

**Legislative Council—No 99**

As received from the House of Assembly and read a first time, 31 October 2012

South Australia

**Wills (International Wills) Amendment Bill 2012**

A BILL FOR

An Act to amend the *Wills Act 1936*.

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**The Parliament of South Australia enacts as follows:**

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Wills (International Wills) Amendment Act 2012*.

#### 2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Wills Act 1936*

- 10 4—Insertion of section 25E

After section 25D insert:

#### **25E—Part does not limit operation of international will provisions**

This Part does not limit the operation of Part 3A.

## 5—Insertion of Part 3A

After Part 3 insert:

### Part 3A—International wills

#### 25F—Interpretation

In this Part—

*Australian legal practitioner* means a local legal practitioner or an interstate legal practitioner within the meaning of the *Legal Practitioners Act 1981*;

*Convention* means the *Convention providing a Uniform Law on the Form of an International Will 1973* signed in Washington D.C. on 26 October 1973;

*international will* means a will made in accordance with the requirements of the Annex to the Convention as set out in Schedule 1.

#### 25G—Application of Convention

The Annex to the Convention has the force of law in this jurisdiction.

**Note—**

The Annex to the Convention is set out in Schedule 1.

#### 25H—Persons authorised to act in connection with international wills

(1) For the purposes of this Part, the following persons are authorised to act in connection with an international will:

- (a) an Australian legal practitioner;
- (b) a public notary of any Australian jurisdiction.

(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—

- (a) a person referred to in subsection (1) who is acting in Australia; or
- (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.

**Note—**

This section gives effect to Articles II and III of the Convention.

#### 25I—Witnesses to international wills

The conditions requisite to acting as a witness to an international will are governed by the law of this jurisdiction.

## **25J—Application of Act to international wills**

To avoid doubt, the provisions of this Act that apply to wills extend to international wills.

## **6—Insertion of Schedule 1**

After section 38 insert:

### **Schedule 1—Annex to Convention providing a Uniform Law on the Form of an International Will 1973**

#### **ANNEX**

#### **UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL 1973**

##### **Article 1**

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.

2 The invalidity of the will as an international will shall not affect its  
formal validity as a will of another kind.

##### **Article 2**

This law shall not apply to the form of testamentary dispositions  
made by two or more persons in one instrument.

##### **Article 3**

- 1 The will shall be made in writing.
- 2 It need not be written by the testator himself.
- 3 It may be written in any language, by hand or by any other means.

##### **Article 4**

- 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 The testator need not inform the witnesses, or the authorized person,  
of the contents of the will.

##### **Article 5**

- 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.

- 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.

- 3 The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

#### Article 6

- 1 The signatures shall be placed at the end of the will.
- 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.

#### Article 7

- 1 The date of the will shall be the date of its signature by the authorized person.
- 2 This date shall be noted at the end of the will by the authorized person.

#### Article 8

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.

#### Article 9

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.

#### 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:

5 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

10 .....  
—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;

15 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;

20 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

25 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

30 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

35 The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

#### Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

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.

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\*To be completed if appropriate