



New South Wales

Succession Amendment (International Wills) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Succession Act 2006* to adopt into New South Wales law the Uniform Law contained in the UNIDROIT *Convention providing a Uniform Law on the Form of an International Will 1973* (the **Convention**). The Uniform Law provides for an additional form of will, known as an international will. An international will made in accordance with the requirements of the Uniform Law may be recognised as a valid will by a court in Australia or another country that is a party to the Convention, irrespective of where the will was made, the location of assets or where the testator lives, and without the court having to examine the laws of foreign countries to determine whether the will has been properly executed.

The Bill is based on model provisions and gives effect to a decision by the Standing Committee of Attorneys-General that each State and Territory would implement legislation in order to enable Australia to accede to the Convention.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation. A proclamation cannot be made unless the Convention has entered into force in Australia. Article XI of the Convention provides that the Convention enters into force in Australia 6 months after Australia has acceded to the Convention.

Schedule 1 Amendment of Succession Act 2006 No 80

Schedule 1 [2] inserts proposed Part 2.4A into the *Succession Act 2006* (the *principal Act*) to give effect to the Convention.

Proposed section 50A defines words and expressions used in the proposed Part.

Proposed section 50B provides that the Annex to the Convention, which contains the Uniform Law, has the force of law in New South Wales. This gives effect to Article II of the Convention. **Schedule 1 [3]** sets out the Annex in full. The Uniform Law contains the formal requirements for an international will to be properly executed. If a will purporting to be an international will does not comply with those formal requirements, it may still be valid as a will in New South Wales.

Proposed section 50C provides that Australian legal practitioners and public notaries are authorised to act in connection with international wills. Under the Uniform Law, an authorised person is required to sign a certificate that is attached to an international will confirming that the formalities necessary for an international will have been complied with. The proposed provision also recognises the capacity of an authorised person in another country that is a party to the Convention to act in relation to an international will in that country. The proposed section gives effect to Articles II and III of the Convention.

Proposed section 50D provides that the existing provisions in the principal Act that deal with witnesses to wills (such as who can or cannot act as a witness to a will) apply to witnesses to international wills. This provision gives effect to Article V of the Convention.

Proposed section 50E confirms that the general provisions of the principal Act (such as those dealing with revocation or the construction of the terms of a will) that apply to wills also apply to international wills.

Schedule 1 [1] provides that existing provisions in the principal Act that relate to foreign wills do not limit the operation of the proposed provisions relating to international wills. A will made outside of Australia, which is not in the form of an international will, will continue to be dealt with under those existing provisions (see Part 2.4 of the principal Act).

First print



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New South Wales

Succession Amendment (International Wills) Bill 2012

No. , 2012

A Bill for

An Act to amend the *Succession Act 2006* to make provision for international wills to give effect to the *Convention providing a Uniform Law on the Form of an International Will 1973*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Succession Amendment (International Wills) Act 2012</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation.	5
(2) A proclamation cannot be made under this section unless the <i>Convention providing a Uniform Law on the Form of an International Will 1973</i> has entered into force in Australia.	6 7 8

Schedule 1	Amendment of Succession Act 2006	1
	No 80	2
[1]	Section 47A	3
	Insert after section 47:	4
	47A Part does not limit operation of international will provisions	5
	This Part does not limit the operation of Part 2.4A.	6
[2]	Part 2.4A	7
	Insert after Part 2.4:	8
	Part 2.4A International wills	9
	50A Definitions	10
	In this Part:	11
	<i>Convention</i> means the <i>Convention providing a Uniform Law on the Form of an International Will 1973</i> signed in Washington, D.C. on 26 October 1973.	12
	<i>international will</i> means a will made in accordance with the requirements of the Annex to the Convention as set out in Schedule 2.	13
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		16
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	50B Application of Convention	18
	The Annex to the Convention has the force of law in this jurisdiction.	19
	Note. The Annex to the Convention is set out in Schedule 2.	20
		21
	50C Persons authorised to act in connection with international wills	22
	(1) For the purposes of this Part, the following persons are authorised to act in connection with an international will:	23
	(a) an Australian legal practitioner,	24
	(b) a public notary of any Australian jurisdiction.	25
		26
	(2) For the purposes of this Part, a reference in the Annex to the Convention to a person authorised to act in connection with international wills is a reference to:	27
	(a) a person referred to in subsection (1) who is acting in Australia, or	28
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		31

(b)	any other person who is acting as an authorised person under the law of a state (other than Australia) that is a party to the Convention.	1 2 3
	Note. This section gives effect to Articles II and III of the Convention.	4
50D	Witnesses to international wills	5
	The conditions requisite to acting as a witness to an international will are governed by the law of this jurisdiction.	6 7
	Note. For the relevant provisions of this Act, see Division 4 of Part 2.1.	8
50E	Application of Act to international wills	9
	To avoid doubt, the provisions of this Act that apply to wills extend to international wills.	10 11
[3]	Schedule 2	12
	Insert after Schedule 1:	13
	Schedule 2 Annex to Convention providing a Uniform Law on the Form of an International Will 1973	14 15 16
	ANNEX	17
	UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL	18
	Article 1	19
	1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.	20 21 22 23
	2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.	24 25
	Article 2	26
	This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.	27 28
	Article 3	29
	1. The will shall be made in writing.	30
	2. It need not be written by the testator himself.	31
	3. It may be written in any language, by hand or by any other means.	32

Article 4	1
1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.	2 3 4
2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.	5 6
Article 5	7
1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.	8 9
2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.	10 11 12 13
3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.	14 15
Article 6	16
1. The signatures shall be placed at the end of the will.	17
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.	18 19 20
Article 7	21
1. The date of the will shall be the date of its signature by the authorized person.	22
2. This date shall be noted at the end of the will by the authorized person.	23
Article 8	24
In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.	25 26 27 28 29
Article 9	30
The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.	31 32

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, (name, address and capacity), a person authorized to act in connection with international wills
2. Certify that on (date) at (place)
3. (testator) (name, address, date and place of birth) in my presence and that of the witnesses
4. (a) (name, address, date and place of birth)
(b) (name, address, date and place of birth)
has declared that the attached document is his will and that he knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses
- (1) the testator has signed the will or has acknowledged his signature previously affixed.
- * (2) following a declaration of the testator stating that he was unable to sign his will for the following reason
- I have mentioned this declaration on the will
- *- the signature has been affixed by (name, address)
7. (b) the witnesses and I have signed the will;
8. *(c) each page of the will has been signed by and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:
12. PLACE
13. DATE
14. SIGNATURE and, if necessary, SEAL

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13	1
The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.	2 3
Article 14	4
The international will shall be subject to the ordinary rules of revocation of wills.	5
Article 15	6
In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.	7 8
<hr/> <small>*To be completed if appropriate.</small>	9 10