



GOVERNMENT OF
WESTERN AUSTRALIA

Department of
Justice

Statutory review of intestacy legacy amounts under the *Administration Act 1903* (WA)

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1 Executive summary

The *Administration Amendment Act 2022* (WA) made amendments to the provisions of Part II of the *Administration Act 1903* (WA) (**the Act**) relating to how a deceased estate is to be distributed on intestacy and, in particular, amendments were made to the intestacy legacy amounts.

Intestacy legacy amounts are the amounts which are payable to surviving relatives¹ when a person dies without leaving a will, a valid will or a will which validly disposes of all of the deceased's estate.

Section 14B(2)(a) of the Act requires the Attorney General to review the intestacy legacy amounts prescribed in the Act and decide whether or not it is appropriate to make an order under section 14A(2) of the Act to alter the intestacy legacy amounts on or before 30 June 2023 (and on or before 30 June in every 2nd year after that).

The Department of Justice (**Department**) has undertaken the first statutory review referred to in section 14B(2)(a) of the Act on behalf of the Attorney General (**Review**).

On completion of the Review and taking into account stakeholder feedback, the Attorney General made a decision that it was appropriate to make an order under section 14A(2) of the Act altering the intestacy legacy amounts (**Attorney General's Decision**).

The *Administration (Intestacy Legacy Amounts) Order 2023* was made on 18 July 2023, published in the *Government Gazette* on 1 August 2023, and tabled in both Houses of Parliament on 8 August 2023.

This Report has been prepared following the Review and the Attorney General's Decision for the purpose of tabling in each House of Parliament as soon as practicable after it is prepared in accordance with section 14B(3) of the Act.

In undertaking the Review, the Department consulted with key stakeholders and considered applicable legislation in other Australian jurisdictions. Details of that consultation and the intestacy legacy amounts in place in other jurisdictions are set out in this Report.

2 Background

The deceased estate distribution entitlements of relatives of a person who dies without leaving a will, a valid will or a will which validly disposes of all of the deceased's estate are prescribed by provisions of the Act.

The relevant entitlements are set out in a table to section 14 of the Act. In some specified circumstances there is a fixed amount² to which a spouse and/or de facto and parent/s are entitled. Those amounts are known as intestacy legacy amounts.

The last time the intestacy legacy amounts had been amended was in 1982.

In 2018 a Bill was introduced into the Western Australian Parliament to amend the intestacy legacy amounts. It was passed in the Legislative Assembly and transmitted to the Legislative Council on 3 April 2019. However, that Bill lapsed with the proroguing of Parliament in 2021.

¹ If the value of the deceased estate is sufficient.

² If the value of the deceased estate is sufficient.

On 26 May 2021 the Administration Amendment Bill 2021 (WA) was introduced in the Legislative Assembly. It was passed and transmitted to the Legislative Council on 7 September 2021. The Bill was passed by the Legislative Council on 22 March 2022. On 29 March 2022 the *Administration Amendment Act 2022* (WA) received Royal Assent.

There were three main effects of the *Administration Amendment Act 2022* (WA). They were:

- (a) to immediately increase the intestacy legacy amounts;
- (b) to prescribe a formula for calculating the amount of the intestacy legacy amounts from time to time in the future; and
- (c) to require the relevant Minister (currently the Attorney General) at specified times to review the intestacy legacy amounts and decide whether or not to apply the prescribed formula to alter the intestacy legacy amounts and, following that review, report the outcome to both Houses of Parliament.

The first statutory review was required to occur prior to 30 June 2023 to allow the Attorney General to, in accordance with new section 14B(2)(a), make a decision on or before 30 June 2023 as to whether or not it was appropriate to alter the intestacy legacy amounts.

The Department has undertaken the Review referred to in section 14B(2)(a) of the Act on behalf of the Attorney General.

3 Review

3.1 Review requirement

Section 14B(2) of the Act provides:

The Minister must review the relevant sums and decide whether or not it is appropriate to make an order under section 14A(2) –

- (a) *on or before 30 June 2023; and*
- (b) *on or before 30 June in every 2nd year after that.*

3.2 Terms of reference

In accordance with section 14B(2) of the Act, the Review has considered whether or not it is appropriate for the Attorney General to make an order under section 14A(2) of the Act to alter the intestacy legacy amounts in accordance with the formula set out in section 14A(3) of the Act.

3.3 Stakeholder consultation and submissions received

The Department initiated stakeholder consultation by inviting submissions from the following stakeholders:

- Supreme Court of Western Australia;
- Office of the Public Trustee;
- Law Society of Western Australia; and
- Society of Trust and Estate Practitioners Western Australia (**STEP WA**).

The Department's invitation to these stakeholders detailed the prescribed formula for calculating new intestacy legacy amounts as set out in section 14A(3) of the Act and identified that, if the amounts were to change, they would change as follows:

Item	Current amount	Proposed new amount
2 - person dies leaving a husband/wife and issue	\$472,000	\$501,000
3(a) and (b) - person dies leaving a husband/wife, specified relatives but no issue	\$705,000	\$748,500
3(b)(i) - amount for a parent where person dies leaving a husband/wife, specified relative but no issue	\$56,500	\$60,000
6 - person dies leaving a parent and specified relatives but no husband, wife or issue	\$56,500	\$60,000

Submissions were received from the Office of the Public Trustee, Law Society of Western Australia, STEP WA, and Mr John Hockley, Barrister at Francis Burt Chambers and member of STEP WA. Stakeholders supported an increase to the intestacy legacy amounts, for the following reasons:

- although the intestacy legacy amounts were only recently increased by a significant amount (approximately 940% as estimated by the Public Trustee's Principal Legal Officer), they had not been increased for a considerable period of time and, if not further increased, could be further eroded in value by inflation;
- the rate of inflation has been high in recent years and the intestacy legacy amounts should be increased commensurate to inflation; and
- increasing the intestacy legacy amounts will assist in avoiding family provision actions by disaffected people entitled to the distribution of a deceased's estate.

3.4 Other jurisdictions

The table below provides a summary of intestacy legacy amounts in other Australian jurisdictions as at March 2023.

	NSW	Vic	Qld	ACT	NT	SA	Tas
Current Amount	\$553,819	\$499,210	\$150,000	\$200,000	\$384,800 spouse/partner + issue \$551,200 spouse/partner + parent/sibling	\$100,000	\$492,153

Whilst it is difficult to make direct comparisons of the intestacy legacy amounts in Western Australia and the other Australian jurisdictions because not all jurisdictions specify different spousal intestacy legacy amounts which distinguish where there is issue and where there is no issue, the Western Australian spousal intestacy legacy amount³ already exceeds the amounts in four other Australian jurisdictions⁴ and is similar to the amounts in two other jurisdictions.⁵

³ Item No 2 in the Table at 3.3 above.

⁴ Qld, ACT, NT and SA.

⁵ Vic and Tas.

4 Outcome of review

Feedback from stakeholders indicated that it was appropriate to increase the intestacy legacy amounts. Taking into account stakeholder feedback, the Attorney General made a decision that it was appropriate to make an order under section 14A(2) of the Act. Accordingly, on 18 July 2023 the *Administration (Intestacy Legacy Amounts) Order 2023* was made.

The *Administration (Intestacy Legacy Amounts) Order 2023* was published in the *Government Gazette* on 1 August 2023 and tabled in both Houses of Parliament on 8 August 2023 as required by section 14A(5) of the Act.

Section 14A(5) of the Act provides that section 42 of the *Interpretation Act 1984* (WA) applies to the Order as if the Order were regulations.

5 Next review

The next review of the intestacy legacy amounts will occur on or before 30 June 2025 and thereafter at two-yearly intervals, as required by section 14B(2)(b) of the Act.