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## THE LAW OF WILLS & SUCCESSION – NATIONAL UNIFORMITY

For years Australian Citizens have faced a situation where different Australian states have different laws regarding Wills and Deceased Estates. Put simply, the laws as to what constitutes a legally valid will, as well as the procedures for the administration of Deceased Estates, have varied, sometimes significantly, between States. This has caused problems for people who have passed away whilst travelling or working temporarily in another State. It has also caused difficulties where people have passed away holding property or assets in several states.

Some of these difficulties will hopefully be resolved as we approach completion of a national project aimed at creating uniformity between the States in this area of law.

This project has been in place for many years. In 1991, the standing Committee of Attorneys General approved the development of uniform succession laws for the whole of Australia. In 1995 a National Committee on Uniform Succession Laws was established to review the existing State Laws relating to Succession and to propose model National Uniform Laws.

The National Committee divided the project into four different phases with each phase dealing with a separate area of succession

law. The first area is the law of Wills. This aspect of the project deals with setting uniform, national requirements as to what constitutes a legally binding Will and deals with “informal” Wills, that is Wills that, although not written with the required legal formality such as two witnesses, etc, will still be accepted by a Court as a valid last Will. There is also the creation of the capacity for people who have an intellectual disability or other type of legal disability to have Wills made for their benefit by the Court. The actual operation of certain clauses in a Will is also dealt with in the legislation. For example, the legislation attempts to clarify what occurs in the situation where a gift is provided to someone in a Will but that person does not survive the maker of the Will.

In New South Wales the first stage of the project, on the law of Wills, was completed by the commencement of the Succession Act 2006 on 1 March 2008.

The second stage deals with Family Provision. In New South Wales this was completed by amendments to the Succession Act which came into force on 1 March 2009. This area of the project deals with establishing national, uniform rules regarding the ways in which an estate may be challenged by an eligible person (usually a spouse, former spouse, child or grandchild, etc). For years this area has been problematic, with the different Australian States having significant differences between the way challenges to an estate are made.



The third stage of the project deals with intestacy. Intestacy is the situation that arises where a person passes away without having left a (valid) Will. The intestacy regime allows for division of a person’s property starting with their closest family members and branching out all the way to the Government as the final beneficiary if there are no others who fall within the legal categories. The Succession Amendment (Intestacy) Bill was introduced in New South Wales Parliament on 1 April 2009. The Bill provides for the Act to commence on proclamation.

The fourth and final stage of the project will deal with the administration of estates and aims to provide consistent procedural requirements for lawyers in all Australian States regarding the Applications that are required to be made to Court so that the last Will is recognised and a Grant of Probate is bestowed by the Court upon the executors.

Our Estate Planning Team will continue to monitor these developments and hopefully will soon be able to report that a significant degree of uniformity in this area of law between the States has finally occurred.



**Rankin Nathan Lawyers**

**1300 727 813**

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