

## STAGE ONE OF SUCCESSION REFORM IN QUEENSLAND

In Queensland, the Wills stage of succession reform has now been introduced by way of amendments to the *Succession Act 1981*. These new amended laws commenced in effect on 1 April 2006. While there are a number of new rules in relation to the validity of Wills, four of these which are potentially significant in relation to estate planning and protection are addressed here:

1. **Making of Will by minor:** In the past, a minor (person under the age of 18 years) could only make a valid Will if they were married or about to marry. As of 1 April 2006, a minor can apply to the Court for authorisation to make, alter or revoke a Will. There will obviously be costs involved in obtaining such an authorisation and subsequently preparing the Will, however this may be useful where a minor has a considerable estate and the intestacy rules regarding distribution do not provide a desirable outcome.

2. **Court made Wills for persons lacking testamentary capacity:** Previously in Queensland, a person lacking testamentary capacity was unable to make, vary or revoke a Will. The Court can now make or alter specific terms of a Will or revoke a Will in whole or in part for a person, while they are alive, on the application of a third party. A person lacking testamentary capacity includes a minor who may be unable (ie. because they are too young and are unable to understand the nature and effect of the proposed Will) to apply for authorisation to make a Will for themselves.

An example was the widely published Victorian case of *De Gois v Korp* where the wife was allegedly locked in boot of car by husband, who subsequently committed suicide shortly after his wife's death. In that instance the daughter made application for the husband to be removed as executor and beneficiary under his wife's Will.

3. **New marriage rules:** The previous rule is retained; that a Will is revoked by marriage unless it is made in contemplation of marriage. The amendments to the laws in this regard are:

(a) a Will made in contemplation of marriage no longer needs to contain that expression and external material may now be relied upon to show that the Will was made in contemplation of marriage and therefore remains valid; and

(b) the Will no longer needs to be made in contemplation of the particular marriage.

4. **New divorce rules:** The previous rule is retained; that a gift to a former spouse or the appointment of a former spouse as executor, trustee or guardian in a Will is revoked by divorce. However, this rule is now subject to contrary intention; a person can now explicitly provide that divorce does not effect the Will or certain provisions of it. This will be significant where former spouses have some form of continuing relationship (ie. common business)

Other amendments to the *Succession Act 1981* in relation to Wills include:

- new interested witness rules;
- new substantial compliance rules (including a new testamentary intention test);
- new anti-lapse provisions (now consistent with the intestacy provisions); and
- new rectification powers for the Court.

### The next stage of Succession Law amendments

The next stage of amendments to be introduced in Queensland will most likely be in relation to family provision. To date, no Bill has been introduced into the Queensland Parliament in this regard. However, this is one of the most contentious areas of succession law as it deals with the rights of a person to claim against an estate where that person is not a named beneficiary in the Will. As more information becomes available, we will publish a further article as it has particular relevance in rural estates.

This article was contributed by Kate Byron.