



Notice to Practitioners

International Wills

The purpose of this notice is to advise practitioners that the *Wills Amendment (International Wills) Act 2012* will commence operation on 10 March 2015.

The Act adopts into Victorian law the Uniform Law on the Form of an International Will contained in the UNIDROIT Convention. The Convention was signed in Washington D.C. in 1973. On 10 September 2014, the Commonwealth Government formally deposited its instrument of accession to the Convention in Washington and as a consequence the Convention will enter into force in Australia on 10 March 2015.¹

The Act introduces a new Division 7 to Part 2 of the *Wills Act 1997*. Its primary objective is to provide for an additional form of will – an international will – that is recognised as a valid form of will by courts of countries party to the Convention,² irrespective of where the will was made, the location of assets, or where the will-maker lives, and without having to look to the internal laws operating in foreign countries to determine whether the will has been properly executed. In short, a will made in a country that has adopted the Convention would be recognised as valid, as to form, in Victoria and vice versa.

The formalities required for an international will are similar, but not identical, to the requirements for a will executed in compliance with section 7 of the *Wills Act 1997*.

¹ The Convention has a mechanism that provides for “entry into force” of the Convention 6 months after accession.

² Countries that have signed the Convention include: Belgium, Bosnia-Herzegovina, Canada (not all provinces), Cyprus, Czechoslovakia, Ecuador, France, Holy See, Iran, Italy, Laos, Libyan Arab Jamahiriya, Niger, Portugal, Russia, Sierra Leone, Slovenia, United Kingdom, United States (not all States) and the Former Republic of Yugoslavia.

The will must be in writing and signed by the will-maker in the presence of two witnesses and a person authorised to act in connection with international wills.³ In addition, the will-maker is required to declare his or her will in the presence of the witnesses and the authorised person. The authorised person is required to attach to the will a certificate, in the form prescribed by the Convention, to the effect that the proper formalities have been complied with. Whilst the certificate, in the absence of contrary evidence, is conclusive evidence of the formal validity of the document as a will for the purposes of the Convention, it is further provided that the omission of the certificate does not affect the formal validity of the will.

The signatures of the will-maker and witnesses must be placed at the end of the will and if the will consists of several sheets, each sheet must be signed by the will-maker and each sheet numbered. The authorised person must also ask the will-maker if he or she wishes to make a declaration concerning the safekeeping of the will. In certain instances, the place where the will-maker intends to keep the will must be set out in the certificate. The authorised person must keep a copy of the certificate and deliver another to the will-maker.

Section 17 of the *Wills Act 1997* provides that a will is taken to be properly executed if it conforms to the internal law in force in the place where it was executed, where the will-maker was domiciled either at the time the will was executed or at the will-maker's death, or where the will-maker was a national. Presently, in most instances where probate of a foreign will is sought, an affidavit by a solicitor practising in the foreign jurisdiction setting out the relevant local law is filed. In the case of an international will, the Registrar would simply need to be satisfied that the will complied with the Convention requirements rather than the relevant foreign law, with the certificate providing a means of proof.

It is important to note that the Convention only deals with form in the strict sense. Once the Registrar has assessed that a will has met the formality requirements of an international will, existing Victorian law will govern issues including capacity,

³ The following persons are authorised in Victoria: an Australian legal practitioner (within the meaning of the *Legal Profession Act 2004*) and a public notary of any Australian jurisdiction.

revocation, construction or modification by codicil. The Uniform Law does not deal with those matters.

The requirements for an international will referred to above are not to be regarded as exhaustive and practitioners are urged to examine the legislation carefully.

Michael J. Halpin
Registrar of Probates
13 November 2014