the intestate) to one half and the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half; |
| 7. dies leaving a parent or parents but leaving no husband or wife and no issue, brother, sister or child of a brother or sister  | the parent or parents shall be entitled (in equal shares where both survive the intestate) to the whole of the intestate property;  |
| 8. dies leaving one or more of the following, namely a brother or sister, or a child of a brother or sister, but leaving no husband or wife and no issue or parent                  | the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the whole of the intestate property;   |
| 9. dies leaving no husband or wife and no issue, parent, brother, sister or child of a brother or sister but leaving a grandparent or grandparents                                  | the grandparent or grandparents shall be entitled (in equal shares where more than one survive the intestate) to the whole of the intestate property;   |
| 10. dies leaving no husband or wife and no issue, parent, brother, sister, child of a brother or sister, or grandparent but leaving an uncle or aunt or a child of an uncle or aunt | the uncles and aunts of the intestate and the children of deceased uncles and aunts of the intestate shall be entitled in accordance with subsection (3a) to the whole of the intestate property but in applying that subsection for the purposes of this item a reference in that subsection to a brother or sister, or a child of a brother or sister, of the intestate shall be construed as a reference to an uncle or aunt, or a child of an uncle or aunt, of the intestate, as the case may be;  |
| 11. dies leaving no husband or wife and no issue, parent, brother, sister, child of a brother or sister, grandparent, uncle, aunt or child of an uncle or aunt                      | the whole of the intestate property passes to the crown by way of escheat.  |

2. For the purposes of the Table —
  - a. **household chattels** means articles of personal or household use or adornment;
  - b. the net value of the intestate property is the net value of that property at the date of the death of the intestate.
- 2a. In subsection (2b), a reference to the entitled issue of an intestate means issue of the intestate surviving the intestate and not also being issue of another person who survived, and was issue of, the intestate.
- 2b. Where, under the table, the issue of an intestate is or are entitled to a portion or the whole of the intestate property (which portion or whole, as the case may be, is referred to in this subsection as the **relevant property**) —
  - a. where a person is the only entitled issue of the intestate, then that person is entitled to all of the relevant property;
  - b. where there are 2 or more entitled issue of the intestate and any of them is a child of the intestate, then the relevant property shall be divided into as many equal parts as there are children of the intestate who —
    - i. survived the intestate; or
    - ii. left issue who survived the intestate, and a child of the intestate who so survived shall be entitled to one of those parts;
  - c. where a person did not survive the intestate but left issue who so survived and that person would, if he had survived the intestate, have been entitled —
    - i. under paragraph (a), to all of the relevant property, then the entitled issue of the intestate being also issue of that person shall be entitled to all of the relevant property
    - ii. under paragraph (b), to a part of the relevant property, then the entitled issue of the intestate being also issue of that person shall be entitled to that part of the relevant property, and where there are 2 or more entitled issue of the intestate being also issue of that person their entitlement under subparagraph (i) or (ii) shall be divided between them under the provisions of this Act (including this paragraph) as if that person had died intestate at the time that the intestate in fact died, the entitlement to be divided were the intestate property of that person, and no person other than those issue were entitled to participate in the distribution thereof.
3. In applying the provisions of item 2 of the Table to a case where the intestate dies leaving —
  - a. a husband or wife and one child; or
  - b. a husband or wife and the issue of one child, the words “one-third” and “two-thirds” in paragraph (b) of that item shall be read as if they were the words “one-half” and “half” respectively.
- 3a. Where, under the Table, the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate are entitled to a portion or the whole of the intestate property (which portion or whole, as the case may be, is referred to in this subsection as the **relevant property**) —
  - a. where only one such person survives the intestate, then that person is entitled to all of the relevant property;
  - b. where 2 or more such persons survive the intestate and any of them is a brother or sister of the intestate, then the relevant property shall be divided into as many equal parts as there are brothers and sisters of the intestate who —
    - i. survived the intestate; or
    - ii. left children who survived the intestate and a brother or sister of the intestate who so survived shall be entitled to one of those parts;
  - c. where any brother or sister did not survive the intestate but left a child or children who so survived, that child shall be entitled or, where there are children, those children, shall be entitled in equal shares —

- i. where that brother or sister would have been entitled under paragraph (a) to all of the relevant property had he or she survived the intestate, to all of the relevant property;
  - ii. where that brother or sister would have been entitled under paragraph (b) to a part of the relevant property had he or she survived the intestate, to that part of the relevant property.
4. Where the intestate dies leaving a husband or wife who is entitled to —
  - a. the sum of \$50,000 mentioned in paragraph (b) of item 2 of the Table; or
  - b. the sum of \$75,000 mentioned in paragraph (b) of item 3 of the Table,the surviving husband or wife shall be entitled to an amount equal to 5% per annum on the sum to which he or she is so entitled, or on that part of such sum as remains unpaid or unsatisfied, calculated from the date of death of the intestate to the date of the payment of that sum, or the date of the effectual appropriation of that sum in accordance with the provisions of the *Trustees Act 1962*, whichever is the earlier of those dates, and the amount to which he or she is entitled under this subsection —
  - c. shall be in addition to any other sum, property or share in property, to which he or she is entitled under the table; and
  - d. shall be payable out of the income of the estate of the intestate, or if there is no income or the income is insufficient for that purpose, out of the capital of the residue of the estate.
5. Subject to subsection (4), the income derived from the intestate property shall be distributed among the persons who are, under the Table, entitled in distribution to that property in the same respective proportions to which they are, under the Table, entitled to share in the distribution of that property.
6. If —
  - a. a surviving husband or wife of the intestate is not entitled to the whole of the intestate property in accordance with this section and section 15; and
  - b. there is an interest within the meaning of clause 1(1)(b) of the Fourth Schedule,then that Schedule applies with respect to that interest.
7. Subject to subsection (6), where the surviving husband or wife of the intestate is entitled under the Table to share in real property he or she shall accept the value of his or her share in lieu of partition, if so desired by all the persons entitled jointly with him or her.
8. Subject to subsections (9) and (10), this section shall apply to the estates of all persons who die on or after 1 March 1977.
9. The amendments effected by section 3 of the *Administration Amendment Act 1982* shall apply to the estates of all persons who die on or after the coming into operation of that section 1.
10. The estates of all persons who have died intestate as to the whole or any part thereof before the coming into operation of the *Administration Amendment Act 1984* 1 shall be distributed in accordance with the enactments and rules of law which would have applied to them if that Act had not been passed.

## 15. De facto partners and distribution on intestacy

1. If the intestate dies leaving a de facto partner but no husband or wife, then where the de facto partner and the intestate lived as de facto partners for a period of at least 2 years immediately before the death of the intestate, the de facto partner shall be entitled, in accordance with section 14, to the intestate property to which a husband or wife of the intestate would have been entitled, had the intestate died leaving a husband or wife
2. If the intestate dies leaving a husband or wife and a de facto partner, then where —
  - a. the de facto partner and the intestate lived as de facto partners for a period of at least 2 years immediately before the death of the intestate; and
  - b. the intestate did not, during the whole or any part of that period, live as the husband or wife of the person to whom he or she was married,

the de facto partner shall be entitled, to one-half of the intestate property to which the husband or wife would have been entitled in accordance with section 14 but for this subsection and the husband or wife shall be entitled to the other half of that property.

3. If the intestate dies leaving a husband or wife and a de facto partner, then where —
  - a. the de facto partner and the intestate lived as de facto partners for a period of at least 5 years immediately before the death of the intestate; and
  - b. the intestate did not, during the whole or any part of that period, live as the husband or wife of the person to whom he or she was married,

the de facto partner shall be entitled, in accordance with section 14, to the intestate property to which the husband or wife would have been entitled but for this subsection.

4. Where under this section a de facto partner is entitled to intestate property and the intestate dies leaving more than one de facto partner so entitled, those de facto partners are entitled to that property in equal shares.
5. Where under this section a de facto partner is entitled to intestate property, then for the purposes of section 14 and the Fourth Schedule, the de facto partner is to be taken to be a husband or wife, as is applicable, and all references to a husband or wife in those provisions are to be construed accordingly.
6. In this section —

**intestate** and **intestate property** have the same respective meanings as they have in section 14.
7. The amendments made to this Act by the *Family Court Amendment Act 2002* do not apply to or in respect of the estate of a person who died intestate as to all or any of the person's property before the commencement of that Act, and the estate of such a person is to be distributed as if that Act had not been passed.

## APPENDIX B

### INTER-JURISDICTIONAL TABLE

<i>Succession Act 1981 (Q)</i> , Schedule 2, Part 1 Intestate survived by spouse	
Circumstance	Estate to be distributed in the following manner
1. if the intestate is not survived by issue	<ol style="list-style-type: none"> <li>1. If there is only 1 surviving spouse, the spouse is entitled to the whole of the residuary estate.</li> <li>2. If there is more than 1 surviving spouse, they are entitled to the whole of the residuary estate in accordance with section 36.</li> </ol>
2. if the intestate is survived by issue	<ol style="list-style-type: none"> <li>1. If there is only 1 surviving spouse, the spouse is entitled to—                             <ol style="list-style-type: none"> <li>a. \$150,000 and the household chattels; and</li> <li>b. the following part of the residuary estate then remaining—                                     <ol style="list-style-type: none"> <li>i. if there is only 1 child of the intestate who survived, or who did not survive but left issue who survived, the intestate—1/2;</li> <li>ii. otherwise—1/3.</li> </ol> </li> </ol> </li> <li>2. If there is more than 1 surviving spouse, they are entitled, in accordance with section 36, to—                             <ol style="list-style-type: none"> <li>a. \$150,000 and the household chattels; and</li> <li>b. the following part of the residuary estate then remaining—                                     <ol style="list-style-type: none"> <li>i. if there is only 1 child of the intestate who survived, or who did not survive but left issue who survived, the intestate—1/2;</li> <li>ii. otherwise—1/3.</li> </ol> </li> </ol> </li> <li>3. The issue of the intestate are entitled to the balance of the residuary estate in accordance with section 36A.</li> </ol>

## *Administration and Probate Act 1958 (Vic)* section 70J - 70N, Distribution if intestate leaves a partner

### Estate to be distributed in the following manner

#### **70J Distribution if intestate leaves a partner and no child or other issue**

1. If an intestate does not leave a child or other issue but leaves a partner, the partner is entitled to the whole of the intestate's residuary estate.
2. This section does not apply if an intestate leaves more than one partner.

#### **70K Distribution if intestate leaves partner and issue of that partner**

1. If an intestate leaves a partner and a child or other issue who is also a child or other issue of that partner, the partner is entitled to the whole of the intestate's residuary estate.
2. This section does not apply if an intestate leaves—
  - a. more than one partner; or
  - b. a child or other issue who is not also a child or other issue of the intestate's surviving partner.

#### **70L Distribution if intestate leaves partner and child or issue not the child or issue of that partner**

1. If an intestate leaves a partner and a child or other issue who is not the child or other issue of that partner, the partner is entitled—
  - a. if the intestate's residuary estate is worth not more than the amount of the partner's statutory legacy, to the whole of the estate, including the personal chattels of the intestate; and
  - b. if the intestate's residuary estate is worth more than the amount of the partner's statutory legacy, to—
    - i. the personal chattels of the intestate; and
    - ii. the amount of the partner's statutory legacy; and
    - iii. interest on the partner's statutory legacy calculated at the legacy interest rate from the date of the death of the intestate to the date of payment of that legacy; and
    - iv. one half of the balance of the residuary estate.
2. If subsection (1)(b) applies, any children of the intestate are entitled to the other half of the balance of the residuary estate, and if more than one, in equal shares.
3. If one or more of the intestate's children predeceased the intestate leaving issue who survived the intestate—
  - a. the share of the deceased child is to be divided between that deceased child's children; and
  - b. if any of those grandchildren of the intestate predeceased the intestate leaving their own issue who survived the intestate, the deceased grandchild's share is to be divided between the deceased grandchild's children and so on until the entitlement is exhausted.

## 70M Amount of partner's statutory legacy

1. From the commencement of this section until subsection (2) applies, the amount of the partner's statutory legacy is \$451 909.

A x

where —

A is —

- a. \$451 909; or
- b. if an amount has been calculated in accordance with this formula and that amount is greater than \$451 909, the amount as last calculated;

**B** is the All groups consumer price index for Melbourne in original terms for the most recent reference period in the preceding calendar year most recently published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made;

**C** is the All groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

3. If the amount of the partner's statutory legacy has been calculated under subsection (2) and—
  - a. the amount is reduced, the reduced amount does not take effect, except for the purpose of the application of the formula under this section in the following year; or
  - b. if, in the next or subsequent financial year the amount of the partner's statutory legacy is increased following a reduction referred to in paragraph (a), that amount has effect as an increase only to the extent (if any) that—
    - i. the amount of the increase exceeds the amount of the reduction in the previous financial year; or
    - ii. part of the reduction has not been set off against a previous increase
4. For the purpose of calculating the amount of the partner's statutory legacy in accordance with the formula under this section—
  - a. if the amount of the variation is less than \$1000, it must be rounded to the nearest whole \$1; and
  - b. if the amount of the variation is \$1000 or more, it must be rounded to the nearest whole \$10.

## 70N Minister to publish notice of amount of partner's statutory legacy in Government Gazette

On or before 1 July of the financial year commencing immediately after the commencement of section 70M(1) and on or before 1 July in each subsequent financial year, the Minister must publish a notice in the Government Gazette that states the amount of the partner's statutory legacy calculated in accordance with section 70M for the following financial year.

*succession Act 2006 (NSW), Spouse's statutory legacy, section 106*

estate to be distributed in the following manner

1. The statutory legacy for a spouse consists of:
  - a. the CPI adjusted legacy, and
  - b. if the statutory legacy is not paid, or not paid in full, within 1 year after the intestate's death – interest at the relevant rate on the amount outstanding from time to time (excluding interest) from the first anniversary of the intestate's death to the date of payment of the legacy in full.
2. The **CPI adjusted legacy** is to be determined in accordance with the following formula:

$$R = A \times (C \div D)$$

where —

- R** represents the CPI adjusted legacy.
- A** is \$350,000.
- C** represents the Consumer Price Index number for the last quarter for which such a number was published before the date on which the intestate died.
- D** represents the Consumer Price Index number for the December 2005 quarter.

## Administration and Probate Act 1919 (SA)

### Distribution on Intestacy, section 72 G Distribution of intestate estate

#### Estate to be distributed in the following manner

1. Subject to this Part, an intestate estate shall be distributed according to the following rules:
  - a. where the intestate is survived by a spouse or domestic partner and by no issue—the spouse or domestic partner is entitled to the whole of the intestate estate;
  - b. where the intestate is survived by a spouse or domestic partner and by issue—
    - i. the spouse or domestic partner is entitled—
      - A. if the value of the intestate estate does not exceed the prescribed amount, to the whole of the intestate estate; or
      - B. if the value of the intestate estate exceeds the prescribed amount, to the prescribed amount and to one-half of the balance of the intestate estate; and
    - ii. the issue of the intestate is entitled to the balance (if any) of the intestate estate;
  - c. if the intestate is not survived by a spouse or domestic partner, but is survived by issue – the issue is entitled to the whole of the intestate estate;
  - d. if the intestate is not survived by a spouse or domestic partner or by issue but is survived by a relative, relatives, or issue of a relative or relatives – the relative, relatives or issue of a relative or relatives are entitled to the whole of the intestate estate;
  - e. if the intestate is not survived by a person entitled to the intestate estate under the foregoing provisions of this section—the intestate estate shall vest in the crown.
2. In this section—

**prescribed amount** means—

  - a. \$100,000; or
  - b. if an amount greater than \$100,000 is prescribed by regulation for the purposes of this section—that amount.

## *Intestacy Act 2010 (Tas), Spouse's statutory legacy, section 7*

### Estate to be distributed in the following manner

1. The statutory legacy for a spouse consists of –
  - a. the CPI adjusted legacy; and
  - b. if the statutory legacy is not paid, or not paid in full, within one year after the intestate's death, interest at the relevant rate on the amount outstanding from time to time (excluding interest) from the first anniversary of the intestate's death to the date of payment of the legacy in full.
2. The "**CPI adjusted legacy**" is to be determined in accordance with the following formula:  
 **$R = A \times (C \div D)$**   
where –  
**R** represents the CPI adjusted legacy;  
**A** is to equal \$350,000;  
**C** represents the Consumer Price Index number for the last quarter for which such a number was published before the date on which the intestate died;  
**D** represents the Consumer Price Index number for the December 2009 quarter.
3. If, however, a spouse is entitled to a statutory legacy under this Act and under the law of another Australian jurisdiction or jurisdictions –
  - a. the spouse's statutory legacy is an amount equivalent to the highest amount fixed by way of statutory legacy under any of the relevant laws (including this Act); but
  - b. the following qualifications apply:
    - i. amounts received by the spouse, by way of statutory legacy, under any of the other relevant laws are taken to have been paid towards satisfaction of the spouse's statutory legacy under this Act;
    - ii. if any of the relevant laws contain no provision corresponding to subparagraph (i), no amount is payable by way of statutory legacy under this Act until the spouse's entitlement under that law is satisfied, or the spouse renounces the spouse's entitlement to payment, or further payment, by way of statutory legacy, under that law.
4. If the value of an intestate estate is insufficient to allow for the payment of a statutory legacy (or statutory legacies) in full, the statutory legacy abates to the necessary extent and, if 2 or more statutory legacies are payable, they abate rateably.
5. The "**relevant rate**" of interest is the rate that lies 2% above the cash rate last published by the Reserve Bank of Australia before 1 January in the calendar year in which interest begins to accrue.
6. If the Australian Statistician publishes a Consumer Price Index number in respect of a particular quarter in substitution for a Consumer Price Index number previously published in respect of that quarter –
  - a. except as provided by paragraph (b), the publication of the later Index number is to be disregarded; or
  - b. if the Minister so directs, regard is to be had to the later and not to the earlier Index number.
7. If the reference base for the Consumer Price Index is changed, regard is to be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
8. An adjustment under subsection (3) is to be made to the nearest whole dollar.
9. In this section –  
**Consumer Price Index number**, for a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

## Administration and Probate Act (NT)

### Schedule 6 Distribution of intestate estate upon intestacy

Circumstance	Estate to be distributed in the following manner
1. Where the intestate is not survived by: a. issue; or b. a parent, a brother or sister or the issue of a brother or sister.	The spouse is entitled to the whole of the intestate estate.
2. Where the intestate is survived by issue.	<ol style="list-style-type: none"><li>1. The spouse is entitled:<ol style="list-style-type: none"><li>a. if the value of the intestate estate does not exceed the prescribed amount – to the whole of the intestate estate; or</li><li>b. if the value of the intestate estate exceeds the prescribed amount – to be paid out of the intestate estate the prescribed sum and an additional sum equal to:<ol style="list-style-type: none"><li>i. if one child or the issue of one child of the intestate but no other issue of the intestate survives the intestate – one-half of the value of the balance of the intestate estate; or</li><li>ii. if any other case – one-third of the value of the balance of the intestate estate.</li></ol></li></ol></li><li>2. The issue of the intestate are entitled to the balance (if any) of the intestate estate after payment to the spouse of the sum or sums to which the spouse is entitled under paragraph 1.</li></ol>
3. Where the intestate is not survived by issue but is survived by a parent, brother or sister or the issue of a brother or sister.	<ol style="list-style-type: none"><li>1. the spouse is entitled:<ol style="list-style-type: none"><li>a. if the value of the intestate estate does not exceed the prescribed amount – to the whole of the intestate estate; or</li><li>b. if the value of the intestate estate exceeds the prescribed amount – to be paid out of the intestate estate the prescribed sum and an additional sum equal to one-half of the value of the balance of the intestate estate.</li></ol></li><li>2. If the intestate is survived by one or both of his or her parents (whether or not the intestate is also survived by a brother or sister or the issue of a brother or sister), the surviving parent is entitled, or the parents are entitled in equal shares, as the case may be, to the balance (if any) of the intestate estate after payment to the spouse of the sum or sums to which the spouse is entitled under paragraph 1.</li><li>3. If the intestate is not survived by a parent, the brothers and sisters of the intestate who survived the intestate, and the issue who survive the intestate of a brother or sister of the intestate who died before the intestate, are entitled to the balance (if any) of the intestate estate, after payment to the spouse of the sum or sums to which the spouse is entitled under paragraph 1 of this item in the shares in which he, she or they would have been entitled to the intestate estate if the intestate had not been survived by his or her spouse.</li></ol>

*Administration and Probate Regulations (NT), Regulation 3, Prescribed amounts and sums for distribution on intestacy*

1. For Schedule 6, Part I, item 2 to the Act:
  - a. the prescribed amount under paragraph 1(a) and (b) is \$350 000; and
  - b. the prescribed sum under paragraph 1(b) is \$350 000.
2. For Schedule 6, Part I, item 3 to the Act:
  - a. the prescribed amount under paragraph 1(a) and (b) is \$500 000; and
  - b. the prescribed sum under paragraph 1(b) is \$500 000.

*Administration and Probate Act 1929 (ACT), Schedule 6, Distribution of intestate estate on intestacy*

Circumstance	Estate to be distributed in the following manner
1. if the intestate is not survived by issue	The partner is entitled to the whole of the intestate estate.
2. if the intestate is survived by issue	<ol style="list-style-type: none"> <li>1. If the value of the intestate estate does not exceed \$200,000, the partner is entitled to the whole of the intestate estate.</li> <li>2. If the value of the intestate estate exceeds \$200,000, the partner is entitled to be paid out of the intestate estate—               <ol style="list-style-type: none"> <li>a. \$200,000; and</li> <li>b. interest on that sum, calculated at the rate of 8% per annum from the date of the death of the intestate to the date that sum is paid or appropriated to the partner (inclusive); and</li> <li>c. an additional sum equal to—                   <ol style="list-style-type: none"> <li>i. if 1 child or the issue of 1 child of the intestate survives the intestate but no other issue of the intestate survives the intestate— 1/2 of the value of the balance of the intestate estate; or</li> <li>ii. in any other case— 1/3 of the value of the balance of the intestate estate.</li> </ol> </li> </ol> </li> <li>3. The issue of the intestate are entitled to the balance (if any) of the intestate estate after payment to the partner of the sum or sums to which the partner is entitled under this item.</li> </ol>



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