

Topic Two – Intestacy

1. What is Intestacy?

a. Distribution on intestacy – various scenarios

If [x] died without a valid will, then intestacy occurred, and laws of intestacy determine how a person's property is to be distributed. All sections here refer to the Administration and Probate Act 1958 unless otherwise stated.

1. **Deceased survived by a partner and no children or other issue:** Partner takes the entire estate (**s 70J**)
2. **Deceased survived by a partner and at least one child or other issue**
 - **If all children are children of partner,** partner entitled to whole of the residuary estate. (**s 70K**)
 - **If child not child of partner and estate not more than statutory legacy** (\$461,780), partner entitled to whole estate (**s 70L(1)(a)**)
 - Increases each year in accordance with Consumer Price Index (**s 70M**)
 - Amount for following financial year is published in the Government Gazette: (**s 70N**)
 - Initial amount was \$451 909 (s.70M) (following NSW); Now 18/90: \$461,780.
 - **If child not child of partner and estate more than statutory legacy** (\$461,780), then:
 - The partner is entitled to:
 - ❖ Personal chattels; Amount of the statutory legacy; Interest on statutory legacy from date of death; Half of the balance of the residuary estate (**s 70L(1)(b)**)
 - All of the children of the intestate (including children of the partner) share the other half of the balance of the residuary estate in equal shares. (**s 70L(2)**)
3. **Deceased survived by multiple partners**
 - a. **General Distribution**
 - If no issues, partners are entitled to the whole of the estate (**s 70Z**)
 - If issue related to a partner, partners entitled to whole of residuary estate (**s 70ZA**)
 - If issue not related to partner and estate not worth more than statutory legacy (\$461,780), then the partner is entitled to the whole of the estate (**s 70ZB(1)(b)**)
 - ❖ Increases each year in accordance with Consumer Price Index (**s 70M**)
 - ❖ Amount for following financial year is published in Gov. Gazette: (**s 70N**)
 - ❖ Initial amount was \$451 909 (s70M) (following NSW); Now 18/90: \$461,780.
 - If issue not related to partner & estate more than stat legacy (\$461,780) (**s 70ZB(1)(c)**):
 - ❖ Partners are entitled to:
 - Personal chattels; Amount of statutory legacy; Interest on statutory legacy from date of death; Half of the balance of the residuary estate
 - ❖ All of the children of the intestate (including children of the partner) share the other half of the balance of the residuary estate in equal shares.
 - b. **Distribution of Partners Shares**
 - i. In accordance with a distribution agreement; or (**s 70ZC**)
 - ii. In accordance with a distribution order; or (**s 70ZD**)
 - ❖ Either can apply. Court may order a distribution in any way Court considers just and equitable, and can include any conditions considered appropriate.
 - iii. In equal shares in accordance with **s 70ZE**
4. **Deceased not survived by a partner.**
 - a. **If surviving children [or other issue]:** All children entitled to share equally (**s 70ZG(1)**)
 - If any children predeceased the intestate, then any grandchildren take child's share per stirpes (if grandchild dead, to their child etc) (**s 70ZG(2)**). If no other issue, share split.
 - b. **If no surviving issue:** Parents to share equally (**s 70ZH**). If one dead, other takes whole (**2**)
 - c. **If no surviving issue or parents:** Siblings share equally (**s 70ZI**) If one dead, other take all (**2**)
 - If sibling predeceased, niece/nephew take share by representation equally (**s 70ZI(3)**)
 - ❖ Not great nieces/nephews. (**s 70ZI(3)**)
 - d. **If no surviving issue, parents, siblings:** Grandparents share equally (**s 70ZJ**) If one dead, other takes whole (**2**)
 - e. **If no surviving issue, parent, sibling or grandparents:** Aunts and uncles share equally (**s 70ZK**)
If one dead, other takes whole (**2**)
 - If aunt/uncle predeceased, cousin take share by representation equally (**s 70ZK(3)**)
 - f. **If there is still no one entitled:** Then estate passes to Crown (bona vacantia) (**s 70ZL**)