

Recommendations of the Report to the Standing Committee of Attorneys General on Intestacy that differ substantially from the current Tasmanian intestacy provisions in the *Administration and Probate Act 1935*.

Recommendation	Current Provision
Recommendation 2. There should be no provision stating that spouses should be treated as separate persons. (Pp 27 &28)	Section 44(8)
Recommendation 4 Where the intestate is survived by a spouse or partner and issue, the spouse or partner should be entitled to the whole intestate estate except in cases where some of the issue are issue of the intestate from another relationship. In cases where some of the issue are issue of the intestate from another relationship, the intestate estate should be shared between the surviving spouse and all surviving issue. (Pp 35 to 52) (Bill – Cl 13 & 28)	Section 44(3)
Recommendation 5 Where the intestate is survived by a spouse or partner and issue from another relationship, the spouse or partner should be entitled to all of the tangible personal property of the intestate with listed exceptions (Pp 54 to 62) (Bill – Cl 4(1) definition of “personal effects”; cl 14(a))	No current provision – all property distributed
Recommendation 6 Where an intestate is survived by a spouse or partner and issue of another relationship, the spouse or partner should be entitled to a statutory legacy The statutory legacy should be set at \$350,000 for all jurisdictions (Pp 63 to71) (Bill – Cl 8(1) & (4); cl 14(b))	Section 44(3) Statutory legacy \$50,000
Recommendation 7 In cases where the surviving spouse or partner 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 from among the jurisdictions in which he or she is entitled. (Pp 71 to 73) (Bill – Cl 8(2))	No current provision
Recommendation 8 Where an intestate is survived by a spouse or partner and issue of another relationship, the spouse or partner should be entitled to one-half of the residue of the intestate estate after he or she has received the personal effects of the intestate and the statutory legacy (with interest). The issue of the intestate should be entitled to the remaining half-share <i>per stirpes</i> . (Pp 73 to76) (Bill – Cl 14(c); cl 28(2))	Section 44(3) & (3B) 1/3 to spouse, 2/3 to issue

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<p>Recommendation 9 The surviving spouse should be able to elect to obtain any property in the intestate’s estate (Pp 78 to 86) (Bill – Cl 16(1))</p>	<p>No provision</p>
<p>Recommendation 10 to 22 These recommendations deal with procedural matters in respect of a spouse’s right to elect to obtain property, and therefore follow from recommendation No 9 (Pp 86 to 108) (Bill – Cl 16,17, 18, 19, 20, 21, 22)</p>	<p>No provisions</p>
<p>Recommendation 23 Where there is more than one spouse or partner and no descendants of the intestate, or descendants who are also descendants of the surviving spouses and/or partners, each spouse should be entitled to share in the estate. Where there is more than one spouse or partner and descendants of the intestate from at least one other relationship: (a) each spouse or partner should be entitled to a statutory legacy (rateably if there are insufficient funds) and a share of half the residue of the estate; and (b) each child (or representative) of the intestate should be entitled to an equal share of the remaining half. The Queensland provisions for distributing an intestate estate where there are multiple spouses and/or partners should be adopted. (Pp 110 to 118) (Bill – Part 2 division 3, cl 8(3))</p>	<p>Section 44 (3A)</p>
<p>Recommendation 25 The model laws should make it clear that persons born after the death of the intestate must have been in the uterus of their mother before the death of the intestate in order to gain any entitlement on intestacy. (This is in respect of children of the intestate conceived through artificial reproductive techniques) (Pp 126 to 129) (Bill – cl 9(1)(b))</p>	<p>No Provision</p>
<p>Recommendation 37 The children of deceased aunts and uncles should be entitled to take, by representation, their deceased parent’s share of the intestate’s estate. No further categories of relative should be entitled beyond the children of deceased aunts and uncles. (pp 166 to 173) (Bill – Cl 32 (3))</p>	<p>Section 44(7)</p>
<p>Recommendation 41 A minor’s share in an intestate estate should not be contingent but vest immediately. (Pp 198 to 204) (Bill – Cl 39)</p>	<p>Section 46(1)</p>
<p>Recommendation 42 Where the forfeiture rule prevents a person from sharing in the intestate estate or where a person has disclaimed the share to which he or she is otherwise entitled, that person should be deemed to have died before the intestate. (Pp 205 to 210) (Bill – Cl 40)</p>	<p>No provision</p>
<p>Recommendation 43 There should be no provisions that take account of benefits given during the intestate’s lifetime. (Pp 212 to 219) (Bill – Cl 41(a))</p>	<p>Section 46(1)(c)</p>
<p>Recommendation 44 There should be no provisions that account for benefits received under the intestate’s will. (Pp 219 to 225) (Bill – Cl 41(b))</p>	<p>Sections 44(4) and 47(a)</p>
<p>Recommendation 45 A person who claims to be entitled to take an interest in an Indigenous person’s intestate estate under the customs and traditions of the community or group to which the Indigenous intestate belonged or a personal representative may apply to the Court for an order for distribution of the estate. A plan of distribution of the estate, prepared in accordance with the traditions of the community or group to which the Indigenous person belonged, must accompany the application. An application must be made within 12 months of the grant of administration. The Court may extend this time subject to any conditions it thinks fit, whether or not the</p>	<p>No provisions</p>

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<p>12 months has expired. No application will be allowed after the intestate estate has been fully distributed according to law.</p> <p>The Court:</p> <p>(a) may order that the intestate estate (or part thereof) be distributed in a specified manner;</p> <p>(b) must, in making an order, take into account the traditions of the community or group to which the intestate belonged and the plan of distribution;</p> <p>(c) must not make any order for distribution unless it is satisfied that it would, in all the circumstances, be just.</p> <p>The Court order may include property which the personal representative distributed within the 12 month period before he or she had notice of any application. The Court will not disturb any distribution if it was made for the purposes of providing for the maintenance, education or advancement in life of a person who was totally or partially dependent on the intestate immediately before his or her death.</p> <p>(Chapter 14) (Bill – Part 4)</p>	
<p>Recommendation 47 There should not be a provision relating to beneficially interested personal representatives (Pp 249 & 250)</p>	<p>Section 47(b)</p>