

CLAUSE NOTES

Wills Amendment (International Wills) Bill 2012

Clause 1: Short title

Clause 2: Commencement date - will be dependent upon the accession and operational commencement of the Convention (see cl 3)

Clause 3: Provides that a proclamation to commence this Act cannot be made unless the relevant Convention has entered into force in Australia. Article XI of the Convention provides that the Convention will enter into force six months after accession. The Convention will therefore enter into force six months after Australia accedes to the Convention.

Clause 4: Provides that the *Wills Act 2008* is the Principal Act

Clause 5: Provides that the existing Part 5 (Wills Under Foreign Law) does not limit the operation of the new 5A. New Part 5A will apply to international wills made in accordance with the requirements of the Convention. Part 5 applies to a "foreign will" that is not an international will, either because there was no intention for it to be made in the form of an international will or because, in spite of any intentions, the will has not been validly made as an international will. Article 1.2 of the Uniform Law provides that the invalidity of an international will does not affect its formal validity as a will of another kind if it meets the local criteria.

Clause 6: Inserts a new **Part 5A – International Wills**

- New section 62A defines terms used in the Part
- New section 62B gives the Annex to the Convention providing a Uniform Law on the Form of an International Will 1973 the force of law in Tasmania. The Annex is set out in Schedule 5. In accordance with clauses 2 and 3 of the Bill, the Annex will not have the force of law in Tasmania until the Convention has entered into force in Australia and the commencement of this Act has been proclaimed.
- New section 62C(1) sets out the who is an “authorised person” in respect of an international will in Australia. This gives effect to Article II of the Convention, which requires a Contracting Party to designate the persons who, in its territory, shall be authorised to act in connection with international wills. Under the Convention, an authorised person is required to certify that the proper formalities for an international will have been performed.
- New section 19C(2) provides for the recognition of authorised persons who have been designated and operate in other Convention jurisdictions. This gives effect to Article III of the Convention, which provides that the capacity of an authorised person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognised in the territories of other Contracting Parties and who is included in a reference to an “authorised person” in the Annex.
- New section 62D provides that determining who may be a witness to an international will is

governed by the law of Tasmania. For example section 11 of the Principal Act provides that a person who is unable to see and attest that a testator has signed a document cannot act as a witness.

- For the avoidance of doubt, new section 62E provides that the provisions of the *Wills Act* extend to international wills. While the new Schedule 5 sets out the specific form requirements of an international will, the other provisions of the Principal Act that apply to wills, such as those dealing with revocation or the construction of the terms of a will, also apply to international wills.

Clause 7: Inserts the Annex to the Convention Providing a Uniform Law on the Form of an International Will as Schedule 5 to the Principal Act. This gives effect to Article I of the Convention, which requires a Contracting Party to reproduce the actual text of the Annex to the Convention.

Clause 8: Provides for the automatic repeal of the Act ninety days after it commences.