SECOND READING SPEECH

Intestacy Bill 2010

Mr. Speaker, when a person dies his or her property must be distributed in an appropriate manner.

Generally the distribution will be in accordance with the deceased's will but if the deceased person has either not made a valid will, or if the will fails to dispose of some or all of the deceased's assets effectively, the property is distributed according to a statutory scheme known as the laws of intestacy.

One of the more widely acknowledged aims of intestacy laws is to produce a similar result as would have been achieved had the person who died intestate had an effective will.

The statutory distribution schemes generally distribute the deceased's property to those closely related to him or her.

However, what is seen as appropriate may vary over time – in the past intestacy laws allowed for a statutory legacy to a person's spouse or defacto partner but not to both.

Now the laws recognize that a person may have both a spouse and a defacto partner at the same time, or that there may be children of the deceased who are not also children of the deceased's spouse.

Obviously, a system that reflects what is generally accepted will not always accurately reflect the actual situation – an intestate may in fact have been estranged from his or her family and be closer to friends who will not inherit under the intestacy laws.

However, the rules of intestacy aim to be fair in the majority of cases and are simply a "fall back" position where a person has not made a will effectively disposing of his or her estate.

If there is unfairness in distribution under the intestacy rules, there may be an opportunity for an interested party to remedy this by making an application under the *Testators Family Maintenance Act 1912*.

The Standing Committee of Attorneys General established a National Committee to manage a Uniform Succession Laws project in 1995. Over the last several years it has produced a number of reports on wills, intestacy, administration of estates and family provision.

In March 2007, the National Committee released its "Report on Intestacy", which included a draft model Bill, to the Standing Committee of Attorneys General.

In July 2007 a summary of the recommendations contained in the Report and the draft model Bill were circulated to Tasmanian stakeholders and published on the internet asking for comment, following which this Bill was drafted and circulated to stakeholders last year.

In Tasmania intestacy provisions are currently contained in the four sections which comprise Part V of the *Administration and Probate Act 1935*.

In 1985, the Law Reform Commission of Tasmania, in its report on *Succession Rights on Intestacy* recommended a number of changes to these provisions, but no amendments were made at that time and it was subsequently decided to wait for the National Committee's Report before proceeding with any changes.

The majority of the changes recommended by the Law Reform Commission are picked up in the recommendations of the National Committee and have been included in this Bill.

The Tasmanian Bill will move the intestacy provisions from the *Administration and Probate Act* into a stand-alone Act, firstly because it contains considerably more than the current four sections and secondly because there is no logical reason why

intestacy laws should be included with the laws on administration of estates.

In addition, the National Committee on Uniform Succession Laws has now released its final report on the administration of estates and it may be that the *Administration and Probate Act 1935* will be amended as a result.

If in the future, after all the statutes relating to succession law have been updated, it is considered desirable for there to be a single Act, this could be done by creating a Succession Act which includes the law of wills, intestacy law, family provision and administration of estates.

Mr Speaker, I will now turn to particular substantive provisions of the Bill.

The first major change to the existing law is that, **unless there are issue from another relationship of the deceased**, the surviving spouse will inherit the whole estate.

("issue" refers to children and any children of those children – that is the deceased's linear descendants.)

In cases where some of the issue are issue of the intestate from another relationship, the spouse will receive a spousal legacy, which I shall talk about in more detail later, and any residue of the estate will be shared between the spouse and all issue.

Currently the estate is shared between the spouse and issue, even when the only issue are also issue of the surviving spouse.

This Bill, by providing that the spouse will take everything unless there are issue from another relationship, simplifies the law and eliminates the need to make special arrangements for the surviving spouse in most cases.

It is based on the underlying assumption that the issue will ultimately receive a share of intestate's estate through the

surviving spouse and also conforms to distribution of estates under the majority of wills.

A survey carried out by the NSW Law Reform Commission found that in 75% of cases where a person who had a spouse and children made a will, that person left the whole estate to the spouse. The estate was shared between the spouse and children in only 2.3% of the estates surveyed. The Bill reflects that preponderance of experience.

A further change made by this Bill is that where the intestate is survived by a spouse and issue from another relationship, the spouse will be entitled to all of the tangible personal property of the intestate with listed exceptions.

The listed exceptions cover items not generally considered personal property, such as property used exclusively for business purposes, property held as a form of security or property, like gold bullion, in which the deceased invested to hedge against inflation or adverse currency movements.

The current Tasmanian intestacy provisions do not differentiate between real and personal property when an intestate's property is distributed, but in all other Australian jurisdictions the surviving spouse is entitled to the personal effects of the intestate, thus minimising the disruption to the spouse.

This Bill increases the statutory spousal legacy to $250,000 bearing in mind that a spousal legacy will only be required where there are issue from another relationship and the estate has to be split.

The basis for the spousal legacy is to allow the spouse to continue living in the family home by purchasing the share owned by the deceased if the property was solely in the name of the deceased or they were tenants in common.

If the deceased and spouse were joint tenants the issue does not arise as the surviving joint tenant automatically inherits the property on the death of the other joint tenant.

Currently in Tasmania the spousal legacy is set at $50,000 compared with $200,000 in New South Wales, $150,000 in Queensland and the Australian Capital Territory, $100,000 in Victoria, $50,000 in Western Australia and $10,000 in South Australia.

As far back as 1985 the Tasmanian Law Reform Commission recommended that the amount be increased to reflect rising property values.

The national model Bill recommends that the legacy be increased to $350,000 in every state and territory, however, the Committee did recognise that there was some support for allowing the legacy to be fixed on a jurisdiction by jurisdiction basis to take into account variations in property prices across Australia.

As at March 2010, Real Estate Institute of Australia data indicated that the Hobart median house price was $380,000 which was close to 70% of the Australian median house price of $514,000. To reflect this Bill sets the statutory legacy at $250,000 which is close to 70% of the recommended $350,000. The amount of the legacy will be adjusted annually in accordance with the CPI.

The Bill also contains a provision to the effect that where the surviving spouse is entitled to claim statutory legacies in more than one jurisdiction, he or she should receive legacies of a combined value that is no more than the highest statutory legacy among the jurisdictions in which he or she is entitled. This will prevent a surviving spouse receiving a windfall benefit to the detriment of surviving issue, as has happened at common law.

Unlike the current intestacy provisions the Bill contains a provision allowing the spouse to elect to take any part of the estate, for example the family home, as part of his or her entitlement to the statutory legacy.

As a consequence of the spouse being able to elect to take a particular part of the estate, the Bill also contains a number of procedural provisions in relation to such an election including notice requirements, time-limits, election by a spouse who is a minor, revocation of an election, valuation of property, procedure where the property is the subject of a charge, restrictions on dealing with property when an election is pending or has been made in favour of the property and a requirement that the spouse be able to provide satisfaction for the interest in the relevant property.

The Bill contains a provision allowing a personal representative to apply to a court to restrict the spouse's right to elect in certain circumstances.

In the situation where an intestate is survived by a spouse and issue who are not also the issue of that spouse, the Bill provides that the spouse is entitled to one-half of what remains of the estate after he or she has received the personal effects of the intestate and the statutory legacy. The other half-share of the residue will be divided among the issue of the intestate.

For example, if the intestate estate is worth $750,000 (not including personal effects) and the intestate is survived by a widow with whom he had two surviving children, and also two surviving children of the intestate from a previous marriage then the widow will be entitled to the statutory legacy plus half the remainder which will amount to $500,000. The remaining $250,000 will be shared equally between the four children.

The current Tasmanian intestacy provisions allow for one third of the residue of the estate to be distributed to the spouse with the remainder being distributed among the issue even when the issue are also issue of the surviving spouse, which can have the unfortunate effect of ousting the surviving spouse from the family home where it is the main asset of the estate.

Where there is no surviving spouse, the Bill provides that the estate is to be distributed among surviving issue on a *per stirpes* basis, which is the same as the current Tasmanian provision.

Per stirpes distribution means that the entitlement of descendants is determined by the entitlement of those who have predeceased them, for example where a child of the intestate has predeceased the intestate, that child's children (the deceased's grandchildren) will only take proportionately among themselves the share that their deceased parent would have taken if he or she was alive.

For example if a widow dies intestate leaving two surviving daughters and two grandchildren of a deceased son, an estate worth $300,000 would be divided so that each daughter received $100,000 and each grandchild of the deceased son received $50,000 representing their share of the $100,000 that would have gone to the son had he not predeceased his mother.

The Bill also provides for various permutations arising where the intestate has more than one spouse at the time of death.

Where there is more than one spouse and no issue of the intestate, other than issue who are also issue of the surviving spouses, the Bill provides that each spouse will be entitled to share in the estate.

The current Tasmanian provisions provide that where there is a surviving husband or wife and another partner, the partner is entitled to the spouse's entitlement if he or she has been partner to the deceased for a continuous period of not less than 2 years. In all other cases the surviving spouse is entitled.

The Bill reflects the fact that there is no good reason to arbitrarily limit the number of spouses/partners so long as they met the definitional requirements. It is envisaged that where there is more than one spouse or partner, the distribution of items from the estate can be subject to negotiation between the parties.

Again there is an underlying assumption that all the issue of the deceased will ultimately receive a share of intestate's estate through their surviving parent.

In the slightly more complicated situation where there is more than one spouse and also issue of the intestate from at least one other relationship the Bill provides that:

- each spouse or partner should be entitled to a statutory legacy, rateably if there are insufficient funds, and a share of half of any residue of the estate; and
- each issue of the intestate should be entitled to an equal share of the remaining half of any residue.

Because in this case there is at least one child who is not also the child of the surviving spouses, there can be no presumption

that all of the issue of the deceased will inherit a share of the deceased's estate through a surviving spouse.

The fairest way to deal with this is to allow all children to share equally in half the residual estate. Again, this differs from the current Tasmanian provisions which do not contemplate there being more than one spouse.

This Bill provides that issue born after the death of the intestate will have to have been in the uterus of their mother before the death of the intestate in order to gain any entitlement on intestacy.

In times past a child could only have been issue of the deceased if conceived prior to the deceased's death.

However advances in assisted reproductive technology mean that further issue may be born well after the normal gestation period, which could have the effect of delaying the administration of a deceased estate, especially when the number of people in a generation needs to be determined for distribution.

The Bill takes the simple approach of disregarding for the purposes of intestate succession any child born by means of assisted reproduction technologies where the child was not *en ventre sa mere* at the death of the intestate.

This will alter the common law in Tasmania as formulated in *Re the Estate of the late K* (1996) 5 Tas R 365 where it was held that "a child, being the product of his father's semen and mother's ovum, implanted in the mother's womb subsequent to the death of his father is, upon birth, entitled to a right of inheritance afforded by law".

For simplicity and certainty, the Bill contains a provision to the effect that a step-child is not recognised for the purposes of intestacy.

This is the case currently in Tasmania at common law.

Most often these days children are step-children because their natural parents have divorced and re-married and they are likely to already be beneficiaries under their natural parents will or entitled to take on intestacy.

To also be entitled to take on intestacy of a step-parent may amount to "double dipping".

The Bill removes any requirement that the amount available to certain persons entitled on an intestacy be reduced where they have already received a benefit from the deceased before his or her death.

Section 44(4) of the current Act provides that where the intestacy is partial only, any benefit that the surviving spouse is entitled to under the will shall be taken as being given in satisfaction towards the spousal legacy.

Section 46(1)(c) provides that where an intestate estate is to be shared, any money or property paid to, or for the benefit of, a child of the intestate by way of "advancement or on marriage" shall be taken, subject to evidence of a contrary intention to have been paid in satisfaction of the child's share of the estate and shall be taken into account.

Section 47(a) applies the requirements of section 46(1)(c) to a partial intestacy where a child has benefited under the will.

Such provisions are sometimes referred to as "the doctrine of hotchpot".

The majority of submissions on intestacy received by the National Committee supported the abolition of such accounting, mostly on the basis of unnecessary complexity.

The Committee noted that despite the long existence of the doctrine of hotchpot there was a great deal of uncertainty in applying the doctrine, for example in defining "advancement" and determining the date of valuation of the benefits conferred.

In addition, the more traditional forms of benefit referred to in the doctrine are anachronistic as marriage settlement and advancements to children are not common in modern society.

The National Committee was of the view that there was nothing to prevent the surviving family members from agreeing to a different distribution if the justice of the case demands it.

Queensland, Western Australia and New South Wales have already repealed accounting provisions.

If the donor of a gift wishes to ensure that it is taken into account when his or her estate is distributed the donor can make a will with a provision to that effect.

This Bill reduces the category of relatives entitled to a distribution from an intestate estate.

Currently in Tasmania the category of relatives entitled to inherit an intestate estate is unlimited. That is, if distribution cannot be made firstly to a spouse and issue, secondly to parents, thirdly to brothers and sisters and fourthly to aunts and uncles then any next of kin according to old civil law can inherit.

While unlimited distribution may be justified on the grounds that most people would prefer a distant, unknown relative to inherit rather than the monies going to the Government as unclaimed land (known as *bona vacantia*) it can be expensive and time-consuming and sometimes impossible to locate family members.

While under this Bill the order of distribution is to be the same, the limit of distribution is to first cousins of the deceased, which will avoid complexity, delay and expense in the administration of intestate estates.

If a person has a strong aversion to the Government potentially benefiting if no close relatives survive him or her then that person should make a will.

The limit is unlikely to prevent relatives inheriting in most instances. In New South Wales, where distribution has been limited to aunts and uncles of the deceased, no more than 30 *bona vacantia* cases occur in any one year.

There will also be a provision, as in the current Tasmanian legislation, whereby certain persons may apply to the State for a distribution out of a *bona vacantia* estate.

While such applications have been rare in Tasmania in the past because of the unlimited distribution, they may become more common with the intended restricted distribution.

In New South Wales property from *bona vacantia* estates is distributed by the courts only 10 to 15 times a year so the number in Tasmania is likely to be very small.

The Bill provides for a wide category of persons who may make an application for a distribution from a *bona vacantia* estate, which is a fair solution to the imposition of a limit on the degrees of kin who are entitled to take. It will also allow claims by close friends or foster children.

The Bill contains two provisions which reflect the current law in Tasmania.

The first is that a person entitled to take in more than one capacity is entitled to take in each capacity (an example of this would be where a maternal aunt and paternal uncle of the intestate have married and have children).

The second is that there is no distinction between siblings with one parent in common and those with two parents in common.

In addition to the recommendations put forward by the National Committee, the Bill also includes a provision which gives an administrator of an estate (worth $20,000 or less) the discretion to cease further searching for next of kin who may be entitled to inherit an intestate estate where the administrator has formed a view that the cost of conducting

the search is likely to exhaust the whole or a substantial part of the funds of the estate.

This provision will apply only where the administrator is the Public Trustee, a Trustee Company or an Australian legal practitioner, all of which have strict statutory and professional obligations in relation to dealing with unclaimed money.

The Bill provides that where there are some identified and locatable persons who are established to the administrator's satisfaction as entitled to inherit, the administrator may either pay the whole or part of the estate funds to those persons.

If only part of the estate is paid out then the remainder of the estate must be dealt with as unclaimed money.

In a case where there are no identified and locatable persons entitled to inherit the whole of the funds of the estate will be treated as unclaimed monies under the relevant legislation (*Public Trustee Act 1930*; *Trustee Companies Act 1953 or the Legal Profession Act 2007)*.

In brief such monies are held for a period of years pending claims by eligible persons and then are disposed of as required by statute.

An example of how the new provision will work to the benefit of Tasmanians can be given by looking at the work of the Public Trustee.

Intestate estates in Tasmania are generally administered by the Public Trustee under section 17 of the *Public Trustee Act*.

If a deceased has no immediate family the Public Trustee, as administrator, must conduct a search to locate relatives to whom the estate can be distributed. This can be particularly problematic if the deceased is a migrant with family members living overseas.

The limit in the Bill on those entitled to share in the estate on intestacy will alleviate this problem somewhat, but there can still be problems where the estate is small and first cousins are difficult to locate.

Suppose an intestate leaving a small estate had migrated to Tasmania from post-war Europe with a first cousin with whom he had a close relationship.

If the intestate was an only child who never married or had children, and who had no living parents, grandparents or aunts and uncles then first cousins can take on intestacy.

However, a search must be conducted for other cousins as the distribution is required to be among all kin at that level of relationship to the deceased and the percentage each will receive is determined by the number of kin in the class.

If other first cousins have migrated to different countries and have not kept in touch it may be a very expensive and possibly ultimately futile exercise to attempt to locate them and the search will significantly, if not completely, deplete the value of a small estate. The cousin living in Tasmania, with whom the deceased had a close relationship, currently cannot receive any share of the estate until the search process is finalised, by which time there may be nothing left to distribute.

Under the proposed change, if the Public Trustee forms a view that the cost of conducting the search is likely to exhaust the whole or a substantial part of the funds of the estate, the Public Trustee would have a discretion to distribute the whole or part of the estate to the cousin whose whereabouts are known and hold any balance as unclaimed monies.

Pursuant to section 36A of the *Public Trustee Act 1930* unclaimed monies are held either by the Public Trustee or the Government and any person who may be entitled to the funds has up to 21 years to make a claim.

Currently the Public Trustee holds 31 intestate estates which are worth less than $20,000 and which require lengthy and time-consuming searches for more remote next of kin.

A third of the estates are worth less than $5,000 and 2 are worth less than $2,000.

Many of these estates relate to estates of post-war migrants from countries where there was a massive displacement of persons in the war years.

Searches are currently being undertaken in Croatia, Poland, Hungary, Germany and Russia.

It is proposed that rather than expend possibly the whole of these estates conducting searches for ever-more distant relatives that the provision giving an administrator a discretion not to search apply retrospectively to small intestate estates where the intestate died prior to the commencement of the amendment.

CLAUSE NOTES

Intestacy Bill 2010

Clause 1: Short Title

Clause 2: Commencement date

Clause 3: Sets out the purpose of the Act

Clause 4: Defines certain words used in the Act

Clause 5: Defines the word "intestate" for the purposes of the Act

Clause 6: Defines the word "spouse" for the purposes of the Act

Clause 7: Provides for calculation of a spouse's statutory legacy which will be CPI adjusted in accordance with the given formula.
Provides that interest is payable if the legacy is not paid within one year.
Provides that if a spouse is entitled to a statutory legacy in more than one jurisdiction, the spouse will only receive an amount equal to the highest legacy payable.
Provides that if there are insufficient funds to pay the statutory legacy in full the legacy decreases to the necessary extent, or if more than one legacy is payable the legacies decrease rateably.

Clause 8: Defines what is meant by the phrase "survive the intestate".

Clause 9: Provides that a person must survive the intestate to be entitled to participate in distribution and that a reference to a category of person entitled to share in the estate is limited to a person who survives the intestate.

Clause 10: Provides that an adopted child is to be regarded as the child of the adoptive parents for the purposes of distribution on intestacy.

Clause 11: Sets out the application of Division 1, Part 2

Clause 12: Provides for spouse's entitlement where the intestate had no issue

Clause 13: Provides for spouse's entitlement where only issue of the intestate are also issue of spouse

Clause 14: Provides for spouse's entitlement where at least one issue of the intestate is not issue of the spouse

Clause 15: Sets out the application of Divisions 2, Part 2.

Clause 16: Provides for the right of spouse to elect to acquire property from the intestate estate, when court authorisation of the election is required and the power of the court to grant authorisation, impose conditions or refuse authorisation.

Clause 17: Requires the personal representative to give notice to the spouse of the spouse's right of election.

Clause 18: Stipulates the time within which an election is to be made and provides for the court to extend time provided the administration of the estate has not been completed.

Clause 19: Sets out how an election is to be made.

Clause 20: Provides that the price at which a spouse may elect to acquire property is the market value at the date of the intestate's death. Provides for a reduction in the price if the spouse assumes liability for a mortgage, charge or encumbrance over the property. Provides for when a valuation should be obtained.

Clause 21: Sets out how the exercise price is to be satisfied if the spouse elects to acquire property from the intestate estate.

Clause 22: Sets out restrictions on the personal representative on disposal of property from the intestate estate.

Clause 23: Provides for spouse's entitlement where more than one spouse but no issue.

Clause 24: Provides for spouse's entitlement where there is more than one spouse and the issue are all issue of surviving spouses.

Clause 25: Provides for spouses' entitlement where any issue of intestate are not issue of surviving spouses.

Clause 26: Sets out how property is to be shared between spouses.

Clause 27: Provides that an intestate's spouse or personal representative may apply to the Court for a distribution order and the Court's powers to deal with such application.

Clause 28: Sets out the entitlement of the intestate's children.

Clause 29: Sets out the entitlement of the intestate's parents.

Clause 30: Sets out the entitlements of the intestate's brothers and sisters.

Clause 31: Sets out the entitlements of the intestate's grandparents.

Clause 32: Sets out the entitlements of the intestate's aunts and uncles and, if one of these has predeceased the intestate, the entitlement of any surviving child of that aunt or uncle.

Clause 33: Provides that a relative may be entitled to participate in the distribution of an intestate estate in separate capacities.

Clause 34: In recognition that the concept of family may vary from the scheme of the Act for indigenous members of the community this clause provides that the personal representative, or a person claiming to be entitled to a share of the estate, of an Indigenous intestate may apply for a Court order for distribution in accordance with the laws, customs etc of the Indigenous community or group to which the intestate belonged and sets out that the application is to be accompanied by a scheme of distribution. Sets out time frames for making an application. Sets out restrictions on distribution if an application is made under this Part.

Clause 35: Sets out the powers of the Court to order distribution where an application has been made under clause 34.

Clause 36: Provides that a distribution order under this Part operates, subject to its terms to the exclusion of all other provisions of this Act.

Clause 37: Provides that where there are no persons entitled to the intestate estate, the State takes the whole estate.

Clause 38: Provides that the State may waive its rights to the whole or part of an intestate estate on application by certain listed persons on conditions the Minister considers appropriate.

Clause 39: Provides that the entitlement of a minor to an interest in an intestate estate vests immediately.

Clause 40: Provides that where a person disclaims an interest in an intestate estate or is disqualified from taking an interest that person will be treated for the purposes of distribution as is they had predeceased the intestate. This may allow any issue of the person disclaiming or disqualified to take that person's share.

Clause 41: Provides that distribution of an intestate estate is not affected by gifts by the intestate to persons entitled either during the intestate's life or on a partial intestacy by will.

Clause 42: Provides that an administrator of an intestacy who is the Public Trustee, a trustee company or an Australian legal practitioner may cease to search for next of kin in the case of a small intestate estate within the meaning of section 20 of the *Public Trustee Act* where the cost of searching is likely to exhaust the whole or a substantial part of the funds of that estate.

Clause 43: Provides that an administrator of an estate who has exercised his or her discretion to cease searching under the previous section may pay the whole or part of the funds to any person the administrator is satisfied is entitled. Any remaining funds of the estate are to be dealt with as unclaimed monies under the appropriate legislation.

Clause 44: Provides that where an administrator of an estate has exercised his or her discretion to cease searching under the previous section and there is no person entitled under this Act the estate is to be dealt with as unclaimed monies under the appropriate legislation.

Clause 45: Provides for the administration of the Act by the Minister for Justice.

Clause 46: Provides for transitional arrangements on the commencement of the Act.

Clauses 47, 48, 49, 50, 51 and 52:

Provide for consequential amendments to the *Administration and Probate Act 1935, Duties Act 2001* and the *Testators Family Maintenance Act 1912*.

FACT SHEET

Intestacy Bill 2010

This Bill is based on a model Bill prepared by the National Committee on Uniform Succession Laws for the Standing Committee of Attorneys General in March 2007.

Tasmanian intestacy provisions are currently contained in Part V of the *Administration and Probate Act 1935*. This Bill repeals that Part and creates a separate *Intestacy Act 2010*.

The following are the main changes to intestacy law brought about by this Bill:

- Unless there are children of the intestate who are not also children of the surviving spouse, the surviving spouse is to the whole intestate estate.
- Where there are children from another relationship, the surviving spouse is entitled to a statutory legacy of $250,000, the intestate's personal property and half of any residue of the estate. The remaining half of any residue is to be divided between all the intestate's children.
- If there is more than one surviving spouse and no children who are not also children of the surviving spouses, each spouse is entitled to share in the estate.
- If there is more than one surviving spouse and children of the intestate who are not also children of the surviving spouses, each spouse is entitled to a statutory legacy (rateably if there are insufficient funds) and a share of half the residue, if any. All children will share equally in the remaining half of the residue (if any).
- To be entitled on intestacy, a child of the intestate must have to have been in the uterus of the mother at the time of the intestate's death.
- There is no longer a requirement to take into account any benefits a person entitled on intestacy received either in the

intestate's lifetime or under a will that dealt with part of the estate only.

- No category of relative is entitled to the estate beyond the children of deceased aunts and uncles.
- Where a small estate within the meaning of section 20 of the *Public Trustee Act 1930* is administered by the Public Trustee, a trustee company or a legal practitioner, the administrator may cease to search for next of kin if of the opinion that the search will exhaust the whole or a substantial part of the estate. The administrator who has ceased searching may distribute the whole or part of the estate to known relatives of the deceased.
- A person will not be entitled to a distribution from an intestate estate unless they survive the deceased by 30 days.