



Western Australia

## **Escheat (Procedure) Act 1940**



## Escheat (Procedure) Act 1940

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### Defined terms



## Escheat (Procedure) Act 1940

**An Act to repeal certain Ordinances<sup>2</sup> 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*.

**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 State 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.

[Section 4 amended: No. 65 of 2003 s. 91.]

**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*<sup>2</sup>.

**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 Account. 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*<sup>2</sup>.

- (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: No. 6 of 1993 s. 13; No. 77 of 2006 s. 4.]*

**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: 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

This is a compilation of the *Escheat (Procedure) Act 1940* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

### 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))
<b>Reprint 1: The <i>Escheat (Procedure) Act 1940</i> as at 21 Mar 2003</b> (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 91, 97 <sup>3</sup>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

### Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Transfer of Land Amendment Act 2022</i> Pt. 3 Div. 3	21 of 2022	24 Jun 2022	To be proclaimed (see s. 2(b))

### Other notes

<sup>1</sup> The provision in this Act repealing these Ordinances has been omitted under s. 7(4)(f) of the *Reprints Act 1984*.

<sup>2</sup> Repealed by the *Public Trustee Act 1941*.

<sup>3</sup> The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 97 reads as follows:

“

**97. References to Crown Solicitor**

If in a written law or other document or instrument there is a reference to the Crown Solicitor that reference may, where the context so requires, be read as if it had been amended to be a reference to the State Solicitor.

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## **Defined terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Court .....	2
Escheated property .....	2
Order of escheat .....	2