THE INTESTACY RULES

Proposed Amendments

to

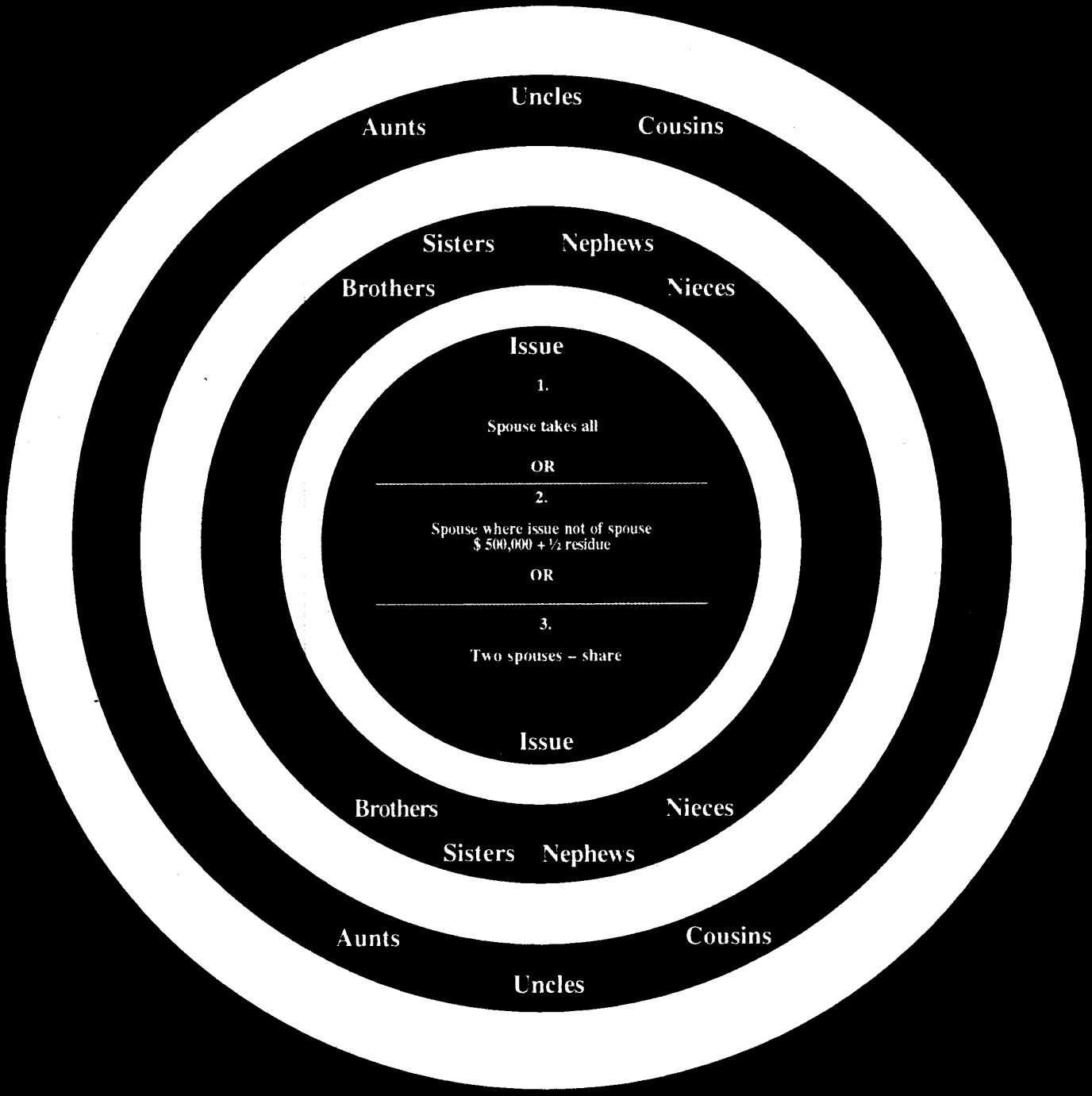
THE SUCCESSION ACT 1981

Queensland Law Reform Commission

1992

Intestacy Rules

Working Paper No. 37



Queensland Law Reform Commission

July 1992

How to make comments and submissions

The Commission welcomes comments and submissions on the proposals made in this paper. Written comments and submissions should be sent to

The Secretary
Queensland Law Reform Commission
PO Box 312
North Quay Q 4002

The closing date for submissions is 30 September 1992

If you would like your submission to be treated as confidential, please indicate this clearly. However submissions may be subject to release when the Freedom of Information Bill comes into effect.

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This Working Paper on the subject of Queensland's Intestacy Rules, is part of a programme to bring up to date the Queensland Succession Laws. The intestacy rules were last revised in 1968.

The principal beneficiary under the proposals will be the spouse of the person who dies without having made a will. At present a spouse has to share the estate with issue of the deceased and with some other kin if there are no issue. Under the proposed rules the spouse will ordinarily take the entire estate of the deceased and will not have to share with either issue or other kin.

Obligations to de facto spouses are recognised in the proposals. At present a de facto spouse is entitled to nothing under the intestacy rules although he or she may apply to the Court for maintenance. Under the proposals a person who, within the period of three years terminating on the death of the intestate, has lived in a connubial relationship, whether heterosexual or homosexual, with the intestate for periods aggregating two years at least, including a period terminating on the death of the intestate, is recognised as a spouse; as is a person living with the intestate at the date of death who is the parent of a child of the intestate. In a departure from traditional practice the proposals give recognition in certain cases to relationships recognised under Aboriginal and Torres Strait Islander customary law.

The spouse will not be entitled to take the entire estate in only two cases. One is where the intestate is survived by issue who are not issue of the surviving spouse. Then the surviving spouse will take the first $500,000 and one half of anything left after that, and the issue, other than issue of the spouse, will take the other half.

The other case is where there are two spouses of the deceased. A person may have entered into a de facto relationship three years before death but still have a married spouse. If that person has lived with the married spouse for any period within five years before death both spouses are recognised. They will each take half of what they would otherwise have taken, unless one spouse has issue of the intestate and the other has no issue of the intestate. In that case the spouse with issue will take two-thirds and the spouse without issue one-third.

A spouse will no longer be required to bring into account a benefit received under a will of the deceased.

There are two objectives to the proposals to improve the position of spouses. One is to ensure that the spouse can afford to remain living in the family home. The other is to reduce the incidence of litigation where in effect two spouses survive.

Where there is no spouse the rules have been changed in detail but not principle. Issue take the entire estate where there is no spouse. Grandchildren and great

grandchildren entitled to take will always take in equal shares; whereas before they could only take, between them, the share their parent would have taken had the parent survived. The rights of remoter kin are not affected. The right of the Crown to take where there are no kin nearer than uncles, aunts or cousins, is also recognised.

The Honourable Mr Justice R E Cooper
Chairman

Members of the Commission

Her Honour Judge H O'Sullivan (Deputy Chair)

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1. PRELIMINARY

1.1 Intestacy rules are the rules which determine the manner in which the estate of a deceased person is distributed to the extent that the deceased fails to make a will. In Australia these rules are not as significant as they are in some other jurisdictions because of the existence of the power vested in the Court since the early years of this century to make a family provision order where the will or intestacy rules fail, in a given set of circumstances, to make adequate provision for the proper maintenance of spouses, including de facto spouses, issue and dependants of the deceased. This power in the Court significantly restricts freedom of testation and its philosophy must be reflected in the intestacy rules. Modern intestacy rules, in Australian jurisdictions, cannot purport to be a substitute for the will the deceased might be presumed to have wished to make: they must ensure that adequate provision is made for the proper maintenance of spouses, issue and other dependants of the intestate. In other words the focus of contemporary succession law in Australia is upon the duties and obligations which testators and intestates owe to their dependants. In this context intestacy laws can no longer have as their sole object the conferring of inherited wealth upon a small group of persons defined by the strict formulae of the past.

1.2 Intestacy rules can never do justice in all cases, because family circumstances vary greatly. A rule which might do adequate justice in one case, perhaps in many usual cases, might do great injustice in others. Intestacy rules do not absolve a person from making a will. Nevertheless persons cannot be forced to make wills and wills can be invalid for want of capacity, knowledge and approval or form. So it is incumbent on government to promulgate and from time to time revise its intestacy rules.

1.3 Another issue of intestacy rules is that of complexity. A complex set of rules might be very difficult for the public to understand and costly to administer. Simple rules, on the other hand, tend to overlook some possible circumstances which may occur frequently enough to warrant attention. Rules which are too detailed may be inefficient. To impose considerable accounting duties upon those charged with the administration of intestate estates might also cause injustice. An intestate estate which consists of a family home and contents, car and a few thousand dollars in savings should not cost thousands of dollars to administer. The policy of

the existing Queensland *Succession Act* underlines, particularly in section 54(1), an expectation that many small estates can be informally and cheaply administered; and intestacy rules should further this policy.

1.4 The present intestacy rules first came into force in 1968 under the provisions of the *Succession Acts Amendment Act* of that year. The provision made for an intestate's spouse and issue is the same as that found in the *Statute of Distributions* of 1685. Since that time a number of substantial economic, demographic and social changes have greatly affected community attitudes towards the distribution of family wealth.

1.5 Inflation, the most obvious and significant economic phenomenon of our times, has made the most specific provision contained in the intestacy rules, which gives the spouse $50,000 plus one half of the residue, where the intestate leaves near next of kin but no issue, completely unjust and irrelevant. The figure of $50,000, in 1968 terms, would now have to be translated into more than $250,000 to make up for the erosion of money values caused by general inflation.

1.6 Increased longevity has also greatly affected public perceptions of the proper allocation of family wealth. The Australian population is ageing and more people are living into their ninth and tenth decades than ever before. It is proper that family wealth should be utilised to maintain them in independence as far as possible for the rest of their lives.

1.7 The need to educate and train the children and younger members of the family is now perceived to be more essential than ever before. Parents realise that education is a better investment for their children than the accumulation of inheritable wealth. They make financial sacrifices for them which reduce the resources available for their own maintenance into advanced old age. At the same time educated adults are likely to be in the work force, perhaps making sacrifices for the education of their own children, and so less able to devote time and resources to caring for an aged parent. The phenomenon of the unmarried, not very well educated, daughter, remaining at home to care for an elderly parent, is less common than in the past.

1.8 At present where an intestate dies leaving a surviving spouse and issue the spouse is obliged to share the estate with the issue. Where there is more than one child of the intestate and those children or issue of them survive the intestate, the spouse takes one third of the estate and the issue two thirds. Where there is only one child and that child or issue of that child survive, the spouse takes one half and the child or issue one half. This rule

is at least 300 years old and was originally applicable only in the case of personalty; the realty would pass to the heir at law. Now the rule is applicable to the whole of the intestate's estate. The application of this rule often leaves the spouse relatively impoverished; and in some cases the family home may have to be sold so that the proceeds can be distributed amongst the spouse and issue. Although unfortunately statistics are not available, it is believed that there is an increasing number of applications for family provision under Part IV of the *Succession Act* originating from the spouses of intestates who consider that the intestacy rules do not make adequate provision for them. In the case of small estates the making of such applications may not be financially justifiable. The existing rules were neither originally created, nor retained, in the context of maintaining surviving spouses to a great age, or of educating the young, particularly females for whom formerly education was considered to be irrelevant. It is now inappropriate to leave the spouse of an intestate impoverished whilst at the same time ensuring a windfall to educated issue. The law should not, in the economic and demographic circumstances of the end of the twentieth century, encourage the inheritance of wealth at the expense of maintaining the aged or educating the young.

1.9 A change of attitude with respect to the importance of the formality of marriage is also a phenomenon the magnitude of which has already resulted in some reforms to the succession laws.

In the 1970's all Australian States conferred on illegitimate children the same inheritance rights as those enjoyed by legitimate children.[1]

In 1981 section 18 of the *Succession Act* recognised the fact of divorce by providing that the dissolution or annulment of the marriage of a testator revokes any beneficial disposition of property made by will by a testator in favour of a spouse as well as any appointment made by will by a testator of a spouse as executor, trustee, advisory trustee or guardian.

Part IV of the same Act recognised the fact that many couples prefer not to participate in a formal marriage ceremony by including, in section 40, within the definition of "dependant" of a deceased person, whether testate or intestate, the following:

> (b) the parent of a surviving child under the age of eighteen years of the deceased person; ...
>
> (d) a person who -
>
> (i) has lived in a connubial relationship with that deceased

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1 Queensland *Status of Children Act 1978.*

person for a continuous period of five years at least terminating on the death of that deceased person; or

(ii) within the period of six years terminating on the death of that deceased person, has lived in a connubial relationship with that person for periods aggregating five years at least including a period terminating on the death of that deceased person.

It does not follow that a couple who decide to live together without taking the formal step of getting married lack commitment or should be exempt from any duties or obligations to each other. When the formality of marriage was all important and divorce virtually impossible the law could not recognise the de facto relationship or any issue of it. Now it can. The duties and obligations of de facto couples towards each other are now seen as similar to those of couples who have taken the formal step of marriage. Indeed access to the law has been facilitated for de facto couples in New South Wales, Victoria, South Australia and the Northern Territory by specific legislation.[2] The Queensland Law Reform Commission is giving this matter consideration in its work on the Shared Property reference.

The proportion of persons marrying has declined over the past 20 years. The decrease in the number of first marriages is particularly noticeable. For every 1000 never married men in 1971, 78 married in that year. By 1986 only 42 per 1000 married. For women the rate of 112 per 1000 never married women in 1971 had almost halved to 57 per 1000 in 1986. The decline in the number of marriages in the younger age groups has been partially offset by the increased tendency for young persons to live together.

In 1986, 38,736 or 6.5 per cent of all couples in Queensland were living in a de facto relationship, compared with 5.7 per cent for Australia. In 60 per cent of these Queensland couples, both partners were less than 35 years old. Women enter couple relationships at an earlier age than males. Of females aged 15 to 19 years, 5.8 per cent (6,238) were living as part of a couple, compared with 1.4 per cent (1,578) of males of the same age.[3]

Further statistics are available concerning the incidence of the ex-nuptial births. The number of ex-nuptial births registered in Queensland in 1990

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2 See e.g. the *De Facto Relationships Act 1984 (NSW)*, the *Property Law (Amendment) Act 1987 (Vic)*, the *Family Relationships Act 1975, Part III (S.A.)* and the *De Facto Relationships Act 1981 (N.T.)*.

3 Queensland Families, Facts and Figures, a publication of the Department of Family Services, Queensland, and the Australian Bureau of Statistics.

was 11,397. In 8,222 of those births the father acknowledged paternity. Nuptial births registered for the same year were 33,471.[4]

The issue of homosexual couples also arises. Now that the stigma of criminality has been removed from the homosexual relationship, and more particularly in the context of anti-discrimination legislation, particularly the *Queensland Anti-Discrimination Act* 1992, it is possible for the law to recognise that homosexual couples do not lack commitment to each other, and neither should they be exempted from duties and obligations to each other, especially where, by reason of their living together and sharing each other's property, they have become economically interdependent in much the same way as married couples and de facto spouses. Further, in the event of the death intestate of a partner in a homosexual relationship without parent or issue the entire estate is most likely to pass to brothers and sisters of the intestate or to even remoter kin. The surviving partner, after a life time of commitment and sharing of property, must hand over everything owned by the deceased, unless he or she can, by litigation, establish the existence of a favourable constructive trust.

Nevertheless de facto couples, whether heterosexual or homosexual, are given no rights upon intestacy. At best the survivor of a heterosexual de facto relationship is relegated to the position of a "dependant" making application for family provision. The consequence of this is that an application or threat of it is virtually a certainty in every case where an intestate leaves a surviving de facto spouse. Since the costs of such an application are normally ordered to be borne by the estate, the de facto spouse will not be deterred from making an application by that factor. It is estimated that the costs incurred in the making and determination of a family provision application will usually lie in the $10,000 to $15,000 range even in an uncomplicated case.

Moreover, if the de facto spouse has offspring of the intestate the offspring will be entitled to share the estate: if the intestate has no other offspring they will be entitled to the entire estate. Further if they are infants the estate may well fall to be administered by the Public Trustee, who might also be a participant in any Part IV application made by the parent, with inevitable administrative costs. It is hardly fair that intestacy rules should recognise issue but not the parent of the issue.

There is no reason to suppose that a de facto spouse, who was in a relationship with the intestate for the duration of time required by law, or who has children of the relationship, would deal less responsibly with an inheritance than a married spouse; their needs for themselves and their responsibilities for their offspring are the same. There is a clear case for giving the de facto spouse rights upon intestacy similar to those enjoyed

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4 Australian Bureau of Statistics 1990 Births Australia, Catalogue No.3301.0.

by the married spouse.

It is not possible to give the de facto spouse the same rights as the married spouse. There is the requirement of duration; and the relationship must still be in existence at the date of the death. In the case of marriage, however, inheritance rights are gained immediately upon marriage, and are lost only by divorce. A married couple may have separated and seen nothing of each other for many years but never obtained a divorce; but if one dies intestate the survivor is fully entitled as a spouse under current law. Marriage automatically results in a legally recognised status, whereas any rights conferred on de facto couples require antecedent proof of the fact of the relationship.

1.10 A far more intractable problem arises where the intestate has died and in effect left two or more dependant spouses surviving. The intestate may have remained living with a married spouse but entered into a de facto relationship for long enough before dying to ensure recognition of the de facto spouse. But that does not mean that all obligations to the married spouse must cease or that the de facto spouse should be ignored completely. A less common but even more intractable problem arises where the intestate is living with two or more spouses, each of whom believes that there is no other spouse. A person whose work involves many trips away of short duration might well have "a wife in every port". That one of the spouses may be married to the intestate should not obscure the fact that obligations can be owed to all.

Nevertheless the present rule is that only the married spouse is entitled upon intestacy, even if the marriage has in fact ceased many years before. That rule must be reconsidered if a de facto spouse is to displace a married spouse as far as intestacy entitlements are concerned. It is not difficult to justify displacing a married spouse where the marriage has long since ceased to have meaning. But where it may fairly be said that the deceased owed obligations to both spouses at the time of death a new solution must be found, one which, preferably, does not relegate either spouse to the position of applicant for provision under Part IV. Possible solutions to these problems are proposed in Chapters 5 and 6 below.

2. RIGHTS OF ISSUE

2.1 Intestacy rules always make provision for the issue of the intestate; and it is uncontroversial that if an intestate dies leaving issue surviving, but no spouse, the issue should share the entire estate. As to the manner in which issue should share there is, however, developing opinion which differs from the existing Queensland rule. The existing rule is provided in section 36 of the *Succession Act 1981* which reads as follows.

2.2 36. Manner of distribution to issue

> "Where an intestate is survived by issue who are entitled to the whole or part of the residuary estate of the intestate the nearest issue of the intestate shall take that whole or part and if there be more than one such nearest issue among them in equal shares and the more remote issue of the intestate shall take that whole or part by representation".

2.3 A live person cannot be "represented". There is criticism of this rule respecting the rights given to representative issue. The operation of the rule is best described by illustration.

2.4 Example (a)

Intestate is survived by two children, A and B, and six grandchildren, one the child of A, one the child of C, a child of the intestate's who predeceased the intestate, and four the children of D, also a child of the intestate's who predeceased the intestate. The estate is divided into four parts: A and B take one part each - they are the nearest and take in equal shares; the child of C, who "represents" C, also takes one part; and the children of D, who "represent" D, take one part between them. The child of A takes nothing because A is still alive and cannot, therefore, be "represented".

2.5 Example (b)

Intestate had four children, A, B, C and D but they all predeceased leaving nine grandchildren, one being A's child, two C's and six D's. Now the

estate is divided into nine equal parts and each grandchild takes one part.

2.6 Comment

In example (a) the children are the "nearest issue" and take in equal shares. The grandchildren, however, take by representation and, as it happens, in unequal shares. But in (b) the grandchildren are the nearest issue and take in equal shares. There are critics of this rule who say that in example (a) all the grandchildren entitled to take should take in equal shares, the inequality resulting from the present rule being the product of chance.

The argument is that a grandparent having four grandchildren A1 the child of A and B1, B2 and B3 the children of B, would hardly give A three times as much, for Christmas or upon A's birthday, as he or she would give B1, B2 and B3. A grandparent usually gives each grandchild the same amount, regardless of their parentage. The same argument will apply to gifts to great grandchildren. Rights of grandchildren and great grandchildren upon the intestacy of the ancestor should similarly be equalised.

2.7 The present Queensland rule reflects the policy of the *American Uniform Probate Code* as it stood when the Queensland rules were being drafted. That Code has now been revised to ensure equality of shares amongst representatives. Section 2.106(b) of the *American Uniform Probate Code* now reads:

2.8 (b) Decedent's Descendants

"If...a decedent's intestate estate or a part thereof passes "by representation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner as if the surviving descendants had predeceased the decedent."

2.9 Using the existing Queensland language as a starting point this is rendered, in the proposed section 37(3), as follows:

> Manner of distribution to issue
>
> "Where an intestate is survived by issue who are entitled to the whole or part of the residuary estate of the intestate the nearest issue shall take that whole or part and if more than one in equal shares and the more remote issue of the intestate (other than issue of any nearer issue entitled to a share of the residuary estate) shall take in equal shares per capita the part, or parts combined together if more than one, that the deceased parent or parents of the more remote issue would have taken if they had survived the intestate."

The amounts to be distributed may be calculated by applying to each generation the formula a/(b+c) where a is the amount of the estate to be distributed (or remaining to be distributed after a distribution has been made); b is the number of issue of nearest degree surviving the intestate; and c is the number of issue of the same degree as in b who predeceased the intestate leaving issue surviving the intestate. An example of the repeated operation of this formula is given in Appendix 1.

3. SPOUSE AND ISSUE

3.1 At the present time where an intestate leaves a spouse and issue the spouse takes one half or one third of the estate and the issue take the remainder. It is time to question this rule which goes back over three centuries. If the estate consists of a family home and contents, a car and some savings, and the issue are all adults, they can insist that the estate be realised and distributed, in which case the surviving spouse might well lose the family home and car. This is inconsistent with the current view taken of what adequate provision should be made for the proper maintenance of the surviving spouse. The current view is illustrated by decisions of the High Court of Australia in family provision cases such as *White v. Barron*[5] and *Goodman v. Windeyer*[6]. A summary was given by Powell J. in *Luciano v. Rosenblum* where he said:[7]

> "It seems to me that, as a broad general rule, and in the absence of special circumstances, the duty of a testator to his widow is, to the extent to which his assets permit him to do so, to ensure that she is secure in her home, to ensure that she has an income sufficient to permit her to live in the style to which she is accustomed, and to provide her with a fund to enable her to meet any unforeseen contingencies."

3.2 If this policy is adopted as appropriate for the reform of intestacy rules the present rule is clearly indefensible. Moreover, where the estate is very small, for instance where the surviving spouse lives in rented accommodation and the estate of the intestate consists of some furniture, a car and perhaps a small amount of money in a savings account, and the issue are not yet adults, to require the surviving spouse to place the share of the issue into a separate trust account not only fails to make adequate provision for either the surviving spouse or the issue, but is oppressive in its requirement of accountability.

3.3 The present rules were devised at least three hundred years ago in a society which had different attitudes to the needs of surviving spouses and infant children and where the intestacy rules were confined to personalty. Nowadays parents strive to expend family resources on educating their children to become independent of them, rather than on ensuring that they inherit wealth; and to ensure reasonable provision for their old age, in the

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5 (1979) 144 CLR 431.

6 (1980) 144 CLR 490.

7 [1985] 2 N.S.W.L.R. 65 at 69-70.

hope that they can remain independent of their children, for the rest of their lives. The present intestacy rules are manifestly unsuitable for those purposes.

3.4 It is therefore arguable that where an intestate is survived by a spouse and by issue of their marriage or relationship, unless the intestate has issue of another relationship, the spouse should take the entire estate. It is justifiable for the law to assume that a parent will take responsibility for the needs of offspring. Moreover, a surviving parent who takes the entire estate will have a better opportunity to consider the needs of issue, at the date of the survivor's death, than the intestate could. Section 36(2) reflects this view.

4. SURVIVING SPOUSE AND ISSUE OTHER THAN ISSUE OF A SURVIVING SPOUSE

4.1 Where the intestate has issue other than issue of a surviving spouse different considerations apply. The intestate may have been married before and have issue of that marriage; or there may be a child of a relationship of the intestate outside marriage. It is understandable that the surviving spouse might prefer his or her own issue to issue of the intestate's by another marriage or relationship. In these cases it is arguable that, in order to ensure that provision is made for children of the intestate who are not children of a surviving spouse, the spouse should be given a portion rather than the whole of the estate, and the issue of the intestate who are not issue of a spouse the residue.

4.2 The Spouse's Portion

The spouse's entitlement where issue survive the intestate has been described in 1.8. Under the present rules a spouse is given $50,000 plus half the residue of the estate, if the estate exceeds $50,000, where the intestate had no issue but left a parent, brother, sister, nephew or niece surviving. These relatives take the other half of the residue as prescribed. This rule recognises the primary importance of the spouse without ignoring near relatives of the intestate.

The figure of $50,000 is, however, hopelessly out of date and, accepting the strategy of the spouse's portion as appropriate, another figure must be substituted for it to reflect current values.

4.3 The Bureau of Statistics has advised that from 1968 to December 1990 the Consumer Price Index rose by 517.9%. $50,000 at the time the present intestacy rules were devised had a purchasing power of $258,950 by December 1990.

But the need to provide for surviving spouses who are living longer, and to ensure that the spouse can remain in the family home if there is one and in addition have sufficient means to remain there, justifies a substantial increase in that figure, even after adjustment to take account of general inflation.

In any case it should be observed that when the figure of $50,000 was legislated in 1968 it was predicated upon the justifiable assumption that most family homes are held in the names of both spouses as joint tenants, so that the surviving spouse would normally receive the $50,000 in addition to the family home. But where there was no family home, or where the family home happened to be in the sole name of the intestate, e.g. because it was purchased by the intestate before marriage, the spouse might well be left without the means to remain in the home.

It is therefore proposed that where the intestate is survived by issue who are not issue of a surviving spouse the spouse's share should be $500,000 or the whole of the estate if the estate is worth less than $500,000. If the estate is worth more than $500,000 the spouse should receive $500,000 plus one half of the residue and issue other than issue of a surviving spouse the remainder of the residue. A spouse should never have to share with more remote kin, however, such as parents (who may make application for provision under Part IV) or brothers and sisters.

Under the present intestacy rules where a spouse is entitled to a spouse's share of $50,000 plus half the residue, the spouse is required, by s.38, to bring into account the value up to $50,000 of any beneficial interest acquired under a will of the intestate. That requirement increases the value of the share of residue available for distribution to the parents, or brothers, sisters, nephews or nieces of the intestate.

Consideration was given to imposing a similar requirement which, in the context of a spouse's share of $500,000 plus half the residue, would have increased the value of the residue available for distribution to issue of the intestate other than issue of a spouse. It would also have meant that if there were issue of the surviving spouse such issue would be disadvantaged, since the estate which they could inherit from the surviving spouse upon death would be diminished.

A will of the intestate making provision for the spouse might well also make provision for issue who would benefit from a requirement to account. If that were the case it would be unfair to require the spouse to bring benefits into account without requiring those issue to bring benefits into account also. That would enlarge the requirement and might be seen as imposing intestacy rules upon a testator. It is therefore recommended that the requirement be dropped.

Consideration was given to whether a spouse should bring into account realty passing to the spouse under the doctrine of survivorship where the intestate and spouse were joint tenants of such realty. It was decided not to recommend such a requirement for the reason that it would disturb an arrangement of substantial financial significance made between the intestate and the spouse during their lifetime as well as for the reasons given above, so far as applicable.

5. DE FACTO SPOUSES

5.1 De facto spouses were first recognised, for the purposes of succession law, by the *Succession Act* 1981 when they were accorded the right to apply for provision under Part IV of the Act (Family Provision). This means that "if in the terms of the will or as a result of the intestacy adequate provision is not made from the estate for the proper maintenance and support"[8] of a de facto spouse who is dependent on the deceased, that spouse can apply to the court for an order making such provision. In the case of intestacy no provision is made for a de facto spouse and so an application by such spouse can be expected.

5.2 In any case the phenomenon of informal marriages cannot be ignored by the State and is not. Many couples do not consider marriage formalities to be sacrosanct. Many couples who do marry have been in a de facto relationship with each other before the marriage. Some never marry but have children and lead a normal family life. Women, as well as men, sometimes refuse to enter into a formal marriage relationship from which release can only be fully accomplished by legal process, namely divorce in the Family Court.

5.3 Moreover it is inconsistent that Part IV (Family Provision) of the *Succession Act* makes provision for de facto spouses but Part III (Intestacy) ignores them altogether. It is therefore proposed that where there is no married spouse, a de facto spouse who comes within the definition of "spouse" should be given the same rights on intestacy as a married spouse.

5.4 At present in Queensland a de facto relationship must have existed for five years before it is recognised for the purposes of Part IV of the *Succession Act* (Family Provision). This duration had been stipulated in South Australian legislation which was adopted by Queensland in 1981. Now that stipulation is out of step with the definitions of de facto spouse appearing in current interstate legislation, as mentioned in 1.9. The most common duration prescribed is two years. To retain the five year requirement would constitute an impediment to progress towards uniformity of laws concerning the rights of de facto spouses, as it is currently developing. The changed stipulation is contained in paragraph (b) of the definition of spouse in section 34(1). A similar definition is recommended in relation to applicants under Part IV.

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8 Section 41(1).

6. MARRIED SPOUSE AND DE FACTO SPOUSE

6.1 Where there is both a married and a de facto spouse feelings are apt to run high and judgment to be clouded by irrelevant assumptions. When a deceased estate is distributed in accordance with mechanical rules, such as intestacy rules, the situation becomes explosive if one spouse is allowed to take all and the other nothing.

6.2 Since at present the de facto spouse takes nothing at all in the case of intestacy a family provision application is likely to be made; and to be defended by the surviving married spouse. Indeed bitterness and revenge might motivate the course of such an application quite as much as the desire to ensure fair provision for the applicant. Costs, in grudge litigation, could make considerable inroads into the value of the estate to the disadvantage of both spouses. One object of intestacy rules should be to reduce the likelihood of acrimonious litigation. On the other hand rigid rules, as intestacy rules are, are not well suited to resolve extremely complex opposing claims in the wake of a death; and legislatures have tended to flounder when confronted by the task.

6.3 Four possible courses

There are four possible courses open to a legislature attempting to deal with the competing claims of married and de facto spouses.

6.4 (1) Give all to the married spouse

Under the present law all is given to the married spouse even although the husband and wife may have gone their separate ways many years before. There are two major objections to this. The first is that it suggests that intestates owe no obligations to de facto spouses. That is unfair to de facto spouses and inconsistent with Part IV (Family Provision) of the Act which recognises that a de facto spouse may be the subject of obligations on the part of the deceased. Secondly to leave the law as it is does not resolve the problem of the likelihood of costly and acrimonious litigation.

6.5 (2) Give all to the de facto spouse

The two objections mentioned in relation to the course of giving all to the married spouse apply in this case.

6.6 The fact that a spouse has left a married spouse and assumed a relationship with a de facto spouse does not mean that there is no obligation left towards the married spouse.

6.7 But there is a third objection. Such a rule would be seen as diminishing the sanctity of the formal marriage. Although many members of society do question the importance of formality, particularly couples involved in a de facto relationship, that does not render marriage unimportant. Those who adhere to conservative values do so fervently and in good conscience. At the present time no-one would expect any Parliament in Australia to reject the concept of marriage. In any case and whatever the strength or weakness of this objection, the strength of the first two is not affected.

6.8 (3) Establish criteria to evaluate the rights of both spouses

A third possibility is to try to establish evaluative criteria, for inclusion in the intestacy rules, to enable the personal representative to divide the estate into parts for distribution to both spouses. It is possible to think of some criteria which could be incorporated into intestacy rules. In the United States, for instance, in some jurisdictions, a wife's entitlement on intestacy can be governed by the number of years the marriage has existed: a spouse of thirty years gets a higher percentage than a spouse of six. De facto spouses are given no recognition at all in the United States. Could a similar principle be adopted in Queensland to settle the relative rights of a married and a de facto spouse? If a married spouse has lived with the intestate for thirty years and the de facto for six years before the intestate's death, should the married spouse be given 30/36ths? This is a formula which does have one advantage: it is calculable with reasonable accuracy. It is a workable rule. However it could not be the sole criterion because it ignores the needs of the spouses. A married spouse may be destitute and a de facto wealthy - or vice versa. The future obligations, for instance towards children, could be non-existent, if the children are adult and affluent, or onerous, if children are infants or handicapped. It is no longer part of the policy of the law to ignore the economic circumstances of beneficiaries. But the economic circumstances of beneficiaries cannot be addressed by intestacy rules or evaluated by personal representatives. Part IV (Family Provision) enables this to be done by the court, and is a

unique process in the international jurisprudence of succession law. Only court action brought by a needy person can justify the consideration of the needs or wealth of a person, and then only where that person is before the court making or opposing an application for provision. Such investigations cannot be undertaken by personal representatives; they cannot be given access to the relevant information.

6.9 (4) Give both spouses the same

6.10 A person who has a married and a recognisable de facto spouse has two spouses. The law's former refusal to recognise the de facto spouse at all is now seen as combining moral repugnance with a desire to punish the perceived personification of that repugnance. It is no longer a desirable posture for the law to strike. To give either spouse nothing must still appear to be a solution manifesting some sort of disapproval.

6.11 In equity where benefit to a class, usually the issue of a person, was intended, but where there were no criteria justifying unequal distribution amongst them, the maxim, and almost the rule, was "Equality is Equity". What would be the consequence, in present context, of giving both spouses equal rights?

6.12 It is submitted that the most significant consequence would be a reduction of family provision applications. It would be clearly inadvisable for a spouse to make such an application unless the circumstances were such that the applicant could expect to receive substantially more, after the costs of the litigation, than half the estate. Such circumstances would be comparatively rare. In a case where one spouse might be awarded 60% of the estate and the other 40% it would scarcely be worth while for either spouse - and they would necessarily take different views of the outcome of the litigation - to incur the delay, costs, anxiety and risk of litigation. Some injustice might result as a consequence of the inhibition upon litigation which a 50-50 rule might bring; but that injustice would be offset by the advantage of freedom from acrimonious litigation and substantial costs. The timid are less likely to litigate than the aggressive, and so a rule which inhibits litigation avoids the psychological imbalance inherent in the adversarial system. Again where the estate is small, e.g. under perhaps $15,000, a Part IV application could hardly be brought for reasons of cost.

6.13 The principle of equality eschews the making of moral judgments or economic forecasts in a context where there is a wide variety of factual circumstances. But it does make substantial provision for both spouses; it

does not make a judgment preferring one to the other; and it demotivates the spouses from embarking upon acrimonious and costly litigation. Subject to what is said in the next two paragraphs, this is the solution which is therefore recommended. It is a principle which has already been adopted in South Australia.[9] It is reflected in the proposed sections 36(3) and 36A(3).

6.14 Despite the advantages of equality of division, however, it is a formula which assumes that the surviving married spouse still has claims upon the intestate. But this is by no means always the case and if a marriage is well and truly over it may be seen as unfair that a former spouse should take any share at all. This might well be the case if the marriage had ceased altogether say five or more years before the death and there had been no contact between the parties.

The New South Wales provision is that the married spouse ceases to be entitled to a share on intestacy if the intestate has had a de facto spouse for a period of two years before the death.[10] With respect that provision seems to be unduly harsh on the married spouse. Two years is hardly long enough for the parties to a marriage to recover from the breakdown of that marriage and take appropriate steps, eg divorce. There are many reasons, cost being one, why partners to a marriage which has broken down might do nothing for several years. A two year rule gravely disadvantages a married spouse who may have been married to the intestate for thirty years.

It is therefore proposed that a married spouse should be entitled to a share on intestacy, as well as a de facto spouse, if the intestate had lived with the married spouse during any period within FIVE years before the death of the intestate. This envisages a complete breakdown of the marriage for that period - sufficient time for both parties to take stock and any appropriate action. The married spouse would continue to be entitled to make an application for family provision; and would only become disentitled to rights on intestacy if there is a de facto spouse. This is reflected in paragraph (a)(i) and (ii) of the definition of spouse in section 34(1).

6.15 Where both spouses have issue of the intestate or where neither spouse has issue of the intestate, it is hoped that the 50/50 rule will be fair enough in a majority of cases. But where one spouse has issue of the intestate and the other no issue of the intestate it is proper to give additional consideration to the parent who has brought up the intestate's children or

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9 *Administration and Probate Act* 1975 Section 72h(2).

10 *Wills, Probate and Administration Act* 1898, Section 61B(3A).

is still doing so. The High Court of Australia has consistently recognised, in considering Part IV applications, that obligations are owed to children with special needs, in particular the costs of education. The moral claims of adult children are also recognised.[11]

It is therefore recommended that where one spouse has issue of the intestate but not the other, the spouse having issue should receive two thirds of the estate, or spouse's share, and the spouse having no such issue one third. This is reflected in sections 36(4) and 36A(4).

6.16 Where there are more than two spouses an extraordinary situation exists. It is possible, given the definition of spouse, that an intestate may die leaving surviving more than two spouses. There are cases where it has been found after death that a deceased person had more than two spouses in different places, none of whom was aware of the existence of the others. It is not appropriate for intestacy rules to try to deal with such an extraordinary circumstance and accordingly it is recommended that none of the spouses should be entitled to receive an automatic entitlement upon intestacy; but they may make application for provision under Part IV, or agree together as to the division of the estate.

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[11] See e.g. *Hughes v National Trustees Executors & Agency Co. (Alasia) Ltd.* (1979) 53 ALJR 249.

7. NEXT OF KIN

7.1 The next of kin entitled to share the estate of an intestate are confined by statute in Queensland to the parents, brothers, sisters, nephews and nieces, grandparents, uncles and aunts and cousins of the intestate. One reason for this is the difficulty of discovering remoter kin in a country a large proportion of whose population are immigrants or the children of immigrants from overseas. There seems to be no reason either to make this list shorter, e.g. by excluding cousins, or to make it longer, by including great grandparents, great uncles and aunts or their issue.

7.2 The entitlement of kin where there is a spouse

At the present time if an intestate is survived by a spouse and a parent, brother, sister, nephew or niece, the spouse must share with those kin, the nearer excluding the more remote. For the reasons given at 3.4 it is now considered that a spouse should not have to share any part of an intestate's estate with issue, unless there are issue who are not issue of that spouse. If the issue of an intestate are to be excluded, where there is a spouse, a fortiori remoter kin, towards whom an intestate has even less obligation, should also be excluded. In the case of parents, where a child may well have obligations, there is already provision for them to make application for provision under Part IV.

7.3 The entitlement of kin where there is no spouse or issue

It is proposed that the law should remain as it is. This means that parents take first; if there are no parents, then brothers, sisters, nieces and nephews; then grandparents; then uncles, aunts and cousins. No-one more remote can take.

8. CUSTOMARY LAW

The Commission is aware that Aboriginal and Torres Strait Island customary law may recognise that a relationship exists between two persons which is not so recognised under non-customary law. The Commission has initiated enquiries concerning the extent to which relationships recognised by customary law should be recognised for the purposes of the intestacy rules.

The Commission's preliminary proposal is reflected in section 34(3). The Commission acknowledges the implications which this proposal has for the recognition of customary law generally. The inclusion of section 34(3) is intended to focus the debate which may be expected on this issue.

9. THE CROWN - BONA VACANTIA

Where there is no spouse and no kin within the range described, the Crown will take the entire estate of the intestate as bona vacantia, that is goods without an owner. Needless to say it behoves every person whose estate would pass to the Crown on intestacy to consider whether that is what that person wishes, and if not, to make a will. In any case the Crown can sometimes be persuaded to make ex gratia payments, where it has taken an intestate's estate, to persons who have a moral claim against the intestate, even although they are not eligible to make an application under Part IV.

10. CONSEQUENTIAL AMENDMENTS

9.1 Part III and the Second Schedule of the *Succession Act 1981* will be repealed.

9.2 Part IV

At present a de facto spouse may make an application for provision under Part IV only if he or she can show that the relationship with the deceased had lasted for five, or five out of six years ending on the death; and that he or she was dependent on the deceased.

Now that it is recommended that de facto spouses should be entitled automatically upon intestacy the requirement of dependency should be removed from Part IV as far as de facto spouses are concerned. Moreover the duration stipulation should be brought in line with that stipulated in the case of intestacy, viz. to two or two out of three years ending with the death, for the reasons given in paragraph 5.4.

The parent of a surviving child of the deceased is already catered for in paragraph (b) of section 40, so the definition of spouse does not need to include, as it does in relation to the proposed intestacy rules, the parent of a surviving child of the deceased.

It is therefore recommended that section 40 be amended as follows:

1. The definition of dependant should end at the end of paragraph (c). That is: delete at the end of (c) the word "or" and insert the word "or" at the end of (b); and then delete paragraph (d).

2. The definition of spouse should be altered to read as follows:

   "spouse" means, in relation to a deceased person -

   (a) a person to whom that person was married at the date of death; and

   (b) a person who has been divorced whether before, on or after the commencement of this Act by or from that person if that person is receiving or entitled to receive maintenance from that person at the time of that person's death; and

(c) a person who, within the period of three years terminating on the death of the intestate, has lived in a connubial relationship (whether heterosexual or homosexual) with the intestate for periods aggregating two years at least including a period terminating on the death of that person; and

(d) a person recognised as a spouse of the deceased person under Aboriginal or Torres Strait Islander customary law.

11. COMPARATIVE SUMMARY OF EXISTING AND PROPOSED INTESTACY RULES

Existing rule		Proposed rule	
	1. SPOUSE		
1a	Spouse and issue: spouse takes 1/2 or 1/3, issue the rest.	1a	Spouse and issue (there being no issue other than issue of the spouse): spouse takes all.
1b	Spouse and parents, brothers, sisters, nephews and nieces: spouse takes $50,000 + 1/2 residue; parents then brothers, sisters nephews and nieces take the rest.	1b	Spouse and issue other than issue of the spouse: spouse takes $500,000 + 1/2 residue; issue other than issue of spouse take the rest. A spouse never has to share with a parent, brother, sister, nephew or niece.
1c	Spouse: no issue, parent, brother, sister, nephew, niece: spouse takes all.	1c	No change.
1d	Spouse must bring into account up to $50,000 received under a will.	1d	Spouse no longer required to bring into account.

2. TWO SPOUSES *

2.	Only the lawful spouse is recognised.	2a	Lawful spouse recognised only if he/she lived with the intestate during any period within five years before the death.
		2b	Each spouse takes 1/2 of 1a or 1b unless one spouse has issue of the intestate but the other does not when they take 2/3 and 1/3 respectively.

* (1) This situation can arise where there is both a lawful and a de facto spouse, or two de facto spouses.

(2) If there are more than two spouses no spouse has any entitlement under the intestacy rules; but each may make a family provision application.

3. ISSUE

3a Issue share with spouse see 1a.

3a Spouse excludes issue except in case 1b.

3b No spouse: issue take all.

3b No spouse: issue take all.

MANNER IN WHICH ISSUE TAKE

3c Nearest take in equal shares, more remote per stirpes.

3c All issue of equal degree take $\frac{a}{b+c}$ where

a = the estate remaining to be distributed.

b = the issue of nearest degree surviving the intestate.

c = issue of the same degree as b, who predeceased the intestate leaving issue surviving the intestate. Recalculate for each generation, omitting those who have received a share and their issue.

4. NEXT OF KIN

PARENTS

4a	Parents take where there is no spouse or issue; parents share with spouse as per 1b.	4a	Parents take where there is no spouse or issue. They take nothing if there is a surviving spouse.

BROTHERS, SISTERS, NEPHEWS AND NIECES

4b	Brothers, sisters and the children of deceased brothers and sisters take if there is no spouse issue or parent. They share with spouse as per 1b.	4b	Brothers, sisters and the children of deceased brothers and sisters take if there is no spouse issue or parent. They take nothing if there is a surviving spouse.

GRANDPARENTS

4c	Grandparents take where there is no spouse, issue, parent, brother, sister, nephew or niece.	4c	Ditto.

UNCLES, AUNTS AND COUSINS

4d	Uncles, aunts and children of uncles and aunts take where there is no spouse, issue, brother, sister, nephew, niece or grandparent.	4d	Ditto.

5. THE CROWN

The crown takes where there is no spouse, issue, parent, brother, sister, nephew, niece, grandparent, uncle, aunt or cousin.

12. DRAFT LEGISLATION

PART III - DISTRIBUTION ON INTESTACY

34. Interpretation (Old ss.34 and 38 and Second Schedule Part I Item 3)

(1) In this part, unless a contrary intention appears

"spouse" means -

(a) (i) except in sections 36(3) and (4) and 36A(3) and (4) a person to whom the intestate was married at the date of death of the intestate; or

(ii) in sections 36(3) and (4) and 36A(3) and (4) a person to whom the intestate was married at the date of death of the intestate and with whom the intestate lived during any period within five years before the death of the intestate; and

(b) a person who, within the period of three years terminating on the death of the intestate, has lived in a connubial relationship (whether heterosexual or homosexual) with the intestate for periods aggregating two years at least including a period terminating on the death of the intestate; and

(c) a person who was living in a connubial relationship with the intestate at the date of the death of the intestate and who is the parent of a child under the age of eighteen of the intestate;

"next of kin" means -

(i) the parents of the intestate;
(ii) the brothers and sisters of the intestate;
(iii) the grandparents of the intestate;
(iv) the uncles and aunts of the intestate;
(v) the children of any brothers or sisters of the intestate who predecease the intestate; and
(vi) the children of any uncles or aunts of the intestate who predecease the intestate.

"residuary estate" in relation to an intestate means -

(a) in the case of an intestate who leaves a will - the property of the intestate that is not effectively disposed of by the will; or

(b) in any other case - the property of the intestate,

which is available for distribution after payment of all debts and expenses properly payable from it;

"spouse's share" means -

(a) the sum of $500,000 together with interest from the first anniversary of the death of the intestate at the rate of eight per cent per annum from the residuary estate or the whole of the residuary estate whichever is the less; and

(b) if the value of the residuary estate exceeds $500,000, one half of the balance of the residuary estate.

(2) For the purposes of this Part, in ascertaining relationship it is immaterial whether the relationship is of the whole blood or of the half blood.

(3) Where a relationship between two persons is recognised by Aboriginal or Torres Strait Island customary law that relationship is recognised for the purposes of this Part unless recognition of the relationship would confer rights which would not be conferred by customary law.

(4) Where there is an executor of a will of the intestate the executor shall hold, subject to all rights and powers of the executor for the purposes of administration, the residuary estate of the intestate on trust for the persons entitled to it.

35. Distribution of residuary estate on intestacy (Old s.35)

(1) Subject to the provisions of Part IV of this Act the following persons are entitled to take, in accordance with the provisions of the remaining sections in this Part, the residuary estate of an intestate namely -

(a) the spouse or spouses of the intestate;
(b) the issue of the intestate;
(c) the next of kin of the intestate; and
(d) the Crown.

(2) Where a person entitled to take any part of the residuary estate of an intestate under this Part does not survive the intestate for a period of thirty days that part of the residuary estate shall be treated as if that person had died before the intestate.

36. Spouse or spouses entitled to the whole of the residuary estate

(1) This section applies unless the intestate is survived by issue who are not issue of a spouse.

(2) Where the intestate is survived by one spouse the spouse is entitled to the whole of the residuary estate.

(3) Subject to subsection (4) where the intestate is survived by two spouses, each spouse is entitled to one half of the residuary estate.

(4) Where the intestate is survived by two spouses and one spouse has issue of the intestate and the other has no such issue the spouse having issue of the intestate is entitled to two thirds of the residuary estate and the spouse having no issue of the intestate is entitled to one third of the residuary estate.

(5) Where the intestate is survived by more than two spouses none of the spouses has any entitlement under this section.

36A. Entitlement to spouses's share

(1) This section applies where the intestate is survived by issue who are not issue of a spouse.

(2) Where the intestate is survived by one spouse the spouse is entitled to a spouse's share.

(3) Subject to subsection (4) where the intestate is survived by two spouses, each spouse is entitled to one half of a spouse's share.

(4) Where the intestate is survived by two spouses and one spouse has issue of the intestate and the other has no such issue the spouse having issue of the intestate is entitled to two thirds of the spouse's share and the spouse having no issue of the intestate is entitled to one third of a spouse's share.

(5) Where the intestate is survived by more than two spouses none of the spouses has any entitlement under this section.

37. Entitlement of issue and manner of distribution amongst issue

(1) The issue of the intestate are entitled to the whole of the residuary estate unless the intestate is survived by a spouse.

(2) Where the intestate is survived by a spouse and by issue who are not issue of the spouse, the issue of the intestate who are not issue of the spouse are entitled to so much of the residuary estate, if any, as remains after the spouse's share has been distributed.

(3) Where an intestate is survived by issue who are entitled to the whole or part of the residuary estate of the intestate the nearest issue shall take that whole or part and if more than one in equal shares and the more remote issue of the intestate (other than issue of any nearer issue entitled to a share of the residuary estate) shall take in equal shares per capita the part, or parts combined together if more than one, that the deceased parent or parents of the more remote issue would have taken if they had survived the intestate.

38. Entitlement of next of kin (Old s.37)

(1) Where there is no spouse or issue of the intestate the next of kin of the intestate are entitled to the residuary estate, and if more than one in equal shares, subject to subsection (2), in the following order -

(a) the parents of the intestate; but if none survives then -

(b) the brothers and sisters of the intestate, and any children of any brothers and sisters of the intestate who predecease the intestate; but if none survives then -

(c) the grandparents of the intestate; but if none survives then -

(d) the uncles and aunts of the intestate and the children of any uncles and aunts of the intestate who predecease the intestate.

(2) The residuary estate of the intestate shall be divided amongst -

(a) the brothers and sisters of the intestate and the children of brothers and sisters who died before the intestate, in the same manner as the residuary estate would have been divided amongst those persons, if the brothers and sisters had been children of the intestate and the children of a brother or sister who died before the intestate had been children of a child of the intestate who died before the intestate;

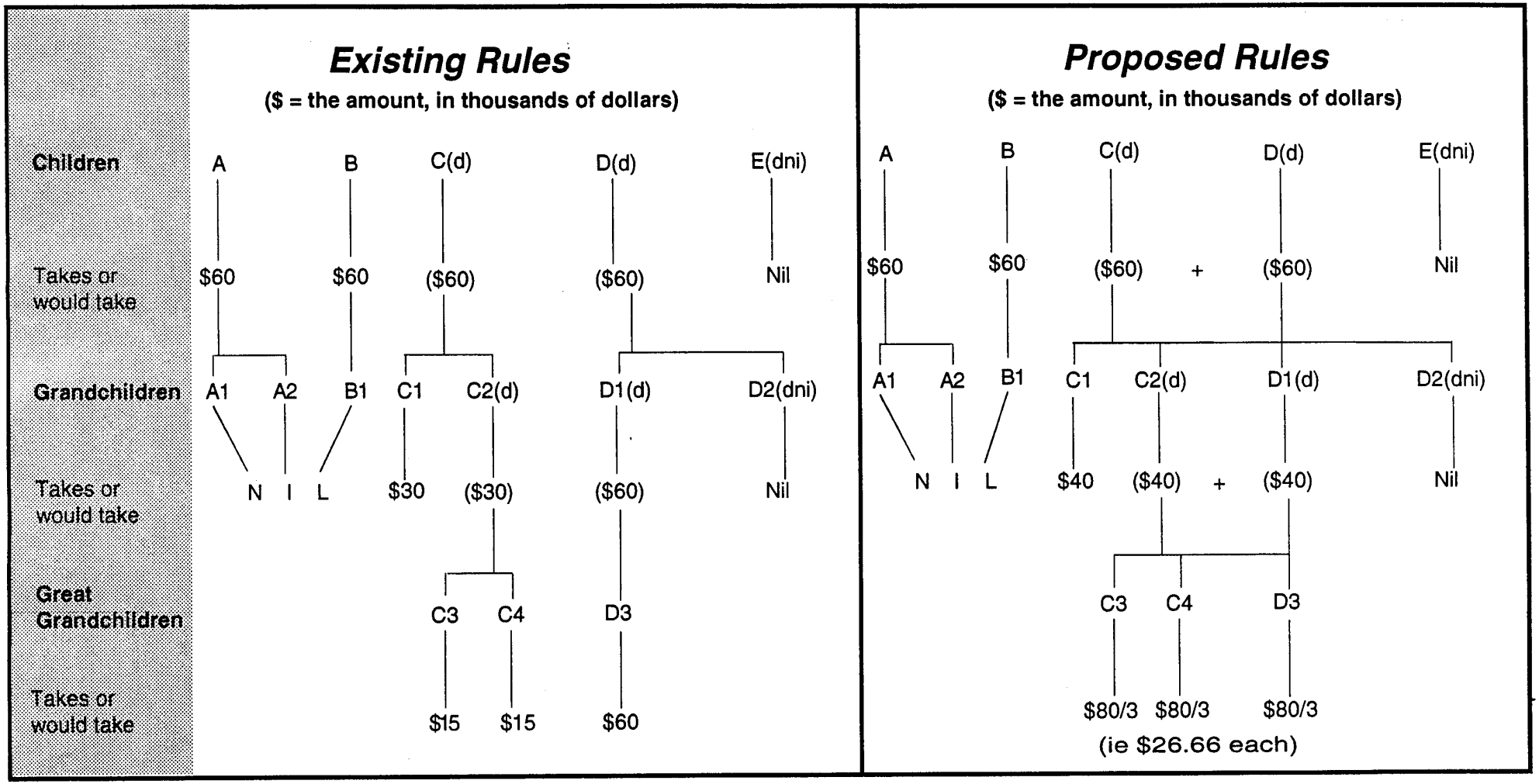
(b) the uncles and aunts of the intestate and the children of those uncles or aunts who died before the intestate, in the same manner as the residuary estate would have been divided amongst those persons if the uncles and aunts had been children of the intestate and the children of an uncle or aunt who died before the intestate had been children of a child of the intestate who died before the intestate:

Provided that the residuary estate shall not be divided amongst the issue of a brother or sister or of an uncle or aunt who died before the intestate more remote than the children of any such brother or sister, uncle or aunt.

39. Entitlement of the Crown - bona vacantia

Where there is no spouse, no issue and no next of kin of the intestate the Crown is entitled to the residuary estate as bona vacantia.

Distribution Amongst Issue
Where Estate of Deceased Intestate = $240,000.00

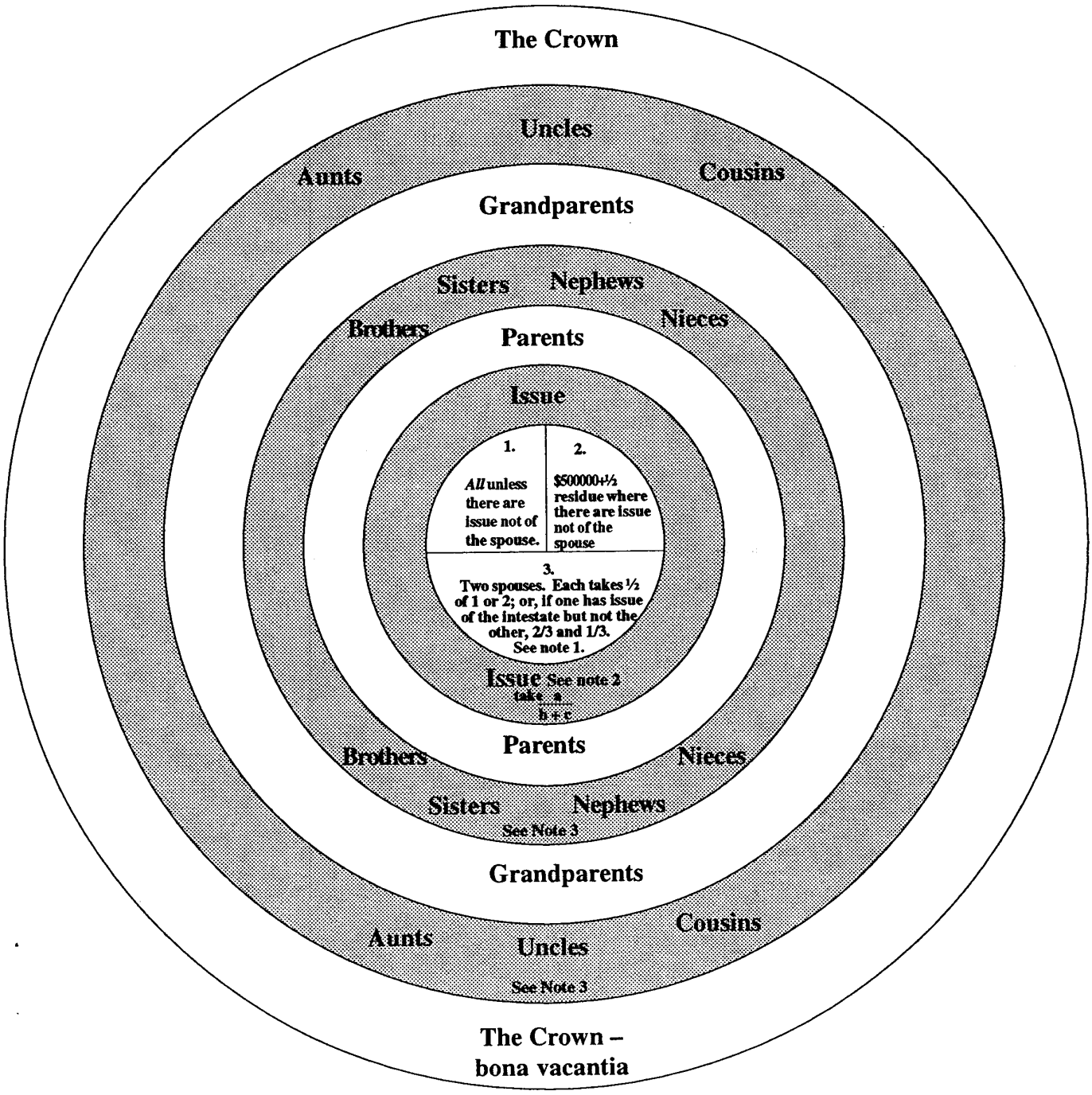


NOTES: **d = died before intestate** **ni = died without issue** **($) = the amount, in thousands, which that person would have taken had he or she survived the intestate**

Appendix 2

Proposed Intestacy Rules

Chart



NOTES TO APPENDIX 2

NOTE 1

A married spouse is included, where there are two spouses, only if the intestate lived with him/her during any period within five years before the death.

If there are more than two spouses, none of them has any rights under the intestacy rules.

NOTE 2

A share is determined by applying the formula $\frac{a}{b + c}$

for each generation of issue surviving the intestate

where -

a = the amount of the estate remaining for distribution

b = the number of issue of nearest degree surviving the intestate to whom no distribution has been made

c = the number of issue of the same degree as in b who predeceased the intestate leaving issue surviving the intestate

No-one can take more than one share.

No-one who is issue of anyone who has taken a share can take a share.

EXAMPLE

The intestate died leaving surviving:

Two children	A and B (two other children, C and D, having predeceased the intestate)
Four grandchildren	A1, a child of A B1, a child of B C1 and C2, children of C (deceased)
Five great grandchildren	A2, a child of A1 B2, a child of B1 C3, a child of C1 D2 and D3, children of D1 (deceased) who was a child of D (deceased)
Suppose the estate is	$120,000
Apply the formula	$\frac{a}{b + c}$

a	=	$120,000
b	=	2 (A and B)
c	=	2 (C and D)

One share is therefore $120,000 ÷ 4 = $30,000

Distribute two shares, viz $30,000 to A and $30,000 to B.

There is now $60,000 remaining for distribution.

Apply $\frac{a}{b + c}$ to the next generation:

a = $60,000

b = 2 (the grandchildren C1 and C2)

c = 1 (D1, the deceased grandchild who left two children D2 and D3)

One share is therefore $60,000 ÷ 3 = $20,000

Pay C1 and C2 $20,000 each

There is now $20,000 remaining for distribution.

Apply $\frac{a}{b + c}$ again:

a = $20,000

b = 2 (the great grandchildren D2 and D3)

c = 0 (no-one in this category)

One share is therefore $20,000 ÷ 2 = $10,000

NOTE 3

The manner of distribution to nephews, nieces and cousins remains unchanged.

Appendix 3

Existing Intestacy Rules

Chart