



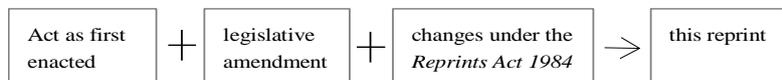
Western Australia

Escheat (Procedure) Act 1940

Reprint 1: The Act as at 21 March 2003

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Reprinted under the
Reprints Act 1984 as
at 21 March 2003

Western Australia

Escheat (Procedure) Act 1940

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Western Australia

Reprinted under the
Reprints Act 1984 as
at 21 March 2003

Escheat (Procedure) Act 1940

An Act to repeal certain Ordinances² relating to escheat and to declare the law and practice in cases of escheat.

1. Short title

This Act may be cited as the *Escheat (Procedure) Act 1940*¹.

2. Definitions

In this Act, subject to the context —

“**Court**” means a Judge of the Supreme Court.

“**Escheated property**” means real or personal property the subject of an order of escheat.

“**Order of escheat**” means an order made under this Act declaring that property has become the property of the Crown by way of escheat.

[3. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

4. Applications for order of escheat

In all cases where it appears that any property has escheated to the Crown (whether before or after the passing of this Act) the Crown Solicitor may make application to a Judge of the Supreme Court for an order declaring that the property concerned has become the property of the Crown by way of escheat.

5. Notice to be published

Notice of the day and hour of any application under the last preceding section shall be published in the *Government Gazette* and in a newspaper circulating in the district in which the property is situated, and, in case of real estate, shall be affixed to or left with some person at the premises respecting which the application is to be made one month before the hearing of the application.

6. Person claiming title to property or premises may appear and support claim

Any person claiming title to the property or premises the subject of any such application may appear and give evidence in support of such claim, may cross-examine witnesses and may be represented by counsel. The Court may summon all such witnesses as may be considered necessary and enforce attendance of such witnesses.

7. Court may declare property has become property of Crown by way of escheat

Upon any such application the Court may declare that the property the subject of such application has become the property of the Crown by way of escheat. Orders made under this section shall be final and conclusive and shall not be liable to be reviewed on appeal. Any such order shall be deemed to be “on office found”, within the meaning of section 16 of the *Curator of Intestate Estates Act 1918*³.

8. Sale of escheated property and application of proceeds

- (1) If the Court makes an order of escheat the sheriff may, upon instructions from the Treasurer, seize and proceed to a sale of the escheated property, and the proceeds of any such sale, after payment of all fees and lawful expenses thereout, shall be paid to the Treasurer, and be by him carried to the credit of the Consolidated Fund. In like manner any other moneys which are the subject of an order of escheat may be paid by the sheriff to

the Treasurer to be dealt with accordingly. The provisions of this subsection shall have no application in any manner whatsoever to any real or personal property vested in the Curator of Intestate Estates under the provisions of the *Curator of Intestate Estates Act 1918*³.

- (2) Subject to the provisions of section 9, the Governor in Executive Council may repay or make good, without interest, any moneys so appropriated to any person who establishes a legal or equitable claim thereto, and all moneys in the Treasury forming part of or arising from the general revenue of the State shall be applicable for so repaying or making good the same.

[Section 8 amended by No. 6 of 1993 s. 13.]

9. Governor in Executive Council may make orders with respect to escheated property in favour of persons with moral claim

- (1) In all cases where any property real or personal shall have escheated to the Crown under the provisions of this Act, and no claim having been made under the provisions of section 8 within 12 months of the date of the order of escheat, the Governor in Executive Council may order, on application in that behalf, that such property or (if sold) its proceeds, or any portion thereof respectively, shall be given, conveyed, transferred, granted or paid in such shares, proportions, and manners and upon such terms and conditions and for such estate or interests to such person or persons having a moral but no legal or equitable claim thereto, to be held by such person or persons (subject as hereinafter provided) for his or their own use and for such estate or interest as the Governor may in each case deem suitable or advisable.
- (2) From and after the making of an order by the Governor under this section, no claim shall be brought or made against the Governor in Executive Council or the Minister for Justice or the Attorney General, as the case may be, the Treasurer, the sheriff, or any person or persons in whose favour an order is made

under this section, by any person in respect of the property or the proceeds thereof which is or are the subject of the order and all such claims shall, as against all such persons as aforesaid, be deemed from the date of the order to be extinguished and forever determined.

10. Sheriff to execute conveyance or transfer of escheated property

- (1) Upon a sale of real property under section 8, or upon the order of the Governor in Executive Council directing the conveyance or transfer of any escheated property to any person or persons named in such order, the sheriff shall execute a proper conveyance or transfer of the land to the purchaser or to the person or persons named in the order of the Governor in Executive Council, as the case may be, which said conveyance or transfer shall operate to pass the right, title, and interest of the deceased owner or the Crown, as the case may be, to the purchaser or such person or persons as in any other case.
- (2) The Registrar of Titles, upon production to him of any such transfer of land which is subject to the provisions of the *Transfer of Land Act 1893*, together with a certified copy of the order of the Court or the order of the Governor in Executive Council, as the case may be, shall register the said transfer and, notwithstanding any provision of the said Act to the contrary, production of the duplicate certificate of title shall not be required but, for the purposes of registration, the Registrar may, if he thinks fit, make such orders and publish such advertisements as are provided for in the case of dealing with land when the duplicate certificate of title is lost or not produced.

[Section 10 amended by No. 81 of 1996 s. 153(1).]

11. Rules of Court

- (1) Rules of Court may be made for regulating the practice and procedure to be followed and observed in proceedings under this Act and the fees to be charged.

- (2) No costs shall be awarded against any party to an application under this Act.

12. Regulations

The Governor may make regulations providing for all or any purpose that may be necessary or expedient to carry out the objects and purposes of this Act.

[Schedule omitted under the Reprints Act 1984 s. 7(4)(f).]

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Notes

- ¹ This reprint is a compilation as at 21 March 2003 of the *Escheat (Procedure) Act 1940* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Escheat (Procedure) Act 1940</i>	45 of 1940	30 Dec 1940	30 Dec 1940
<i>Financial Administration Legislation Amendment Act 1993</i> s. 13	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Transfer of Land Amendment Act 1996</i> s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
Reprint 1: The <i>Escheat (Procedure) Act 1940</i> as at 21 Mar 2003 (includes amendments listed above)			

- ² The provision in this Act repealing these Ordinances has been omitted under s. 7(4)(f) of the *Reprints Act 1984*.
- ³ Repealed by the *Public Trustee Act 1941*.