

19 June 2023

Mr Dominico Fernandes
Executive Director
Legislative Services
Department of Justice

By email: legpolicy@justice.wa.gov.au

Dear Mr Fernandes

STATUTORY REVIEW OF INTESTACY LEGACY AMOUNTS UNDER SECTION 14B(2)(A) OF THE ADMINISTRATION ACT 1903 (WA)

Thank you for your letter dated 22 May 2023 inviting the Law Society of Western Australia (the Law Society) to make a submission to the above review.

The point of including the review of the Administration Act 1903 (the Act) (section 14A(2) of the Act) and the statutory formula (section 14A(3) of the Act) was to ensure that the “intestacy or Statutory legacy” for the surviving spouse or de facto partner of a deceased person kept pace with inflation and took account of the average house price in Western Australia, and that also applied to the other intestacy legacy amounts for other surviving family members.

The rate of inflation in the last 2 years has been high, reaching 7.4% in the last year and it is still 6.8% on the April 2023 figures. Despite 8 interest rate increases the average Perth house price in January 2023 was \$540,000.00, up from \$525,000.00 in 2021 (source REIWA).

To maintain the ability of a surviving spouse or de facto partner to retain the family home (if solely owned by the deceased) or to purchase a home, the amount of the intestacy or statutory legacies should be increased in line with the statutory formula.

The other “legacies” should be commensurately increased to take account of the inflation figures.

Ensuring that the intestacy legacies are kept up to date helps avoid family provision actions by disaffected persons entitled in distribution to a deceased’s estate. Even if a family arrangement can be entered into without costly court proceedings (which denude the estate) then transfer duty may be payable by the surviving spouse or de facto partner which effectively reduces their share of the estate.

The Law Society supports the increase in the intestacy legacies as per the statutory formula on the Attorney-General’s review and as set out in your letter dated 22 May 2023.

If you have any queries please contact Mary Woodford, General Manager Advocacy and Professional Development on (08) 9324 8646 or mwoodford@lawsocietywa.asn.au

Yours sincerely



Ante Golem
President