

PARLIAMENT OF VICTORIA

Wills Amendment (International Wills) Bill 2011

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

Wills Amendment (International Wills) Bill 2011

A Bill for an Act to amend the **Wills Act 1997** and for other purposes.

The Parliament of Victoria enacts:

1 Main purpose

The main purpose of this Act is to amend the **Wills Act 1997** to give effect to the Convention providing a Uniform Law on the Form of an International Will 1973.

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2 Commencement

This Act comes into operation on a day or days to be proclaimed, not being a day earlier than the day on which the Convention providing a Uniform Law on the Form of an International Will 1973 enters into force in respect of Australia.

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3 Principal Act

See:
Act No.
88/1997.
Reprint No. 1
as at
20 July 1998
and
amending
Act Nos
27/2001,
18/2005,
38/2007,
12/2008,
69/2009 and
29/2011.
LawToday:
www.
legislation.
vic.gov.au

In this Act, the **Wills Act 1997** is called the
Principal Act.

4 New section 16A inserted

Before section 17 of the Principal Act **insert—**

**"16A Division 6 does not limit the operation of
Division 7**

This Division does not limit the operation of
Division 7."

5 New Division 7 of Part 2 inserted

After Division 6 of Part 2 of the Principal Act
insert—

"Division 7—International wills

19A Definitions

In this Division—

Convention means the Convention providing
a Uniform Law on the Form of an
International Will 1973 signed in
Washington 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 the Schedule.

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19B 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 the Schedule.

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19C 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—

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- (a) an Australian legal practitioner (within the meaning of the **Legal Profession Act 2004**);
- (b) a public notary of any Australian jurisdiction.

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(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—

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

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Note

This section gives effect to Articles 2 and 3 of the Convention.

s. 6

19D Witnesses to international wills

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

Note

For the relevant provisions of this Act, see Division 4.

19E Application of Act to international wills

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

6 New Schedule inserted

At the end of the Principal Act **insert**—

" _____

SCHEDULE

Section 19B

**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**

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 hereafter.

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.

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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.

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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.

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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.

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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.

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s. 6

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:

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

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.

s. 7

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.

* To be completed if appropriate.".

7 Statute law revision

In section 3(1) of the Principal Act, in the definition of *spouse*, for "death;" substitute "death."

8 Repeal of amending Act

This Act is **repealed** on the first anniversary of the first day on which all of the provisions of this Act are in operation.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES