10. Bona vacantia

- Where should it go?
- How should it be distributed?
- Discretionary distribution

10.1 *Bona vacantia* is the Crown's statutory right to the property of an intestate, when no relatives are entitled. In most jurisdictions when the intestate is not survived by a spouse or partner, issue, parents or remoter eligible relatives, the State or Territory is entitled to the intestate's estate by *bona vacantia*.[1]

10.2 Given the reduction in the size of the average family in Australia and the higher incidence of single child families, the possibility of an intestate's estate passing to a State or Territory may not be so unlikely as it once was.[2] The following hypothetical example illustrates the point:

> Alan died intestate leaving no spouse and no issue. Alan was an only child of parents each of whom was an only child. His parents and all of his grandparents had predeceased him.[3]

10.3 A further example may be found in a 1991 case where one-third of the large estate of an elderly woman (who left no relatives entitled

1. *Succession Act 1981* (Qld) s 35 and Sch 2 Pt 2 It 4; *Administration and Probate Act 1919* (SA) s 72G(e); *Administration and Probate Act 1958* (Vic) s 55; *Administration and Probate Act 1929* (ACT) Sch 6 Pt 6.2 It 4; *Administration and Probate Act 1969* (NT) s 66(1) and Sch 6 Pt 4 It 4; *Wills, Probate and Administration Act 1898* (NSW) s 61B(7); and *Administration and Probate Act 1935* (Tas) s 45. See also *Administration Act 1969* (NZ) s 77 It 8; and *Administration of Estates Act 1925* (Eng) s 46(1)(vi). Western Australia does not employ *bona vacantia*. It is the only Australian jurisdiction which maintains escheat to the Crown. Escheat is the feudal rule whereby real property would revert to the Crown, or lord of the fee, should the owner of such property die intestate and without heirs. Land may also have reverted if the holder grossly breached his or her feudal bond. In Western Australia escheated property includes real and personal property: *Administration Act 1903* (WA) s 14(1) Table It 11; *Escheat (Procedure) Act 1940* (WA) s 2, s 9. In cases of intestacy, at least, escheat has been expressly abolished in *Property Law Act 1974* (Qld) s 20(3)(a); *Wills, Probate and Administration Act 1898* (NSW) s 61B(7); *Law of Property Act 2000* (NT) s 20; *Administration and Probate Act 1935* (Tas) s 45; *Administration and Probate Act 1958* (Vic) s 55; *Administration Act 1969* (NZ) s 76; and *Administration of Estates Act 1925* (Eng) s 45(1)(d).
2. Cases of property passing to the Crown on intestacy were once more frequent, notwithstanding the old civil degrees of kinship, in the time before ex-nuptial children were accorded equal status for the purposes of intestacy: See I J Hardingham, M A Neave and H A J Ford, *Wills and Intestacy in Australia and New Zealand* (2nd ed, Law Book Company, Sydney, 1989) at para 2704.
3. Queensland Law Reform Commission, *Intestacy Rules* (Report 42, 1993) at 65.

on intestacy) went on partial intestacy to the Crown, contrary to her intention, because her will was badly drawn.[4]

10.4 *Bona vacantia* occurs most frequently in NSW because the limit is set at aunts and uncles rather than first cousins or more remote relatives. In NSW, in the period 2001-2005, the Public Trustee paid $24,289,946.86 into Treasury from 92 estates (averaging $264,000 each) where there were no next of kin closer than cousins.[5] Some have suggested that the incidence of *bona vacantia* estates is increasing in NSW for a number of reasons. First, people are generally having fewer children.[6] Secondly, because the now elderly population of refugees from World War II and its aftermath generally have fewer surviving near relatives.[7]

WHERE SHOULD IT GO?

10.5 At present, all *bona vacantia* estates go to consolidated revenue. There is some support for this position.[8] For example, the Western Australian Law Reform Commission argued that "the general community should benefit rather than remote relatives, who would usually have little or no contact with the deceased".[9]

Distribution to charities

10.6 An alternative could be to let *bona vacantia* estates go to a charity or charities rather than to a State or Territory. In 1985, the Law Reform Commission of Tasmania noted:

> The Commission believes that most people would prefer their estate to go to charity than to the Crown, given that no close family exist at the time of their death. Although many people might object to the property going to the State rather than to

4. *Mortensen v State of New South Wales* (NSW Court of Appeal, No 40544/1990, 12 December 1991, unreported).
5. Information supplied by Mr B Maher, Counsel, Public Trustee NSW (22 June 2005). A further 808 estates, totalling $22,323,729.85, were also dealt with where no beneficiaries could be identified or located.
6. *Sydney Consultation 1*; *Sydney Consultation 2*.
7. *Sydney Consultation 2*.
8. The NT makes express provision for the payment of the proceeds of an estate into consolidated revenue: *Public Trustee Act* (NT) s 67A.
9. Western Australia Law Reform Committee, *Distribution on Intestacy* (Project No 34, Part 1, Working Paper, 1972) at 7. See also I J Hardingham, M A Neave and H A J Ford, *Wills and Intestacy in Australia and New Zealand* (2nd ed, Law Book Company, 1989) at para 1609.

> relatives of the deceased, they are less likely to object to it going to charity.[10]

10.7 The Tasmanian proposal, which has not been implemented, would require the establishment of a "Charities Board" to distribute the funds received. Attention has been drawn to the establishment, in 1995, of the Tasmanian Community Foundation, which is described as an "independent philanthropic organisation working in a specific geographic area",[11] as an appropriate body for receiving *bona vacantia* estates.[12] Community Foundations, based on the same principles, have been established in various regions across Australia.[13]

10.8 In similar vein, the Society of Trust and Estate Practitioners in England has recently suggested that the Crown, the Duchy of Lancaster and the Duchy of Cornwall could be replaced by charities as recipients of *bona vacantia* estates.[14]

10.9 A provision to similar effect has been enacted in Queensland with respect to Indigenous people who die intestate under schemes whereby the chief executive of the Aboriginal and Islander Affairs Corporation may grant aid to Indigenous people who apply for it on such terms as the chief executive may think fit. In cases where the chief executive is unable to determine that any person is entitled to succeed to the estate or a part of the estate, that property shall "vest in the chief executive who shall apply the moneys or the proceeds of the sale of any property (less the expenses (if any) of such sale) for the benefit of [Aborigines/Islanders] generally".[15] Similarly in WA, where no kin can be identified, an Indigenous intestate estate will go to the Aboriginal Affairs Planning Authority for the benefit of Indigenous people.[16]

10.10 In Alberta, *bona vacantia* estates are held on trust to pay an annual income to the boards of various universities to provide such scholarships and assistance in fields of research as each board considers proper. The Crown holds the estates on trust and the

---

10. Law Reform Commission of Tasmania, *Succession Rights on Intestacy* (Report 43, 1985) at 15.
11. «*http://www.tasmaniancommunityfoundation.org*» (as at 28 February 2007).
12. Law Society of Tasmania, *Submission* at 15.
13. See «*http://www.philanthropy.org.au/community/auscf.html*» (as at 28 February 2007).
14. P Hewitt and H Labes, "Wills and probate update" (2006) 156 *New Law Journal* 55 at 55.
15. *Aboriginal Communities (Justice and Land Matters) Act 1984* (Qld) s 56, s 60(4); *Community Services (Torres Strait) Act 1984* (Qld) s 179, s 183(4). See para 14.19.
16. *Aboriginal Affairs Planning Authority Act 1972* (WA) s 35(3). See para 14.25.

Minister responsible for universities initially determines the allocation of income.[17]

10.11 A public opinion survey conducted by the English Law Commission found that 60% of respondents supported the property in a *bona vacantia* estate going to a charity. Only 17% of those surveyed supported the current position.[18] However, the Commission ultimately opposed such a proposal as the chosen charity would then also have the job of administering the intestate estate and might be required to account to any beneficiaries that are subsequently discovered.[19]

Submissions and consultations

10.12 Some opinions expressed in submissions and consultations generally supported *bona vacantia* estates going to charity rather than a State or Territory.[20] Some submissions supported the idea of a "Charities Board",[21] with one suggesting that the Board should be responsible for redress to relatives who are later discovered.[22]

10.13 Other submissions supported the current position of the proceeds of *bona vacantia* estates being paid into consolidated revenue.[23]

National Committee's conclusion

10.14 The suggestions outlined above would involve complex arrangements or are otherwise inappropriate. In particular, the National Committee is of the view that any scheme to apply intestate estates to "charitable purposes", in the absence of a body to administer it, would be unworkably broad and it would not be possible to achieve agreement on anything more specific, such as a particular charity.

10.15 The National Committee also considers it possible that a really worthwhile cause might defeat some moral claims. However, it is possible that specific charities and other organisations which have a

17. *Ultimate Heir Act* RSA 2005 c U-1, s 9-10.
18. England and Wales, Law Commission, *Family Law: Distribution on Intestacy* (Report 187, 1989) at para 52.
19. England and Wales, Law Commission, *Family Law: Distribution on Intestacy* (Report 187, 1989) at para 54.
20. Probate Committee, Law Society of South Australia, *Consultation*. See also Trustee Corporations Association of Australia, *Submission* at 19; Law Society of Tasmania, *Submission* at 15; P Worrall, *Consultation*.
21. J North, *Submission* at 5; Tasmania, Office of the Public Trustee, *Consultation*.
22. J North, *Submission* at 5.
23. Public Trustee NSW, *Submission* at 14

special connection with the intestate may be able to make a moral claim for discretionary distribution.[24]

10.16 It should also be noted that a State or Territory will be in a better position to account to beneficiaries who come to light at a later date.

10.17 The proceeds of a *bona vacantia* estate should be paid into consolidated revenue to be used for public purposes.

Recommendation 38

Bona vacantia estates should vest in the relevant State or Territory.

See Intestacy Bill 2006 cl 37.

HOW SHOULD IT BE DISTRIBUTED?

10.18 In all Australian jurisdictions, apart from the ACT, an estate where no-one is entitled to take passes immediately to the Crown.

10.19 In the ACT, conditions are imposed upon the public trustee where the Territory is entitled to an intestate estate. The estate must be held in trust until six years have passed since the intestate's death. At that point, the estate must be sold and the proceeds paid to the Territory, less all costs and charges lawfully due to the public trustee or any other person.[25]

10.20 Such an arrangement would appear to be of practical utility only where the class of persons who may be entitled on intestacy is wider than the National Committee has recommended and it may take some considerable time for beneficiaries to be identified. Such provisions were common in Canada in jurisdictions that retained the system of distribution by civil degrees of relationship. So, the Law Reform Commission of British Columbia was able to observe in 1983 that their recommendation limiting the range of persons entitled to take would permit estates to pass to the Crown without waiting the prescribed period of 10 years.[26]

DISCRETIONARY DISTRIBUTION

10.21 In most jurisdictions, a person may, in certain circumstances, apply to the Crown for provision to be made out of a *bona vacantia*

24. See para 10.37.
25. *Administration and Probate Act 1929* (ACT) s 49CA.
26. Law Reform Commission of British Columbia, *Statutory Succession Rights* (Report 70, 1983) at 36.

estate. In some cases, the right is expressly provided in legislation. In others, the exercise of the right is based in practice only.

10.22 Legislation in Tasmania, NSW and Victoria expressly states that certain persons may apply to the State for provision. These people are dependants and other people for whom the intestate might reasonably have been expected to make provision.[27] WA makes similar provision, referring instead only to persons who have a "moral claim" against the estate.[28] Queensland provides a more extensive list of persons in whose favour the responsible Minister may waive the rights of the State. They are:

> (a) any dependants, whether kindred or not, of the intestate;
>
> (b) any other persons for whom the intestate might reasonably have been expected to make provision;
>
> (c) any persons to whom the State would, if the State's title had been duly proved by inquisition, have the power to grant such property;
>
> (d) any other persons having in the opinion of the Minister a just claim to the grant of the property;
>
> (e) the trustees of any person as mentioned in paragraphs (a) to (d).[29]

The NT has also adopted the Queensland list.[30]

10.23 The statutory provisions can be seen as a recognition of the common law right "of certain dependants of the intestate who, although not entitled at law, may nevertheless petition the Crown for a waiver of its rights of *bona vacantia* in any estate in respect of which there are no legal next of kin".[31] The Queensland provisions appear to have been a response to a 1962 case involving the old method of petitioning the Crown for a waiver of rights.[32] Such provisions have been said to be "desirable" as a means of benefiting more remote kin

---

27. *Wills, Probate and Administration Act 1898* (NSW) s 61B(8); *Administration and Probate Act 1935* (Tas) s 45(2); and *Financial Management Act 1994* (Vic) s 58(3). See also *Administration Act 1969* (NZ) s 77 It 8; and *Administration of Estates Act 1925* (Eng) s 46(1)(vi).
28. *Escheat (Procedure) Act 1940* (WA) s 9.
29. *Property Law Act 1974* (Qld) s 20(5).
30. *Law of Property Act 2000* (NT) s 20(3).
31. NSW, *Parliamentary Debates (Hansard)* Legislative Assembly, 25 October 1977, Wills, Probate and Administration (Amendment) Bill, Second Reading at 8993.
32. *Re Bonner* [1963] QdR 488. See *Re Suncorp Insurance and Finance* [1991] 2 QdR 704 at 708.

who are unable to take directly on intestacy and dependants who are not related to the intestate.[33]

10.24 In SA there is a procedure which applies only to real estate. Application can be made to the Governor for waiver of the Crown's right with respect to land in a *bona vacantia* estate. No guidance is offered with respect to whom application may be made, the provision merely stating that the Governor may "by warrant under his hand, authorise the waiver of such right on such terms, whether for the payment of money or otherwise, as may be specified in the warrant; and the Public Trustee may, in pursuance of such warrant, convey to the person in whose favour the waiver is made the right of His Majesty so waived".[34] It would appear that the provision is rarely used. No applications with respect to *bona vacantia* estates have been made in recent memory.[35]

10.25 In NSW, applications are handled initially by the Crown Solicitor's Office before being passed to Treasury. It is estimated that only around 10 to 15 applications are made per year.[36]

10.26 The Victorian provision is not widely known, being located in a different statute, and seldom taken advantage of, not least because of the use of civil degrees of kinship to find potential beneficiaries. One Victorian practitioner recalled having once written a letter to the Department of Justice concerning an estate that had gone to *bona vacantia*.[37] Such circumstances are all but unknown in Tasmania.[38] Since 1998, there has been one *bona vacantia* matter in Tasmania. An application was made to the Governor for discretionary distribution but there was no evidence to support it.[39]

Circumstances in which distribution may be made

10.27 Although the circumstances in which such provisions can be applied are limited, it has been suggested that they could cover persons who are otherwise not entitled to distribution on intestacy, such as foster children, step-children, and carers, such as "an old

33. I J Hardingham, M A Neave and H A J Ford, *Wills and Intestacy in Australia and New Zealand* (2nd ed, Law Book Company, 1989) at para 1610.
34. *Law of Property Act 1936* (SA) s 115.
35. Probate Committee, Law Society of SA, *Consultation*.
36. Information supplied by Mr P Crollini, NSW Crown Solicitor's Office (21 April 2005).
37. *Melbourne Consultation*.
38. Registry, Supreme Court of Tasmania, *Consultation*; K Mackie, *Consultation*.
39. Tasmania, Office of the Public Trustee, *Consultation*.

friend... who looked after the intestate in the last days of his life".[40] One submission noted that as families become smaller people come to rely more on friends for their social network.[41] It has been noted, at least in NSW, that the provision allowing dependants to make application was of particular importance to de facto couples, both heterosexual and same-sex, before the reforms of 1984 and 1999 respectively, since they could not apply under family provision legislation.[42] The provisions would also have had some significance before ex-nuptial children were granted equal status. On intestacy, an ex-nuptial child's estate could only be distributed if that child left a surviving "lawful" spouse and/or "lawful" children.[43]

10.28 The most comprehensive list of categories of applicants for distribution is contained in a 1971 English publication. It summarised the grounds in respect of which the UK Treasury most often granted applications. These were:[44]

- "Where the applicant performed essential services or substantial acts of kindness for the deceased person". In such cases, the services should normally have been provided for no reward. Cases where remuneration or reward were contemplated were more appropriately dealt with as legal claims against the estate.
- "Where the deceased person was of illegitimate birth, but was survived by blood relatives". This ground is no longer relevant since the bars associated with ex-nuptial children have been removed.
- "Where the deceased person left a document of a testamentary character which was not valid as a will".
- "Where there existed between the applicant and the deceased person, over a long period, an association which was similar to some close blood relationship". This category covered de facto partners and people brought up as if they were children of the family.
- "Where the deceased person made his home with the applicant for an appreciable period and became regarded as a member of the applicant's family". The most common person in this category was

40. NSW, *Parliamentary Debates (Hansard)* Legislative Assembly, 16 November 1954, Administration of Estates Bill, Second Reading at 1715.
41. Trustee Corporations Association of Australia, *Submission* at 19.
42. K Mason and L G Handler, *Wills Probate and Administration Service* (Butterworths, Service 70) at para 1305.6.
43. See I J Hardingham, M A Neave and H A J Ford, *Wills and Intestacy in Australia and New Zealand* (2nd ed, Law Book Company, Sydney, 1989) at para 2704; and *Re Bonner* [1963] QdR 488.
44. N D Ing, *Bona Vacantia* (Butterworths, London, 1971) at 105-107.

said to be "the lodger who shared the life and amusements of his landlord's or landlady's family".

10.29 The publication also listed applications that were often made but did not, at the time, by themselves result in grants being made:[45]

- where the applicant was related to the intestate by marriage;
- where the whole or part of the intestate's estate was derived from a particular source, for example, from a previously deceased spouse, so that the estate ought to be returned to the spouse's family;
- where the intestate had verbally stated that he or she intended to make provision for the applicant.

10.30 It can be argued that such provisions are no longer necessary given the broader scope of family provision legislation to cover dependants, and especially in light of the recommendations of the National Committee in relation to persons to whom the deceased "owed a responsibility to provide maintenance, education or advancement in life."[46] In making a family provision order in relation to such an application, the court may have regard to whether the applicant "was being maintained, either wholly or partly, by the deceased person before the deceased person's death".[47]

10.31 However, it is important to distinguish between the nature of an application under family provision and the nature of an application for provision out of *bona vacantia*. In the case of a claim for family provision, people who are not entitled to a share of the deceased's estate may only make a claim if the deceased had been maintaining them or if the deceased had a responsibility towards them. In the case of *bona vacantia*, people may apply in cases where they have a purely moral claim to a share of the estate. Examples of purely moral claims may include foster children who are now adult, or beneficiaries whose inheritance has been struck out on a technicality, for example, a sole beneficiary who had signed as a witness.[48]

---

45. N D Ing, *Bona Vacantia* (Butterworths, London, 1971) at 107.
46. Family Provision Bill 2004 cl 7 in National Committee for Uniform Succession Laws, *Family Provision: Supplementary Report to the Standing Committee of Attorneys General* (Queensland Law Reform Commission, Report 58, 2004) Appendix 2.
47. Family Provision Bill 2004 cl 11(2)(j) in National Committee for Uniform Succession Laws, *Family Provision: Supplementary Report to the Standing Committee of Attorneys General* (Queensland Law Reform Commission, Report 58, 2004) Appendix 2.
48. Law Reform Commission of British Columbia, *Statutory Succession Rights* (Report 70, 1983) at 36.

10.32 It should also be noted that an application for provision out of *bona vacantia* is a relatively inexpensive procedure and that, in some cases, it will be cheaper and easier for dependants to seek an exercise of discretion rather than pursue a claim for family provision.[49]

Criteria for assessment of claims

10.33 As already noted, NSW, Tasmania, Queensland and Victoria refer to "dependants" and to other people for whom the intestate might reasonably have been expected to make provision.[50] WA refers only to persons who have a "moral claim" against the estate.[51] In WA, the term "moral claim" is used to distinguish a separate procedure that deals with any legal or equitable claims that may be made against the estate.[52]

10.34 In British Columbia, the *Escheat Act* provided for the restoration of property to anyone having a "legal or moral" claim upon the intestate.[53] In that province, it has been reported that every claim is treated as a moral claim, leaving the term "legal claim" undefined in practice.[54] Other Canadian provinces have similar provision for moral claims.[55]

10.35 While some have suggested that *ex-gratia* distributions from *bona vacantia* in NSW are "completely Delphic",[56] submissions generally supported a system of giving the Crown a discretion.[57] It was felt to be very difficult to "lay down specific criteria to cover all circumstances".[58] Another submission suggested that setting out criteria would be restrictive rather than helpful.[59] However, one

49. See England and Wales, Law Commission, *Distribution on Intestacy* (Working Paper 108, 1988) at 8 n 15.
50. *Wills, Probate and Administration Act 1898* (NSW) s 61B(8); *Administration and Probate Act 1935* (Tas) s 45(2); *Financial Management Act 1994* (Vic) s 58(3); and *Property Law Act 1974* (Qld) s 20(5). See also *Administration Act 1969* (NZ) s 77 It 8; and *Administration of Estates Act 1925* (Eng) s 46(1)(vi).
51. *Escheat (Procedure) Act 1940* (WA) s 9.
52. See *Escheat (Procedure) Act 1940* (WA) s 8.
53. *Escheat Act* RSBC 1996 c 120 s 5.
54. Law Reform Commission of British Columbia, *Statutory Succession Rights* (Report 70, 1983) at 36.
55. See *Escheats Act* CCSM c E-140 s 3; *Escheats and Forfeiture Act* RSNB 1973 c E-10 s 3 and s 6; *Escheats Act* RSO 1990 c E-20 s 3; *Escheats Act* RSPEI 1988 c E-10 s 2 and s 5; *Escheats Act* RSS 1978 c E-11 s 4.
56. *Sydney Consultation 2*. See also *Sydney Consultation 1*.
57. Public Trustee NSW, *Submission* at 14.
58. Public Trustee NSW, *Submission* at 14; Trustee Corporations Association of Australia, *Submission* at 20.
59. W V Windeyer, *Submission* at 5

submission has suggested that a court should determine any claims,[60] while another suggested that, if applications were to be made, they should be handled in the same way as family provision applications.[61]

10.36 In NSW, it has been noted that applicants stand a good chance of receiving some of the intestate estate if they are really part of the family. That is, if the deceased had made a will, they would have included the applicant.[62] One example given was that of the cousin of a Holocaust survivor's deceased husband who cared for her in her final years.[63]

Corporate claimants

10.37 The Law Commission suggests that in the English provisions "person" includes a corporate body.[64] It is, therefore, possible that a charity or community organisation with which the deceased had a close association could make an application for provision out of a *bona vacantia* estate.[65] The Law Commission observed that "payments may also be made to charities having such a claim or where the deceased has tried to benefit a charity by a testamentary disposition which failed".[66] This could potentially be the case in all Australian jurisdictions where the relevant interpretation acts each include a body corporate in their definition of "person".[67]

National Committee's conclusion

10.38 The National Committee has concluded that it should adopt a version of the provisions that allow for the discretionary distribution of *bona vacantia* estates. Provisions of this kind are a fair solution to the problem arising from the imposition of a limit on the degrees of

60. J North, *Submission* at 5.
61. Law Society of Tasmania, *Submission* at 15.
62. *Sydney Consultation 2*.
63. *Sydney Consultation 2*.
64. England and Wales, Law Commission, *Family Law: Distribution on Intestacy* (Report 187, 1989) at para 15.
65. On the possibility of a religious organisation establishing a "moral claim" in the context of a family provision application, see: P Ridge, "Moral duty, religious faith and the regulation of testation" (2005) 28 *University of New South Wales Law Journal* 720 at 732-733.
66. England and Wales, Law Commission, *Family Law: Distribution on Intestacy* (Report 187, 1989) at para 53.
67. *Interpretation Act 1987* (NSW) s 21(1); *Interpretation Act 1984* (WA) s 5; *Acts Interpretation Act 1915* (SA) s 4; *Interpretation Act 1978* (NT) s 19; *Acts Interpretation Act 1954* (Qld) s 36; *Interpretation of Legislation Act 1984* (Vic) s 38A; *Acts Interpretation Act 1931* (Tas) s 41(1); *Legislation Act 2001* (ACT) s 160(1).

kin who are entitled to take. They involve a relatively inexpensive procedure that saves on having to find remote relatives, but ensures the "deserving" ones get something. Such provisions will also be rarely invoked, considering that approximately half of the NSW applications in any year already go to cousins of the intestate.

10.39 The National Committee has decided to adopt a version of the Queensland provision. It has a number of benefits, including that it provides a reasonably comprehensive list of the types of application that might be entertained. It also does not require an application from each person who may be eligible, leaving open the possibility that an application can be made on behalf of a group. However, the National Committee considers that the provision relating to proof of title by inquisition should be omitted from the model provisions as being otiose in the context of intestacy. A further category of "any other person" should also be added to ensure that any person who may be deserving but does not fit within any of the other categories will not be excluded.

10.40 The Committee also considers that it should be made clear in the provision that it extends to corporate entities as well as individuals in order to cover any rare cases where, for example, a charity or social group can demonstrate a sufficient case for provision.

Recommendation 39

The responsible Minister should have the discretion, upon application, to make provision out of *bona vacantia* estates for people in the following classes:
(a) any dependants of the intestate;
(b) any persons having in the opinion of the Minister a just or moral claim to the grant of the property;
(c) any persons or organisations for whom the intestate might reasonably be expected to have made provision;
(d) the trustees of any person as mentioned in paragraphs (a) to (c);
(e) any other organisation or person.

See Intestacy Bill 2006 cl 38.